

# STATE OF COLORADO

## Colorado General Assembly

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## MEMORANDUM

**TO:** Beverly Razon and Loren Furman  
**FROM:** Legislative Council Staff and Office of Legislative Legal Services  
**DATE:** February 5, 2024  
**SUBJECT:** Proposed Initiative Measure 2023-2024 #170, concerning Limit on Contingency Fees

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Colorado Legislative Council and the Office of Legislative Legal Services to "review and comment" on initiative petitions for proposed laws and amendments to the Colorado Constitution. We hereby submit our comments to you regarding the appended proposed initiative.

The purpose of this statutory requirement of the directors of Legislative Council and the Office of Legislative Legal Services is to provide comments intended to aid proponents in determining the language of their proposal and to avail the public of knowledge of the contents of the proposal. Our first objective is to be sure we understand your intent and your objective in proposing the amendment. We hope that the statements and questions contained in this memorandum will provide a basis for discussion and understanding of the proposal.

### Purposes

The major purposes of the proposed amendment to the Colorado Revised Statutes appear to be to limit contingency fees for legal representation involving personal injury and wrongful death cases to no more than 25 percent of the total amount awarded to the client.

## **Substantive Comments and Questions**

The substance of the proposed initiative raises the following comments and questions:

1. Article V, section 1 (5.5) of the Colorado Constitution requires all proposed initiatives to have a single subject. What is the single subject of the proposed initiative?
2. What do the proponents mean by "legal representation involving personal injury"? Would the proponents consider defining the term?
3. What does "total amount awarded to the client" include? Would the proponents consider defining the phrase?
4. Do the proponents intend for the contingency fee cap to apply to all personal injury cases, or would there be exceptions?
5. Do the proponents intend for the contingency fee cap to apply to all types of wrongful death cases, or would there be exceptions?
6. What is the basis for determining a contingency fee must "not exceed twenty-five percent of the total amount awarded to the client"?
7. Can an attorney pass on additional costs to a client if the contingency fee award is not sufficient to cover the attorney expenses that are traditionally covered by a contingency fee?
8. How will a contingency fee cap affect attorneys who provide services to clients based on a contingency fee sliding scale?
9. How will capping contingency fees affect clients who may not have the resources to pay an attorney if attorneys take fewer cases due to the contingency fee cap?
10. What is the penalty for attorneys whose contingency fee exceeds 25 percent?

## **Technical Comments**

The following comments address technical issues raised by the form of the proposed initiative. These comments will be read aloud at the public meeting only if the proponents so request. You will have the opportunity to ask questions about these comments at the review and comment meeting. Please consider revising the proposed initiative as suggested below.

1. It is standard drafting practice to use lowercase type to show language being added as a nonstatutory declaration. It is standard drafting practice to use SMALL CAPITAL LETTERS [rather than ALL CAPS] to show language being added to a statutory declaration. If you would like the declaration in section 1 of the proposed initiative to be statutory, please add an amending clause indicating where in the Colorado Revised Statutes the declaration is intended to go. For example:

**SECTION 1.** In Colorado Revised Statutes, **add** \_\_\_\_\_ as follows:

2. In section 1 of the proposed initiative, each lettered paragraph should end with a semi-colon except for the last paragraph, which should end with a period. The second to last paragraph should also include the word "and."
3. In section 2 of the proposed initiative, the word "**Section**" should not be included in the headnote. In addition, because there is a definition in the proposed section, you may wish to add the word "definition" to the headnote (**13-17-204. Limit on contingency fees - definition.**).
4. For purposes of this statutory initiative, the word "shall" is defined in section 2-4-401 (13.7), Colorado Revised Statutes, and it means "that a person has a duty." The related word "must," which is defined in section 2-4-401 (6.5), Colorado Revised Statutes, "means that a person or thing is required to meet a condition for a consequence to apply." Furthermore, "'must' does not mean that a person has a duty."
5. In section 3 of the proposed initiative, a comma should follow "2025."