

1 AN ACT relating to contingency fee legal personal service contracts.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 45A.717 is amended to read as follows:

- 4 (1) The head of a contracting body, which includes constitutional officers, shall not
5 award a personal service contract for legal services that provides for payment by
6 contingency fee unless, prior to the award, the head of the contracting body
7 determines in writing:
- 8 (a) The contingency fee is both cost-effective and in the public interest;
 - 9 (b) Sufficient and appropriate legal and financial resources do not exist within the
10 contracting body;
 - 11 (c) The amount of time and labor required to perform the requested services;
 - 12 (d) The novelty, complexity, and difficulty of the matter;
 - 13 (e) The skill required to perform the requested services properly;
 - 14 (f) The geographic area where the legal services are to be provided; and
 - 15 (g) The experience desired for the particular kind of legal services to be provided.
- 16 (2) The head of the contracting body or his or her designee shall participate in
17 reviewing and evaluating the responses to the requests for proposals and discussions
18 with offerors.
- 19 (3) A contingency fee shall not exceed:
- 20 (a) Twenty percent (20%) of the amount recovered up to ten million dollars
21 (\$10,000,000);
 - 22 (b) Fifteen percent (15%) of the amount recovered between ten million dollars
23 (\$10,000,000) and fifteen million dollars (\$15,000,000);
 - 24 (c) Ten percent (10%) of the amount recovered between fifteen million dollars
25 (\$15,000,000) and twenty million dollars (\$20,000,000); and
 - 26 (d) Five percent (5%) of the amount recovered of twenty million dollars
27 (\$20,000,000) or more.

- 1 (4) A contingency fee shall not exceed twenty million dollars (\$20,000,000), regardless
2 of the number of actions or proceedings or the number of attorneys or law firms
3 involved in the matter, and exclusive of any costs and expenses provided for by the
4 contract and actually incurred by the legal services contractor.
- 5 (5) A contingency fee shall be payable only from money that is actually received
6 pursuant to a judgment or settlement agreement, and any judgment or settlement
7 funds shall be disbursed in accordance with KRS 48.005.
- 8 (6) During the contract period and any extension:
- 9 (a) The head of the contracting body or his or her designee shall retain control
10 over the course and conduct of the case and shall retain veto authority over
11 any decision made by the contract attorney;
- 12 (b) The head of the contracting body or his or her designee with authority over the
13 contract shall:
- 14 1. Attend all settlement conferences;
- 15 2. Be personally involved in overseeing the litigation; and
- 16 3. Make recommendation to the secretary of the Finance and
17 Administration Cabinet on any proposed settlement of the matter for
18 which the contract was entered, with the secretary having~~Have~~
19 ~~exclusive decision-making power regarding any settlement~~~~of the~~
20 ~~matter for which the contract was entered~~; and
- 21 (c) Any opposing party to the matter for which the contract was entered into may
22 directly contact the head of the contracting body or his or her designee with
23 authority over the contract, without having to notify the contract attorney.
- 24 (7) The Finance and Administration Cabinet shall develop a standard addendum to be
25 added to each personal service contract for legal services to include the terms of this
26 section.
- 27 (8) (a) Within five (5) business days after the contract award, the Finance and

1 Administration Cabinet shall post on its Web site each personal service
2 contract for legal services that provides for payment by contingency fee and
3 the accompanying written determinations described in subsection (1) of this
4 section. The contract and accompanying determinations shall remain on the
5 Web site during the duration of the contract and any extension.

6 (b) Any payment of contingency fees shall be posted on the contracting body's
7 Web site within fifteen (15) days after the payment of such contingency fees
8 to the legal services contractor and shall remain posted on the Web site for at
9 least three hundred sixty-five (365) days.

10 (9) (a) In addition to the information required of each contingency fee contract by the
11 Kentucky Model Procurement Code and KRS 45A.695, a contractor awarded
12 a personal service contract for legal services that provides for payment by
13 contingency fee shall maintain detailed current records, including
14 documentation of:

- 15 1. Expenses;
- 16 2. Disbursements;
- 17 3. Charges and credits;
- 18 4. Underlying receipts and invoices; and
- 19 5. Any other financial transactions that concern the attorney services
20 rendered under the contract.

21 (b) 1. All records described in this subsection shall become public records
22 subject to KRS 61.870 to 61.884 after a judgment or agreement is
23 entered in the case and all appeals have been exhausted, but shall not be
24 public records until that time.

25 2. Any information that is subject to an evidentiary privilege and is
26 contained within any record described in this subsection shall not be a
27 public record. The privileged information shall be redacted before any

1 public disclosure of the record.

2 (10) (a) The Finance and Administration Cabinet and the contracting body shall
3 submit a joint report to the Government Contract Review Committee by
4 September 1 of each year identifying all contingency fee contracts for legal
5 services:

- 6 1. Awarded in the previous fiscal year;
- 7 2. Active in the previous fiscal year, but awarded in prior fiscal years; or
- 8 3. Concluded in the previous fiscal year.

9 (b) For each contract, the report shall include:

- 10 1. The written determinations made under subsection (1) of this section;
- 11 2. Any determination made that the contract was not to be procured
12 through the request for proposal process; and
- 13 3. Any determination made that the contract may be entered into despite a
14 finding of disapproval by the committee.

15 (c) In addition, the report shall describe:

- 16 1. The name of the attorney or law firm with whom the contract was made;
- 17 2. The nature and status of the legal matter that is the subject of the
18 contract;
- 19 3. The name of the parties to the legal matter that is the subject of the
20 contract;
- 21 4. The amount of recovery, if any; and
- 22 5. The amount of the contingency fee paid, if any.

23 (11) The common law authority of any duly elected statewide constitutional officer is
24 specifically abrogated to the extent it is inconsistent with the provisions of this
25 section.