WEST VIRGINIA CODE: §48-1-215

§48-1-215. Contingent fee agreement defined.

(a) "Contingent fee agreement" means a contract under which an attorney may be compensated for work in progress, dependent on the occurrence of some future event which is not certain and absolute. As such, a contingent fee agreement is not an asset, but is potential income or income capacity. This potential income may have current value, and a portion of that current value, if any, may be considered to be a marital asset. In the event a party seeks to quantify the current value of a particular contingent fee agreement for the purpose of establishing the value of the agreement as marital property, the court must find that the party has proved such value by a preponderance of the evidence. Factors to be considered by the court include, but are not limited to, the following:

(1) The nature of the particular case or claim which underlies the agreement;

(2) The jurisdiction or venue of any projected trial or proceeding;

(3) Any historical data relevant to verdicts or settlements within the jurisdiction where the case or claim is pending or may be brought;

(4) The terms and particulars of the agreement;

(5) The status of the case or claim at valuation date;

(6) The amount of time spent working on the case or claim prior to the valuation date, and an analysis of the nature of how that time was spent, including, but not limited to, such activities such as investigation, research, discovery, trial or appellate practice;

(7) The extent of the person's active role in the work in process, whether as an actual participant or as an indirect participant such as a partner, local counsel or other ancillary role;

(8) The age of the case or claim;

(9) The expenses accrued or projected to bring the case or claim to resolution, including any office overhead attributable to case or claim; and

(10) The probable tax consequences attendant to a successful resolution of the case or claim.

(b) The provisions of this section as enacted during the regular session of the Legislature, one thousand nine hundred ninety-six, are to be applied prospectively and shall have no application to any action for annulment, divorce or separate maintenance that was commenced on or before June 7, 1996.

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