



Ohio Board of Professional Conduct

OPINION 2026-03

Issued October 2, 2026

Lawyer's Indemnification of Client for Losses Arising from Representation

SYLLABUS: A lawyer may not agree to indemnify a client for losses, damages, or claims arising out of the lawyer's representation. The indemnification agreement creates a conflict between the lawyer's personal and financial interests and the interests of the client and interferes with the lawyer's required exercise of independent professional judgment. A lawyer's agreement to indemnify a client for losses, damages, or claims arising out of the lawyer's representation constitutes prohibited financial assistance to a client.

This nonbinding advisory opinion is issued by the Ohio Board of Professional Conduct in response to a prospective or hypothetical question regarding the application of ethics rules applicable to Ohio judges and lawyers. The Ohio Board of Professional Conduct is solely responsible for the content of this advisory opinion, and the advice contained in this opinion does not reflect and should not be construed as reflecting the opinion of the Supreme Court of Ohio. Questions regarding this advisory opinion should be directed to the staff of the Ohio Board of Professional Conduct.



Ohio Board of Professional Conduct

THOMAS J. MOYER OHIO JUDICIAL CENTER
65 SOUTH FRONT STREET, 4TH FLOOR, COLUMBUS, OH 43215-3431
614.387.9370
www.bpc.ohio.gov

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APPLICABLE RULES: Prof.Cond.R. 1.7, 1.8, 2.1.

QUESTIONS PRESENTED:

- 1). Is it ethically permissible for a lawyer to agree to indemnify a client for losses, damages, or claims arising out of the lawyer's provision of legal services?
- 2). May a lawyer agree to indemnity obligations that are not covered by the lawyer's professional malpractice insurance?
- 3). Is a nonconsentable conflict created by the indemnity obligation due to the lawyer's personal financial exposure?

ANALYSIS:

Background

Institutional and governmental clients increasingly include defense and indemnification provisions in engagement letters and outside counsel guidelines that require lawyers to indemnify, defend, and hold the client harmless from specified losses, costs, and claims arising from the lawyer's representation. *Client Indemnification*

Agreements—Look Before You Leap, Bloomberg Law (May 2, 2017) (discussing indemnification provisions in outside counsel guidelines and their potential to expand counsel's liability beyond that otherwise imposed by law). However, most clients expect their counsel to carry malpractice insurance while some institutional clients may agree to restrict indemnification to amounts covered by insurance. In response to a request to enter into an indemnification agreement, some lawyers have advised clients that such an agreement is unnecessary because lawyers remain liable for their malpractice even without one. *Id.*

Whether a lawyer may indemnify a client for losses arising from his or her representation of the client is an issue of first impression in Ohio. The issue is not directly addressed by Supreme Court rule, Ohio case law, or Board Advisory opinion. For purpose of this opinion, the personal liability imposed by the indemnification agreement could exceed the standards imposed by legal malpractice under common law.

Conflict of Interest and Informed Consent

Prof.Cond.R. 1.7(a)(2) prohibits a lawyer from representing a client if “there is a substantial risk that the lawyer's ability to consider, recommend, or carry out an appropriate course of action for that client will be materially limited * * * by a personal interest of the lawyer.” A lawyer must consider whether personal interests will materially limit his or her ability to represent the client. A lawyer's financial interests are obviously a personal interest that a lawyer must take under consideration when examining potential conflicts. Under an indemnification agreement, a lawyer may be exposed to liability that exceeds the lawyer's personal financial resources and the limits available through malpractice insurance. Consequently, the indemnification obligation described in the questions presented creates a situation in which the lawyer's financial and personal interests are adverse to the client's interests, giving rise to a material limitation conflict under Prof.Cond.R. 1.7(a)(2).

Prof.Cond.R. 1.7(b)(1) permits a lawyer to seek the client's informed consent to a material limitation conflict only if the lawyer believes that he or she will be able to provide competent and diligent representation to the client notwithstanding the conflict. However, in the Board's view, the lawyer's personal and financial interests created by the indemnification agreement result in a material limitation conflict of such magnitude

that the lawyer should not seek the client's informed consent to the conflict. Notwithstanding any waiver obtained from the client, other ethical considerations compel the conclusion that a lawyer may not ethically enter into the indemnification agreement.

Independent Professional Judgment

Under the indemnification agreement, the lawyer assumes a financial obligation that is dependent, at least in part, upon the consequences of the lawyer's own independent professional judgment. *See* Prof.Cond.R. 2.1 (in representing a client, a lawyer shall exercise independent professional judgment). Thus, the agreement may impair or prevent the lawyer's unfettered exercise of his or her independent professional judgment. For example, the lawyer may be less willing to recommend an aggressive but legally appropriate strategy if the strategy increases the possibility of a claim by a third party for which the lawyer could be financially responsible. Similarly, the lawyer may be hesitant to advise the client about whether to pursue a claim, accept a settlement, disclose an error, or seek additional counsel, if the consequence of the advice could increase the lawyer's financial exposure.

Prohibited Financial Assistance

The proposed indemnification provision raises additional concerns under Prof.Cond.R. 1.8(e) that prohibits a lawyer from providing financial assistance to a client in connection with pending or contemplated litigation, subject to limited exceptions like the advancement of litigation expenses subject to repayment by the client.

The proposed indemnification provision goes beyond the limited financial assistance permitted by Prof.Cond.R. 1.8(e). The provision does not merely advance a litigation expense. Instead, it requires the lawyer to assume financial responsibility for losses, liabilities, or claims arising from the representation, including losses that may exceed available malpractice insurance, could not reasonably be foreseen at the outset of the engagement, and may not be identified until after the lawyer has completed the representation. The indemnification agreement effectively functions as a financial guarantee that the lawyer will use the lawyer's own resources to protect the client from possible financial consequences associated with the lawyer's representation.

Accordingly, the Board concludes that the indemnification agreement would constitute prohibited financial assistance under Prof.Cond.R. 1.8(e).

Ethical Guidance in Other Jurisdictions

At least one jurisdiction has addressed the issue of client indemnification by a lawyer. The Maryland State Bar Association Ethics Committee considered an indemnification clause in a bank's retainer agreement that required a lawyer to indemnify and hold harmless the bank and its officers, directors, and employees from all claims arising out of the lawyer's representation of the bank. Md. Ethics Comm. Op. 2010-03. The opinion characterized the indemnification clause as "quite broad and [would] cause an attorney who signs it to assume substantial liability well beyond the value of the engagement as it indemnifies the [b]ank for matters outside the control of the attorney." Specifically, the lawyer was asked to indemnify the bank against any loss associated with "procedures" or steps required of various parties (including the lawyer) while performing services for the bank under the Protecting Tenants at Foreclosure Act of 2009. The opinion concluded that such a clause "create[s] a potential conflict" under that state's Rule 1.7, "as an attorney's interest in avoiding personal liability or cost under the indemnification may affect the attorney's independence of judgment to an extent that would be prohibited by the Rule." *Id.*