



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

Opinion 1292 (02/12/2026)

Topic: Payment of legal fees by service provider identified to client by lawyer

Digest: A lawyer who handles matters for individuals with disabilities under federal or state law may enter into agreements with providers of compensatory services to the disabled to supplement the lawyer's legal fees, and the lawyer may provide information to clients about such potential providers of compensatory services so long as (i) the client gives informed consent under Rule 1.8(f) and (ii) there is not a material difference in the cost and quality of such providers. Obtaining informed consent confirmed in writing under Rule 1.7(b) for a Rule 1.7(a)(2) personal interest conflict would also be required. If a lawyer submits to a court a request for legal fees to be awarded under a fee-shifting statute, and if a third-party service provider's agreement to pay a portion of the lawyer's fees would be an appropriate consideration in the court's fee award determination, then the arrangement with the third-party service provider may need to be disclosed to the court and opposing party. The fee supplementation arrangement may also need to be disclosed at other phases of the litigation. In any negotiation of the claim or amount of fees to be paid, the lawyer would need to guard against any misstatement of fact or fraudulent or deceptive conduct relating to the fee supplementation arrangement.

Rules: 1.5(a), 1.7(a)(2), 1.7(b), 1.8(f), 1.16(c), 4.1, 5.8, 8.4(c)

FACTS:

1. The inquirer is a New York attorney at a law firm that advocates under federal and state laws for individuals with disabilities who cannot afford legal fees. Many of the relevant federal and state laws provide for an award of reasonable fees to the prevailing party. After a plaintiff prevails, fees are either negotiated with the defendant (usually a public entity) or resolved by litigation. Both litigation and negotiation of fee awards involve significant uncertainty and unpredictability as to ultimate fee recovery and typically result in the lawyer receiving less than the lawyer's full fee the lawyer has requested for the services provided. The inquirer does not believe this existing business model, relying on solely on fee-shifting provisions, is sustainable.

2. In order to achieve a more sustainable business model, the inquirer is considering an arrangement whereby he would enter into agreements with licensed providers of compensatory services to disabled parties such as teaching services, occupational therapy services, or speech therapy services. According to the inquirer, quality among providers differs somewhat, but not by a material amount, and the rates charged by the various providers vary somewhat but are generally comparable. (Likewise, the hearing officers award prevailing parties reimbursement of these expenses within a narrow range, not varying much from one hearing officer to another.)

3. Under the inquirer's contemplated arrangement, potential providers would agree in advance to pay the lawyer a portion of the otherwise unpaid legal fees after settlement of the fee dispute between the firm and the public entity, or a percentage of the value of the services awarded. By way of example, if the adjudicator awarded 100 hours of speech services at \$200/hour (for a total value of \$20,000), the inquirer might receive 10% of that amount, or \$2,000, from the provider. If a client does not have a way to pay legal fees, under the proposed arrangement, the inquirer would share with the client the contact information of providers who have agreed that they would supplement the lawyer's legal fees, and the client would choose which of those providers to use.¹ The inquirer would disclose to the client the agreement between the lawyer and the provider by (i) describing the agreement in the engagement letter with the client, (ii) fully disclosing how the provision would function, and (iii) obtaining informed consent to the payment of fees by someone other than the client under Rule 1.8(f).

4. The client would have unrestricted decision-making authority with respect to the matter, and the inquirer's agreement with each provider would make clear that the provider has no decision-making authority with respect to the litigation or settlement.

QUESTIONS:

5. Is the arrangement proposed by the inquirer permissible? If it would create a personal conflict of interest under Rule 1.7(a)(2), would such conflict be consentable under Rule 1.7(b)?

6. If the claim or amount of fees to be paid is litigated or negotiated, does the arrangement with the provider need to be disclosed to the court or to the opposing public entity?

OPINION:

7. As an initial matter, we assume that the total legal fee received by the inquirer under the proposed arrangement would not be excessive or otherwise in violation of Rule 1.5. *See esp.* Rule 1.5(a)(8) (whether a fee is contingent is one factor bearing on whether a fee is excessive). In addition, as the Committee does not opine on questions of law, it does not opine on whether the proposed arrangement between the inquiring attorney and the licensed provider would violate any statute or regulation. If the proposed arrangement would violate any statute or regulation, then the inquirer may be violating Rule 8.4(b)'s prohibition on engaging in "illegal" conduct or Rule 8.4(h)'s prohibition on conduct reflecting adversely on the lawyer's "honesty, trustworthiness, or fitness as a lawyer." *See, e.g.,* N.Y. State 1086 ¶ 5 (2016) (if "the proposed fee or commission is illegal and reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer, it would violate Rule 8.4(b)").

8. The inquirer's proposed arrangement also raises concerns under other law regarding the extent to which the payments to be made by providers would need to be disclosed to

¹ The inquirer notes that clients may come to the firm after they have already selected a provider. In that circumstance, if the provider did not have an agreement to remit part of its fees to the inquirer, the inquirer would take the case only if the client could pay the inquirer's full fee. While the inquirer is free to decline a representation where a client is not able to pay the inquirer's rates, it may be that declining the representation for that reason would lead quickly to a discussion of the use of providers who would provide payment of some of their fees to counsel, which is the situation addressed in this opinion.

the counterparty to any negotiation over the amount and cost of any services to be provided or to any tribunal asked to address those issues. We address those questions below.

9. An analysis of the New York Rules of Professional Conduct (the “Rules”), specifically Rules 1.7 and 1.8(f), is warranted. The proposed fee supplementation arrangement would result in a portion of the lawyer’s legal fees being paid by the chosen provider of compensatory services, a person “other than the client.” Where fees are to be paid by one other than the client, Rule 1.8(f) requires that the client provide informed consent; that there be no interference with the lawyer’s independent professional judgment or the client-lawyer relationship; and that the client’s confidential information be protected. Here, the inquirer intends to obtain informed consent to the fee supplementation agreement and has stated that the client would have full decision-making authority over all aspects of the matter. Accordingly, so long as the inquirer obtains each client’s informed consent pursuant to Rule 1.8(f)(1), that Rule is not an obstacle to the proposed arrangement.

10. As amended by New York’s Appellate Division effective November 10, 2025, Rule 1.7(a) provides:

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if a reasonable lawyer would conclude that the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client;
or
- (2) there is a significant risk that (i) the lawyer’s independent professional judgment on behalf of a client will be adversely affected by, or (ii) the representation of one or more clients otherwise will be materially limited by, the lawyer’s responsibilities to another client, a former client or a third person or by the lawyer’s own financial, business, property or other personal interests.

11. This Committee has previously considered whether an attorney may receive a referral fee, commission, or other compensation from a third party in exchange for the attorney recommending the third party’s services. We have recognized that the attorney’s interest in receiving such compensation creates a personal interest conflict under Rule 1.7(a)(2). As we noted in N.Y. State 682 (1996), “Clients view recommendations of other professionals as part of their representation by their lawyers, and expect that lawyers will act as trusted fiduciaries in such matters.”

12. The more complex question is whether, when there is such a personal interest conflict, it is consentable under Rule 1.7(b). For instance, in N.Y. State 1086 (2016), we determined that the receipt by an attorney of a referral fee from an investment firm for recommending that firm to the attorney’s client resulted in a personal interest conflict that was not consentable.

13. In some circumstances, however, the personal interest conflict resulting from compensation paid to the lawyer by a third party was determined to be consentable. The opinions reaching different outcomes as to consentability were summarized in N.Y. State 1086 ¶¶ 9-10:

A number of our prior opinions have permitted a lawyer to accept a referral fee or commission from a third-party service provider for referring a client to the

service provider under very limited circumstances. *See, e.g.*, N.Y. State 981 (2013) (referral fee not prohibited by Rule 1.7 where the service is not related to the lawyer's legal services and the lawyer makes no recommendation to use the service); N.Y. State 667 (1994) (lawyer may accept referral fee from mortgage broker notwithstanding predecessors to Rules 1.7(a) and 1.8(f) as long as client consents and all proceeds are credited to client if client so requests); N.Y. State 626 (1992) (lawyer for lender may retain fees from a title insurance company as long as client consents and amount of the fee is disclosed to the borrower who will pay the cost of the insurance and the total amount of the lawyer's fee is not excessive); N.Y. State 576 (1986) (lawyer may act as agent for title insurance company and also represent the buyer, seller or mortgagee in a real estate transaction consistent with the predecessors to Rules 1.7(a) and 1.8(f) as long as lawyer credits client with amount received from title insurer or the client expressly consents to the lawyer retaining the fee paid by the insurer); N.Y. State 461 (1977) (lawyer may accept part of a fire adjuster's commission consistent with predecessor to Rule 1.7(a) if client consents and all proceeds thereof are credited to client); and N.Y. State 107 (1969) and N.Y. State 107(a) (1970) (both permitting lawyer to accept a referral fee from a financial company where the lawyer invests the client's funds in certificates of deposit, if client consents after disclosure and lawyer remits the fee to client if client so requests).

On the other hand, a number of our prior opinions have prohibited a lawyer from accepting a referral fee or commission from a third-party service provider for referring a client to the service provider. Where our opinions have held that a lawyer may not accept a fee from a third-party service provider, we often have found that the lawyer's personal conflict of interest is so great that disclosure to and consent from the client will not cure the conflict. *See, e.g.*, N.Y. State 682 (1996) (lawyer may not accept a fee from an investment adviser for referring a client under predecessor to Rule 1.7 because disclosure and consent would not cure the lawyer's direct and substantial conflict); N.Y. State 671 (1994) (lawyer engaged in estate planning may not accept referral fee from insurance company for referring client under predecessor to Rule 1.7 because disclosure and consent could not cure the direct and substantial conflict between the client's and the lawyer's interests); N.Y. State 619 (1991) (where estate planning lawyer's remuneration from the third party would vary with the quantity of the product or services recommended, receipt of the referral fee was impermissible under predecessors to Rules 1.7 and 1.8(a) [business transaction with client] because the lawyer's substantial financial interest conflict could not be cured by disclosure and consent).

14. N.Y. State 1086 ¶ 11 cited to N.Y. State 682 for guidance in determining whether a personal interest conflict resulting from the receipt of a payment from a third party for a referral was consentable:

N.Y. State 682 identifies two factors that determine whether the lawyer's financial interest in a referral fee is so great that disclosure and client consent will be ineffective. A client may give informed consent for a referral fee when (1) the transaction at issue concerns a product or service that is fairly uniform among providers and is required in an objectively determinable quantity or (2) when the product or service is fairly uniform among providers and is unconnected to any particular legal services. (Footnote omitted.)

The test articulated in N.Y. State 682 was also applied in N.Y. State 1155 (2018) and in N.Y. State 1200 (2020). In N.Y. State 1155, the Committee concluded that a lawyer may not accept referral fees or commissions from an asset management firm to whom the lawyer refers financial planning clients. In N.Y. State 1200 the Committee concluded that a lawyer “may not refer a law client, even if the services are unrelated, to a financial planner for a referral fee.” *See also* N.Y. State 845 (2010) (noting the guidance provided in N.Y. State 682).

15. In the matter at hand, although the proposed arrangement is not a traditional referral fee or commission, we believe the same analysis applies. The issue is thus whether, if there is a personal interest conflict under Rule 1.7(a)(2), it is consentable or whether, instead, the lawyer’s advice concerning available providers would be so tainted by the funding being provided by the third party service provider that the lawyer could not reasonably provide competent and diligent representation to the client.

16. Under Rule 1.7(a)(2) (quoted above), the question is whether the lawyer’s professional judgment will be adversely affected by the lawyer’s own interests. Here, the inquirer has a personal interest in receiving adequate compensation in the form of additional legal fees (beyond fees obtained under a fee-shifting statute). We think that whether there is a Rule 1.7(a)(2) conflict here is a close question. The lawyer is not recommending a provider or group of providers in response to a client’s request for a referral to a provider. Nor is this a case where a client is asking for a recommendation and expecting the lawyer to act solely in the client’s interest in providing a recommendation. Instead, the lawyer, faced with a prospective client who cannot afford to pay the lawyer’s legal fees, is identifying a number of providers that could, by supplementing the lawyer’s anticipated fee-shifting income, close the gap and make representation of the prospective client financially practicable. The selection of a provider from within that group would be left to the prospective client. Moreover, if a prospective client who could pay full legal fees asked the inquirer for information about providers, we have no reason to believe that the inquirer would limit the information given to such prospective clients only to those providers who had agreed to supplement the inquirer’s fees. At the same time, we recognize that the inquirer would be providing contact information only for those providers who are willing to come to acceptable terms with respect to supplementing the lawyer’s legal fees, and the Committee concludes that that latter circumstance is sufficient to create a personal interest conflict under Rule 1.7(a)(2).²

17. The next question under our prior opinions is whether, given the personal interest conflict, it is consentable under the standard articulated in N.Y. State 682 and applied in N.Y. State 1086, N.Y. State 1155 and N.Y. State 1200.

18. We will assume the accuracy of the inquirer’s assertions, such as that the services at issue do not vary widely by cost or quality and are “fairly uniform.” Thus, as in N.Y. State 682, we assume that the services do not “vary substantially” from one provider to the next. In any event, this Committee has not always applied the “fairly uniform” test strictly.

² Because the inquirer would have fee supplementation agreements with multiple providers, the referral relationship between the lawyer and any one provider would not be “exclusive.” Accordingly, Rule 5.8’s prohibition on certain contractual relationships other than those “consisting solely of non-exclusive reciprocal referral agreements or understandings” would not be applicable. *See* N.Y. State 1155 (2018) (finding Rule 5.8 inapplicable to a nonexclusive referral relationship between lawyer and investment firm whereby lawyer might refer clients to the investment firm in exchange for a commission).

See N.Y. State 845 (2010) (allowing referral fees after finding that real estate brokerage “falls somewhere in between ‘fairly uniform’ products and services like title insurance ... and highly variable products and services like life insurance and investment advice.”).

19. Apart from the comparability issue, the amount of services required here would either be determined by a tribunal or would be agreed between the client and the public entity. Thus, the amount of services required is not a factor that could be manipulated to benefit the lawyer. Thus, whether or not a provider’s services are deemed to be “connected” to the representation, under our prior opinions any personal interest conflict would be consentable³. The disclosures required to obtain a client’s informed consent (which would need to be confirmed in writing), would need to include all material facts, which might include the dollar or percentage amount of fees that each provider has agreed to pay to the inquirer, because the amount of supplemental fees to be paid by the providers might affect the client’s evaluation of which provider to use.

20. If the arrangement is otherwise permissible, a question is presented as to whether disclosure of the fee arrangement would need to be made to the court and/or adversary. We consider this issue at three distinct phases of the litigation: litigation of the underlying claim; litigation of the amount of fees to be awarded; and any negotiation between the parties of the claim or fees.

21. Litigating the Underlying Claim -- The underlying claim concerns whether a public entity improperly denied certain services to the inquirer’s client and, if so, whether a tribunal should award compensatory, makeup services to the client. We understand that a successful award would typically be that the plaintiff is entitled to X hours of compensatory services at Y dollars per hour. If the court would find it significant that the provider will be supplementing the inquirer’s legal fees, then the inquirer’s failure to disclose the supplementation agreement could be viewed by the court as deceptive or fraudulent. See generally Rule 8.4(c) (prohibiting a lawyer from engaging in conduct involving “dishonesty, fraud, deceit or misrepresentation”). Whether nondisclosure of the supplementation agreement during the litigation of the underlying claim would be so required is a question of law beyond the mandate of this Committee.

22. Litigating the Fees to be Awarded – If the fee supplementation arrangement is otherwise permissible, if the question of appropriate legal fees is put before a court, if the existence of the arrangement would likely be significant to the court considering the issue, and if nondisclosure would be viewed by the court as fraudulent or otherwise improper, then disclosure of the fee supplementation arrangement would need to be made both to the court and to the adversary. Whether those factors are present in any given case is a question of fact beyond our knowledge. In any case, whether disclosure is required under applicable federal or state statutes, rules or tribunal practices is a question of law on which this Committee does not opine.

23. Negotiating the Merits of the Claim or the Amount of Fees -- In addition to the proscriptions of Rule 8.4, a negotiation of the merits of the claim or the amount of fees would likely implicate Rule 4.1, which dictates that “a lawyer shall not knowingly make a false statement of fact or law to a third person.” The last sentence of Comment [2] to Rule

³ If a client decides during the pendency of the matter to select a different provider from the provider the client agreed to initially, and if that new provider will not agree to supplement the lawyer’s legal fees, the lawyer likely would either need to accede to such substitution or, instead, seek to withdraw from the matter under Rule 1.16(c)(5) (permissive withdrawal where client deliberately disregards an agreement or obligation to the lawyer as to expenses or fees).

4.1 admonishes lawyers “to be mindful of their obligations under applicable law to avoid criminal and tortious misrepresentation.” A lawyer negotiating the merits of the claim (or the amount of fees to be paid by agreement in lieu of litigating under a fee-shifting statute) would need to be careful to avoid misstatements of fact and to avoid other proscribed conduct in making assertions about the circumstances. For example, a statement that the client is seeking X hours of services at Y dollars per hour might be deemed a misstatement if in fact the provider, because of a fee supplementation agreement, will be receiving a net amount lower than X multiplied by Y. Whether any particular statement would be deemed to be a misrepresentation in any specific circumstance is a factual question that we cannot resolve. And whether a statement that failed to reveal the details of the arrangement might be a violation of a legal duty to disclose in any particular circumstance is a question of law that is beyond our jurisdiction.

CONCLUSION:

24. A lawyer who handles matters for individuals with disabilities under federal or state law may enter into agreements with providers of compensatory services to the disabled to supplement the lawyer’s legal fees, and the lawyer may provide information to clients about such potential providers of compensatory services so long as (i) the client gives informed consent under Rule 1.8(f) and (ii) there is not a material difference in the cost and quality of such providers. Obtaining informed consent confirmed in writing under Rule 1.7(b) for a Rule 1.7(a)(2) personal interest conflict would also be required. If a lawyer submits to a court a request for legal fees to be awarded under a fee-shifting statute, and if a third-party service provider’s agreement to pay a portion of the lawyer’s fees would be an appropriate consideration in the court’s fee award determination, then the arrangement with the third-party service provider may need to be disclosed to the court and opposing party. The fee supplementation arrangement may also need to be disclosed at other phases of the litigation. In any negotiation of the claim or amount of fees to be paid, the lawyer would need to guard against any misstatement of fact or fraudulent or deceptive conduct relating to the fee supplementation arrangement.

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