

22 NYCRR 603.25

Section 603.25. Claims or actions for personal injuries, property damage, wrongful death, loss of services resulting from personal injuries and claims in connection with condemnation or change of grade proceedings

(a) Statements as to retainers; blank retainers.

(1) Every attorney who, in connection with any action or claim for damages for personal injuries or for property damages or for death or loss of services resulting from personal injuries, or in connection with any claim in condemnation or change of grade proceedings, accepts a retainer or enters into an agreement, express or implied, for compensation for services rendered or to be rendered in such action, claim or proceeding, whereby the attorney's compensation is to be dependent or contingent in whole or in part upon the successful prosecution or settlement thereof, shall, within 30 days from the date of any such retainer or agreement of compensation, sign personally and file with the Office of Court Administration of the State of New York a written statement of such retainer or agreement of compensation, containing the information hereinafter set forth. Such statement must be filed by electronic transmission in a manner directed by the chief administrative judge and approved by the presiding justice of the Appellate Division.

(2) A statement of retainer must be filed in connection with each action, claim or proceeding for which the attorney has been retained. Such statement shall contain the following information:

Retainer Statement for Office Use:

TO THE OFFICE OF COURT ADMINISTRATION OF THE STATE OF NEW YORK

1. Date of agreement as to retainer
2. Terms of compensation
3. Name and home address of client
4. If engaged by an attorney, name and office address of retaining attorney
5. If claim for personal injuries, wrongful death or property damage, date and place of occurrence
6. If a condemnation or change of grade proceeding:
 - (a) Title and description
 - (b) Date proceeding was commenced
 - (c) Number or other designation of the parcels affected
7. Name, address, occupation and relationship of person referring the client

Dated: _____, New York, _____ day of _____, 20 ____

Yours, etc.

Signature of Attorney

Attorney Name

Office and P.O. Address

Dist. Dept. County

NOTE: CPLR 2104 and 3217 REQUIRE THAT THE ATTORNEY FOR THE DEFENDANT FILE A STIPULATION OR STATEMENT OF DISCONTINUANCE WITH THE COURT UPON DISCONTINUANCE OF AN ACTION

(3) An attorney retained by another attorney, on a contingent fee basis, as trial or appeal counsel or to assist in the preparation, investigation, adjustment or settlement of any such action, claim or proceeding shall, within 15 days from the date of such retainer, sign personally and file electronically with the Office of Court Administration a written statement of such retainer in the manner and form as above set forth, which statement shall also contain particulars as to the fee arrangement, the type of services to be rendered in the matter, the code number assigned to the statement of retainer filed by the retaining attorney and the date when said statement of retainer was filed.

(4) No attorney shall accept or act under any written retainer or agreement of compensation in which the name of the attorney was left blank at the time of its execution by the client.

(b) Closing statement; statement where no recovery.

(1) A closing statement shall be filed in connection with every claim, action or proceeding in which a retainer statement is required, as follows: every attorney upon receiving, retaining or sharing any sum in connection with a claim, action or proceeding subject to this section shall, within 15 days after such receipt, retention or sharing, sign personally, file with the Office of Court Administration by electronic transmission in a manner directed by the chief administrative judge and approved by the presiding justice of the Appellate Division and serve upon the client a closing statement as hereinafter provided. Where there has been a disposition of any claim, action or proceeding, or a retainer agreement is terminated, without recovery, a closing statement showing such fact shall be signed personally by the attorney and filed electronically with the Office of Court Administration within days after such disposition or termination.

(2) Each closing statement shall be on one side of paper 8 1/2 inches by 11 inches and be in the following form and contain the following information:

Closing Statement for Office Use:

TO THE OFFICE OF COURT ADMINISTRATION OF THE STATE OF NEW YORK

1. Code number appearing on Attorney's receipt for filing of retainer statement.
2. Name and present address of client
3. Plaintiff(s)
4. Defendant(s)
- 5.(a) If an action was commenced, state the date: _____, 20____, _____ Court, _____ County.

(b) Was the action disposed of in open Court?

If not, and a request for judicial intervention was filed, state the date the stipulation or statement of discontinuance was filed with the clerk of the part to which the action was assigned

If not, and an index number was assigned but no request for judicial intervention was filed, state the date the stipulation or statement of discontinuance was filed with the County Clerk

6. Check items applicable: Settled (); Claim abandoned by client (); Judgment ().

Date of payment by carrier or defendant _____ day of _____, 20 ____

Date of payment to client _____ day of _____, 20 ____

7. Gross amount of recovery (if judgment entered, include any interest, costs and disbursements allowed) \$ _____ (of which \$ _____ was taxable costs and disbursements).

8. Name and address of insurance carrier or person paying judgment or claim and carrier's file number, if any.

9. Net amounts: to client \$ _____; compensation to undersigned \$ _____; names, addresses and amounts paid to attorneys participating in the contingent compensation _____.

10. Compensation fixed by: retainer agreement (); under schedule (); or by court ().

11. If compensation fix by court: Name of Judge _____ Court _____ Index No. _____ Date of order _____

12. Itemized statement of payments made for hospital, medical care or treatment, liens, assignments, claims and expenses on behalf of the client which have been charged against the client's share of the recovery, together with the name, address, amount and reason for each payment.

13. Itemized statement of the amounts of expenses and disbursements paid or agreed to be paid to others for expert testimony, investigative or other services properly chargeable to the recovery of damages together with the name, address and reason for each payment.

14. Date on which a copy of this closing statement has been forwarded to the client _____, 20 ____.

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Dated: _____, New York, _____ day of _____, 20 ____.

Yours, etc.

Signature of Attorney

Attorney's Name

Office and P.O. Address

Dist. Dept. County

(If space provided is insufficient, riders on sheets 8 ½ inches by 11 inches and signed by the attorney may be attached.)

(3) A joint closing statement may be served and filed in the event that more than one attorney receives, retains or shares in the contingent compensation in any claim, action or proceeding, in which event the statement shall be signed by each such attorney.

(c) Confidential nature of statements.

(1) All statements of retainer or closing statements filed shall be deemed to be confidential and the information therein contained shall not be divulged or made available for inspection or examination to any person other than the client of the attorney filing said statements except upon written order of the presiding justice of the Appellate Division.

(2) When a retainer or closing statement has been filed electronically pursuant to this section, the official record shall be the electronic recording of the document stored by the Office of Court Administration.

(d) Deposit of collections; notice.

(1) Whenever an attorney, who has accepted a retainer or entered into an agreement as above referred to, shall collect any sum of money upon any such action, claim or proceeding, either by way of settlement or after a trial or hearing, he shall forthwith deposit the same in a special account in accordance with the provisions of section 603.27 of this Part. Within 15 days after the receipt of any such sum he shall cause to be delivered personally to such client or sent by registered or certified mail, addressed to such client at the client's last known address, a copy of the closing statement required by this section. At the same time the attorney shall pay or remit to the client the amount shown by such statement to be due the client, and he may then withdraw for himself the amount so claimed to be due him for compensation and disbursements. For the purpose of calculating the 15-day period, the attorney shall be deemed to have collected or received or been paid a sum of money on the date that he receives the draft endorsed by the client, or if the client's endorsement is not required, on the date the attorney receives the sum. The acceptance by a client of such amount shall be without prejudice to the latter's right in an appropriate action or proceeding, to petition the court to have the question of the attorney's compensation or reimbursement for expenses investigated and determined by it.

(2) Whenever any sum of money is payable upon any such claim, action or proceeding, either by way of settlement or after trial or hearing, and the attorney is unable to locate a client, the attorney shall apply, pursuant to Rule 1.15(f) of the Rules of Professional Conduct (Part 1200 of this Title [Rule 1.15(f)]), to the court in which such action or proceeding was pending, or if no action had been commenced, then to the Supreme Court in the county in which the attorney maintains an office, for an order directing payment to be made to the attorney of the fees and reimbursable disbursements determined by the court to be due said attorney and to the Lawyers Fund for Client Protection of the balance due to the client, for the account of the client, subject to the charge of any lien found by the court to be payable therefrom.

(e) Contingent fees in claims and actions for personal injury and wrongful death.

(1) In any claim or action for personal injury or wrongful death, other than one alleging medical, dental or podiatric malpractice, whether determined by judgment or settlement, in which the compensation of claimant's or plaintiff's attorney is contingent, that is, dependent in whole or in part upon the amount of the recovery, the receipt, retention or sharing by such attorney, pursuant to agreement or otherwise, of compensation which is equal to or less than that contained in any schedule of fees adopted by this department is deemed to be fair and reasonable. The receipt, retention or sharing of compensation which is in excess of such scheduled fees shall constitute the exaction of unreasonable and unconscionable compensation in violation of any provision of the Rules of Professional Conduct (Part 1200 of this Title) with respect to conduct on or after April 1, 2009, or the former Code of Professional Responsibility, as adopted by the New York State Bar Association effective January 1, 1970, as amended, with respect to conduct on or before March 31, 2009, unless authorized by a written order of the court as hereinafter provided.

(2) The following is the schedule of reasonable fees referred to in paragraph (1) of this subdivision: either,

SCHEDULE A

- (i) 50 percent on the first \$1,000 of the sum recovered,
- (ii) 40 percent on the next \$2,000 of the sum recovered,
- (iii) 35 percent on the next \$22,000 of the sum recovered,
- (iv) 25 percent on any amount over \$25,000 of the sum recovered; or

SCHEDULE B

A percentage not exceeding 33% percent of the sum recovered. If the initial contractual arrangement between the client and the attorney so provides, in which event the procedure hereinafter provided for making application for additional compensation because of extraordinary circumstances shall not apply.

(3) Such percentage shall be computed by one of the following two methods, to be selected by the client in the retainer agreement or letter of engagement: (i) on the net sum recovered after deducting from the amount recovered expenses and disbursements for expert testimony and investigative or other services properly chargeable to the enforcement of the claim or prosecution of the action; or (ii) in the event that the attorney agrees to pay costs and expenses of the action pursuant to Judiciary Law section 488(2)(d), on the gross sum recovered before deducting expenses and disbursements. The retainer agreement or letter of engagement shall describe these alternative methods, explain the financial consequences of each, and clearly indicate the client's selection. In computing the fee, the costs as taxed, including interest upon a judgment, shall be deemed part of the amount recovered. For the following or similar items there shall be no deduction in computing such percentages: liens, assignments or claims in favor of hospitals, for medical care and treatment by doctors and nurses, or of self-insurers or insurance carriers.

(4) In the event that claimant's or plaintiff's attorney believes in good faith that Schedule A, above, because of extraordinary circumstances, will not give him adequate compensation, application for greater compensation may be made upon affidavit with written notice and an opportunity to be heard to the client and other persons holding liens or assignments on the recovery. Such application shall be made to the justice of the trial part to which the action had been sent for trial; or, if it had not been sent to a part for trial, then to the justice presiding at the trial term calendar part of the court in which the action had been instituted; or, if no action had been instituted, then to the justice presiding at the trial term calendar part of the Supreme Court for the county in the judicial department in which the attorney who filed the statement of retainer, pursuant to this section, has an office. Upon such application, the justice, in his discretion, if extraordinary circumstances are found to be present, and without regard to the claimant's or plaintiff's consent, may fix as reasonable compensation for legal services rendered an amount greater than that specified in Schedule A, above; provided, however, that such greater amount shall not exceed the fee fixed pursuant to the contractual arrangement, if any, between the client and the attorney. If the application be granted, the justice shall make a written order accordingly, briefly stating the reasons for granting the greater compensation; and a copy of such order shall be served on all persons entitled to receive notice of the application.

(5) The provisions of this subdivision shall not apply to an attorney retained as counsel in a claim or action for personal injury or wrongful death by another attorney, if such other attorney is not subject to the provisions of this section in such claim or action, but all other subdivisions of this section shall apply.

(6) Nothing contained in this subdivision shall be deemed applicable to the fixing of compensation for attorneys representing infants or other persons, where the statutes or rules provide for the fixation of such compensation by the court.

(7) Nothing contained in this subdivision shall be deemed applicable to the fixing of compensation for attorneys for services rendered in connection with the collection of first-party benefits as defined by section 5102 of the Insurance Law.

(8) The provisions of paragraph (2) of this subdivision shall not apply to claims alleging medical, dental, or podiatric malpractice. Compensation of claimant's or plaintiff's attorney for services rendered in claims or actions for personal injury alleging medical, dental or podiatric malpractice shall be computed pursuant to the fee schedule in Judiciary Law, section 474-a.

(f) Preservation of records of claims and actions. Attorneys for both plaintiff and defendant in the case of any such claim or cause of action shall preserve, for a period of seven years after any settlement or satisfaction of the claim or cause of action or any judgment thereon or after the dismissal or discontinuance of any action, the pleadings and other papers pertaining to such claim or cause of action, including, but not limited to, letters or other data relating to the claim of loss of time from employment or loss of income; medical reports, medical bills, X-ray reports, X-ray bills; repair bills, estimates of repairs; all correspondence concerning the claim or cause of action; and memoranda of the disposition thereof as well as cancelled vouchers, receipts and memoranda evidencing the amounts disbursed by the attorney to the client and others in connection with the aforesaid claim or

cause of action and such other records as are required to be maintained under section 603.27 of this Part.

(g) Omnibus filings in property damage claims or actions. Attorneys prosecuting claims or actions for property damages are permitted to make semi-annual omnibus filings of retainer statements and closing statements.