THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 5.2.1

[Formerly PDR 2013, para 58]

FEE ARRANGEMENTS WITH CLIENTS

A. Propriety of an Agreement to Accept Payment of Solicitor and Client Costs Only in the Event of Success and Recovery by the Client of his/her Fixed Party and Party Costs in the Case of a Judgment in Default of Appearance
[Formerly Council's Practice Direction 3 of 2004]

Council considered and deliberated on the ethical propriety of a member agreeing with clients to only charge costs at an amount fixed as party and party costs ('P & P Costs') for judgments in default of appearance and payable upon the clients' recovery of such costs.

Council also deliberated if it was ethical for a member to charge less than the fixed P & P Costs if clients do not recover legal costs from the judgment debtor.

Council has ruled that entering into such fee sharing arrangement will mean that a solicitor's (as defined by the Act) solicitor and client costs ('S & C Costs') are effectively dependent on the recovery of P & P Costs by a client and such conduct can amount to a breach of section 107 of the Legal Profession Act (Cap 161, 2009 Rev Ed) ('LPA').

B. Fee Arrangements with Clients for Judgments in Default of Appearance
[Formerly Council's Practice Direction 4 of 2004]

Guidance to members:

(a) It does not constitute a breach of Council's Practice Direction if a member agrees with his/her client to only charge S & C Costs at an amount equal to fixed P & P Costs for judgments in default of appearance so long as payment of S & C Costs are not contingent upon the client's recovery of his/her P & P Costs from the judgment debtor.

(b) It will be a breach of the Practice Direction if a member agrees with his/her client to charge S & C Costs at an amount less than the fixed P & P Costs for judgments in default of appearance.

(c) The ruling of Council contained in Part B of this Practice Direction applies equally to P & P Costs for judgments in default of defence.

C. Ethical Propriety of Fee Arrangements with Clients Where Payment of Solicitor and Client Costs and Disbursements is Contingent on Recovery of Party and Party Costs and Disbursements
[Formerly Council's Practice Direction 2 of 2012]

It has come to the attention of the Council that a client of a member has set the following guideline on the billing of S & C Costs: "solicitor and client costs and disbursements would be limited to whatever party and party costs and disbursements are recovered from the other party" and "in the event that no costs are recovered from the other party, solicitor and client costs will be waived and only disbursements billed".

Council has taken the position that such a fee arrangement would be improper for the following reasons:

(a) any fee arrangement that provides for payment of S & C Costs that is contingent on the amount of P & P Costs recovered by a client would render a solicitor in breach of section 107 of the LPA and rule 18 of the Legal Profession (Professional Conduct) Rules 2015 (S 706/2015) ('PCR 2015') because the solicitor would have an interest in the subject matter of the litigation or be purchasing an interest in the client; and

(b) the Council has deemed a fee arrangement similar to the guideline referred to in the second paragraph of Part C of this Practice Direction herein as improper under Parts A and B of this Practice Direction in the context of a solicitor acting for a client in obtaining a judgment in default of appearance or defence.

Council continues to be of the view that in any contentious matter, it is improper for solicitors to have an interest in the subject matter of the litigation or to purchase an interest of a client. Therefore, such a fee arrangement would result in any solicitor acting for the client being in breach of section 107 of the LPA and rule 18 of the PCR 2015 and liable for professional misconduct under section 83(2) of the LPA. Further, section 107(3) of the LPA provides that a solicitor, like any other person, shall be subject to the law of maintenance and champerty.

[Note: Propriety of a solicitor representing an impecunious client where fees or disbursements are likely to be recovered if the claim is successful:

(a) The above paragraphs should be read in light of the decision in *Law Society of Singapore v Kurubalan s/o Manickam Rengaraju* [2013] SGHC 135 ('*Kurubalan*'), where the judges opined that it would be permissible and even honourable for a solicitor to act for an impecunious client in the knowledge that he/she would likely be able to recover his/her appropriate fees or disbursement if the client was successful in the claim and could pay him/her out of those proceeds or if there was a costs order obtained against the other side.

(b) The judges in *Kurubalan* went on to explain that such an arrangement would not be caught by section 107 of the LPA or rule 37 (currently rule 18 of the PCR 2015) because it would not amount to acquiring an interest in the fruits of litigation. In such a case, the solicitor is putting aside his/her usual desire to be assured that he/she will be paid his/her fees in the interests of ensuring that the client is not denied the opportunity to seek justice. There can be no wrong in a solicitor taking on a matter even if, as a practical matter, he/she knows that the client is unlikely to be able to afford to pay his/her bill unless the claim is successful or a costs order is obtained.

(c) The judges in *Kurubalan* took the view that the Practice Directions should not be read to apply to the impecunious litigant who would not otherwise be able to afford legal representation, as there is an overriding public interest in ensuring access to justice. However, the rules that proscribe champertous agreements are statutorily enacted and lawyers who enter into champertous agreements can expect to face at least a substantial period of suspension.]

Date: 31 January 2019

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE