

**Maintaining the Integrity of the Profession
Misconduct**

Opinion Number: 20030022 - Rule Number: 8.4

QUESTION: Attorney's firm proposes to borrow money from a non-lawyer for the purpose of funding expenses in mass tort litigation. The loan will be on a non-recourse basis. The firm's duty to repay would be based on successful prosecution of the cases as a whole, but not on the recovery of any individual case. ANSWER: Generally, it is permissible for the law firm to borrow money from a third party to fund litigation. However, it is not permissible for the repayment of the loan to be based on the outcome of the lawsuit. An attorney cannot engage in conduct that would amount to champerty or maintenance.

The elements of champerty are "(1) an agreement by one with no interest in a lawsuit of another (2) to support or maintain the litigation at his own expense (3) in exchange for a part of the litigated matter in the event of a successful conclusion of the cause." [Schnabel v. Taft Broadcasting Company, Inc.], 525 S.W.2d 819, 825 (Mo. App. W.D. 1975). Maintenance of litigation requires proof that a non-party to a suit maintains or assists either party, with money or otherwise, in prosecuting or defending the suit. Id. at 823.

[Macke Laundry Serv. Ltd. v. Jetz Serv.], 931 S.W.2d 166 (Mo. App. W.D. 1996).

Client-Lawyer Relationship

Fees

Opinion Number: 970066 - Rule Number: 1.5

QUESTION: If Attorney borrows money in order to fund the litigation expenses in a case, may Attorney pass the interest on the loan through to the client? ANSWER: Attorney may pass these costs on to Attorney's client, under certain conditions. Attorney's client must agree to this arrangement, in general terms, at the outset of the representation. Assuming that these cases will be contingency fee cases, this arrangement should be covered in the written fee agreement. Additionally, Attorney should specifically explain this provision to the client, orally. At the time Attorney takes out any such loan, Attorney's client should agree to the terms of the loan before the money is borrowed. This additional agreement must also be in writing since it would be an addendum to the original fee agreement.