

Nassau Bar Rejects Lawyer Role In Arbitration Firm

BY LAZAR EMANUEL

A lawyer planned to establish and invest in a business whose purpose was consultation with, and representation of, investors in securities-related arbitration proceedings. The other participants in the business would be non-lawyers. The lawyer investor asserted that he would not perform any legal services in connection with the business.

In Opinion 04-1, the Committee on Professional Ethics of the Nassau County Bar Association advised the lawyer that his plan could not be effectuated under the New York Code of Professional Responsibility.

First of all, the plan contemplated a corporate entity in which both lawyers and non-lawyers would invest and participate. It would therefore appear to constitute a limited multidisciplinary contractual relationship between lawyers and nonlawyers under DR 1-107(A). But such relationships are permitted only between a lawyer and certain other professions designated by the Appellate Divisions. The designated professions are architects; CPA's; professional engineers; land surveyors; and certified social workers. Because the approved designations do not include advising or representing individuals in arbitration proceedings, the proposed business relationship is improper.

Further, the proposed arrangement would involve fee splitting between lawyer and nonlawyer. Fee splitting is prohibited under DR 3-102 and DR 1-107(A) (2).

It's immaterial that the lawyer intends not to render any legal services. The lawyer is relying on a mistaken definition of legal services. When a lawyer performs certain services, they become legal services simply because a lawyer is supplying them, even though it may be the case that nonlawyers may supply the same services without violating the restrictions on the unlawful practice of law. Thus, when a nonlawyer advises an investor in an arbitration proceeding, he is not rendering legal services. But when a lawyer gives the same advice, he is rendering legal services.