

CAYMAN ISLANDS



Private Funding of Legal Services Act, 2020

(Act 58 of 2020)

PRIVATE FUNDING OF LEGAL SERVICES REGULATIONS, 2021

(SL 34 of 2021)

Supplement No. 1 published with Legislation Gazette No. 30 dated 2nd May, 2021.

PUBLISHING DETAILS



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Arrangement of Regulations

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**PRIVATE FUNDING OF LEGAL SERVICES
REGULATIONS, 2021**
(SL 34 of 2021)

In exercise of the powers conferred by sections 16(2)(b) and 19 of the Private Funding of Legal Services Act, 2020, the Cabinet makes the following Regulations —

Citation

1. These Regulations may be cited as the Private Funding of Legal Services Regulations, 2021.

Definitions

2. In these Regulations —

“**litigation guardian**” means a person appointed by the court to represent another person who does not have the capacity to instruct an attorney-at-law;

“**person under disability**” has the meaning assigned by Order 80, rule 1(c) of the *Rules of Court*; and

“**Rules of Court**” means the Rules of Court made under section 19 of the *Grand Court Act (2015 Revision)*.

Title of contingency fee agreement

3. For the purposes of section 5 of the Act, a contingency fee agreement shall be entitled “Contingency Fee Retainer Agreement”.



Contents of contingency fee agreements - general

4. An attorney-at-law who is a party to a contingency fee agreement shall ensure that the contingency fee agreement includes the following —
- (a) the name, address and telephone number of the attorney-at-law and the client;
 - (b) a statement that indicates that before the contingency fee agreement was entered into, the client —
 - (i) was informed that, in the event of the client being unsuccessful in the proceedings, the client may be liable to pay the taxed or agreed costs of the client's opponent in the proceedings; and
 - (ii) understood the meaning and purport of the contingency fee agreement;
 - (c) a statement of the type and nature of the matter in respect of which the attorney-at-law is providing services to the client;
 - (d) a statement that indicates that —
 - (i) the client and the attorney-at-law discussed options for retaining the attorney-at-law, other than by way of a contingency fee agreement, including retaining the attorney-at-law by way of an hourly-rate retainer;
 - (ii) the client was advised that hourly rates may vary among attorneys-at-law and that the client may consult with other attorneys-at-law to compare rates;
 - (iii) the client has chosen to retain the attorney-at-law by way of a contingency fee agreement; and
 - (iv) the client understands that all usual protections and controls on retainers between an attorney-at-law and client, as defined by the common law, apply to the contingency fee agreement;
 - (e) a statement that explains the contingency upon which the fee is to be paid to the attorney-at-law;
 - (f) a statement that explains what is to be regarded by the parties to the contingency fee agreement as constituting success or partial success;
 - (g) a statement that sets out the method by which the contingency fee is to be determined where the method of determination is a percentage of the amount recovered;
 - (h) a statement that explains that for the purpose of calculating the contingency fee, the amount to be recovered excludes any amount awarded or agreed from that which is separately specified as an amount in respect of costs and disbursements;
 - (i) an example that shows how the contingency fee is calculated;



- (j) a statement that outlines how the contingency fee is calculated, where recovery is by way of a structured settlement;
- (k) a statement that informs the client of the client's right to request the Grand Court to review and approve of the attorney-at-law's bill, which statement shall include the applicable timelines for asking for the review;
- (l) a statement that outlines —
 - (i) when and how the client or the attorney-at-law may terminate the contingency fee agreement,
 - (ii) the consequences of the termination for each of them; and
 - (iii) the manner in which the attorney-at-law's fee is to be determined in the event that the contingency fee agreement is terminated; and
- (m) a statement that informs the client that the client retains the right to make all critical decisions regarding the conduct of the matter.

Contents of contingency fee agreements - litigious matters

5. In addition to the requirements set out in regulation 4, where an attorney-at-law is a party to a contingency fee agreement made in respect of a litigious matter, the attorney-at-law shall ensure that the contingency fee agreement includes the following —
- (a) a statement giving effect to the provisions in regulation 9;
 - (b) a statement that explains costs and the awarding of costs;
 - (c) where the client is a plaintiff, a statement that indicates that the client agrees and directs that all funds claimed by the attorney-at-law for fees, costs, taxes and disbursements in respect of legal services shall be paid to the attorney-at-law in trust from any judgment or settlement money; and
 - (d) where the client is a person under disability represented by a litigation guardian —
 - (i) a statement that the contingency fee agreement must be reviewed by a judge before the agreement is finalised, or must be reviewed as part of the motion or application for approval of a settlement under Order 80, rule 11 of the *Rules of Court*;
 - (ii) a statement that the amount of the fees, costs and disbursements in respect of legal services are subject to the approval of a judge when the judge reviews a settlement agreement under Order 80, rule 11 of the *Rules of Court*; and
 - (iii) a statement that any money payable to a person under disability pursuant to an order or settlement shall be paid into court, unless a judge orders otherwise under Order 80, rule 11 of the *Rules of Court*.

Matters to be excluded from contingency fee agreements

6. An attorney-at-law shall not include in a contingency fee agreement a provision that —
- (a) requires the consent of the attorney-at-law before a claim may be abandoned, discontinued or settled at the instructions of the client; or
 - (b) prevents the client from terminating the contingency fee agreement with the attorney-at-law or changing attorneys-at-law.

Contingency fee agreement - person under disability

7. Where a person under disability who is represented by a litigation guardian seeks to enter into a contingency fee agreement with an attorney-at-law, the attorney-at-law shall —
- (a) apply to a judge for approval of the contingency fee agreement before the contingency fee agreement is finalised; or
 - (b) include the contingency fee agreement as part of the motion or application for approval of a settlement under Order 80, rule 11 of the *Rules of Court*.

Maximum fees

8. (1) For the purposes of section 4(2) of the Act, in the case of claims sounding in money, the total of any success fee payable by the client to the attorney-at-law shall not exceed thirty-three point three per cent of the total amount awarded or of any amount obtained by the client in consequence of the proceedings concerned, which amount shall not, for purposes of calculating such excess, include any costs.
- (2) For the purposes of section 4(3) of the Act, where a contingency fee agreement involves a percentage of the amount or of the value of the property recovered in an action or proceedings, the amount to be paid to the attorney-at-law shall not exceed thirty-three point three per cent of the amount or of the value of the property recovered in the action or proceedings.

Disbursements

9. (1) Where the client is responsible for the payment of disbursements under a contingency fee agreement, an attorney-at-law who pays disbursements during the course of the matter in respect of which legal services were provided, shall be reimbursed for the disbursements from any funds received as a result of a judgment or settlement of the matter.



- (2) Except as provided under section 30 of the *Legal Aid Act, 2015*, the amount to be reimbursed to the attorney-at-law under paragraph (1) is a first charge on the funds received as a result of the judgment or settlement.

Made in Cabinet the 6th day of April, 2021.

Kim Bullings
Clerk of the Cabinet

