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Hon. Rob Bonta
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Attention: Ms. Anabel Renteria
Initiative Coordinator

Dear Attorney General Bonta:

Pursuant to Elections Code 9005, we reviewed the proposed constitutional initiative related to contracting with attorneys (A.G. File No. 25-0027, Amendment #1).

Background

In Noncriminal Legal Matters, People Typically Pay for Attorneys' Services. In criminal court cases, the government is required to provide and pay for attorneys for people who are unable to afford private attorneys. Otherwise, if they can afford it, people are required to pay for a private attorney. In noncriminal court cases, people—with certain exceptions—are not entitled to government-paid representation. Instead, they typically either represent themselves or pay for a private attorney. People may also pay for a private attorney to assist with legal matters that do not involve the courts, such as assistance with writing a will or entering into a business contract.

Attorneys Can Be Paid in Various Ways. State law generally requires attorneys enter into written contracts with clients to specify what services are being provided and how they will be paid for. While specific terms vary, contracts for attorney services typically include whether people will be paying their attorneys (1) an hourly rate, (2) a flat fee (a set amount for a product or service), or (3) on a contingency basis. Payment on a contingency basis typically occurs only if an attorney wins or settles a case. After deducting up-front litigation costs (such as court fees), attorneys are paid an agreed-upon percentage of the money that their client receives after winning or settling the case.

California Supreme Court and State Bar Regulate Attorneys. The California Constitution provides the California Supreme Court and the State Bar with authority to oversee and regulate attorneys—including specifying rules for who is eligible to practice law and how attorneys are paid. For example, these rules prohibit attorneys from charging an “unconscionable fee,” such as a fee that is not proportional to the value of services provided. They also prohibit attorneys from charging fees on a contingency basis in criminal and family law cases.


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State Law Also Regulates Attorneys. State law also regulates attorneys—including how they are paid. For example, it limits contingency fee agreements in medical malpractice cases to 25 percent of the amount the client receives if the case is settled before it is filed in court and 33 percent if it is resolved after it is filed. State law also prohibits attorney representation in small claims civil cases. Additionally, state law authorizes courts to award reasonable attorney fees and costs to people who win in certain case types.

Proposal

Prohibits New Limits on People’s Ability to Contract With Attorneys. This measure provides a new constitutional right protecting the ability of people to contract with attorneys beginning January 1, 2026. Specifically, it prohibits the state from denying or interfering with “the right of any person to contract with an attorney of their choice to protect or vindicate their legal rights.” This measure does not apply to any civil action in which the government appoints an attorney for someone or to any criminal case. Any laws in effect prior to January 1, 2026—including “the authority of the courts to regulate the practice of law and to prohibit illegal or unconscionable fees”—would remain in place. However, with the exception of civil actions in which the government appoints an attorney for someone and criminal cases, any future changes to state law regulating the way people contract with attorneys would need to be approved by the voters.

Fiscal Effects

No Direct Fiscal Effect. This measure would have no direct fiscal effect on state or local government. This is because it does not change existing laws and rules in place as of January 1, 2026 related to attorney contracts. However, it is possible that there could be future fiscal impacts on state and local governments as a result of the limit on making changes to people’s ability to contract with attorneys. The impact of this is unknown.

Summary of Major Fiscal Effects. This measure would have the following major fiscal effect:

- No direct fiscal effect on state or local government costs because the measure preserves existing laws and rules as of January 1, 2026 related to attorney contracts.

Sincerely,



for Gabriel Petek
Legislative Analyst



for Joe Stephenshaw
Director of Finance