

# MODEL TRANSPARENCY IN PRIVATE ATTORNEY CONTRACTING ACT

## Section 1. Title

This Act may be known as the Transparency in Private Attorney Contracting (TIPAC) Act.

## Section 2. Definitions

As used in this section, the term:

A. "Government attorney" means an attorney employed by the State as a staff attorney in the Attorney General's Office.

B. "Private attorney" means any private attorney or law firm.

C. "State" means the State of [insert name of state], including state officers, departments, boards, commissions, divisions, bureaus, councils, and units of organization, however designated, of the executive branch of state government, and any of its agents.

## Section 3. Procurement

A. The Attorney General may not enter into a contingency fee contract with a private attorney unless the Attorney General makes a written determination prior to entering into such a contract that contingency fee representation is both cost-effective and in the public interest. Any written determination shall include specific findings for each of the following factors:

- (i) Whether there exist sufficient and appropriate legal and financial resources within the Attorney General's office to handle the matter.
- (ii) The time and labor required; the novelty, complexity, and difficulty of the questions involved; and the skill requisite to perform the attorney services properly.
- (iii) The geographic area where the attorney services are to be provided.

- (iv) The amount of experience desired for the particular kind of attorney services to be provided and the nature of the private attorney's experience with similar issues or cases.

B. If the Attorney General makes the determination described in subsection (A.), the Attorney General shall request proposals from private attorneys to represent the State on a contingency fee basis and draft a written request for proposal from private attorneys and post this request for proposal prominently on the Attorney General's website, unless the Attorney General determines that requesting proposals is not feasible under the circumstances and sets forth the basis for this determination in writing.

#### **Section 4. Contingent Fees**

A. The Attorney General may not enter into a contingency fee contract that provides for the private attorney to receive an aggregate contingency fee, exclusive of reasonable costs and expense, in excess of:

- (i) Twenty-five percent of any recovery of up to \$10 million; plus
- (ii) Twenty percent of any portion of such recovery between \$10 million and \$15 million; plus
- (iii) Fifteen percent of any portion of such recovery between \$15 million and \$20 million; plus
- (iv) Ten percent of any portion of such recovery between \$20 million and \$25 million; plus
- (v) Five percent of any portion of such recovery exceeding \$25 million.

B. In no event shall the aggregate contingency fee exceed \$50 million, exclusive of reasonable costs and expenses, and irrespective of the number of lawsuits filed or the number of private attorneys retained to achieve the recovery.

C. A contingency fee shall not be based on penalties or civil fines awarded or any amounts attributable to penalties or civil fines.

#### **Section 5. Control**

A. The Attorney General shall not enter into a contract for contingency fee attorney services unless the following requirements are met throughout the contract period and any extensions thereof:

- (i) The government attorneys shall retain complete control over the course and conduct of the case.
- (ii) A government attorney with supervisory authority shall be personally involved in overseeing the litigation.
- (iii) The government attorneys shall retain the authority to reject any decisions made by outside counsel.
- (iv) Any defendant that is the subject of such litigation may contact the lead government attorneys directly, without having to confer with contingency fee counsel.
- (v) A government attorney with supervisory authority for the case shall attend all settlement conferences.
- (vi) Decisions regarding settlement of the case shall be reserved exclusively to the discretion of the government attorneys and the State.

B. The Attorney General shall develop a standard addendum to every contract for contingent fee attorney services that shall be used in all cases, describing in detail what is expected of both the contracted private attorney and the State, including, without limitation, the requirements listed in (A)(i)-(vi), inclusive.

## **Section 6. Oversight**

A. Copies of any executed contingency fee contract and the Attorney General's written determination to enter into a contingency fee contract with the private attorney shall be posted on the Attorney General's website for public inspection within 5 business days after the date the contract is executed and shall remain posted on the website for the duration of the contingency fee contract, including any extensions or amendments thereto. Any payment of contingency fees shall be posted on the Attorney General's website within 15 days after the payment of such contingency fees to the private attorney and shall remain posted on the website for at least 365 days thereafter.

B. Any private attorney under contract to provide services to the State on a contingency fee basis shall, from the inception of the contract until at least 4 years after the contract expires or is terminated, maintain detailed current records, including documentation of all expenses, disbursements, charges, credits, underlying receipts and invoices, and other financial transactions that concern the provision of such attorney services. The private attorney shall make all such records available to the Attorney General, where they will be available for inspection and copying upon request in accordance with [insert relevant sections of state Open Records statute]. The Attorney General may take reasonable steps to protect the evidentiary privileges of the State when producing these records under [relevant state Open Records statute]. In addition, the private attorney shall maintain detailed contemporaneous time records for the attorneys and paralegals working on the matter in increments of no greater than 1/10 of an hour and shall promptly provide these records to the Attorney General, upon request.

C. By February 1 of each year, the Attorney General shall submit a report to the President of the Senate and the Speaker of the House of Representatives describing the use of contingency fee contracts with private attorneys in the preceding calendar year. The Attorney General may take reasonable steps to protect the evidentiary privileges of the State when producing this report. At a minimum, the report shall:

- (i) Identify all new contingency fee contracts entered into during the year and all previously executed contingency fee contracts that remain current during any part of the year, and for each contract describe:
  - (a) The name of the private attorney with whom the department has contracted, including the name of the attorney's law firm;
  - (b) The nature and status of the legal matter;
  - (c) The name of the parties to the legal matter;
  - (d) The amount of any recovery; and
  - (e) The amount of any contingency fee paid.
- (ii) Include copies of any written determinations made under subsections (3)(A) and (3)(B) during the year.

**Section 7. No Expansion of Authority**

Nothing in this Act shall be construed to expand the authority of any state agency or state agent to enter into contracts where no such authority previously existed.

**Section 8. Effective Date**