

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

Opinion 1304 (09/29/2026)

Topic: Non-attorney Interference with the Independent Professional Judgment of a Lawyer;
Sharing Client Information with Third Parties in a Non-Profit Organization

Digest: A lawyer who works in a non-profit organization that performs research to be shared with the public, and that receives its funding from grants and donations, must not allow a non-attorney supervisor or colleagues to interfere with the lawyer's independent professional judgment in the representation of a pro bono client. The lawyer must protect client confidentiality and must not share confidential or privileged information with a non-attorney supervisor, colleagues, funders, or the public, unless the client consents.

Rules: 1.0(j), 1.6(a), 1.8(f), and 5.4(c).

FACTS:

1. The inquirer is a lawyer licensed in New York and another state, working on a special project that falls under the umbrella of a law school educational center (the "Center"). The Center is a not-for-profit entity, and its projects are funded by foundation and other private grant donations.

2. The inquirer is an employee of the law school, which is part of a university, but the funding for the lawyer's salary comes from donations to the Center designated for the specific project to which the lawyer is assigned. Initially the inquirer was performing research on various issues for the Center, but then the lawyer's responsibilities expanded to include the representation of a pro bono client.

3. The pro bono client came to the inquirer through a clinic in the law school. The Center operates at the same law school and shares some faculty members with the clinic, but each is a separate and distinct entity. Both the inquirer and an attorney/law professor who oversees the clinic are listed in the engagement letter with the client as the lawyers assigned to the case.

4. The inquirer's direct supervisor on the project is a non-attorney who is not a part of the clinic. The inquirer's non-attorney supervisor is requesting access to work the inquirer is performing for the pro bono client. The non-attorney supervisor plans to use the information in research publications that further the goals of the project, and intends to share the information with project donors to demonstrate how the funding is being used. The information the supervisor wants to access includes attorney-client communications such as client interviews and emails, as well as the client's financial information. Colleagues of the inquirer who are working on research publications for the project also wish to have similar access to the pro bono client's information. The inquirer has refused to share confidential and privileged attorney-client information with the supervisor and others outside of the attorney-client relationship, and has also walled off the confidential and privileged client information from the supervisor and from his colleagues who are part of the project.

5. The inquirer's client is a small business whose executives are familiar with the industry in which the client operates, and the executives have a good grasp of the legal issues involved in its case. The inquirer has thoroughly discussed with the client whether information that the client has shared with the inquirer can also be shared with the inquirer's supervisor and colleagues, and the client has specifically requested that much of that information remain confidential, including the client's email and other communications with the inquirer and certain financial information. The client does consent, however, to limited information being shared, such as the client's identity and certain language in the retainer agreement covering legal work for the client, including payment structure terms, but not amounts. The inquirer is confident that the client understood the ramifications of consenting to the release of certain confidential information, and has a full understanding of the impact it might have on its business operations.

6. The inquirer has told the supervisor and colleagues that the inquirer can only share information that the client has given him permission to disclose and nothing else.

QUESTIONS:

7. The inquirer poses two questions:

A. May the inquirer permit his non-attorney supervisor to review or direct the inquirer's legal work for the pro bono client?

B. May a lawyer practicing within a legal non-profit organization share a pro bono client's information and details of legal work performed for the client with a non-attorney supervisor, colleagues, third-party donors, or the public, when the legal work pertains to a project for which the inquirer was hired and is being paid for by donor funds from third parties who support the project?

OPINION:

Lawyer May Not Permit Non-Attorney Supervisor to Interfere with Lawyer's Independent Professional Judgment in Representing a Client

8. The fact that the inquirer's salary is paid by donations that support the specific project to which the inquirer is assigned does not require or permit the inquirer to allow the non-attorney supervisor to direct or interfere with the representation of a client. Rule 1.8(f) forbids a lawyer from accepting compensation from anyone other than a client "unless: (1) the client gives informed consent; (2) there is no interference with the lawyer's independent professional judgment or with the client-lawyer relationship; and (3) the client's confidential information is protected as required by Rule 1.6." A corollary to this Rule is found in Rule 5.4(c), which provides that, unless authorized by law, a lawyer cannot allow a person who employs or pays the lawyer for providing legal services to another to direct or regulate the lawyer's professional judgment in rendering those legal services or cause the lawyer to compromise the duty to maintain confidential information of the client pursuant to Rule 1.6.

9. We have previously addressed the importance of not allowing a third party who pays the lawyer to interfere with the lawyer's independent professional judgment in providing legal services to the client, the client-lawyer relationship, or the lawyer's duty to maintain client confidentiality. In N.Y. State 1081 (2016), for example, two lawyers were employed by a debt management company working under the direction of a nonlawyer manager. We noted that the purpose of Rule

5.4 is to “protect the lawyer’s professional independence of judgment,” (see Comment [1] to Rule 5.4), and concluded that “[i]f the lawyers here work under the direction of a nonlawyer, they may be violating Rule 5.4(c).”

10. In N.Y. State 957 (2013), a nonprofit credit counseling agency wanted to pay a lawyer to provide legal services to those who did not qualify for legal aid but could not afford private legal representation. The clients of the lawyer engaged by the credit counseling agency would enter into an engagement letter specifying that the agency would not give legal advice or represent clients, and that the client-lawyer relationship was only between the client and the lawyer. The agency’s board of directors was going to adopt a policy prohibiting the agency from controlling the lawyer’s representation of clients. Opinion 957 highlighted the need for the inquirer to comply with Rules 1.8(f) and 5.4(c) and to prevent the agency that paid the lawyer from directing or regulating the lawyer’s professional judgment in rendering legal services.

11. We have also discussed the issue of third-party fee payment in the context of an insurance company paying to retain a lawyer for an insured. In N.Y. State 1154 (2018)) we pointed out that under Rule 1.8(f), regardless of who is compensating the lawyer, “the lawyer’s duty is to the client, not the one paying the lawyer’s fees.” In the digest of Opinion 1154 we said: “[a]n attorney assigned by insurance carrier to represent an insured owes a duty of loyalty to the insured, and may not restrict or limit communications to the insured concerning the representation.” Opinion 1154 quotes Comment [11] to Rule 1.8(f), which says:

... Third-party payers frequently have interests that may differ from those of the client. A lawyer is therefore prohibited from accepting or continuing such a representation unless the lawyer determines that there will be *no interference with the lawyer’s professional judgment* and there is informed consent from the client. [Emphasis added.]

12. Here the inquirer’s non-attorney supervisor and colleagues request access to confidential client information for project purposes. The inquirer must ensure that her professional judgment concerning what is best for the client is not influenced by these requests. The attorney must thoroughly discuss with the client all the issues in the case, including the pros and cons of decisions to be made, free from any interference by third parties outside of the attorney-client relationship.

Lawyer Must Not Reveal Confidential Information Without Client’s Informed Consent

13. Rule 1.6(a) specifically addresses when a lawyer may reveal confidential information. A lawyer may do so if: (1) “the client gives informed consent, as defined in Rule 1.0(j)” or (2) “the disclosure is impliedly authorized to advance the best interests of the client and is either reasonable under the circumstances or customary in the professional community.” (The provisions allowing for disclosure referenced in 1.6(a)(3) and 1.6 (b) do not apply to the facts in this inquiry.)

14. Rule 1.6(a) defines confidential information as:

information gained during or relating to the representation of a client, whatever its source, that is (a) protected by the attorney-client privilege, (b) likely to be embarrassing or detrimental to the client if disclosed, or (c) information that the client has requested be kept confidential. “Confidential information” does not ordinarily include (i) a lawyer’s legal knowledge or legal research or (ii) information that is generally

known in the local community or in the trade, field or profession to which the information relates.

15. Comment [2] to Rule 1.6 expands upon the principle that a lawyer must maintain the confidentiality of information that a client shares during the course of representation:

A fundamental principle in the client-lawyer relationship is that, in the absence of the client's informed consent, or except as permitted or required by these Rules, the lawyer must not knowingly reveal information gained during and related to the representation, whatever its source.

16. Comment [3] to Rule 1.6 further explains that:

The professional duty of client-lawyer confidentiality, in contrast, applies to a lawyer in all settings and at all times, prohibiting the lawyer from disclosing confidential information unless permitted or required by these Rules or to comply with other law or court order. The confidentiality duty applies not only to matters communicated in confidence by the client, which are protected by the attorney-client privilege, but also to all information gained during and relating to the representation, whatever its source.

17. This committee recently addressed the issue of sharing confidential client information with nonlegal staff in a situation where a New York lawyer was working for a non-profit organization where both legal and non-legal services were provided to clients involving immigration assistance and housing. See N.Y. State 1282 (2025). In Opinion 1282, we concluded that the lawyer could not share information gained during the legal representation unless: the information was not privileged and the disclosure would not be embarrassing or detrimental to the client; the client gave informed consent to the disclosure; or the lawyer was impliedly authorized to disclose the information because a disclosure advanced the best interests of the client and was reasonable or customary under the circumstances. We reach a similar conclusion here.

18. We have addressed this or similar issues several times in the past. Some of the committee's older opinions issued before the Appellate Division adopted the New York Rules of Professional Conduct on April 1, 2009, are relevant to this inquiry. In N.Y. State 485 (1978), this committee found that lawyers in the Juvenile Rights Division of the Legal Aid Society could not reveal client confidential information in Family Court cases where their clients were juveniles, because juveniles lacked capacity to give their informed consent. To do so would violate DR 4-101(B), the predecessor to our current Rule 1.6(a).

19. In N.Y. State 490 (1978) this committee concluded that attorneys practicing in a federally-funded, non-profit legal services organization cannot be required to submit status reports on specific cases to the executive director for discussion with the organization's Board of Directors, which consisted of both attorney and non-attorney members. We noted that the Board should not interfere in the lawyer-client relationship and the handling of cases. Citing to two American Bar Association informal opinions – ABA Inf. 1137 (1970) and ABA Inf. 1081 (1961) – as well as to N.Y. State 485, we maintained that confidential client information could be revealed only if the client gave informed consent. We further highlighted that it was particularly important to ensure

that indigent clients fully understood what they were being asked to consent to, and that they were not as a practical matter required to consent. We wanted to ensure that the consent of indigent clients was voluntary (citing N.Y. State 485 and ABA Inf. 1287 (1974)).

20. Whether information is protected by the attorney-client privilege (or not) is not alone dispositive in determining if a lawyer can reveal it. If the lawyer obtained the information in question during the representation of the client and if the information could be embarrassing or detrimental to the client if disclosed, or if the client had requested that the lawyer keep it confidential, then the lawyer may not disclose it even if the information is not protected by the attorney-client privilege.

21. In the situation here, the client has expressly requested that much of the information shared with the attorney be kept confidential. Under Rule 1.6, information that the client specifically wishes to remain confidential cannot be shared with the inquirer's non-attorney supervisor, colleagues, or the public.

Rule 1.6(a)(2) Exception Does not Apply

22. Whether the exception set forth in Rule 1.6(a)(2) applies, i.e., to the extent disclosure of certain information could be "impliedly authorized" to advance the best interests of the client and is either reasonable under the circumstances or customary in the professional community, is to be determined on a case-by-case basis. As we noted in N.Y. State 991 (2013):

The "impliedly authorized" exception is intended mainly for situations in which time is of the essence and it is impractical for the lawyer to wait for the client's informed consent (such as during settlement negotiations or trial), or for situations in which revealing information about a client with diminished capacity is "necessary to take protective action to safeguard the client's interests." See Rule 1.6, Cmt. [5] (giving examples of circumstances in which disclosure of confidential information is impliedly authorized).

23. N.Y. State 1266 (2024), referencing N.Y. State 991, concluded:

In retaining a lawyer in an immigration matter, a client does not impliedly authorize the lawyer to disclose confidential information to a funder, because doing so does not advance the client's interests in the immigration matter in which the lawyer represents the client. Therefore, the client would not expect the information to be disclosed.

Here, time is not of the essence. The inquirer has already had a specific conversation with the client regarding what information can and cannot be shared with the inquirer's non-attorney supervisors. Hence, the "impliedly authorized" exception does not apply.

Attorney Must Discuss With the Client the Potential Consequences of Consenting to Reveal Confidential Information for Consent to be Informed

24. To the extent that the client has given "informed consent" to revealing confidential information to others, including the inquirer's non-attorney supervisor and colleagues, and for inclusion in any research publication, the inquirer must ensure that the consent is voluntary and informed, as defined in 1.0(j). For consent to be informed, a client must agree only after the lawyer:

has communicated information adequate for the person to make an informed decision, and after the lawyer has adequately explained to the person the material risks of the proposed course of conduct and reasonably available alternatives.

25. In N.Y. State 1282 we noted that for consent to be informed, the discussion with the client “should include the impact of the disclosure on the attorney-client privilege (such as whether disclosure will waive the privilege).” Whether the consent to reveal certain confidential information will waive the attorney-client privilege is a question of law that we cannot answer, and the question requires a case-by-case factual determination for which we lack sufficient factual information. As we said in N.Y. State 1032 (2014), “Waiver of attorney-client privilege turns on questions of law beyond our jurisdiction.” But the inquirer should consider and discuss possible waiver of attorney-client privilege with the client if the inquirer seeks the client’s informed consent. We have noted in past opinions this obligation for a lawyer to advise the client that disclosures of confidential information might compromise the attorney-client privilege. See N.Y. State 769 (2003) (discussing disclosure of information to financing institutions for purposes of obtaining litigation funding). See also N.Y. City 2011-2 (2011) (attorney must explain potential waiver of attorney-client privilege, and the impact of that waiver, in order to obtain a client’s informed consent to disclosure of privileged information to a third-party financing company).

26. A client’s consent to reveal confidential information must be voluntary, not coerced. See, e.g., N.Y. State 1282 (discussed supra) and N.Y. State 1059 (2015) (regarding disclosure in the context of indigent immigration clients who may be subject to certain vulnerabilities). Those concerns do not appear to exist here, where the client is a business enterprise.

27. Here, where the inquirer’s non-attorney supervisor is requesting that the inquirer share confidential information with the non-attorney supervisor, the inquirer’s colleagues, and the public, it is especially important that the inquirer ensure that all potential consequences of the disclosure of certain confidential information be thoroughly examined and discussed with the client before the lawyer seeks or accepts the client’s consent. It is also important that the client’s consent to the release be voluntary, without any undue influence being brought to bear on either the lawyer or the client by others on the project. The lawyer’s independent professional judgment must be the guiding factor in the advice provided to the client.

28. Comment [6] to Rule 1.0 discusses the meaning of “informed consent.” Comment [6] reads, in part:

. . . . A lawyer need not inform a client or other person of facts or implications already known to the client or other person; nevertheless, a lawyer who does not personally inform the client or other person assumes the risk that the client or other person is inadequately informed and the consent is invalid. In determining whether the information and explanation provided are reasonably adequate, relevant factors include whether the client or other person is experienced in legal matters generally and in making decisions of the type involved, and whether the client or other person is independently represented by other counsel in giving the consent. Normally, such persons need less information and explanation than others, and generally a client or other person who is independently represented by other counsel in giving the consent should be assumed to have given informed consent. . . .

29. We take no position on the amount of information the lawyer needs to provide to the client to satisfy informed consent. Here, the client is a business whose executives appear to be experienced in the client's field and have a good grasp of the legal issues involved in the case and the impact their decisions may have on the client's business operations.

30. We also note that if the client has not consented to revealing any confidential information, it might still be possible for the lawyer to utilize certain information from the case for research purposes if the information could be disclosed in a format where the client could not be identified, and thereby the disclosure could not be embarrassing or detrimental to the client. If this is not possible then client consent must be obtained. See N.Y. State 718 (1999) and ABA Formal Op. 95-393 (1995) for a discussion of anonymizing case information.

CONCLUSION:

31. A lawyer who works in a non-profit organization that performs research to be shared with the public, and that receives its funding from grants and donations, must not allow a non-attorney supervisor or colleagues to interfere with the lawyer's independent professional judgment in the representation of a pro bono client. The lawyer must protect client confidentiality and must not share confidential or privileged information with a non-attorney supervisor, colleagues, funders, or the public, unless the client consents.

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