

# *The Supreme Court of Ohio*

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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## **OPINION 2004-2**

Issued June 3, 2004

*[CPR Opinion-provides advice under the Ohio Code of Professional Responsibility which is superseded by the Ohio Rules of Professional Conduct, eff. 2/1/2007.]*

**SYLLABUS:** It is improper for an attorney, upon reaching a settlement agreement in a client's legal matter, to sell or assign his or her legal fee to a funding company in exchange for immediate cash at a small discount to the full value of the legal fee. Such sale or assignment of an attorney's legal fee is an improper division of legal fees with a non-attorney and is an interference with the duty of loyalty in an attorney-client relationship.

**OPINION:** The opinion addresses the propriety of an attorney selling a legal fee to a funding company upon reaching a settlement of a client's legal matter.

Is it proper for an attorney, upon reaching a settlement agreement in a client's legal matter, to sell or assign his or her legal fee to a funding company in exchange for immediate cash at a small discount to the full value of the legal fee?

A funding company offers opportunities for attorneys in sole proprietorships to sell their legal fees to the funding company as soon as reaching settlement agreements in clients' legal matters. Rather than waiting for payment of settlement funds, the attorney gets immediate cash from the funding company at an amount less than the full value of the legal fee. The client awaits payment of the settlement funds and disbursement, but the attorney receives his or her legal fee immediately from the funding company. The funding company profits from the difference between the full legal fee, paid from the settlement, and the discounted amount it funded to the attorney.

Pertinent rules in the Ohio Code of Professional Responsibility are set forth.

DR 3-102 Dividing legal fees with a nonlawyer

(A) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(1) An agreement by a lawyer with his or her firm, partner, or associate may provide for the payment of money, over a

reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons.

- (2) An agreement to purchase the practice of a deceased, disabled, or disappeared lawyer in accordance with DR 2-111 may provide for the payment of money, over a reasonable period of time, to a nonlawyer.
- (3) A lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer a portion of the total compensation that fairly represents the services rendered by the deceased lawyer.
- (4) A lawyer or law firm may include nonlawyer employees in a retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement.
- (5) A lawyer participating in a lawyer referral service that satisfies the requirements of DR 2-103(C) may pay to the service a fee calculated as a percentage of legal fees earned by the lawyer in his or her capacity as a lawyer to whom the service has referred a matter. This percentage fee is in addition to any reasonable membership or registration fee established by the service.

#### DR 5-107 Avoiding influence by others than the client

- (A) Except with the consent of his [her] client after full disclosure, a lawyer shall not:
  - (1) Accept compensation for his [her] legal services from one other than his [her] client.
  - (2) Accept from one other than his [her] client any thing of value related to his [her] representation of or his [her] employment by his [her] client.
- (B) A lawyer shall not permit a person who recommends, employs, or pays him [her] to render legal services for another to direct or regulate his [her] professional judgment in rendering such legal services.

It is unethical for an attorney to sell his or her legal fees. An attorney who upon reaching a settlement agreement sells or assigns his or her legal fee to a funding company is dividing a legal fee with a non-attorney. The attorney gets only part of his or her legal fee--the amount advanced by the funding company. The non-attorney funding company gets the rest of the attorney's legal fee. This proposed conduct violates DR 3-102(A). None of the exceptions to the division of fees with non-lawyers, listed in DR 3-102(A)(1) through (5), applies.

Delay between reaching a settlement agreement and the payment of the settlement funds is not justification for a lawyer selling his or her legal fee to obtain immediate cash. Delay is part of the process. Attorneys and clients should be well aware that money does not appear like magic upon reaching a settlement agreement.

A lawyer's legal representation of the client does not end upon reaching a settlement agreement, but continues from settlement agreement through the time of receiving and disbursing the settlement money. A lot can happen in that interval. As one example, settlement agreements requiring court approval always carry uncertainty as to whether approval will be forthcoming from the court. Until the money agreed upon in the settlement is paid and disbursed, the attorney has not completed his or her legal representation of the client.

Not only does the proposed sale or assignment of legal fees violate the rule barring division of fees with non-lawyers, it is an interference with the attorney-client relationship. Pursuant to the proposed assignment and sale agreement, inter alia:

- The attorney (assignor) “agrees that it will not consent to, or permit, any change to the terms of the settlement and/or resolution of the Case that will affect Assignee’s interest in the Legal Fee, including, without limitation, the amount or payment terms of the Legal Fee.”
- The attorney (assignor) “grants to Assignee a security interest in all Assignor’s present and future accounts, chattel paper, equipment, instruments, investment property, documents, letter of credit rights and general intangibles.”
- The attorney (assignor) promises that “[a]t Assignee’s request, Assignor will notify the insurance company or similar party that it is obligated to pay the Settlement Amount and/or Legal Fee (and Assignee may also so notify such party) of the terms of this Assignment and Assignor will direct such insurance company or similar party to make any proceeds for such Settlement Amount payable to Assignee instead of (and not to) Assignor.”

These types of provisions interfere with the attorney-client relationship by diluting an attorney’s loyalty to a client and promoting an appearance that the attorney’s new loyalty is to the funding company.

Thus, this Board advises as follows. It is improper for an attorney, upon reaching a settlement agreement in a client’s legal matter, to sell or assign his or her legal fee to a funding company in exchange for immediate cash at a small discount to the full value of the legal fee. Such sale or assignment of an attorney’s legal fee is an improper division of legal fees with a non-attorney and is an interference with the duty of loyalty in an attorney-client relationship.

**Advisory Opinions of the Board of Commissioners on Grievances and Discipline are informal, nonbinding opinions in response to prospective or hypothetical questions regarding the application of the Supreme Court Rules for the Government of the Bar of Ohio, the Supreme Court Rules for the Government of the Judiciary, the Code of Professional Responsibility, the Code of Judicial Conduct, and the Attorney's Oath of Office.**