

Selected New York Ethics Opinions Related to Referrals

NYSBA Ethics Opinion 1162 [1/17/19] referral fees

A lawyer formed a tax credit business and wanted to pay referral fees to other lawyers. He cannot because it would be payment of a fee for a referral which is not permitted by Rule 7.2. Here there is no shared work situation.

NYSBA Ethics Opinion 1160 [1/2/19] affiliation and fee-sharing with a NY resident attorney not admitted in NY, although admitted out of state, and licensed to practice in NY federal courts
“We have never sanctioned an arrangement between a NY lawyer and a non-attorney consisting of nothing more than signing up clients and passing them on to lawyers with a fee skimmed off the top.” The relationship would be improper because it violates NYS Rules about the solicitation of clients, sharing of fees and other services that constitute the unauthorized practice of law.

NYSBA Ethics Opinion 1150 [4/30/18] Solicitations and referrals, Spouses in related businesses
Spouses may refer work to each other, even when one is a lawyer and the other a real estate broker, as long as the lawyer is not involved in the real estate transaction and, vice versa, as long as the realtor is not involved in the transaction. In some cases, client consent may be necessary.

NYSBA Ethics Opinion 1132 [8/8/17] Paying nonlawyers for a recommendation or a referral
“A lawyer may not pay the current marketing fee to participate in Avvo Legal Services, because the fee includes an improper payment for a recommendation in violation of Rule 7.2(a).”

NYSBA Ethics Opinion 1131 [8/8/17] lead generation, lawyer paying for-profit company for leads
Overrules NYS 902 [2012] as to payment of marketing fee.

“A lawyer may pay a for-profit service for leads to potential clients obtained via a website on which potential clients provide contact information and agree to be contacted by a participating lawyer, as long as

- the lawyer who contacts the potential client has been selected by transparent and mechanical methods that do not purport to be based on an analysis of the potential client’s legal problem or the qualifications of the selected lawyer to handle that problem;
- the service does not explicitly or implicitly recommend any lawyer, and
- the website of the service complies with the requirements of Rule 7.1.

A lawyer who purchases such a lead to a potential client may telephone that potential client if the party has invited a telephonic communication by the lawyer selected by the service.”

NYSBA Ethics Opinion 1043 [1/6/16] Lawyer's receipt of a real estate fee from a real estate broker. "A lawyer may not accept, as a referral fee, a portion of a real estate broker's commission in lieu of charging a fee to the lawyer's client" because it could interfere with the lawyer's independent judgment."

NYSBA Ethics Opinion 981 [10/2/13] Payment to lawyer of a referral fee for clients who sign up for a security system

"A lawyer may receive a referral fee under certain circumstances." Yes, because the "referral" in question would come because people in the lawyer's office picked up the security company's flyer in the lawyer's waiting room and then became security company clients.

NYSBA Ethics Opinion 979 [8/8/13] Lawyer-mediator group, payment for referrals

A group of otherwise unaffiliated lawyer-mediators may place joint advertisements and maintain a website that lets people contact any one of the lawyers by visiting the website or calling a telephone number listed for the group as a whole. The site is similar to a directory with listings and information about lawyers sufficient to let the prospective client visiting the shared website select a lawyer without any other recommendation.

NYSBA Ethics Opinion 902 [1/13/12] Payment for marketing services based on contacts developed

A lawyer may pay an agency for marketing activities, but in this case, the lawyer may not pay the agency to introduce the lawyer to their clients because it would be a payment to recommend for the purposes of employment. Similarly, the attorney cannot pay the agency a bonus if s/he is hired.

NYSBA Ethics Opinion 887 [2011] A lawyer cannot pay an employee marketing person a bonus based on referrals of particular matters or profitability of the firm where such profits are substantially related to the employee's efforts.

NYSBA Ethics Opinion 870 [5/31/11] nonexclusive referral agreement between lawyer and nonlawyer

This is permissible because it is a nonexclusive agreement, and the lawyer and the company are otherwise unaffiliated. The lawyer may need to disclose the arrangement to the client.

NYSBA Ethics Opinion 845 [10/14/10] Lawyer/real estate broker sharing her brokerage commission with lawyers who refer buyers or sellers.

This is OK as long as the referring lawyer is not representing the buyer or seller in the transaction, or the referring lawyer is representing the buyer or seller and remits or credits the referral fee to the client, and obtains the client's informed consent to the potential conflict arising from the referral fee.

NYSBA Ethics Opinion 641 [4/12/10] Lawyer sending emails to other lawyers seeking referrals of people injured by a particular pharmaceutical product.

"A lawyer may ethically send emails to other lawyers asking for referrals of clients who have been injured by a particular pharmaceutical product." The key here is lawyer to lawyer.

NYSBA Ethics Opinion 791 [2/1/06] referrals and solicitation

Ethics Committee asked to reconsider NYSBA 741 [2001] which concluded: "A lawyer may not participate in a business networking organization that requires the lawyer to refer clients to other members in exchange for their referral of legal business." BNI [the organization to which the lawyer belongs] does not require lawyers to refer clients in exchange for referrals to them, but it does charge fees to belong to the group. The opinion holds that NYSBA Opinion 741 still applies here because lawyers may not belong to a group that requires nonlawyer members to refer potential clients to lawyers in the group. The opinion here adds that participation is a violation of the Rules because by paying fees to belong to BNI, the lawyer is paying for referrals.

NYSBA Ethics Opinion 779 [11/5/04] Paying a national marketing organization for referrals

It is "improper for an attorney to pay money to a national marketing organization in return for that organization providing the attorney with 'leads' to potential clients."