

COMMON LAW CONTIGENCY FEE AGREEMENTS

It is now more than a year since the Law Society of the Northern Provinces gave the green light to its members to enter into common law contingency fee agreements with their clients. The feedback is that it was well received and that, by and large, it works well.

The other Provinces, however, have as yet not followed suit. During the Annual General Meeting of the Law Society of South Africa in March this year, an ad hoc committee was appointed to consider the matter and to make recommendations to the Law Society of South Africa. Two Councillors of the Law Society of the Northern Provinces serve on that ad hoc committee. We are awaiting the committee's recommendations, for consideration. Unless otherwise notified, members may continue to enter into common law contingency fee agreements with their clients.

However, kindly note the following:

1. A Common Law Contingency Fee agreement must be entered into. Such agreement will normally be entered into before

commencement of the proceedings. If entered into thereafter, valid reason should exist. Common Law Contingency Fees cannot therefore be applied as a matter of course;

2. A Common Law Contingency Fee agreement should meet the following criteria:

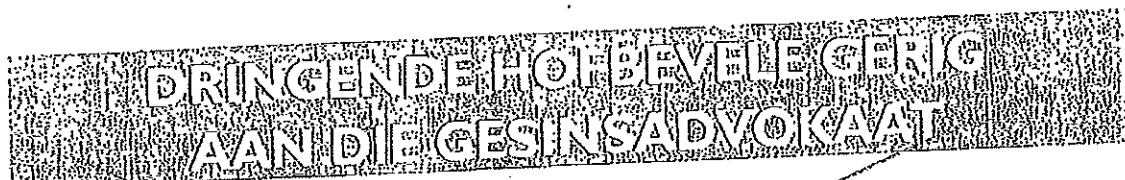
- * It should relate to a genuine case of assisting an impudent client to assert his/her rights. This refers to someone who, due to lack of means, is unable to assert his/her rights to relief in the Courts; and
- * The attorney's remuneration must be fair;
- * The agreement must not amount to gambling, speculation or trafficking in litigation.
- 3. The question of whether a Common Law Contingency Fee agreement withstands judicial scrutiny will depend on the facts of every matter. It can be assumed that reasonableness will remain the touchstone in respect of the percentage of the agreed success

fee. Because the Courts will probably refer to the 25% cap on success fees in the Contingency Fees Act, Act 66 of 1997, in determining the reasonableness, any agreed percentage in excess of that cap would be at risk. The percentage of the agreed success fee referred to is exclusive of actual disbursements of VAT.

Please note further that Council has considered the application of Common Law Contingency Fees to the value of an Undertaking, issued by the Road Accident Fund in terms of the relevant Act. Council's view is that Common Law Contingency Fees may not be applied against the value of an Undertaking. Members are therefore not allowed to apply the percentage of the agreed success fee to the value of such an Undertaking at all.

Please ensure adherence.

CP FOURIE
VICE-PRESIDENT
LAW SOCIETY OF THE NORTHERN PROVINCES



Die kantoor van die Gesinsadvokaat doen hierdie 'n dringende beroep op prokureurs om Hofbevels met kort keertydums te verny aangesien die Gesinsadvokaat vuid dat:

1. Dit soms ongewoon is, indien nie onmoontlik is, om 'n vaste standpunt in 'n kompleks aangeleenthoud in te neem waar meer oorweging en moeite eenvoudig 'n beter resultaat sou opgelewer het;
2. Die dringende Hofbevele vorels uit die aard van die saak spesiale reëlings wat dikwels betekenis dat afsprake wat reeds geskakuleer is gekanselleer of verskuif moet word. Dringende sake is nie noodwendig altyd meer belangrik as ander sake nie en dit is onbillik om voorkeurbehandeling af te dwing onder dekmantel van 'n Bevel;
3. Baie van die dringende sake het 'n geskiedenis met duidelike gevareltjens tank voor die tyd wat daarop volg dat aandag daarvan gegoe moet word. Daar die sake betys na die Gesinsadvokaat te verwys kan late van die krisisse afgeweer

word;

4. Die dringende Bevele bevat dikwels instruksies dat stelkundige evaluasies gedoen moet word. Die Gesinsadvokaat beskik nie oor stelkundiges in huis nie en maak dan van bulte doskundiges gebruik, oor wie hulle werkelik geen heue het, soos dit betrek vanoor die partye gesien word of hoe gou 'n vorslag beskikbaar gemaak word nie;
5. Sommige keertydums is eenvoudig onrealisties kort in omstandighede waar daar geen vooraf konsultasie met die Gesinsadvokaat se kantoor plaasvind nie;
6. Heelwat dringende bevele kom nie dadelik onder hul aandag nie. Dit is onwyss om sonder meer te aanvaar dat die Orde altyd sal toestan dat die Gesinsadvokaat die Bevel ontvang en dit is in praktylek veel beter indien die prokureur self daarna omsteln en