**Risk Management Checklist for Third-Party Litigation Finance Ethical Issues**

* Is the Third-Party Litigation Financier (TLF) entering into a contract with a lawyer’s client or with a lawyer/law firm? The duties of counsel are different and depends on the recipient of the TLF financing.
* If the TLF extends credit to counsel, counsel should assure that counsel is not agreeing to assign a claim to a TLF, but only agreeing to accept credit to fund litigation-related expenses. Counsel should read 2006 FEO 12 and the discussion therein related to counsel’s obligations related to receipt of a loan to fund litigation expenses. For example, counsel cannot reveal confidential information without informed client consent, counsel must determine whether the loan is reasonable, and counsel must take four key steps if a finance company charges a fee for extending credit to counsel (obtaining informed consent from client, determining if the fee is clearly excessive, assuring the fees are only used to pay expenses incurred on behalf of a client, and discussing other financial arrangement with the client).
* If the TLF extends credit to a client, is counsel executing a written acknowledgment of the debt? What are the terms of the written acknowledgment and can counsel negotiate the terms? Counsel should hesitate to acknowledge any fiduciary relationship. Do the contact documents create a lien or a mere promise to pay to pay the TLF from any settlement or judgment in favor of the claimant? If the contract documents create a mere promise to pay, counsel should advise client of the consequences of not re-paying the TLF. According to 2000 FEO 4, counsel has an obligation to re-pay a TLF if counsel has executed a written acknowledgment of a valid lien. If a written lien exists and counsel has acknowledged the lien, counsel must re-pay the TLF from any settlement proceeds and any lien, even if re-payment is contrary to a client instruction to counsel. Re-payment is required even if counsel has not executed a written acknowledgment once counsel has verified the legality of the credit extended or advised client to seek independent counsel to review the legality of the credit extended.
* Clients with questions about the specifics of third-party litigation financing should review 2000 FEO 4, 2006 FEO 12, and related ethics opinions RPC 69 and RPC 125.