

PHILADELPHIA BAR ASSOCIATION  
PROFESSIONAL GUIDANCE COMMITTEE  
Opinion 2003-15  
(October 2003)

This inquiry involves a proposed arrangement between an attorney and a Funding Company whereby the Funding Company would advance loans to the attorney to cover litigation costs. The costs would be repaid, plus additional fees, only if the case were successfully concluded and funds were derived by the attorney.

Most importantly, the Funding Company would have no right of action and no claim against the client. The client would not be liable for any costs or fees to be repaid to the Funding Company under any circumstances and there would be no alteration of the fee arrangement between the attorney and client based upon the existence of a funding agreement between the attorney and the Funding Company.

If there is a recovery, the only claim by the Funding Company is against the attorney and the attorney's bank account (after distribution of all recoveries from the escrow account) and not against the client nor the client's recovery. A limited amount of information is required to be disclosed to the Funding Company such as the fee agreement entered into by the client and any referral counsel, and submission of a copy of any filed lawsuit. However, the Funding Company also requires a full written disclosure and signed consent from the client.

The Committee has concluded that based upon the presentation by the inquirer and the sample agreement submitted, there appears to be a debtor/creditor relationship between the attorney and the Funding Company. Under the agreement, there is no direct contractual relationship between the Funding Company and the client, nor any obligation whatsoever of the client to the Funding Company. This arrangement appears to be no different than when an attorney negotiates a loan from a bank to cover operating costs or as working capital.

It therefore appears that this relationship between the attorney and the Funding Company has no impact whatsoever upon the client and therefore is not subject to any prohibition of the Rules of Professional Conduct so long as the lawyer does not permit consideration of this arrangement to affect his or her decision to recommend settlement to the client, in contravention of the requirement of Pennsylvania Rules of Professional Conduct 1.7(b) and 1.8(f). Rule 1.7(b) requires disclosure and waiver of a conflict where the attorney might be materially limited by responsibility to another, but believes he or she can provide the client with zealous representation without such material limitation. Rule 1.8f requires an attorney to exercise independent professional judgment when another party is paying his or her fee. The Committee believes that in this

situation where the Funding Company is loaning the costs to the attorney, that the situation is close enough to warrant the same compliance with the specific requirements of 1.8f(1)(2) and (3).

The Committee notes that this inquiry is different from a situation where the attorney assists in arranging a loan for the client directly from a Funding Company. There, the attorney provides substantial information to the Funding Company about the case and in some of these cases, the Funding Company will pay a fee to the attorney for time expended in providing this information and legal opinions regarding the likelihood of success.

As stated in Pa. Ethics Opinion 99-107, a complete and full disclosure of the fee arrangement and written consent of the client would be required under those circumstances.

Nevertheless, the Committee notes that paragraph 4.1 should be amended to include the specific client consent to submission of the requested documentation to the Funding Company as required by Rule 1.8f(3). Although the fee agreement might not be privileged, it nevertheless relates to the representation and is thus confidential, requiring client consent to disclose to a third party.

**CAVEAT:** The foregoing opinion is advisory only and is based upon the facts set forth above. The opinion is not binding upon the Disciplinary Board of the Supreme Court of Pennsylvania or any other Court. It carries only such weight as an appropriate reviewing authority may choose to give it.