

NYSBA Delegates Approve MacCrate MDP Proposals

New York took a significant first step towards the implementation of the MacCrate Committee's MDP proposals on November 4 when the NYSBA House of Delegates approved two new DR's — DR 1-106 and DR 1-107— and modified existing DR 2-101, DR 2-102 and DR 2-103. The changes approved by the Delegates have been submitted to the Appellate Division.

The new DR's permit lawyers and law firms to provide nonlegal services to clients or others, provided that no nonlawyer who is involved in supplying these services owns or controls the law practice of the lawyer or law firm or is otherwise permitted to direct the professional judgment of the lawyers supplying the services. They also permit lawyers and law firms to enter into inter-professional contractual arrangements with nonlegal professionals to supply legal and other professional services. These arrangements have been called "side by side arrangements."

The text of the new and modified DR's appears below. The related Ethical Considerations are printed on pages 9-10.

DR 1-106 Responsibilities Regarding Nonlegal Services

A. With respect to lawyers or law firms providing nonlegal services to clients or other persons: [Editor 's Note: the term "nonlegal services" is defined in section (C) below.]

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 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 the nonlegal services are the subject of an attorney-client relationship.
4. For purposes of DR 1-106(A)(2) and DR 1-106(A)(3), it will be presumed that the person receiving nonlegal services could not reasonably believe the services to be the subject of an attorney- client

relationship if the interest of the lawyer or law firm is de minimis or if 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.

B. Notwithstanding the provisions of DR 1-106(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 to be 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 DR 4-101(B) and (D) with respect to the confidences and secrets of a client receiving legal services.

C. For purposes of DR 1-106, "nonlegal services" shall mean those services that lawyers may lawfully provide and that are not prohibited as the unauthorized practice of law when provided by a nonlawyer.

DR 1-107 Contractual Relationships Between Lawyers and Nonlegal Professionals

A. 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 professional services, notwithstanding the provisions of DR 5-101(A), provided that: [Editor's note: DR 5-101(A) deals with conflicts of interest occasioned by a lawyer's business or personal interests.]

1. The profession of the nonlegal professional or nonlegal professional service firm is a profession listed by the Office of Court Administration pursuant to DR 1-107(B);
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; and
3. The fact that the contractual relationship exists is disclosed to any client of the lawyer or law firm to whom nonlegal professional services are provided.

B. For purposes of DR 1-107(A):

1. Each profession on the list maintained by the Office of Court Administration shall have been designated by it, or shall have been approved by it upon the application of an individual or firm in this State, 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. DR 1-107(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 DR 3-102(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 DR 1-107(A), provided the allocation reasonably reflects the costs and expenses incurred or expected to be incurred by each. [Editor’s Note: DR 3102(A) prohibits the sharing of fees with a non-lawyer.]

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 DR 2-101(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 DR 1-107, 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 DR 2-101(L) of this section; 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 DR 2-101(C) that is consistent with these purposes may be disseminated providing that it does not violate any other provisions of this Rule.

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 DR 2-101, 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 DR 2-101(C), DR 2-101(D) or DR 2-105. 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 of any nonlegal business conducted by the lawyer or law firm pursuant to DR 1-106. 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 DR 2-105.
3. A sign in or near the office and in the building directory identifying the law office and any nonlegal business conducted by the lawyer or law firm pursuant to DR 1-106. The sign may state the nature of the legal practice if permitted under DR 2-105.
4. A 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 DR 2-101(C), DR 2-101(D) or DR 2-105. 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 devotes 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 of 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 DR 1-107 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.

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 an agreement or other 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 DR 1-107, or
2. A ~~lawyer~~ 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 DR 2-107.