

Rule Change #2001(11)

**The Colorado Rules of Civil Procedure
Chapter 23.3. Rules Governing Contingent Fees**

The following rules are Amended and Adopted as of May 24, 2001:

Rule 6. Sanction for Non-Compliance

Rule 7. Forms

**Amended and Adopted by the Court, En Banc, May 24, 2001,
effective July 1, 2001.**

BY THE COURT:

**Gregory J. Hobbs, Jr.
Justice, Colorado Supreme Court**

CHAPTER 23.3
Rules Governing Contingent Fees

Rule 6. Sanction for Non-Compliance

No contingent fee agreement shall be enforceable by the involved attorney unless there has been substantial compliance with all of the provisions of this ~~rule~~ Chapter 23.3.

Rule 7. Forms

The following forms may be used and shall be sufficient. The authorization of these forms shall not prevent use of other forms consistent with this ~~rule~~ Chapter 23.3.

Form 1
Disclosure Statement

Type of Attorney Fee Agreements:

I have been informed and understand that there are several types of attorney fee arrangements: (1) time based, (2) fixed, ~~or~~ (3) contingent, or (4) combinations of these types of fee arrangements. "Time based" means a fee that is determined by the amount of time involved such as so much per hour, day or week. "Fixed" means a fee that is based on an agreed amount regardless of the time or effort involved or the result obtained. "Contingent" means a certain agreed percentage or amount that is payable only upon attaining a recovery regardless of the time or effort involved. ~~I understand I have the right to choose the type of attorney fee arrangement that not all attorneys offer all of these different types of fee arrangements, and I acknowledge that I have the right to contact other attorneys to determine if they may provide such other fee arrangements for my case or matter. After such consideration or consultation, I have elected the fee arrangement set forth in the accompanying contingent fee agreement.~~

Specially Awarded Attorney Fees: [*** NO CHANGE]

Expenses: [*** NO CHANGE]

The Potential of Costs and Attorney's Fees Being Awarded to The Opposing Party: [*** NO CHANGE]

Associated Counsel: [*** NO CHANGE]

Subrogation: [*** NO CHANGE]

Alternative Attorney Compensation:

I have been informed and understand that if, after entering into a fee agreement with my attorney, I terminate the employment of my attorney or my attorney justifiably withdraws, I may nevertheless be obligated to pay my attorney for the work done by my attorney on my behalf. The fee agreement should contain a provision stating how such alternative compensation, if any, will be handled.

I acknowledge that I received a complete copy of this Disclosure Statement and read it this ____ day of _____, 20__.

(Signature)

**Form 2
CONTINGENT FEE AGREEMENT
(To be Executed in Duplicate)**

Dated _____, 20__

[*** NO CHANGE]

(3) The client is not to be liable to pay compensation otherwise than from amounts collected for the client by the attorney, except as follows:

In the event the client terminates this contingent fee agreement without wrongful conduct by the attorney which would cause the attorney to forfeit any fee, or if the attorney justifiably withdraws from the representation of the client, the attorney may ask the court or other tribunal to order the client

to pay the attorney a fee based upon the reasonable value of the services provided by the attorney. If the attorney and the client cannot agree how the attorney is to be compensated in this circumstance, the attorney will request the court or other tribunal to determine: (1) if the client has been unfairly or unjustly enriched if the client does not pay a fee to the attorney; and (2) the amount of the fee owed, taking into account the nature and complexity of the client's case, the time and skill devoted to the client's case by the attorney, and the benefit obtained by the client as a result of the attorney's efforts. Any such fee shall be payable only out of the gross recovery obtained by or on behalf of the client and the amount of such fee shall not be greater than the fee that would have been earned by the attorney if the contingency described in this contingent fee agreement had occurred.

(4) [*** NO CHANGE]

(5) [*** NO CHANGE]

(6) [*** NO CHANGE]

(7) The client (authorizes) (does not authorize) [indicate which] the attorney to pay from the amount collected the following: (e.g., all physicians, hospitals, subrogation claims and liens, etc.). Where the applicable law specifically requires the attorney to pay the claims of third parties out of any amount collected for the client, the attorney shall have the authority to do so notwithstanding any lack of authorization by the client, but if the amount or validity of the third party claim is disputed by the client, the attorney shall deposit the funds into the registry of an appropriate court for determination. Any amounts ~~so~~ paid to third parties (will) (will not) [indicate which] be subtracted from the amount collected before computing the amount of the contingent fee under this agreement.

[This section moved from below and amended]

WE HAVE EACH READ THE ABOVE AGREEMENT BEFORE SIGNING IT.

Witnesses to Signatures:

(Signature of Client)

Witness to Client's Signature

(Signature of Attorney)

Witness to Attorney's Signature

*[Here insert the percentages to be charged in the event of collection. These may be on a flat basis or on a descending scale in relation to amount collected.]

~~Suggested additions to the contingent fee agreement where applicable:~~

~~(7) The client (authorizes) (does not authorize) [indicate which] the attorney to pay from the amount collected the following: (e.g., all physicians, hospitals, subrogation claims and liens, etc.). Any amounts so paid (will) (will not) [indicate which] be subtracted from the amount collected before computing the amount of the contingent fee under this agreement.~~

FINAL DISBURSEMENT STATEMENT

[*** NO CHANGE]

COMMITTEE COMMENT

The Rules contained in this Chapter 23.3 set forth the minimum requirements of all enforceable contingency fee agreements in Colorado. The Rules do not prohibit additional terms, provided that such terms are not inconsistent with these Rules or the Colorado Rules of Professional Conduct.

One type of provision that is sometimes included in contingent fee agreements is a "conversion clause." A conversion clause is a provision that converts the fee due from the contingent amount set forth in the contract to some other type of fee, often an hourly based fee, when the contract is terminated before the contingency occurs.

There are a number of factors that must be considered to determine the ethical propriety and legal enforceability of a conversion clause. These factors are set forth and analyzed in detail in Formal Opinion 100, issued by the Colorado Bar Association Ethics Committee. Opinions of the CBA Ethics Committee are available on the Internet at www.cobar.org. This Committee notes that any conversion clause that purports to remove the contingency by making the attorney's fees payable

without regard to the occurrence of the contingency, is presumptively invalid, unless the client is relatively sophisticated, has the demonstrated means to pay the attorney's fee even before the occurrence of the contingency, and has specifically negotiated the conversion clause.

The Colorado Supreme Court has held that an attorney cannot recover a fee based upon quantum meruit or unjust enrichment, unless the contingent fee agreement provides notice to the client of the possibility of such a fee. *Dudding v. Norton Frickey & Associates*, 11 P.3d 441 (Colo. 2000). Section (3) of the form Contingent Fee Agreement, which is a part of Chapter 23.3, provides notice to the client of the possibility of a quantum meruit or unjust enrichment fee recovery.