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LEGISLATIONS
SECRETARY OF STATE

Proposed Initiative 2007-2008
#89
Final Text

Be it enacted by the People of the State of Colorado:

SECTION 1. Part 2 of article 17 of title 13, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

13-17-204. CONTINGENT ATTORNEY FEES - REQUIRED DISCLOSURES - REPORTS - REVIEWS - REMEDIES - LIMITATIONS

(1) INFORMED CONSENT FOR CONTINGENT ATTORNEY FEES

(a) AN ATTORNEY WHO IS RETAINED BY A CLAIMANT ON A CONTINGENT FEE BASIS SHALL, AT THE INITIAL MEETING, DISCLOSE TO THE CLAIMANT THE CLAIMANT'S RIGHT TO RECEIVE A WRITTEN STATEMENT OF THE INFORMATION DESCRIBED IN PARAGRAPHS (b) THROUGH (e) OF THIS SUBSECTION (1), AND DISCLOSE THE CLAIMANT'S RIGHTS SET FORTH IN PARAGRAPHS (f) THROUGH (h) OF THIS SUBSECTION (1).

(b) AN ATTORNEY RETAINED BY A CLAIMANT ON A CONTINGENT FEE BASIS SHALL, WITHIN A REASONABLE TIME NOT LATER THAN THIRTY DAYS AFTER THE INITIAL MEETING OR AFTER THE FORMATION OF AN ATTORNEY-CLIENT RELATIONSHIP, DISCLOSE IN A WRITTEN STATEMENT TO THE CLAIMANT:

(I) THE ESTIMATED NUMBER OF HOURS OF THE ATTORNEY'S SERVICES THAT WILL BE SPENT HANDLING THE CLAIM THROUGH SETTLEMENT OR TRIAL; AND

(II) THE ATTORNEY'S CONTINGENT FEE FOR SERVICES REGARDING THE CLAIM AND ANY CONDITIONS, LIMITATIONS, RESTRICTIONS, OR OTHER QUALIFICATIONS ON THAT FEE THE ATTORNEY DEEMS APPROPRIATE; AND

(III) THE AMOUNT OF ANY COSTS OR EXPENSES THAT THE CLIENT MUST BEAR; AND

(IV) ALL OTHER FEE AGREEMENTS TO BE MADE CONCERNING THE CLAIM, INCLUDING THE AMOUNT TO BE PAID TO ANY CO-COUNSEL ASSOCIATED WITH THE CASE AND ANY AGREEMENT TO REFER THE CLIENT TO ANOTHER ATTORNEY IN EXCHANGE FOR A REFERRAL FEE.

(c) AN ATTORNEY RETAINED BY A CLAIMANT ON A CONTINGENT FEE BASIS MUST KEEP ACCURATE RECORDS OF THE TIME SPENT ON THE CLAIMANT'S CASE AND, DURING THE PENDENCY OF THE CLAIM, MUST GIVE MONTHLY REPORTS TO THE CLAIMANT ON TIME SPENT, WORK PERFORMED, AND PROGRESS IN THE CASE.

(d) A CLAIMANT HAS THE RIGHT TO REQUEST AN OBJECTIVE REVIEW OF A CONTINGENT FEE BY A COURT OR A BAR ASSOCIATION COMMITTEE TO ENSURE THAT THE FEE IS REASONABLE AND FAIR IN THE CIRCUMSTANCES, BASED ON SUCH FACTORS AS WHETHER LIABILITY WAS CONTESTED, WHETHER THE AMOUNT OF DAMAGES WAS CLEAR, AND HOW MUCH ACTUAL TIME AN ATTORNEY REASONABLY SPENT ON THE CASE.

(e) AN ATTORNEY RETAINED BY A CLAIMANT ON A CONTINGENT FEE BASIS SHALL, WITHIN A REASONABLE TIME NOT LATER THAN THIRTY DAYS AFTER THE CLAIM IS FINALLY SETTLED OR ADJUDICATED, DISCLOSE IN A WRITTEN STATEMENT TO THE CLAIMANT:

(I) THE ACTUAL NUMBER OF HOURS OF THE ATTORNEY'S SERVICES SPENT IN CONNECTION WITH THE CLAIM;

(II) THE TOTAL AMOUNT OF THE CONTINGENT FEE FOR THE ATTORNEY'S SERVICES IN CONNECTION WITH THE CLAIM;

(III) THE ACTUAL FEE PER HOUR OF THE ATTORNEY'S SERVICES IN CONNECTION WITH THE CLAIM, DETERMINED BY DIVIDING THE TOTAL CONTINGENT FEE BY THE ACTUAL NUMBER OF HOURS OF THE ATTORNEY'S SERVICES; AND

(IV) THE CLAIMANT'S RIGHT TO REQUEST AN OBJECTIVE REVIEW OF A CONTINGENT FEE BY A COURT OR A BAR ASSOCIATION COMMITTEE TO ENSURE THAT THE FEE IS REASONABLE AND FAIR IN THE CIRCUMSTANCES, INCLUDING THE ADDRESS AND TELEPHONE NUMBER FOR SUCH COURT OF BAR ASSOCIATION COMMITTEE.

(f) AN ATTORNEY WHO FAILS TO DISCLOSE TO A CLAIMANT ANY INFORMATION REQUIRED BY THIS ACT SHALL BE LIABLE TO SUCH CLAIMANT IN AN AMOUNT DETERMINED BY A COURT. AN ATTORNEY WHO INTENTIONALLY FAILS TO DISCLOSE TO A CLAIMANT ANY INFORMATION REQUIRED BY THIS ACT SHALL ADDITIONALLY BE LIABLE FOR EXEMPLARY DAMAGES. A CLAIMANT TO WHOM AN ATTORNEY FAILS TO DISCLOSE INFORMATION REQUIRED BY THIS SECTION MAY BRING A CIVIL ACTION FOR DAMAGES AGAINST HIS OR HER ATTORNEY IN THE COURT IN WHICH THE CLAIM WAS OR COULD HAVE BEEN BROUGHT.

(g) A CLAIMANT MAY BRING A CIVIL ACTION TO RECOVER FEES IN EXCESS OF A REASONABLE FEE OR IN EXCESS OF THE LIMITS CONTAINED IN THIS SECTION. IN THE EVENT AN ATTORNEY HAS WILFULLY AND WANTONLY CHARGED AN UNREASONABLE FEE OR EXCEEDED THE LIMITS CONTAINED IN THIS SECTION, A CLAIMANT MAY RECOVER THREE TIMES THE AMOUNT IN EXCESS OF A REASONABLE FEE OR IN EXCESS OF THE LIMITS CONTAINED IN THIS SECTION.

(h) THE PROVISIONS OF THIS SECTION SHALL BE IN ADDITION TO AND NOT IN LIEU OF ANY OTHER AVAILABLE REMEDIES OR PENALTIES, INCLUDING ANY ETHICS RULES APPLICABLE TO ATTORNEYS THAT PROVIDE ADDITIONAL PROTECTIONS FOR LEGAL CONSUMERS.

(2) LIMITATION ON FEES

(a) NOTWITHSTANDING ANY PROVISION IN THIS ARTICLE TO THE CONTRARY, AN ATTORNEY MAY NOT CHARGE A CLAIMANT A CONTINGENT FEE THAT EXCEEDS:

(I) THIRTY PERCENT OF THE FIRST TWO HUNDRED FIFTY THOUSAND DOLLARS RECOVERED FOR THE CLAIMANT;

(II) TWENTY FIVE PERCENT OF THE AMOUNT RECOVERED FOR THE CLIENT THAT IS MORE THAN TWO-HUNDRED FIFTY THOUSAND DOLLARS BUT LESS THAN FIVE HUNDRED THOUSAND DOLLARS; AND

(III) TEN PERCENT OF THE AMOUNT RECOVERED FOR THE CLIENT THAT IS FIVE HUNDRED THOUSAND OR MORE.

(b) IN NO INSTANCE WILL AN ATTORNEY CHARGE A CLAIMANT A CONTINGENT FEE THAT EXCEEDS THE EQUIVALENT OF FIVE HUNDRED DOLLARS PER HOUR MULTIPLIED BY THE NUMBER OF HOURS AN ATTORNEY WORKED ON THE CASE. THE BASE RATE OF FIVE HUNDRED DOLLARS PER HOUR SHALL BE ADJUSTED BY THE CONSUMER PRICE INDEX IN USE FOR THE DENVER-BOULDER-GREELEY METROPOLITAN AREA, BEGINNING ON JANUARY 1, 2010.

(3) DEFINITIONS. AS USED IN THIS ACT,

(a) "ATTORNEY" MEANS ANY NATURAL PERSON, PROFESSIONAL LAW ASSOCIATION, CORPORATION, OR PARTNERSHIP AUTHORIZED UNDER APPLICABLE STATE LAW TO PRACTICE LAW.

(b) "ATTORNEY'S SERVICES" MEANS THE PROFESSIONAL ADVICE OR COUNSELING OF OR REPRESENTATION BY AN ATTORNEY, BUT DOES NOT INCLUDE OTHER ASSISTANCE INCURRED, DIRECTLY OR INDIRECTLY, IN CONNECTION WITH AN ATTORNEY'S, SUCH AS ADMINISTRATIVE, SECRETARIAL, OR CLERICAL ASSISTANCE, OVERHEAD, TRAVEL EXPENSES, WITNESS FEES, OR PREPARATION BY A PERSON OTHER THAN THE ATTORNEY OF ANY STUDY, ANALYSIS, REPORT, OR TEST.

(c) "CLAIM" MEANS A CIVIL ACTION BROUGHT IN A COURT IN THIS STATE.

(d) "CLAIMANT" MEANS ANY NATURAL PERSON, ORGANIZATION OR LEGAL ENTITY, SUCH AS A FIRM, CORPORATION, ASSOCIATION, COMPANY, PARTNERSHIP, SOCIETY, OR JOINT VENTURE, WHO BRINGS A CLAIM, AND, IF SUCH A CLAIM IS BROUGHT ON BEHALF OF THE CLAIMANT'S ESTATE, THE TERM SHALL INCLUDE THE CLAIMANT'S PERSONAL REPRESENTATIVE; IF SUCH A CLAIM IS BROUGHT ON BEHALF OF A MINOR OR INCOMPETENT, THE TERM SHALL INCLUDE THE CLAIMANT'S PARENT, GUARDIAN, OR PERSONAL REPRESENTATIVE.

(e) "INITIAL MEETING" MEANS THE FIRST CONFERENCE OR DISCUSSION BETWEEN THE CLAIMANT AND THE ATTORNEY, WHETHER BY TELEPHONE OR IN PERSON, OF THE DETAILS, FACTS OR BASIS OF A CLAIM.

(f) "RETAIN" MEANS THE ACT OF A CLAIMANT IN ENGAGING AN ATTORNEY'S SERVICES, WHETHER BY EXPRESS AGREEMENT OR IMPLIEDLY BY SEEKING AND OBTAINING THE ATTORNEY'S SERVICES.

(4) Two-Thirds Vote Required. DURING THE FIRST TEN YEARS AFTER THE EFFECTIVE DATE OF THIS SECTION, ANY CHANGES ENACTED BY THE STATE LEGISLATURE SHALL REQUIRE THE

CONSENT OF TWO-THIRDS OF THE MEMBERS FROM EACH CHAMBER.

(5) EFFECTIVE DATE. THE PROVISIONS OF THIS SECTION SHALL TAKE EFFECT ON JANUARY 1, 2009, AND SHALL APPLY TO ALL CIVIL ACTIONS FILED AFTER SUCH DATE.

SECTION 2. 13-17-104 is amended to read:

13-17-104. Fee arrangements between attorney and client. EXCEPT AS PROVIDED IN SECTION 13-17-204, AN ~~The~~ attorney and his client shall remain free to negotiate in private the actual fee which the client is to pay his attorney.

Names and Addresses of Proponents:

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