



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

Opinion 1291 (01/30/2026)

Topic: Participation in an Alternative Business Structure (ABS)

Digest: A New York lawyer may hold a financial interest in an ABS which renders legal services in a jurisdiction where such provision of legal services is permitted. A New York lawyer may have a contractual relationship with such an entity pursuant to which the New York attorney receives referral fees, but the division of fees must comply with Rule 1.5(g) of the New York Rules. A lawyer admitted both in New York and in the jurisdiction where the ABS is permitted may, under the New York Rules, ethically provide legal services so long as the “particular conduct” in rendering such legal service “clearly” has its “predominant effect” in a jurisdiction other than New York.

Rules: 1.5(g), 5.4, 8.5(a) & (b)

FACTS:

1. An Alternative Business Structure (“ABS”) is an entity which provides legal services and may have non-lawyer ownership and management. New York law does not permit an ABS to practice law in New York, but a few other jurisdictions, including Arizona, permit ABS law firms to practice law in their jurisdictions.
2. The inquiring attorney (referred to as “XYZ”) is a lawyer licensed only in New York and the sole member of XYZ Law PLLC (“XYZ Law”).
3. XYZ Law is a New York-based entity which provides legal services to and advises U.S. and foreign clients on income and transfer tax issues and estate planning matters. While XYZ Law has New York-based clients and routinely advises clients on New York State tax and trust law issues, over 90% of XYZ Law’s individual clients live outside of New York and XYZ Law does not market its services in New York.
4. XYZ Law has arrangements with several other law firms who act as independent contractors (the “Contractor Firms”) where XYZ Law agrees to provide these Contractor Firms with a regular flow of legal work, while XYZ Law acts as lead counsel on certain of those matters.
5. One of the Contractor Firms is DEF Legal LLC (“DEF Legal”), a New Jersey entity wholly owned by “DEF,” who is XYZ’s son and is an attorney already licensed in New York and New Jersey and in the process of being admitted to the Arizona bar. None of the employees of DEF Legal are located in New York.
6. XYZ is considering retirement from the practice of law, and both for personal estate planning purposes and for general continuity of the firm, XYZ would like to restructure XYZ Law’s arrangement with DEF Legal and the other Contractor Firms pursuant to the structure proposed below.
7. Under the proposed structure, a new Arizona law firm, “AZ Law,” will be formed, structured as an ABS and licensed under the Arizona ABS rules. Once admitted to the Arizona bar, DEF will manage the AZ Law Firm in accordance with Arizona licensing requirements.

8. AZ Law will be wholly owned by two trusts: The XYZ Family Trust and The XYZ Trust (collectively referred to as the “Trusts”).

9. It is not anticipated that members of AZ Law will appear in New York courts, either pro hac vice or otherwise.

10. Two of the Contractor Firms will be XYZ Law (the inquirer’s New York law firm) and DEF Legal (his son’s New Jersey firm). Both XYZ Law and DEF Legal will assist AZ Law in providing legal and back-office services and will be compensated for their work. In particular, XYZ Law (the New York firm), (i) will be compensated for acting as lead counsel on most of the client matters, and (ii) will receive referral fees for clients it refers to AZ Law. We do not opine on questions of law, such as unauthorized practice of law, but for purposes of this opinion we will assume that the relationship between XYZ Law and AZ Law does not constitute the unauthorized practice of law in Arizona, which is a question of law for Arizona authorities.

11. The proposed structure results in the aforementioned Trusts being non-attorney owners of AZ Law. However, licensed attorneys will make up the entirety of AZ Law management and will make all decisions related to its practice of law – the Trusts will play no role in controlling or influencing AZ Law’s practice of law.

12. No New York lawyer practicing in New York will be practicing law through AZ Law. But one lawyer admitted to practice in New York (DEF) will have an indirect financial interest in the AZ Law Firm as a beneficiary of one of the Trusts.

QUESTIONS:

13. May a lawyer admitted in New York hold a financial interest in an ABS in a state where the ABS is permitted to practice law?

14. May a lawyer admitted in New York have a contractual relationship with an ABS located in a state where such structures are permitted, whereby the New York lawyer shares fees that the ABS receives on account of legal work performed in New York?

15. May a New York lawyer manage an ABS located in a state where such structures are permitted?

OPINION:

16. The Committee does not express any opinion relating to interpretation of the Rules of Professional Conduct or other law relating to the conduct of lawyers in New Jersey¹ or Arizona², does not opine on the legality of the proposed arrangement under applicable law, and does not comment on the advisability of any proposed business structure. In particular, we do not opine on whether the proposed arrangement or the proposed activities of XYZ are consistent with Arizona ER 5.5 (entitled “Unauthorized Practice of Law; Multijurisdictional Practice of Law”). Accordingly, we neither endorse nor disapprove of the inquirer’s business plan and assume for purposes of this opinion (but without expressing an opinion) that the business plan before us conforms to Arizona law and ethics rules.

¹ For sources on New Jersey legal ethics, see <https://njlaw.rutgers.edu/collections/ethics/>

² For sources on Arizona legal ethics, see <https://www.azbar.org/for-legal-professionals/ethics/ethics-opinions/?V=Rules> (Arizona Ethics Rules with commentary and related opinions); <https://www.azcourts.gov/cld/Ethics-Advisory-Committee/Opinions-Issued-by-the-Committee> (Arizona formal binding ethics opinions); and <https://www.azbar.org/for-legal-professionals/ethics/ethics-opinions/> (opinions from 1985 and 2016 by the State Bar of Arizona’s former Rules of Professional Conduct Committee)

17. In the New York Rules of Professional Conduct (the “Rules”), Rule 5.4(d) provides that a lawyer “shall not practice with or in the form of an entity authorized to practice law for profit” if a nonlawyer owns any interest in the entity. (As mentioned earlier, ABSs that provide legal services and have non-lawyer ownership and management are not permitted to practice law in New York. However, a few other jurisdictions, including Arizona, permit ABSs to practice law.)

18. Arizona permits lawyers to practice in an ABS with non-lawyer ownership under certain licensing requirements and requires ABSs to comply with the Arizona Rules of Professional Conduct. Under Arizona law, an ABS “is a business entity that includes nonlawyers who have an economic interest or decision-making Authority in the firm and provides legal services...” Arizona Code of Judicial Administration, Section 7-209(A).

May a lawyer admitted in New York hold a financial interest in an ABS in a state where the ABS is permitted to practice law?

19. With respect to the inquirer’s first question, no New York Rule forbids or regulates a New York lawyer’s holding of a financial interest in an entity operating in a jurisdiction outside New York where the entity is owned by one or more non-lawyers if such entity is permitted to practice law in that jurisdiction. Thus, the answer to the inquirer’s first question—whether a New York lawyer may hold a financial interest in an ABS—is that the lawyer may ethically do so. This conclusion is in accord with N.Y. City 2024-4 (2024), which similarly concluded that a New York lawyer may hold a financial interest in an ABS that is lawfully operating in a jurisdiction permitting such entities provided the lawyer is not practicing law through the ABS and is merely a passive financial investor.

May a lawyer admitted in New York have a contractual relationship with an ABS located in a state where such structures are permitted, whereby the New York lawyer shares fees that the ABS receives on account of legal work performed in New York?

20. With respect to the inquirer’s second question, the inquirer (who is a New York lawyer practicing in New York) proposes to have an ongoing contractual relationship with the ABS pursuant to which the inquirer (i) would share in the legal fees earned by AZ Law (an ABS owned by non-lawyers) through the inquirer’s receipt of fees for work as lead counsel on the matters and (ii) would receive from AZ Law what the inquirer calls “referral fees.” To answer this question, we must look to a recent change in the language of New York Rule 5.4. Effective November 10, 2025, the Appellate Division of the New York State Supreme Court issued a new Rule 5.4(a)(4) that addresses the precise situation before us. Specifically, new Rule 5.4(a)(4) governs the circumstances under which a New York lawyer may divide a legal fee with a law firm that has nonlawyer owners in jurisdictions that permit such nonlawyer ownership. New Rule 5.4(a)(4) states:

(4) A lawyer or law firm may divide a fee with another lawyer or law firm that has nonlawyer owners or nonlawyer supervisors provided that:

(i) nonlawyer ownership of law firms is permitted in the jurisdiction whose professional conduct rules governs the other lawyer’s conduct;

(ii) the lawyer who divides the fee does not permit any nonlawyer to interfere with the lawyer’s independent professional judgment or with the client lawyer relationship; and

(iii) the division of fees with the other lawyer complies with Rule 1.5(g).³

21. Rule 1.5(g), referred to in the new Rule 5.4(a)(4), regulates the division of fees between lawyers. It provides:

A lawyer shall not divide a fee for legal services with another lawyer who is not associated in the same law firm unless:

(1) the division is in proportion to the services performed by each lawyer or, by a writing given to the client, each lawyer assumes joint responsibility for the representation;

(2) the client agrees to employment of the other lawyer after a full disclosure that a division of fees will be made, including the share each lawyer will receive, and the client's agreement is confirmed in writing; and

(3) the total fee is not excessive.

22. Rules 5.4(a)(4) and 1.5(g) apply to both the lawyer paying a share of the fee and to the lawyer receiving that share. We interpret the term used in the Rules—"divide a fee"—to apply to both the lawyer initiating the apportionment and the lawyer who receives it. Comment [7] to New York Rule 1.5 takes that approach, stating:

A division of fee facilitates association of more than one lawyer in a matter in which neither alone could serve the client as well. Paragraph (g) *permits the lawyers to divide a fee* either on the basis of the proportion of services they render or if each lawyer assumes responsibility for the representation as a whole in a writing given to the client. In addition, the client must agree to the arrangement, including the share that each lawyer is to receive, and the client's agreement must be confirmed in writing. [Emphasis added.]

23. This Committee has repeatedly applied Rule 1.5(g) to lawyers who receive fees from another lawyer, particularly in the case of retiring lawyers. *E.g.*, N.Y. State 1172 ¶ 3 (2019) (stating that "rule on sharing fees [referring to Rule 1.5(g)] applies to both the payor and the recipient," who was a retiring lawyer); N.Y. State 1244 (2022) (applying Rule 1.5(g) to retiring lawyer's receipt of referral fees); N.Y. State 1128 ¶¶ 11-12 (2017) (treating Rule 1.5(g) as applying to inquirer who would refer matters to another lawyer in exchange for receiving a share of the fees); N.Y. State 961 (2013) (applying Rule 1.5(g) to retiring lawyer selling a law practice in exchange for a share of fees earned by the buyer).

24. Further, Rule 1.5(g)'s prohibition on dividing a fee for legal services with another lawyer who is not associated in the same law firm absent compliance with the three enumerated conditions in Rule 1.5(g)(1)-(3) does not distinguish between the paying and receiving lawyer. As we noted in N.Y. State 961 ¶ 8:

[O]ne purpose of the prohibition [in Rule 1.5(g)] is to limit the risk of outside influences on a lawyer's independent judgment. A lawyer with an economic interest in a matter who is not sufficiently involved in the work and does not take responsibility for it may press the lawyer handling the matter to cut corners or settle too early.

25. The question then arises whether New York Rules 5.4(a)(4) and 1.5(g) apply when the fee is being collected by AZ Law. Under New York Rule 8.5(b)(2)(i), for conduct *not* in connection with court proceedings, if a lawyer "is licensed to practice only in this state, the rules to be applied shall be the rules of this state." XYZ is admitted "only" in New York and the legal work for which he would receive a portion

³ <https://www.nycourts.gov/LegacyPDFS/RULES/jointappellate/AO%20Signed%20Letter%20to%20DOS-Administrative%20Order-JointAppDivOrder.pdf>

of AZ Law's fees would be performed in New York. He would thus need to comply with New York Rule 1.5(g), including the requirement that the fees he receives be "in proportion to the services performed or, by a writing given to the client, each lawyer assumes joint responsibility for the work."

May a New York lawyer manage an ABS located in a state where such structures are permitted?

26. With respect to the inquirer's third question, he poses it on behalf of his son, DEF, who is admitted in New York and New Jersey and is in the process of seeking admission to the Arizona Bar. The question is whether DEF, as a New York lawyer, can participate in the management of an out-of-state law firm that has nonlawyer owners.

28. The answer to this question is provided by Rule 8.5(b)(2)(ii), which provides that for conduct *not* in connection with a court proceeding, "the rules to be applied shall be the rules of the admitting jurisdiction in which the lawyer principally practices." If DEF "principally practices" in Arizona once he is admitted there (or even before his admission in Arizona if Arizona will permit him to practice there), then DEF's ethical conduct will in most instances be governed by the Arizona Rules.

29. There is, however, a significant carve-out in New York Rule 8.5(b)(2)(ii): "[I]f particular conduct *clearly* has its *predominant effect* in another jurisdiction in which the lawyer is licensed to practice, the rules of that jurisdiction shall be applied to that conduct." [Emphasis added.]

30. Thus, if a legal matter handled by AZ Law "clearly" has its "predominant effect" in another jurisdiction where DEF is admitted to practice (even if he does not principally practice there), then the rules of that jurisdiction may apply. But if the predominant effect is clearly in New York, then the New York Rules (instead of the Arizona Rules) would apply to DEF's conduct. If the New York Rules apply, then he must comply with New York Rule 5.4(b) and (d), which provide, in pertinent part:

(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

(d) A lawyer shall not practice with or in the form of an entity authorized to practice law for profit, if:

(1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;

(2) a nonlawyer is a member, corporate director, or officer thereof or occupies a position of similar responsibility in any form of association other than a corporation; or

(3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

31. Therefore, to the extent that DEF practices through AZ Law in such manner that the "predominant effect" of such practice is "clearly" in New York, New York's Rules would apply. Under such circumstances, the prohibitions of Rule 5.4 would make DEF's participation in the ABS structure unethical and would subject DEF to professional discipline in New York. Whether a particular legal matter or representation has its predominant effect in New York, however, is a fact-intensive inquiry beyond the scope of this opinion.

32. Consequently, the response to XYZ's third question is a qualified "yes." The qualification is that the practice of DEF and AZ Law may not include legal services whose predominant effect is clearly in New York.

CONCLUSION:

33. A New York lawyer may hold a financial interest in an ABS which renders legal services in a jurisdiction where such provision of legal services is permitted. A New York lawyer may have a contractual relationship with such an entity pursuant to which the New York attorney receives referral fees, but the division of fees must comply with Rule 1.5(g) of the New York Rules. A lawyer admitted both in New York and in the jurisdiction where the ABS is permitted may, under the New York Rules, ethically provide legal services so long as the "particular conduct" in rendering such legal services "clearly" has its "predominant effect" in a jurisdiction other than New York.

(11-25)