

A Consumer Guide to Clients' Rights



This information about clients' rights is being provided to you as a public service by The Florida Bar. To help prevent any misunderstandings between you and your lawyer, please read this pamphlet carefully.

The section, "10 Basic Rights," tells what you, as a client, are entitled to by law or by custom.

The "Statement of Clients' rights" was approved by the Florida Supreme Court in June 1986. It must be read and signed by both attorney and client in most contingency fee matters (that is, a case where the attorney's fee is a percentage of the amount awarded to the client). The "Waiver of the Constitutional Right Provided in Article 1, Section 26, Florida Constitution" and "Acknowledgment by Client for Presentation to the Court" were approved by the Florida Supreme Court and became effective January 1, 2007. Those must be signed and notarized if you are unable to find a lawyer or law firm to represent you at the contingency fee rates set out in the Florida Constitution for medical malpractice cases or if you want to hire a particular lawyer or law firm, but you cannot hire your choice of counsel at the contingency fee rates provided in the constitutional provision.

Before you enter into a contingency fee arrangement, read and understand this information. Many of the suggestions listed in the "Statement of Clients' rights" are helpful to those thinking about hiring an attorney in any situation, not just a contingency fee case.

If you ever have any question about your rights as a client, or about the way your case is being handled, ask your lawyer. He or she should be readily available to represent your best interests and keep you informed about your case.

10 BASIC RIGHTS

When I retain a lawyer, I am entitled to one who:

- 1. WILL** be capable of handling my case.

2. WILL represent me zealously and seek any lawful means to present or defend my case.
3. WILL preserve my confidences, secrets or statements which I reveal in the course of our relationship.
4. WILL give me the right to make the ultimate decision on the objectives to be pursued in my case.
5. WILL charge me a reasonable fee and tell me, in advance of being hired and upon my request, the basis of that fee.
6. WILL show me courtesy and consideration at all times.
7. WILL exercise independent professional judgment in my behalf, free from compromising influences.
8. WILL inform me periodically about the status of my case and, at my request, give me copies of documents prepared.
9. WILL exhibit the highest degree of ethical conduct.
10. WILL refer me to other legal counsel, if he or she cannot properly represent me.

STATEMENT OF CLIENTS' RIGHTS IN CONTINGENCY FEE CASES

Before you, the prospective client, arrange a contingent fee agreement with a lawyer, you should understand this statement of your rights as a client. This statement is not a part of the actual contract between you and your lawyer, but, as a prospective client, you should be aware of these rights:

1. There is no legal requirement that a lawyer charge a client a set fee or a percentage of money recovered in a case. You, the client, have the right to talk with your lawyer about the proposed fee and to bargain about the rate or percentage as in any other contract. If you do not reach an agreement with one lawyer you may talk with other lawyers.

2. Any contingent fee contract must be in writing and you have three (3) business days to reconsider the contract. You may cancel the contract without any reason if you notify your lawyer in writing within three (3) business days of signing the contract. If you withdraw from the contract within the first three (3) business days, you do not owe the lawyer a fee although you may be responsible for the lawyer's actual costs during that time. If your lawyer begins to represent you, your lawyer may not withdraw from the case without giving you notice, delivering necessary papers to you, and allowing you time to employ another lawyer. Often, your lawyer must obtain court approval before withdrawing from a case. If you discharge your lawyer without good cause after the three-day period, you may have to pay a fee for work the lawyer has done.

3. Before hiring a lawyer, you, the client, have the right to know about the lawyer's education, training, and experience. If you ask, the lawyer should tell you specifically about his or her actual experience dealing with cases similar to yours. If you ask, the lawyer should provide information about special training or knowledge and give you this information in writing if you request it.

4. Before signing a contingent fee contract with you, a lawyer must advise you whether he or she intends to handle your case alone or whether other lawyers will be helping with the case. If your lawyer intends to refer the case to other lawyers he or she should tell you what kind of fee sharing arrangement will be made with the other lawyers. If lawyers from different law firms will represent you, at least one lawyer from each law firm must sign the contingent fee contract.

5. If your lawyer intends to refer your case to another lawyer or counsel with other lawyers, your lawyer should tell you about that at the beginning. If your lawyer takes the case and later decides to refer it to another lawyer or to associate with other law-

yers, you should sign a new contract which includes the new lawyers. You, the client, also have the right to consult with each lawyer working on your case and each lawyer is legally responsible to represent your interests and is legally responsible for the acts of the other lawyers involved in the case.

6. You, the client, have the right to know in advance how you will need to pay the expenses and the legal fees at the end of the case. If you pay a deposit in advance for costs, you may ask reasonable questions about how the money will be or has been spent and how much of it remains unspent. Your lawyer should give a reasonable estimate about future necessary costs. If your lawyer agrees to lend or advance you money to prepare or research the case, you have the right to know periodically how much money your lawyer has spent on your behalf. You also have the right to decide, after consulting with your lawyer, how much money is to be spent to prepare a case. If you pay the expenses, you have the right to decide how much to spend. Your lawyer should also inform you whether the fee will be based on the gross amount recovered or on the amount recovered minus the costs.

7. You, the client, have the right to be told by your lawyer about possible adverse consequences if you lose the case. Those adverse consequences might include money which you might have to pay to your lawyer for costs and liability you might have for attorney's fees, costs and expenses to the other side.

8. You, the client, have the right to receive and approve a closing statement at the end of the case before you pay any money. The statement must list all of the financial details of the entire case, including the amount recovered, all expenses, and a precise statement of your lawyer's fee. Until you approve the closing statement, your lawyer cannot pay any money to anyone, including you, without an appropriate order of the court. You also have the right to

have every lawyer or law firm working on your case sign this closing statement.

9. You, the client, have the right to ask your lawyer at reasonable intervals how the case is progressing and to have these questions answered to the best of your lawyer’s ability.

10. You, the client, have the right to make the final decision regarding settlement of a case. Your lawyer must notify you of all offers of settlement before and after the trial. Offers during the trial must be immediately communicated and you should consult with your lawyer regarding whether to accept a settlement. However, you must make the final decision to accept or reject a settlement.

11. If at any time, you, the client, believe that your lawyer has charged an excessive or illegal fee, you, the client, have the right to report the matter to The Florida Bar, the agency that oversees the practice and behavior of all lawyers in Florida.

Client Signature

Date

Attorney Signature

Date

For more information, contact The Florida Bar at (850) 561-5600 or contact the local bar association. Any disagreement between you and your lawyer about a fee can be taken to court and you may wish to hire another lawyer to help you resolve this disagreement. Usually fee disputes must be handled in a separate lawsuit, unless your fee contract provides for arbitration. You can request, but may not require,

that a provision for arbitration (under Chapter 682, Florida Statutes or under the Fee Arbitration Rule of The Florida Bar) be included in your fee contract.

WAIVER OF THE CONSTITUTIONAL RIGHT PROVIDED IN ARTICLE 1, SECTION 26, FLORIDA CONSTITUTION

On November 2, 2004 voters in the State of Florida approved The Medical Liability Claimant's Compensation Amendment that was identified as Amendment 3 on the ballot. The amendment is set forth below:

The Florida Constitution Article 1, Section 26 is created to read "Claimant's right to fair compensation." In any medical liability claim involving a contingency fee, the claimant is entitled to receive no less than 70% of the first \$250,000 in all damages received by the claimant, exclusive of reasonable and customary costs, whether received by judgment, settlement or otherwise, and regardless of the number of defendants. The claimant is entitled to 90% of all damages in excess of \$250,000, exclusive of reasonable and customary costs and regardless of the number of defendants. This provision is self-executing and does not require implementing legislation.

The undersigned client understands and acknowledges that (initial each provision):

_____ I have been advised that signing this waiver releases an important constitutional right; and

_____ I have been advised that I may consult with separate counsel before signing this waiver; and that I may request a hearing before a judge to further explain this waiver; and

_____ By signing this waiver I agree to an increase in the attorney fee that might otherwise be owed if the constitutional provision listed above is not

waived. Without prior court approval, the increased fee that I agree to may be up to the maximum contingency fee percentages set forth in Rules Regulating The Florida Bar 4-1.5(f)(4)(B)(i). Depending on the circumstances of my case, the maximum agreed upon fee may range from 33 1/3% to 40% of any recovery up to \$1 million; plus 20% to 30% of any portion of the recovery between \$1 million and \$2 million; plus 15% to 20% of any recovery exceeding \$2 million; and

_____ I have three (3) business days following execution of this waiver in which to cancel this waiver; and

_____ I wish to engage the legal services of the lawyers or law firms listed below in an action or claim for medical liability the fee for which is contingent in whole or in part upon the successful prosecution or settlement thereof, but I am unable to do so because of the provisions of the constitutional limitation set forth above. In consideration of the lawyers' or law firms' agreements to represent me and my desire to employ the lawyers or law firms listed below, I hereby knowingly, willingly, and voluntarily waive any and all rights and privileges that I may have under the constitutional provision set forth above, as apply to the contingency fee agreement only. Specifically, I waive the percentage restrictions that are the subject of the constitutional provision and confirm the fee percentages set forth in the contingency fee agreement; and

_____ I have selected the lawyers or law firms listed below as my counsel of choice in this matter and would not be able to engage their services without this waiver; and I expressly state that this waiver is made freely and voluntarily, with full knowledge of its terms, and that all questions have been answered to my satisfaction.

ACKNOWLEDGMENT BY CLIENT FOR PRESENTATION TO THE COURT

The undersigned client hereby acknowledges, under oath, the following:

_____ I have read and understand this entire waiver of my rights under the constitutional provision set forth above.

_____ I am not under the influence of any substance, drug, or condition (physical, mental, or emotional) that interferes with my understanding of this entire waiver in which I am entering and all the consequences thereof.

_____ I have entered into and signed this waiver freely and voluntarily.

_____ I authorize my lawyers or law firms listed below to present this waiver to the appropriate court, if required for purposes of approval of the contingency fee agreement. Unless the court requires my attendance at a hearing for that purpose, my lawyers or law firms are authorized to provide his waiver to the court for its consideration without my presence.

DATED this _____ day of _____, _____.

By: _____
Client

Sworn to and subscribed before me this _____ day of _____, _____ by _____, who is personally known to me, or has produced the following identification: _____.

Notary Public
My Commission Expires:

Dated this _____ day of _____, _____.

By: _____
Attorney

FEE ARBITRATION PROGRAM

The Florida Bar's statewide Fee Arbitration Program is available and authorized by the Florida Supreme Court to settle fee matters. The arbitration process was designed as an alternative to the court system for the resolution of fee disputes. The sole purpose of a fee arbitration hearing is to decide the fair and reasonable value of the legal services performed for a client by an attorney. As the program is voluntary, binding arbitration, the process cannot be put into effect unless both parties agree to arbitrate. If you would like additional information on the Fee Arbitration Program, please forward a written request to: Fee Arbitration Administrator, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300.

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