Ohio Revised Code

Section 9.492 Contingency fee contract with private attorney.

Effective: August 12, 2015
Legislation: Senate Bill 38 - 131st General Assembly

(A) The state shall not enter into a contingency fee contract with a private attorney unless the attorney general or the attorney general's designee makes a written determination prior to entering into that contract or within a reasonable time after entering into the contract that private representation is both cost-effective and in the public interest. Any written determination shall include findings for each of the following factors:

(1) Whether there exist sufficient and appropriate legal and financial resources within the attorney general's office to handle the matter involved;

(2) The nature of the legal matter for which private representation is required so long as divulging that information would not violate any ethical responsibility of the attorney general or privilege held by the state.

(B) If the attorney general or the attorney general's designee makes the determination described in division (A) of this section, the attorney general or the attorney general's designee shall request qualifications from private attorneys to represent the state, unless the attorney general or the attorney general's designee determines that requesting qualifications is not feasible under the circumstances and sets forth the basis for this determination in writing.

(C)(1) Except as otherwise provided in division (C)(2) of this section and subject to divisions (C)(3) and (4) of this section, the state shall not enter into a contingency fee contract with a private attorney that provides for the private attorney to receive an aggregate contingency fee in excess of the total of the following amounts:

(a) Twenty-five per cent of any damages up to ten million dollars;

(b) Twenty per cent of any portion of any damages of ten million dollars or more but less than fifteen million dollars;

(c) Fifteen per cent of any portion of any damages of fifteen million dollars or more but less than twenty million dollars;

(d) Ten per cent of any portion of any damages of twenty million dollars or more but less than twenty-five million dollars;

(e) Five per cent of any portion of any damages of twenty-five million dollars or more.

(2) Except as provided in division (D) of this section with respect to security class actions, the aggregate contingency fee under division (C)(1) of this section, exclusive of reasonable costs and expenses, shall not exceed fifty million dollars, regardless of the number of lawsuits filed or the number of private attorneys retained to achieve the recovery, unless the contract expressly authorizes a contingency fee in excess of fifty million dollars. The attorney general shall not enter into a contract authorizing a contingency fee in excess of fifty million dollars without the approval of the controlling board.

(3) A contingency fee in a contingency fee contract under division (C)(1) of this section shall not be based on penalties or civil fines awarded or on any amounts attributable to penalties or civil fines.

(4) The amount of a contingency fee paid to a private attorney under a contingency fee contract between the state and the private attorney shall be the percentage of the amount of damages actually recovered by the state to which the private attorney is entitled under division (C)(1) of this section.

(D) In any contingency fee contract covering a securities class action in which this state is appointed as lead plaintiff pursuant to section 27(a)(3)(B)(i) of the "Securities Act of 1933," 15 U.S.C. 77z-1(a)(3)(B)(i) or section 21D(a)(3)(B)(i) of the "Securities Exchange Act of 1934," 15 U.S.C. 78u-4(a)(3)(B)(i) or in which any state is a class representative, division (C)(2) of this section applies only with respect to the state's share of any judgment, settlement amount, or common fund and does not apply to the amount of attorney's fees that may be awarded to a private attorney for representing other members of a class certified pursuant to Rule 23 of the Federal Rules of Civil Procedure or state class action procedures.

(E)(1) A contract entered into between the state and a private attorney under this section shall include all of the following provisions that apply throughout the term of the contract and any extensions of that term:

(a) The private attorney shall acknowledge that the assistant attorney general retains complete control over the course and conduct of the case involved.

(b) An assistant attorney general with supervisory authority shall oversee the litigation of the case.

(c) An assistant attorney general shall retain veto power over any decisions made by the private attorney.

(d) Any opposing party in the case may contact the assistant attorney general directly without having to confer with the private attorney unless the assistant attorney general instructs the opposing party otherwise.

(e) An assistant attorney general with supervisory authority for the case may attend all settlement conferences.

(f) The private attorney shall acknowledge that final approval regarding settlement of the case is reserved exclusively to the discretion of the attorney general.

(2) Nothing in division (E)(1) of this section shall be construed to limit the authority of the client regarding the course, conduct, or settlement of the case.