

NOTICE TO THE BAR

OFFICIAL COMMENT ADDED TO RULE 1:21-7 REGARDING RETAINER FEE AGREEMENTS IN STATUTORILY BASED FEE-SHIFTING CASES

The Supreme Court has adopted an Official Comment to Rule 1:21-7 (“Contingent Fees”) to provide guidance to attorneys and the public regarding ethical issues related to retainer fee agreements in statutorily based fee-shifting cases. The Court took this action as a follow-up to its decision in Balducci v. Cige, 240 N.J. 574 (2020), after input from the Advisory Committee on Professional Ethics and comments from the legal community and interested members of the public. The Court’s April 26, 2024 order adopting the Official Comment effective September 1, 2024 is attached.



Hon. Glenn A. Grant, J.A.D.

Acting Administrative Director of the Courts

Dated: April 26, 2024

SUPREME COURT OF NEW JERSEY

It is ORDERED that the attached amendment to Court Rule 1:21-7
("Contingent Fees") is adopted April 26, 2024, to be effective
September 1, 2024.

For the Court,

A handwritten signature in black ink, appearing to be "S. G. ...", written over a horizontal line.

Chief Justice

Dated: April 26, 2024

Rule 1:21-7 Contingent Fees

(a) . . . no change

(b) . . . no change

(c) . . . no change

(d) . . . no change

(e) . . . no change

(f) . . . no change

(g) . . . no change

(h) . . . no change

(i) . . . no change

Official Comment by the Supreme Court (September 1, 2024)

In Balducci v. Cige, 240 N.J. 574 (2020), a case concerning ethical issues relating to retainer fee agreements in statutorily based discrimination cases, the Supreme Court raised questions about the necessity for new rules of general applicability concerning the reasonableness of such fees. After thorough consideration and public comment, the Court finds that lawyers who represent clients in statutorily based discrimination cases must abide by the following:

1. Lawyers must explicitly disclose, in the retainer agreement, all identifiable fees or costs that the clients may have to pay either up-front or at the conclusion of the case.
2. Within the wide scope of potential paths litigation might take, lawyers must provide clients with an estimate of fees

and costs and the range of value of the case at the initiation of the representation.

3. Lawyers have a continuing obligation to inform clients about additional fees and costs that may arise as the case progresses.
4. Lawyers must promptly inform the client when rising fees and costs are likely to result in little to no monies recovered by the client in the lawsuit.
5. The retainer agreement is presumptively unreasonable when a lawyer charges the greater of a contingent fee or a regular hourly fee that is payable even if there is no recovery.
6. A contingency fee agreement in which the damages award and the fee award are combined, and a percentage is applied to the combined amount, is not presumptively unreasonable.
7. There should not be a cap on fees recoverable in statutory fee-shifting cases, but lawyers should notify clients, in the retainer agreement or orally, when the fee percentage is higher than 33 $\frac{1}{3}$ percent.
8. There is no need for proportionality between the lawyers' fee award and the damages award.

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 July 12, 2002 to be effective September 3, 2002; paragraphs (d) and (f) amended July 9, 2008 to be effective September 1, 2008; paragraph (f) amended July 19, 2012 to be effective September 4, 2012; paragraph (c) amended July 22, 2014 to be effective September 1, 2014; Official Comment adopted April 26, 2024 to be effective September 1, 2024.