



**New York State Bar Association  
Committee on Professional Ethics**

**Opinion 1271 (08/20/2024)**

**Topic:** Sharing of Legal Fees with Non-Lawyer; Impermissible Referral Fees; Non-Refundable Retainer

**Digest:** A lawyer violates Rule 5.4(a), which prohibits a lawyer from sharing legal fees with a non-lawyer, if she pays a percentage of a legal fee to an online service owned by non-lawyers, on which attorneys can bid on potential clients' legal services requests. Payment to the online service for access to the platform would also violate Rule 7.2(a), prohibiting a lawyer from paying for a recommendation, because the online service's website claims to vet and evaluate the skill of the participating lawyers. If the online service has no mechanism to refund the unearned portion of a fee to a lawyer who withdraws or is discharged by the client before completing the work, that would violate Rule 1.5(d)(4)'s prohibition against nonrefundable fees.

**Rules:** 1.2, 1.5(d)(4), 5.4(a), 5.8, 7.2(a)

**FACTS:**

1. The inquirer is considering contracting with a company that operates a website through which her firm would bid against other attorneys for clients in need of legal services (hereinafter referred to as the "Online Bidding Service"). She inquires whether the Online Bidding Service's fee structure violates any of the New York Rules of Professional Conduct (the "Rules").
2. The Online Bidding Service does not charge an upfront fee to participating attorneys. Instead, the client pays 50 percent of the eventual legal fee to the Service. The Service then deducts 15 percent of that 50 percent before delivering the remainder to the winning bidder (*i.e.*, the lawyer who submitted the winning bid).
3. Once the attorney has completed the legal work requested by the client, the attorney submits the legal work to the client through the Online Bidding Service's website. The client then has "a certain amount of time" to review and request changes.
4. After changes are made at the client's request (or after the specified period of time elapses without the client requesting changes), the Online Bidding Service will collect the remaining 50 percent of the fee from the client and deliver payment to the

attorney.

5. According to the Online Bidding Service's website, in situations where a client is dissatisfied with the services provided by the attorney service, the Online Bidding Service will "attempt to negotiate a settlement," but will take no binding action. If client and attorney are unable to reach a settlement, "they can go to the state bar associations to deal with it."

6. It is unclear whether the Online Bidding Service has a process for returning fees paid in advance if the attorney fails to perform the contracted work and has not earned the full advance fee.

7. The Online Bidding Service screens potential participating attorneys in several ways. The Online Bidding Service reviews the information provided by applicant attorneys and verifies that they are licensed and in good standing. The Online Bidding Service also conducts video or phone interviews of attorney applicants to determine "cultural fit and client service skills." In addition, the Online Bidding Service evaluates the "basic contract drafting and review skills" of applicant lawyers. The Online Bidding Service proclaims on its web page that it can connect potential clients with lawyers who are experts in helping their clients sign favorable contracts. In addition, the Online Bidding Service claims that all its participating lawyers are vetted by its team and reviewed by users.

#### **QUESTIONS:**

8. Does the portion of the legal fee retained by the Online Bidding Service violate the prohibition against sharing legal fees with non-lawyers?

9. Does the portion of the legal fee retained by the Online Bidding Service violate the rule against paying for referrals?

#### **OPINION:**

10. The answer to both questions is "yes." Use of the Online Bidding Service as described by the inquirer to obtain potential clients would violate multiple Rules.

#### **Sharing of Legal Fees with Non-Lawyers**

11. Rule 5.4(a) states that a "lawyer or law firm shall not share legal fees with a nonlawyer," subject to certain exceptions that are not applicable here. Comment [1] to Rule 5.4(a) explains that "[t]hese limitations are to protect the lawyer's professional independence of judgment."

12. Here, the Online Bidding Service is owned by non-lawyers and collects as payment for its service 7.5% (= 15% of 50%) of the total legal fee agreed between lawyer and client. Thus, if the inquirer were to pay the Online Bidding Service under its fee structure, she would be sharing a legal fee with non-lawyers in violation of Rule

5.4(a). The fact that the Online Bidding Service collects its fee from the client before delivering the remainder to the lawyer does not avoid the application of this Rule. Thus, a lawyer who participates in the Online Bidding Service and accepts payment through the method utilized by the Online Bidding Service shares a legal fee with a non-lawyer by allowing the Online Bidding Service to retain a portion of the legal fee. *See* N.Y. State 942 (2012) (“Lawyer may not ethically enter into arrangement with a non-lawyer firm to accept referrals of clients whose legal fees, in an amount not disclosed to the client, would be taken from the fee paid by the client to the non-lawyer firm”); N.Y. City 2014-1 (2014) (if a nonlawyer organization charges the client more for legal services than it pays the Lawyer, then the arrangement could constitute impermissible fee splitting) (citing N.Y. State 942).

13. In short, the fee violates Rule 5.4(a).

### **Impermissible Referral Fees**

14. Payment by a lawyer to the Online Bidding Service to generate clients also violates Rule 7.2(a), because it would be an impermissible payment for a referral.

15. Rule 7.2(a) provides: “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 ....” Comment [1] to Rule 7.2 explains the meaning of the word “recommendation” by stating: “A communication contains a recommendation if it endorses or vouches for a lawyer’s credentials, abilities, competence, character, or other professional qualities.”

16. In addition, Rule 7.2(c) provides:

[A] lawyer may pay others for generating clients leads, such as Internet-based client leads, as long as (i) the lead generator does not recommend the lawyers, (ii) any payment to the lead generator is consistent with Rules 1.5(g) (division of fees) and 5.4 (professional independence of the lawyer), (iii) the lawyer complies with Rule 1.8(f) (prohibiting interference with a lawyer’s independent professional judgment by a person who recommends the lawyer’s services), and (iv) the lead generator’s communications are consistent with Rules 7.1 (Advertising) and 7.3 (Solicitation and Recommendation of Professional Employment).”

17. In N.Y. State 1131 (2017), this Committee stated that advertising and marketing fees paid to an online service that matches attorneys with clients do not violate Rule 7.2(a) if the service matches attorneys using mechanical, non-discretionary factors. However, in N.Y. State 1132 (2017), we concluded that Avvo’s ratings of participating lawyers “on a scale of 1 (Extreme Caution) to 10 (Superb)” and Avvo’s description of participating lawyers as “highly qualified” expressly stated or at least implied or created the reasonable impression that Avvo was “recommending” those lawyers. Likewise, in N.Y. State 1213 (2021), this Committee disapproved of attorneys paying fees to an

online referral service matching clients seeking representation in traffic matters with attorneys that the service claimed had a “great track record in the court where the ticket will be contested.” And in N.Y. State 1267 (2024), this Committee opined that an attorney would be paying an impermissible referral fee under Rule 7.2(a) if the attorney signed up with a web referral service that claimed it applied a “thorough vetting process” to its participating attorneys, who it described as “top tier.”

18. Here, the Online Bidding Service states that it verifies the information provided by participating attorneys and that the participating attorneys are licensed and in good standing. If the Online Bidding Service did no more than that to screen attorneys, payment to it would not constitute improper payment for a recommendation. But the Online Bidding Service also conducts interviews with potential participants and claims in its marketing materials that it has assessed participating attorneys’ “basic contract drafting and review skills.” It further claims that its attorneys are “experts in helping their clients sign favorable contracts.” The Online Bidding Service’s claims that it has assessed the qualifications and competence of participating attorneys, like the claims of the nonlawyer entity discussed in Opinion 1267, are improper recommendations under the Rules.

19. We recognize that in N.Y. State 1132, N.Y. State 1213, and N.Y. State 1267, the referral service matched clients with attorneys, whereas the Online Bidding Service here allows potential clients to bid on attorneys, leaving the ultimate choice of attorney selection to the client. Nevertheless, the operative question is whether the service “recommends” the lawyers by endorsing the lawyers’ qualifications and competence. Pursuant to Comment [1] to Rule 7.2 (quoted above), we believe the Online Bidding Service is recommending the lawyers here because “it endorses or vouches for a lawyer’s credentials, abilities, competence, character, or other professional qualities.”

20. Because the Online Bidding Service recommends the lawyers participating in its service and charges the lawyers who participate in the service, the inquirer’s payment to the Online Bidding Service to participate in the Service would be an impermissible referral fee under Rule 7.2(a).

### **Non-Refundable Retainers**

21. Finally, the fee arrangement utilized by the Online Bidding Service implicates Rule 1.5(d)(4), which forbids non-refundable retainer fees. According to the inquirer, if a client discharges the attorney before the fifty percent advance fee has been earned, the attorney must return the unearned portion. Based on the information the inquirer has provided to us, there does not appear to be a mechanism for the attorney to return the portion of the client’s fee paid to the Online Bidding Service, raising the specter of the attorney being unable to return to the client an unearned fee. The failure to return the unearned portion of the fee would be an additional violation of Rule 1.5. *See* Rule 1.5, Cmt. [4]. *See also Matter of Cooperman*, 83 N.Y.2d 465 (1994) (holding that non-refundable retainer fee agreements violate public policy and the former Code of Professional Responsibility).

## **CONCLUSION:**

22. If the inquirer were to pay the Online Bidding Service under the Service's fee structure to participate in the Online Bidding Service, she would be sharing a legal fee with non-lawyers in violation of Rule 5.4(a). She would also be violating Rule 7.2(a), which prohibits lawyers from paying for a recommendation, because the Online Bidding Service claims to vet and evaluate the skill of the participating lawyers, thus constituting a "recommendation." In addition, if the Online Bidding Service fails to provide a mechanism to return to the client the unearned portion of the fee, that failure would potentially violate Rule 1.5(d)(4), which prohibits nonrefundable legal fees.

(20-23)