§ 82.065. Contract for Legal Services

(a) A contingent fee contract for legal services must be in writing and signed by the attorney and client.

(b) Any contract for legal services is voidable by the client if it is procured as a result of conduct violating Section 38.12(a) or (b), Penal Code, or Rule 7.03 of the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas, regarding barratry by attorneys or other persons.

(c) An attorney who was paid or owed fees or expenses under a contract that is voided under this section may recover fees and expenses based on a quantum meruit theory if the client does not prove that the attorney committed barratry or had actual knowledge, before undertaking the representation, that the contract was procured as a result of barratry by another person. To recover fees or expenses under this subsection, the attorney must have reported the misconduct as required by the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas, unless:

(1) another person has already reported the misconduct; or

(2) the attorney reasonably believed that reporting the misconduct would substantially prejudice the client's interests.

CREDIT(S)


HISTORICAL AND STATUTORY NOTES

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Section 3(a) of Acts 2011, 82nd Leg., ch. 94 (S.B. 1716) provides:

“Section 82.065, Government Code, as amended by this Act, applies only to a contract entered into on or after the effective date [Sept. 1, 2011] of this Act. A contract entered into before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.”

2013 Legislation

Acts 2013, 83rd Leg., ch. 315 (H.B. 1711) in subsec. (b), substituted “Section 38.12(a) or (b), Penal Code, or Rule 7.03 of the Texas Disciplinary Rules” for “the laws of this state or the Texas Disciplinary Rules” and inserted a comma following “State Bar of Texas”.

Section 4(a) of Acts 2013, 83rd Leg., ch. 315 (H.B. 1711) provides:

“Section 82.065(b), Government Code, as amended by this Act, applies only to a contract procured as a result of conduct described by that subsection, as amended by this Act, occurring on or after the effective date [Sept. 1, 2013] of this Act. A contract procured as a result of conduct occurring before the effective date of this Act is governed by the law applicable to the contract immediately before the effective date of this Act, and that law is continued in effect for that purpose.”

LAW REVIEW COMMENTARIES


LIBRARY REFERENCES

2013 Main Volume

Attorney and Client ☐130, 147.
Westlaw Topic No. 45.
C.J.S. Attorney and Client §§ 344, 352 to 356, 391 to 396.
RESEARCH REFERENCES

2013 Electronic Pocket Part Update

ALR Library

26 ALR 5th 107, Validity and Construction of Agreement Between Attorney and Client to Arbitrate Disputes Arising Between Them.

Encyclopedias


TX Jur. 3d Attorneys at Law § 235, Requisites.

TX Jur. 3d Attorneys at Law § 262, Illness or Death of Attorney; Rights of Partners.

Forms

1 West's Texas Forms § 11:6.50, Contingent Attorney's Fee Agreement for Collection of Debt.

Treatises and Practice Aids

McDonald & Carlson Texas Civil Practice § 2:9, Employment Agreement.

McDonald & Carlson Texas Civil Practice § 2:10, Fee Arrangements.

McDonald & Carlson Texas Civil Practice § 2:115, Barratry.

Schuwerk and Hardwick, 48 Tex. Prac. Series § 1:6, Terms to Include.


NOTES OF DECISIONS

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1. Purpose

Attorney contingency fee contracts serve two main purposes: first, they allow plaintiffs who cannot afford to pay a lawyer up-front to pay the lawyer out of any recovery and, second, such contracts, because they offer the potential of a greater fee than might be earned under an hourly billing method, compensate the attorney for the risk that the attorney will receive no fee whatsoever if the case is lost. In re Polybutylene Plumbing Litigation (App. 1 Dist. 2000) 23 S.W.3d 428, rehearing overruled, review dismissed. Attorney And Client \(\Rightarrow 148(1)\)

To determine legislative intent regarding contingent fee contracts for legal services, court had to look to language used and purpose behind regulation of contingent fee contracts. Enochs v. Brown (App. 3 Dist. 1994) 872 S.W.2d 312.

Costs \(\Rightarrow 194.20\); Costs \(\Rightarrow 194.22\)

Purpose of barratry statute is to protect vulnerable and unknowing individuals from overreaching or improper behavior on part of lawyers. Enochs v. Brown (App. 3 Dist. 1994) 872 S.W.2d 312. Champerty And Maintenance \(\Rightarrow 3\)

2. Signatures

Attorney-client contract containing contingent fee agreement for legal services, including arbitration agreement, was unenforceable, where contract was signed only by client, and neither attorney, nor anyone from attorney's office, signed agreement. In re Godt (App. 13 Dist. 2000) 28 S.W.3d 732, rehearing overruled. Alternative Dispute Resolution \(\Rightarrow 133(2)\)

Written contingent fee contract for attorney services signed by client and fully performed by attorney, but lacking attorney's signature, was enforceable; client's signature on written contract demonstrated her awareness of contingent fee arrangement. Enochs v. Brown (App. 3 Dist. 1994) 872 S.W.2d 312. Attorney And Client \(\Rightarrow 147\)

3. Enforceability

Under Texas law, client was only person who had standing to challenge her oral contingency fee agreement with her attorney, and therefore agreement was legal and enforceable in the absence of such challenge by client, notwithstanding attempt to void agreement by opposing party under statute requiring contingent fee contracts to be in writing and signed by both attorney and client. In re Webber, Bkrtcy.S.D.Tex.2006, 350 B.R. 344. Attorney And Client \(\Rightarrow 147\)

Statute requiring that contingency fee agreements between client and attorney be in writing and Disciplinary Rule of Professional Conduct governing contingent fee agreements did not apply to former clients' challenge to validity of fee sharing agreement between clients' counsel and other attorney who assisted counsel in settling class action, which allowed attorney to recover portion of attorney fees paid by clients to counsel. Bailey v. Gallagher (App. 5 Dist. 2011) 348 S.W.3d 322, rehearing overruled, review denied. Attorney and Client \(\Rightarrow 151\)
Contingent fee contracts entered into between plaintiffs and law firms representing them in mass tort litigation, under which plaintiffs agreed to pay law firms a specified percentage of gross value of any recovery from any party and law firms agreed to advance out-of-pocket costs of litigation to be reimbursed only upon recovery, complied with statute governing contingent fee contracts. In re Polybutylene Plumbing Litigation (App. 1 Dist. 2000) 23 S.W.3d 428, rehearing overruled, review dismissed. Attorney And Client 147

Attorney’s full performance under contingent fee contract for legal services and client's acceptance of benefits prevented client's guardian ad litem from arguing that contract was unenforceable under statute regulating contingent fee agreements. Enochs v. Brown (App. 3 Dist. 1994) 872 S.W.2d 312. Attorney And Client 147

Where contingent attorney fee contract was ambiguous, as document referred to “my” claims but those claims were based on child's injuries even though original petition named child's mother individually and as child's next friend, and handwritten provision of contract provided for waiver of attorney's fees if recovery was simply “limits of liability” but did not define that term, contingent fee contract was unclear as to whose claims were covered, and thus court properly admitted testimony of child's mother and attorney to clarify meaning of ambiguous terms. Enochs v. Brown (App. 3 Dist. 1994) 872 S.W.2d 312, Evidence 450(6)

4. Voidability

A client may void a contingent fee contract that violates barratry statute by expressing his intent to do so before attorney has fully or substantially performed. Cobb v. Stern, Miller & Higdon (App. 1 Dist. 2009) 305 S.W.3d 36, rehearing overruled. Attorney and Client 147

Failure to reduce contingency agreement to writing for over two years rendered the agreement voidable by the client. Robert L. Crill, Inc. v. Bond (App. 5 Dist. 2001) 76 S.W.3d 411, rehearing denied 2002 WL 1308910, review denied, rehearing of petition for review denied. Attorney And Client 147

Attorneys' undisclosed referral fee agreement had no financial impact on client, and thus was not void for violating public policy, where the fee was based on the amount of attorneys' fees collected by the attorneys prosecuting the case and did not require the client to pay any amount in addition to what the client otherwise agreed to pay; however, the more professional practice would have been to have disclosed the agreement to client and obtained the client's consent. Robert L. Crill, Inc. v. Bond (App. 5 Dist. 2001) 76 S.W.3d 411, rehearing denied 2002 WL 1308910, review denied, rehearing of petition for review denied. Attorney And Client 151

Client voided unsigned contingent fee agreement (a letter from the attorney) by instructing attorney to take no further action on case and by transferring case to in-house counsel. Tillery & Tillery v. Zurich Ins. Co. (App. 5 Dist. 2001) 54 S.W.3d 356, review denied. Attorney And Client 147

Letters from client to original attorney and to attorney he in turn retained, stating that client had obtained other counsel who would be solely handling case, asking original attorneys to send case file to new counsel with list of expenses for
reimbursement, and declaring that original attorneys would no longer be associated with case, expressly informed
attorney retained by original attorney of client's intent to avoid his alleged oral contingency fee agreement as allowed
Client  ☞ 146.1

Original attorney's contracts with clients authorized attorney to settle clients' claims without any further consultation
with them in violation of disciplinary rule, which thus rendered contracts voidable at clients' option. Sanes v. Clark
(App. 10 Dist. 2000) 25 S.W.3d 800, rehearing overruled, review denied. Attorney And Client  ☞ 101(1)

5. Jurisdiction

Non-resident client voided contingency fee agreement, which violated barratry statute, when client sent notice to firm
that he did not want firm to represent him before the law firm had fully or substantially complied with the agreement;
therefore, given that the activity stemming from the void agreement was the only contact with Texas, there was no
specific jurisdiction over the non-resident former client in the law firm's action alleging breach of the contingency fee
Client  ☞ 147; Courts  ☞ 13.5(11)

6. Waiver

Child's father and guardian ad litem waived pleading issues as to recovery of attorney fees based on quantum meruit,
and claim for attorney fees under other contract or quantum meruit was tried by implied consent, where father and
 guardian ad litem challenged only validity and interpretation of attorney fee contract and did not object to lack of
 pleadings or argue to trial court that child's mother could not raise issue of fees for attorney who represented child in

V. T. C. A., Government Code § 82.065, TX GOVT § 82.065

Current through the end of the 2013 Third Called Session of the 83rd Legislature

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