

Financing Legal Fees (Factoring)

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While most small and medium sizes law firms want to grow and prosper, few have the necessary working capital to handle increased case loads or extended settlement payment. Factoring, which is the purchase and sale of accounts receivable (in this case, legal fees) at a discount at or near the time of creation (settlement), can help solve this all too familiar cash flow problem.

Financial transactions with attorneys are shaped by ethics issues. The intrinsic problem is that the non-lawyer entity has an incentive to attempt to "maximize its earnings to the detriment of the representation of clients." However, once a case has settled, these issues are not in play any longer and the ethics issues go away. Legal fees on settled cases are just like any other account receivable and can be sold, assigned, factored or otherwise financed.

Specialty finance companies like CapTran (www.captran.com) will purchase legal fees on settled cases. Most companies will deal in all fifty states.

- Minimum Transactions amounts are as low as \$5,000
- Individual fees can be aggregated to meet minimum
- Maximum Transactions amounts are generally in the millions as most factoring companies are very well capitalized
- A portion of a fee may be sold
- Generally, there are no application fees
- The fees must have no known motions or actions challenging the settlement

How it works

Once a case has settled and all documents have been properly executed by both plaintiff and defendant, the fee receivable is purchased for a small discount, usually between 2% and 12% depending on the payor and amount. The main difference in rates is the factor's estimation of the time it will take to collect the fee.

Step 1 – Master Fee Purchase Agreement

A Master Fee Purchase Agreement is executed specifying the terms of the under which fees will be purchased, including minimum and maximum amounts, advance rates, fees and rebates. Before you begin factoring, please fax us the following documents:

- If your firm is a Proprietorship:
 - o Fictitious Business Name Statement or other document you filed with your local governmental agency allowing you to conduct business under your company name;
- If your firm is a Professional Corporation or Limited Liability Company (LLC):
 - o the document stamped by your state governmental agency confirming your company's registration and allowing you to conduct business under your company name. This is often known as a Charter or Articles;
- A copy of the declarations page of your malpractice insurance policy.

Step 2 – Submit Fee Purchase

Submission of fee for purchase using factor's submission process/forms. (CapTran has an online e-form to make the process of submitting fees for purchase as easy as possible.) The documentation is simple and closing is usually within 24-48 hours.

Documentation:

- Copy of client fee agreement
- Copy of settlement or judgment
- Must be signed by defendant
- must be signed by insurance company or other payor

- Letter of instruction from attorney to payor directing payment to factor's bank or lockbox.

Step 3 – Acceptance

Purchase of fees is subject to the factor's acceptance,(acceptance occurs when you receive your advance), at their sole and absolute discretion at a the discount from face value agreed to in the Master Fee Purchase Agreement, which is usually wire transferred directly into your checking account. The discount will include the factor's fee as well as any margin or "haircut" form the face value, which the factor has required. Usually, the factoring of legal fees requires no haircut if the payor is of unquestioned credit worthiness.

The assignment and letter of instructions from you is sent to the payor of the fee (usually an insurance company).

Step 4 – Payment

The payor sends their checks to the factor, which amounts are credited to your account, as received.

If the payor pays in a timely fashion (less than 90 days), you will also receive a Rebate when enough money has been collected to close any particular transaction. The Rebate is calculated by a predetermined formula that adjusts the original discount in Step 3. Here's an example assuming a 12.5% factoring fee and a rebate of 4.8% for payment within 90 days:

Amount of Fee \$10,000

Less Advance Disocunt (12.5%) \$1,250

Net Advanced to Attorney \$8,750

Rebate if payment within 90 days (4.8%) \$480

Net retained by attorney if paid within 90 days = \$9,230

Net retained by attorney if paid after 90 days = \$8,750

Every factor has its own rules, preferences and idiosyncrasies. However, the welcome mat in clearly out for accomplished small to medium sized law firms.

Some firms also offer working capital loans which may, for certain firms, compliment factoring very nicely.

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