

Joint Order Of The Appellate Divisions

BY LAZAR EMANUEL

The Appellate Divisions of the Supreme Court, pursuant to the authority invested in them, do hereby amend, effective November 1, 2001, Part 1200 of Title 22 of the Official Compilations of Codes, Rules and Regulations of the State of New York, entitled "Disciplinary Rules of the Code of Professional Responsibility," and do hereby add, effective November 1, 2001, a new Part 1205 of said Title, entitled "Cooperative Business Arrangements between Lawyers and Nonlegal Professionals," as follows:

§ 1200.5-b [DR 1-106] Responsibilities Regarding Nonlegal Services

- (a) With respect to lawyers or law firms providing non-legal services to clients or other persons:
 - (1) A lawyer or law firm that provides nonlegal services to a person that are not distinct from legal services being provided to that person by the lawyer or law firm is subject to these Disciplinary Rules with respect to the provision of both legal and nonlegal services.
 - (2) A lawyer or law firm that provides nonlegal services to a person that are distinct from legal services being provided to that person by the lawyer or law firm is subject to these Disciplinary Rules with respect to the nonlegal services if the person receiving the services could reasonably believe that the nonlegal services are the subject of an attorney-client relationship.
 - (3) A lawyer or law firm that is an owner, controlling party or agent of, or that is otherwise affiliated with, an entity that the lawyer or law firm knows to be providing nonlegal services to a person is subject to these Disciplinary Rules with respect to the nonlegal services if the person receiving the services could reasonably believe that the nonlegal services are the subject of an attorney-client relationship.
 - (4) For purposes of sections 1200.5-b(a)(2) and (a)(3), it will be presumed that the person receiving nonlegal services believes the services to be the subject of an attorney-client relationship unless the lawyer or law firm has advised the person receiving the services in writing that the services are not legal services and that the protection of an attorney-client relationship does not exist with respect to the nonlegal services, or if the interest of the lawyer or law firm in the entity providing nonlegal services is de minimis.
- (b) Notwithstanding the provisions of section 1200.5-b(a), a lawyer or law firm that is an owner, controlling party, agent, or is otherwise affiliated with an entity that the lawyer or law firm knows is providing nonlegal services to a person shall not permit any nonlawyer providing such services or affiliated with that entity to direct or regulate the professional judgment of the lawyer or law firm in rendering legal services to any person, or to cause the lawyer or law firm to compromise its duty under sections 1200.19(b) and (d) with respect to the confidences and secrets of a client receiving legal services.
- (c) For purposes of this section, "nonlegal services" shall mean those services that lawyers may lawfully provide and that are not prohibited as an unauthorized practice of law when provided by a nonlawyer.

§1200.5-c [DR 1-107] Contractual Relationship Between Lawyers and Nonlegal Professionals

- (a) The practice of law has an essential tradition of complete independence and uncompromised loyalty to those it serves. Recognizing this tradition, clients of lawyers practicing in New York State are guaranteed “independent professional judgment and undivided loyalty uncompromised by conflicts of interest”.¹

Indeed, these guarantees represent the very foundation of the profession and allow and foster its continued role as a protector of the system of law. Therefore, a lawyer must remain completely responsible for his or her own independent professional judgment, maintain the confidences and secrets of clients, preserve funds of clients and third parties in his or her control, and otherwise comply with the legal and ethical principles governing lawyers in New York State.

Multi-disciplinary practice between lawyers and nonlawyers is incompatible with the core values of the legal profession and therefore, a strict division between services provided by lawyers and those provided by nonlawyers is essential to protect those values. However, a lawyer or law firm may enter into and maintain a contractual relationship with a nonlegal professional or nonlegal professional service firm for the purpose of offering to the public, on a systematic and continuing basis, legal services performed by the lawyer or law firm, as well as other nonlegal professional services, notwithstanding the provisions of section 1200.20(a), provided that:

1. The profession of the nonlegal professional or nonlegal professional service firm is included in a list jointly established and maintained by the Appellate Divisions pursuant to Section 1205.3 of the Joint Appellate Division rules.
2. The lawyer or law firm neither grants to the nonlegal professional or nonlegal professional service firm, nor permits such person or firm to obtain, hold or exercise, directly or indirectly, any ownership or investment interest in, or managerial or supervisory right, power or position in connection with the practice of law by the lawyer or law firm, nor, as provided in section 1200.8(b)(1), shares legal fees with a nonlawyer or receives or gives any monetary or other tangible benefit for giving or receiving a referral; and
3. The fact that the contractual relationship exists is disclosed by the lawyer or law firm to any client of the lawyer or law firm before the client is referred to the nonlegal professional service firm, or to any client of the nonlegal professional service firm before that client receives legal services from the lawyer or law firm; and the client has given informed written consent and has been provided with a copy of the “Statement of Client’s Rights In Cooperative Business Arrangements” pursuant to section 1205.4 of the Joint Appellate Divisions rules.

(b) For purposes of section 1205-c(a):

- (1) Each profession on the list maintained pursuant to a joint rule of the Appellate Divisions shall have been designated sua sponte, or approved by the Appellate Divisions upon application of a member of a nonlegal profession or nonlegal professional service firm, upon a determination that the profession is composed of individuals who, with respect to their profession:
 - (a) have been awarded a Bachelor’s Degree or its equivalent from an accredited college or university;

- (b) are licensed to practice the profession by an agency of the State of New York or the United States Government; and
 - (c) are required under penalty of suspension or revocation of license to adhere to a code of ethical conduct that is reasonably comparable to that of the legal profession.
- (2) The term “ownership or investment interest” shall mean any such interest in any form of debt or equity, and shall include any interest commonly considered to be an interest accruing to or enjoyed by an owner or investor.
- (c) Section 1200.5-c(a)(1) shall not apply to relationships consisting solely of reciprocal referral agreements or understandings between a lawyer or law firm and a nonlegal professional or nonlegal professional service firm.
 - (d) Notwithstanding section 1200.17(a), a lawyer or law firm may allocate costs and expenses with a nonlegal professional or nonlegal professional service firm pursuant to a contractual relationship permitted by section 1200.5-c(a), provided the allocation reasonably reflects only the costs and expenses incurred or expected to be incurred by each.

§1200.6 (DR 2-101) Publicity and Advertising

(a) A lawyer on behalf of himself or herself or partners or associates, shall not use or disseminate or participate in the preparation or dissemination of any public communication or communication to a prospective client containing statements or claims that are false, deceptive or misleading.

(b) (Repealed)

(c) It is proper to include information, provided its dissemination does not violate the provisions of section

1200.6(a), as to:

- (1) legal and nonlegal education, degrees and other scholastic distinctions; dates of admission to any bar; areas of the law in which the lawyer or law firm practices, as authorized by the code of professional responsibility; public offices and teaching positions held; memberships in bar associations or other professional societies or organizations, including offices and committee assignments therein; foreign language fluency;
- (2) names of clients regularly represented, provided that the client has given prior written consent.
- (3) bank references; credit arrangements accepted; prepaid or group legal services programs in which the attorney or firm participates; nonlegal services provided by the lawyer or by an entity owned and controlled by the lawyer; the existence of contractual relationships between the lawyer or law firm and a nonlegal professional or nonlegal professional service firm, to the extent permitted by section 1200.5-c and the nature and extent of services available through those contractual relationships; and
- (4) [legal] fees for initial consultation; contingent fee rates in civil matters when accompanied by a statement disclosing the information required by section 1200.6(l); range of fees for legal and nonlegal services, provided that there be available to the public free of charge a written statement clearly describing the scope of each advertised service; hourly rates; and fixed fees for specified legal and nonlegal services.

(d) Advertising and publicity shall be designed to educate the public to an awareness of legal needs and to provide information relevant to the selection of the most appropriate counsel. Information other than that specifically authorized in section 1200.6(c) that is consistent with these purposes may be disseminated providing that it does not violate any other provisions of this Rule.

§1200.7 (DR 2-102) Professional Notices, Letterheads, and Signs.

- (a) A lawyer or law firm may use professional cards, professional announcement cards, office signs, letterheads or similar professional notices or devices, provided the same do not violate any statute or court rule, and are in accordance with section 1200.6, including the following:
 - (1) A professional card of a lawyer identifying the lawyer by name and as a lawyer, and giving addresses, telephone numbers, the name of the law firm, and any information permitted under [section] sections= 1200.6(c), 1200.6(d) or 1200.10. A professional card of a law firm may also give the names of members and associates.
 - (2) A professional announcement card stating new or changed associations or addresses, change of firm name, or similar matters pertaining to the professional offices of a lawyer or law firm or any nonlegal business conducted by the lawyer or law firm pursuant to section 1200.5-b. It may state biographical data, the names of members of the firm and associates and the names and dates of predecessor firms in a continuing line of succession. It may state the nature of the legal practice if permitted under section 1200.10 of this Part.
 - (3) A sign in or near the office and in the building directory identifying the law office and any non-legal business conducted by the lawyer or law firm pursuant to section 1200.5-b. The sign may state the nature of the legal practice if permitted under section 1200.10 of this Part.
 - (4) The letterhead identifying the lawyer by name and as a lawyer, and giving addresses, telephone numbers, the name of the law firm, associates and any information permitted under [section] sections 1200.6(c), 1200.6(d) or 1200.10 of this Part. A letterhead of a law firm may also give the names of members and associates, and names and dates relating to deceased and retired members. A lawyer or law firm may be designated "Of Counsel" on a letterhead if there is a continuing relationship with a lawyer or law firm, other than as a partner or associate. A lawyer or law firm may be designated as "General Counsel" or by similar professional reference on stationery of a client if the lawyer or the firm denotes a substantial amount of professional time in the representation of that client. The letterhead of a law firm may give the names and dates of predecessor firms in a continuing line of succession.
- (b) A lawyer in private practice shall not practice under a trade name, a name that is misleading as to the identity of the lawyer or lawyers practicing under such name, or a firm name containing names other than those of one or more of the lawyers in the firm, except that the name of a professional corporation shall contain "P.C." or such symbols permitted by law, the name of a limited liability company or partnership shall contain "L.L.C.," "L.L.P." or such symbols permitted by law, and, if otherwise lawful, a firm may use as, or continue to include in its name the name or names of one or more deceased or retired members of the firm or of a predecessor firm in a continuing line of succession. Such terms as "legal clinic," "legal aid," "legal service office," "legal assistance office," "defender office" and the like, may be used only by qualified legal assistance organizations, except that the term "legal clinic" may be used by any lawyer or law firm provided the name or a participating lawyer or firm is incorporated therein. A lawyer or law firm may not include the name of a nonlawyer in its firm name, nor may a lawyer or law firm that has a contractual relationship with a nonlegal professional or nonlegal professional service firm pursuant to section 1200.5-c to provide legal and other professional services on a systematic and continuing basis include in its firm name the name of the nonlegal professional service firm or any individual nonlegal professional affiliated therewith. A lawyer who assumes a judicial, legislative or public executive or administrative post or office shall not permit his or her name to remain in the name of a law firm or to be used in professional notices of the firm during any significant period in which the lawyer is not actively and regularly practicing law as a member of the firm and, during such

period, other members of the firm shall not use the lawyer 's name in the firm name or in professional notices of the firm.

§1200.8 (DR 2-103) Solicitation and Recommendation of Professional Employment

(b) A lawyer shall not compensate or give anything of value to a person or organization to recommend or obtain employment by a client, or as a reward for having made a recommendation resulting in employment by a client, except that:

- (1) A lawyer or law firm may refer clients to a nonlegal professional or nonlegal professional service firm pursuant to a contractual relationship with such nonlegal professional or nonlegal professional service firm to provide legal and other professional services on a systematic and continuing basis as permitted by section 1200.5-c, provided however that such referral shall not otherwise include any monetary or other tangible consideration or reward for such, or the sharing of legal fees; or
- (2) [a] A lawyer may pay the usual and reasonable fees or dues charged by a qualified legal assistance organization or referral fees to another lawyer as permitted by section 1200.12 of this Part.

PART 1205. COOPERATIVE BUSINESS ARRANGEMENTS BETWEEN LAWYERS AND NON-LEGAL PROFESSIONALS.

Sec. 1205.1. Application

This Part shall apply to all lawyers who, pursuant to a cooperative business arrangement, (1) undertake to provide legal services to a client referred by a nonlegal service provider or (2) refer an existing client to a nonlegal service provider.

Sec. 1205.2. Definition

A "cooperative business arrangement" is a contractual relationship between a lawyer or law firm and a nonlegal professional or nonlegal professional service firm for the purpose of offering to the public, on a systematic and continuing basis, legal services performed by the lawyer or law firm, as well as other nonlegal professional services, as authorized by section 1200.5-c of the Disciplinary Rules of the Code of Professional Responsibility.

Sec. 1205.3. List of Professions

- (a) The Appellate Divisions jointly shall establish and maintain a list of professions, designated by the Appellate Divisions sua sponte or approved by them upon application of a member of a nonlegal profession or nonlegal professional service firm, with whose members a lawyer may enter into a cooperative business arrangement to perform legal and nonlegal services as authorized by section 1200.5-c of the Disciplinary Rules.
- (b) A profession shall be eligible for inclusion in the list if the profession is composed of individuals who, with respect to their profession, meet the requirements set forth in section 1200.5-c(b)(1) of the Disciplinary Rules.

Sec.1205.4 Statement of Client's Rights in Cooperative Business Arrangements

In the furtherance of a cooperative business arrangement, (a) prior to the commencement of legal representation of a client referred by a nonlegal service provider or (b) prior to the referral of an existing client to a nonlegal service provider, a lawyer shall provide the client with a statement of client's rights. That statement shall include a consent to the referral to be signed by the client and shall contain the following:

STATEMENT OF CLIENT'S RIGHTS IN COOPERATIVE BUSINESS ARRANGEMENTS

Your lawyer is providing you with this document to explain how your rights may be affected by the referral of your particular matter by your lawyer to a nonlegal service provider, or by the referral of your particular matter by a nonlegal service provider to your lawyer.

To help avoid any misunderstanding between you and your lawyer please read this document carefully. If you have any questions about these rights, do not hesitate to ask your lawyer.

Your lawyer has entered into a contractual relationship with a nonlegal professional or professional service firm, in the form of a cooperative business arrangement which may include sharing of costs and expenses, to provide legal and nonlegal services. Such an arrangement may substantially affect your rights in a number of respects. Specifically, you are advised:

1. A lawyer's clients are guaranteed the independent professional judgment and undivided loyalty of the lawyer, uncompromised by conflicts of interest. The lawyer's business arrangement with a provider of nonlegal services may not diminish these rights.
2. Confidences and secrets imparted by a client to a lawyer are protected by the attorney/client privilege and may not be disclosed by the lawyer as part of a referral to a nonlegal service provider without the separate written consent of the client.
3. The protections afforded to a client by the attorney/client privilege may not carry over to dealings between the client and a nonlegal service provider. Information that would be protected as a confidence or secret, if imparted by the client to a lawyer, may not be so protected when disclosed by the client to a nonlegal service provider. Under some circumstances, the nonlegal service provider may be required by statute or a code of ethics to make disclosure to a government agency.
4. Even where a lawyer refers a client to a nonlegal service provider for assistance in financial matters, the lawyer's obligation to preserve and safeguard client funds in his or her possession continues.

You have the right to consult with an independent lawyer or other third party before signing this agreement.

Client's Consent:

I have read the above Statement of Client's Rights in Cooperative Business Arrangements and I consent to the referral of my particular matter in accordance with that Statement.

Client's signature: Date:

Dated: July 23, 2001

¹ "Statement of Client's Rights" 22 NYCRR Part 1210.