

I. Proposed Amendment to R. 1:21-7 — Contingent Fees

In the 1998-2000 term, the Committee had asked the Supreme Court for its view on the Committee's position that the limitations of the contingent fee rule do not apply to employment or discrimination cases. The Court agreed with the Committee's position and indicated that an official comment to the rule might be promulgated to memorialize this position. In lieu of the publication of an official comment, the Committee proposes that, for the sake of ease and clarity, R. 1:21-7(c) simply be amended to exclude employment and LAD cases from its provisions.

The Committee also recommends changing the reference in R. 1:21-1(c)(6) from "incompetent" to "mentally incapacitated." See also Section I. JJ., *infra*.

See Section II.F. of this report for discussion of other proposed amendments to this rule, which the Committee does not recommend.

The proposed amendments to R. 1:21-7 follow.

1:21-7. Contingent Fees

(a) ...no change.

(b) ...no change.

(c) In any matter where a client's claim for damages is based upon the alleged tortious conduct of another, including products liability claims and claims among family members that are subject to Part V of these Rules but excluding discrimination and employment cases, and the client is not a subrogee, an attorney shall not contract for, charge, or collect a contingent fee in excess of the following limits:

(1) 33 1/3% on the first \$500,000 recovered;

(2) 30% on the next \$500,000 recovered;

(3) 25% on the next \$500,000 recovered;

(4) 20% on the next \$500,000 recovered; and

(5) on all amounts recovered in excess of the above by application for reasonable fee in accordance with the provisions of paragraph (f) hereof; and

(6) where the amount recovered is for the benefit of a client who was a minor or [incompetent] mentally incapacitated when the contingent fee arrangement was made, the foregoing limits shall apply, except that the fee on any amount recovered by settlement without trial shall not exceed 25%.

(d) ...no change.

(e) ...no change.

(f) ...no change.

(g) ...no change.

(h) ...no change.

(i) ...no change.

Note: Source—*R. 1:21–6(f)*, as adopted July 7, 1971 to be effective September 13, 1971 and deleted December 21, 1971 to be effective January 31, 1972. Adopted December 21, 1971 to be effective January 31, 1972. Amended June 29, 1973 to be effective September 10, 1973. Paragraphs (c) and (e) amended October 13, 1976, effective as to contingent fee arrangements entered into on November 1, 1976 and thereafter. Closing statements on all contingent fee arrangements filed as previously required between January 31, 1972 and January 31, 1973 shall be filed with the Administrative Office of the Courts whenever the case is closed; paragraph (c) amended July 29, 1977 to be effective September 6, 1977; paragraph (d) amended July 24, 1978 to be effective September 11, 1978; paragraph (c) amended and new paragraphs (h) and (I) adopted January 16, 1984, to be effective immediately; paragraph (d) amended July 26, 1984 to be effective September 10, 1984; paragraph (e) amended June 29, 1990 to be effective September 4, 1990; paragraphs (b) and (c)(5) amended July 13, 1994 to be effective September 1, 1994; paragraph (c) amended June 28, 1996 to be effective September 1, 1996; paragraph (c) amended January 21, 1999 to be effective April 5, 1999; paragraphs (g) and (h) amended July 5, 2000 to be effective September 5, 2000; paragraph (c) amended _____ to become effective _____.