

Proposed Amendments To The Code Of Professional Responsibility

BY LAZAR EMANUEL

Editor's Note: Following the recommendations of the MacCrate Commission, the NYSBA House of Delegates has proposed the following new DRs. Comments must be submitted before October 13, 2000.

DR 1-106 Responsibilities Regarding Nonlegal Services

A. With respect to lawyers or law firms providing nonlegal 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 any legal services being provided to that person is subject to these Disciplinary Rules with respect to the nonlegal services if a disinterested person would conclude that the person receiving the services could reasonably believe the 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 providing nonlegal services to a person is subject to these Disciplinary Rules with respect to the nonlegal services if a disinterested person would conclude that the person receiving the services could reasonably believe the services are the subject of an attorney-client relationship.
4. For purposes of DR 1-106(A)(2) and DR 1-106(A)(3) above, and in the absence of circumstances requiring additional communications, 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 lawyer or law firm has advised the person 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 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) to maintain 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, provided that:

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); and
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.

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 by the State of New York; 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) shall not apply to relationships consisting solely of non-exclusive 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).