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GOVERNMENT GAZETTE

STAATSKOERANT

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PRESIDENT'S OFFICE

No. 1563.

21 November 1997

It is hereby notified that the President has assented to the following Act which is hereby published for general information:—

No. 66 of 1997: Contingency Fees Act, 1997

KANTOOR VAN DIE PRESIDENT

No. 1563.

21 November 1997

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 66 van 1997: Wet op Gebeurlikheidsgelde, 1997.

ACT

To provide for contingency fees agreements between legal practitioners and their clients; and to provide for matters connected therewith.

*(English text signed by the President.)
(Assented to 13 November 1997.)*

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Definitions

1. In this Act, unless the context otherwise indicates—
 - (i) “contingency fees agreement” means any agreement referred to in section 5
2(1); (iii)
 - (ii) “day” means a court day; (ii)
 - (iii) “legal practitioner” means an attorney or an advocate; (v)
 - (iv) “normal fees”, in relation to work performed by a legal practitioner in connection with proceedings, means the reasonable fees which may be 10 charged by such practitioner for such work, if such fees are taxed or assessed on an attorney and own client basis, in the absence of a contingency fees agreement; (iv)
 - (v) “proceedings” means any proceedings in or before any court of law or any tribunal or functionary having the powers of a court of law, or having the power to issue, grant or recommend the issuing of any licence, permit or other authorisation for the performance of any act or the carrying on of any business or other activity, and includes any professional services rendered by the legal practitioner concerned and any arbitration proceedings, but excludes any criminal proceedings or any proceedings in respect of any family law matter; 20 (vi)
 - (vi) “professional controlling body”—
 - (a) in respect of an attorney, means any body established by or under any law for the purposes of exercising control over the carrying on of the business of the attorneys’ profession, and of which such an attorney is a member; 25 and
 - (b) in respect of an advocate, means any body which is determined by the Minister of Justice by notice in the *Gazette* for the purposes of this Act, and of which such an advocate is a member. (i)

Contingency fees agreements

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2. (1) Notwithstanding anything to the contrary in any law or the common law, a legal practitioner may, if in his or her opinion there are reasonable prospects that his or her client may be successful in any proceedings, enter into an agreement with such client in which it is agreed—
 - (a) that the legal practitioner shall not be entitled to any fees for services rendered 35 in respect of such proceedings unless such client is successful in such proceedings to the extent set out in such agreement;
 - (b) that the legal practitioner shall be entitled to fees equal to or, subject to subsection (2), higher than his or her normal fees, set out in such agreement, for any such services rendered, if such client is successful in such proceedings 40 to the extent set out in such agreement.
- (2) Any fees referred to in subsection (1)(b) which are higher than the normal fees of

WET

Om voorsiening te maak vir gebeurlikheidsgeldeooreenkomste tussen regspraktisyne en hul kliënte; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

*(Engelse teks deur die President geteken.)
(Goedgekeur op 13 November 1997.)*

DAAR WORD BEPAAL deur die Parlement van die Republiek van Suid-Afrika, soos volg:—

Woordomskrywing

1. In hierdie Wet, tensy uit die samehang anders blyk, beteken—
 - (i) “beroepsbeheerliggaam”—
 - (a) met betrekking tot ‘n prokureur, ‘n liggaam wat by of kragtens ‘n wet ingestel is vir doeinde van die uitoefening van beheer oor die bedryf van die prokureursberoep, en waarvan daardie prokureur ‘n lid is; en
 - (b) met betrekking tot ‘n advokaat, ‘n liggaam wat deur die Minister van Justisie by kennisgewing in die *Staatskoerant* vir doeinde van hierdie Wet bepaal is, en waarvan daardie advokaat ‘n lid is; (vi)
 - (ii) “dag” ‘n hofdag; (ii)
 - (iii) “gebeurlikheidsgeldeooreenkoms” ‘n ooreenkoms in artikel 2(1) vermeld;
 - (i)
 - (iv) “normale gelde”, met betrekking tot werk wat deur ‘n regspraktisyn in verband met verrigtinge gedoen word, die redelike gelde wat deur sodanige regspraktisyn vir daardie werk gevorder kan word indien daardie gelde op ‘n prokureur- en eie kliëntgrondslag, waar daar geen gebeurlikheidsgeldeooreenkoms bestaan nie, getakseer of aangeslaan word; (iv)
 - (v) “regspraktisyn” ‘n prokureur of ‘n advokaat; (iii)
 - (vi) “verrigtinge” enige verrigtinge in of voor ‘n geregshof of enige tribunaal of funksionaris wat die bevoegdhede van ‘n geregshof het, of wat die bevoegdheid het om ‘n lisensie, permit of ander magtiging vir die verrigting van enige handeling of die voortsetting van enige besigheid of ander bedrywigheid uit te reik, toe te ken of die uitreiking aan te beveel, en ook enige professionele dienste wat deur die betrokke regspraktisyn verrig is en enige arbitrasieverrigtinge, maar nie ook enige strafregtelike verrigtinge of enige verrigtinge ten opsigte van ‘n familieregtelike aangeleenthed nie. (v)

Gebeurlikheidsgeldeooreenkomste

- 30 2. (1) Ondanks andersluidende bepalings van enige wet of die gemene reg, kan ‘n regspraktisyn, indien daar na sy of haar oordeel redelike vooruitsigte bestaan dat sy of haar kliënt suksesvol kan wees in enige verrigtinge, met daardie kliënt ‘n ooreenkoms aangaan waarin ooreengekom word—
 - (a) dat die regspraktisyn nie op enige gelde vir dienste ten opsigte van sodanige verrigtinge gelewer, geregtig sal wees nie, tensy daardie kliënt in die betrokke verrigtinge suksesvol is in die mate in sodanige ooreenkoms uiteengesit;
 - (b) dat die regspraktisyn geregtig sal wees op gelde wat gelyk is aan of onderworpe aan subartikel (2), hoër is as sy of haar normale gelde, in sodanige ooreenkoms uiteengesit, vir enige dienste gelewer, indien daardie kliënt in die betrokke verrigtinge suksesvol is in die mate in sodanige ooreenkoms uiteengesit.
- (2) Enige gelde in subartikel (1)(b) bedoel wat hoër is as die normale gelde van die

the legal practitioner concerned (hereinafter referred to as the 'success fee'), shall not exceed such normal fees by more than 100 per cent: Provided that, in the case of claims sounding in money, the total of any such success fee payable by the client to the legal practitioner, shall not exceed 25 per cent of the total amount awarded or 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.

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Form and content of contingency fees agreement

3. (1) (a) A contingency fees agreement shall be in writing and in the form prescribed by the Minister of Justice, which shall be published in the *Gazette*, after consultation with the advocates' and attorneys' professions.

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(b) The Minister of Justice shall cause a copy of the form referred to in paragraph (a) to be tabled in Parliament, before such form is put into operation.

(2) A contingency fees agreement shall be signed by the client concerned or, if the client is a juristic person, by its duly authorised representative, and the attorney representing such client and, where applicable, shall be countersigned by the advocate concerned, who shall thereby become a party to the agreement.

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(3) A contingency fees agreement shall state—

(a) the proceedings to which the agreement relates;

(b) that, before the agreement was entered into, the client—

(i) was advised of any other ways of financing the litigation and of their respective implications;

(ii) was informed of the normal rule that in the event of his, her or it being unsuccessful in the proceedings, he, she or it may be liable to pay the taxed party and party costs of his, her or its opponent in the proceedings;

(iii) was informed that he, she or it will also be liable to pay the success fee in the event of success; and

(iv) understood the meaning and purport of the agreement;

(c) what will be regarded by the parties to the agreement as constituting success or partial success;

(d) the circumstances in which the legal practitioner's fees and disbursements relating to the matter are payable;

(e) the amount which will be due, and the consequences which will follow, in the event of the partial success in the proceedings, and in the event of the premature termination for any reason of the agreement;

(f) either the amounts payable or the method to be used in calculating the amounts payable;

(g) the manner in which disbursements made or incurred by the legal practitioner on behalf of the client shall be dealt with;

(h) that the client will have a period of 14 days, calculated from the date of the agreement, during which he, she or it will have the right to withdraw from the agreement by giving notice to the legal practitioner in writing: Provided that in the event of withdrawal the legal practitioner shall be entitled to fees and disbursements in respect of any necessary or essential work done to protect the interests of the client during such period, calculated on an attorney and client basis; and

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(i) the manner in which any amendment or other agreements ancillary to that contingency fees agreement will be dealt with.

(4) A copy of any contingency fees agreement shall be delivered to the client concerned upon the date on which such agreement is signed.

Settlement

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4. (1) Any offer of settlement made to any party who has entered into a contingency fees agreement, may be accepted after the legal practitioner has filed an affidavit with the court, if the matter is before court, or has filed an affidavit with the professional controlling body, if the matter is not before court, stating—

(a) the full terms of the settlement;

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betrokke regspraktisy (hierna na verwys as die 'suksesfooi'), mag nie sodanige normale gelde met meer as 100 persent oorskry nie: Met dien verstande dat in die geval van eise wat van geldelike aard is, die totaal van enige sodanige suksesfooi wat deur die kliënt betaalbaar is aan die regspraktisy nie 25 persent van die totale bedrag wat aan die kliënt ten gevolge van die betrokke verrigtinge toegeken of enige bedrag wat deur die kliënt verkry is, mag oorskry nie, watter bedrag, vir die doeleindes van berekening van sodanige oorskryding, geen koste mag insluit nie.

Vorm en inhoud van gebeurlikheidsgeldeooreenkoms

3. (1) (a) 'n Gebeurlikheidsgeldeooreenkoms moet skriftelik wees en moet in die vorm wees wat die Minister van Justisie voorskryf, en wat in die *Staatskoerant* gepubliseer moet word, na oorlegpleging met die advokate- en prokureursberoep.

(b) Die Minister van Justisie moet 'n afskrif van die vorm bedoel in paragraaf (a) in die Parlement ter tafel laat lê voordat sodanige vorm in werking gestel word.

(2) 'n Gebeurlikheidsgeldeooreenkoms moet deur die betrokke kliënt of, indien die kliënt 'n regspersoon is, deur sy behoorlik gevoldmagtigde verteenwoordiger, en die prokureur wat sodanige kliënt verteenwoordig, onderteken word en moet, waar toepaslik, deur die betrokke advokaat medeonderteken word, wat daardeur 'n party tot die ooreenkoms word.

- (3) 'n Gebeurlikheidsgeldeooreenkoms moet vermeld—
- 20 (a) die verrigtinge waarop die ooreenkoms van toepassing is;
 - (b) dat, voordat die ooreenkoms aangegaan is, die kliënt—
 - (i) geadviseer is oor ander wyses om die litigasie te finansier en oor hul onderskeie implikasies;
 - (ii) verwittig is van die normale reëling dat ingeval hy of sy in die verrigtinge onsuksesvol sou wees hy of sy aanspreeklik kan wees om die getakseerde party-en-partykoste van sy of haar opponent in die verrigtinge te betaal;
 - (iii) daarvan verwittig is dat hy of sy ook aanspreeklik sal wees vir die betaling van die suksesfooi, in geval van sukses; en
 - (iv) die betekenis en strekking van die ooreenkoms begryp het;
 - 30 (c) wat deur die partye tot die ooreenkoms as sukses of gedeeltelike sukses beskou sal word;
 - (d) die omstandighede waaronder die regspraktisy se gelde en uitbetalings wat met die aangeleentheid verband hou, betaalbaar is;
 - 35 (e) die bedrag wat verskuldig sal wees, en die gevolge wat sal voortspruit, in die geval van gedeeltelike sukses in die verrigtinge en in die geval van voortydige beëindiging van die ooreenkoms om enige rede;
 - (f) of die bedrae wat betaalbaar is of die metode wat gebruik moet word om die betaalbare bedrae te bereken;
 - 40 (g) die wyse waarop uitbetalings wat deur die regspraktisy ten behoeve van die kliënt gemaak of opgeloop word, gehanteer sal word;
 - (h) dat die kliënt 'n tydperk van 14 dae, bereken vanaf die datum van die ooreenkoms, sal hê waartydens hy of sy die reg sal hê om uit die ooreenkoms terug te tree deur aan die regspraktisy skriftelike kennis te gee: Met dien verstande dat in die geval van terugtrede die regspraktisy geregtig sal wees op gelde en uitbetalings ten opsigte van nodige en noodsaklike werk wat gedurende sodanige tydperk gedoen is om die belang van die kliënt te beskerm, bereken op 'n prokureur- en kliëntgrondslag; en
 - 45 (i) die wyse waarop met 'n amendement of ander aanvullende ooreenkomste tot die gebeurlikheidsgeldeooreenkoms gehandel sal word.
- (4) 'n Afskrif van enige gebeurlikheidsgeldeooreenkoms moet aan die betrokke kliënt gelewer word op die datum waarop sodanige ooreenkoms onderteken word.

Skikkingsaanbod

4. (1) 'n Skikkingsaanbod wat aan 'n party gedoen word wat 'n gebeurlikheidsgeldeooreenkoms aangegaan het, kan aangeneem word nadat die regspraktisy 'n beëdigde verklaring by die hof ingedien het, indien die aangeleentheid voor 'n hof is, of 'n beëdigde verklaring by die beroepsbeheerliggaam ingedien het, indien die aangeleentheid nie voor 'n hof is nie, waarin vermeld word—

- (a) die volledige bepalings van die skikkingsaanbod;

Act No. 66, 1997**CONTINGENCY FEES ACT, 1997**

- (b) an estimate of the amount or other relief that may be obtained by taking the matter to trial;
- (c) an estimate of the chances of success or failure at trial;
- (d) an outline of the legal practitioner's fees if the matter is settled as compared to taking the matter to trial;
- (e) the reasons why the settlement is recommended;
- (f) that the matters contemplated in paragraphs (a) to (e) were explained to the client, and the steps taken to ensure that the client understands the explanation; and
- (g) that the legal practitioner was informed by the client that he or she understands and accepts the terms of the settlement.

(2) The affidavit referred to in subsection (1) must be accompanied by an affidavit by the client, stating—

- (a) that he or she was notified in writing of the terms of the settlement;
- (b) that the terms of the settlement were explained to him or her, and that he or she understands and agrees to them; and
- (c) his or her attitude to the settlement.

(3) Any settlement made where a contingency fees agreement has been entered into, shall be made an order of court, if the matter was before court.

Client may claim review of agreement or fees

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5. (1) A client of a legal practitioner who has entered into a contingency fees agreement and who feels aggrieved by any provision thereof or any fees chargeable in terms thereof may refer such agreement or fees to the professional controlling body or, in the case of a legal practitioner who is not a member of a professional controlling body, to such body or person as the Minister of Justice may designate by notice in the *Gazette* 25 for the purposes of this section.

(2) Such professional controlling body or designated body or person may review any such agreement and set aside any provision thereof or any fees claimable in terms thereof if in his, her or its opinion the provision or fees are unreasonable or unjust.

Rules

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6. Any professional controlling body or, in the absence of such body, the Rules Board for Courts of Law, established by section 2 of the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985), may make such rules as such professional controlling body or the Rules Board may deem necessary in order to give effect to this Act.

Regulations

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7. The Minister of Justice may make regulations prescribing further steps to be taken for the purposes of implementing and monitoring the provisions of this Act.

Short title and commencement

8. This Act shall be called the Contingency Fees Act, 1997, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*. 40

- (b) 'n beraming van die bedrag of ander verligting wat verkry kan word deur die aangeleentheid op verhoor te neem;
- (c) 'n beraming van die vooruitsigte op sukses of mislukking op verhoor;
- (d) 'n skets van die regspraktisy se gelde indien die aangeleentheid geskik word, in vergelyking met die neem daarvan op verhoor;
- 5 (e) die redes waarom die skikking aanbeveel word;
- (f) dat die aangeleenthede beoog in paragrawe (a) tot (e) aan die kliënt verduidelik is, en die stappe wat gedoen is om te verseker dat die kliënt die verduideliking verstaan; en
- 10 (g) dat die regspraktisy deur die kliënt ingelig is dat hy of sy die bepalings van die skikking verstaan en aanneem.
- (2) Die beëdigde verklaring bedoel in subartikel (1) moet vergesel wees van 'n beëdigde verklaring deur die kliënt waarin vermeld word—
- (a) dat hy of sy skriftelik van die bepalings van die skikking in kennis gestel is;
- 15 (b) dat die bepalings van die skikking aan hom of haar verduidelik is en dat hy of sy dit verstaan en daartoe toestem; en
- (c) sy of haar houding jeans die skikking.
- (3) 'n Skikking wat gedoen is waar 'n gebeurlikheidsgeldeooreenkoms aangegaan is, word 'n bevel van die hof gemaak indien die aangeleentheid voor 'n hof is.

20 Kliënt kan hersiening van ooreenkoms of bedrag eis

5. (1) 'n Kliënt van 'n regspraktisy wat 'n gebeurlikheidsgeldeooreenkoms aangegaan het en wat veronreg voel deur enige bepaling daarvan of enige gelde wat ingevolge daarvan vorderbaar is, kan sodanige ooreenkoms of gelde na die beroepsbeheerliggaam verwys, of, in die geval van 'n regspraktisy wat nie 'n lid van 'n beroepsbeheerliggaam is nie, na daardie liggaam of persoon wat die Minister van Justisie by kennisgewing in die *Staatskoerant* aanwys vir die doeleindeste van hierdie artikel.
- (2) Sodanige beroepsbeheerliggaam of aangewese liggaam of persoon kan sodanige ooreenkoms hersien en enige bepaling daarvan of enige gelde wat ingevolge so 'n ooreenkoms geëis word, tersyde stel indien dit na sy oordeel onredelik of onregverdig is.

Reëls

6. 'n Beroepsbeheerliggaam of, by ontstentenis van sodanige liggaam, die Reëlsraad vir Geregshewe, ingestel by artikel 2 van die Wet op die Reëlsraad vir Geregshewe, 35 1985 (Wet No. 107 van 1985), kan die reëls maak wat sodanige beroepsbeheerliggaam of die Reëlsraad nodig ag om aan die bepalings van hierdie Wet uitvoering te gee.

Regulasies

7. Die Minister van Justisie kan regulasies uitvaardig wat verdere stappe voorskryf wat vir doeleindeste van implementering en monitering van die bepalings van hierdie Wet 40 gedoen moet word.

Kort titel en inwerkingtreding

8. Hierdie Wet heet die Wet op Gebeurlikheidsgelde, 1997, en tree in werking op 'n datum deur die President by proklamasie in die *Staatskoerant* bepaal.

