

NYSBA Opinion 827, 11/03/08

Facts: a law firm regularly defends a client in personal injury defense. The client self-insures. The client has hired an outside auditor to monitor its legal expenses. The auditor's bills will be a percentage of the law firm's bills. Client insists that the auditor's fee be withdrawn automatically from the firm's bank account.

Opinion: Cooperation between the law firm and the auditor is not intrinsically impermissible. But the law firm must ensure that the client understands the risks inherent in disclosure of its bills to the auditor: 1) disclosure by the auditor to others; 2) waiver of the attorney-client privilege; 3) use of the information adversely to the client.

If the client understands and proceeds, DR 3-102, prohibiting the sharing of legal fees with non-lawyers, is not violated. The arrangement is simply an agreement between firm and client to allocate fees. The firm is not dividing its fees with the auditor. The intention of DR 3-102 is to prevent a non-lawyer from preferring his own profit interests to the interests of the client.

Nor does the arrangement violate DR 2-103(D) which prohibits a lawyer from compensating anyone for a client referral. The client is already a client, and the auditor is being paid for his services. The law firm may permit the auditor's fee to be withdrawn from its bank account automatically.