

# COMMON LAW CONTINGENCY 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 impecunious 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

## DRINGENDE HOEBEVELINGE AAN DIE GESINSADVOKAAT

Die kantoor van die Gesinsadvokaat doen hiermee 'n dringende beroep op prokureurs om Hoebevela met kort keurdatums te verny aangesien die Gesinsadvokaat vind dat:

1. Dit soms ongewens is, indien nie onmoontlik nie, om 'n vaste standpunt in 'n komplekse aangeleentheid in te neem waar meer oorvraging en navrae eenvoudig 'n beter resultaat sou oplewer het;
2. Die dringende Hoebevela vereis uit die aard van die saak spesiale reëlings wat dikwels betekenis dat afsprake wat reeds geskied is gekanselleer of verskuif moet word. Dringende sake is nie noodwendig altyd meer belangrik as ander sake nie en dit is onbillik om voorkeur behandeling af te dwing onder dekning van 'n Bevel;
3. Bate van die dringende sake het 'n geskiedenis met duidelike gevarekens (ank voor die tyd wat daarop dui dat aandag daaraan gegee moet word. Daar die sake betyds na die Gesinsadvokaat te verwys kon bate van die tuisse afgeweer

word;

4. Die dringende Bevele bevat dikwels instruksies dat stekundige evaluasies gedoen moet word. Die Gesinsadvokaat beskik nie oor stekundiges in-huis nie en maak dan van buite deskundiges gebruik, oor wie hulle verklik geen beheer het, sover dit betref vramoor die partye gesien word of hoe gou 'n verslag beskikbaar gemaak word nie;
5. Sommige keurdatums is eenvoudig onrealisties kort in omstandighede waar daar geen vooraf konsultasie met die Gesinsadvokaat se kantoor plaasvind nie;
6. Hoewat dringende bevel kom nie dadelik onder hiel aandag nie. Dit is onvys om sondermeer te aanvaar dat die Griffier altyd sal toestaan dat die Gesinsadvokaat die Bevel ontvang en dit is in praktyk veel beter indien die prokureur self daarna omsien; en