Ethics Update for Trial Lawyers

Sharon Stern Gerstman, Esq.
Former President, New York State Bar Association
Magavern, Magavern, Grimm, LLP
Buffalo

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ETHICS UPDATE FOR TRIAL LAWYERS

Sharon Stern Gerstman
Magavern Magavern Grimm LLP

Note: Text of NYSBA Opinions may be found here: https://www.nysba.org/Ethics/

I. Issues Regarding Firm Name

Rule 7.5(b) provides:

"A lawyer in private practice shall not practice under a trade name, a name that is misleading as to the identity of the lawyer or lawyers practicing under such name, or a firm name containing names other than those of one or more of the lawyers in the firm, except that the name of a professional corporation shall contain 'PC' or such symbols permitted by law, the name of a limited liability company or partnership shall contain 'LLC,' 'LLP' or such symbols permitted by law and, if otherwise lawful, a firm may use as, or continue to include in its name the name or names of one or more deceased or retired members of the firm or of a predecessor firm in a continuing line of succession. Such terms as 'legal clinic,' 'legal aid,' 'legal service office,' 'legal assistance office,' 'defender office' and the like may be used only be qualified legal assistance organizations, except that the term 'legal clinic' may be used by a lawyer or law firm provided the name of a participating lawyer or firm is incorporated therein. A lawyer or law firm may not include the name of a nonlawyer in its firm name, nor may a lawyer or law firm that has a contractual relationship with a nonlegal profession or nonlegal professional service firm pursuant to Rule 5.8 to provide legal and other professional services on a systematic and continuing basis include in its firm name the name of the nonlegal professional service firm or any individual nonlegal professional affiliated therewith. A lawyer who assumes a judicial, legislative or public executive or administrative post or office shall not permit the lawyer's name to remain in the name of a law firm or to be used in professional notices of the firm during any significant period in which the lawyer is not actively and regularly practicing law as a member of the firm and, during such period, other members of the firm shall not use the lawyer's name in the firm name or in professional notices of the firm."

Rule 7.5(e) provides:

"A lawyer or law firm may utilize a domain name for an internet web site that does not include the name of the lawyer or law firm provided:

(1) All pages of the web site clearly and conspicuously include the actual name of the lawyer or law firm;
(2) The lawyer or law firm in no way attempts to engage in the practice of law using the domain name;
(3) The domain name does not imply an ability to obtain results in a matter;
(4) The domain name does not otherwise violate these Rules.

The comments to Rule 7.5 include further elucidation regarding the use of domain names, giving examples of proper domain names (for law firm Able and Baker, could use www.ableandbaker.com, www.ab.com, www.ablelaw.com, www.realestatelawyers.com, etc.) and giving examples of some improper usages (PI lawyers can't use www.win-your-case.com or

www.settleformore.com) which might run afoul of (e)(3), and underscoring that any advertising cannot be strictly under the domain name, that the name of the firm must be conspicuous as well.

Two recent NYSBA opinions deal with firm names.

In NYSBA Opinion 1167, May 9, 2019, the Committee decided a question about the use of the lawyer's middle name, as the latest of a long line of questions about use of parts of a lawyer's name. The Committee decided that it was permissible to use the lawyer's middle and last name as the firm name, even if the middle name sounded like another last name and the consumer might think the firm had two lawyers. E.g., if the lawyer's name was Marie Wilson Jones, the firm could be called Wilson Jones. The committee likened it to one that permitted the use of the lawyer's last name and middle initials (NYSBA 1003, 2014), and distinguished the opinion on this issue from previous ones that forbade the practice under just the lawyer's first name (NYSBA Opinion 1152, 5/17/2018). Also forbidden are a contraction of initials or parts of a lawyer's first, middle, and/or last name (NYSBA Opinions 948 and 920, 2012), and a English translation of the lawyer's actual last name (NYSBA Opinion 1138, 2017).

In NYSBA Opinion 1168, May 13, 2019, the Committee decided a question about the use of the seller's firm name after sale. The purchaser was someone who worked as a contract attorney in the firm. However, the seller was going to continue to practice law in the state, albeit quite some distance away. The Committee first opined that the sale was ethical under Rule 1.17 which allows the sale of a private practice by a retiring attorney in that Rule 1.17 defines retirement as the cessation of the private practice of law in the geographic area (defined as the county and city and any contiguous county or city). Second, the committee found that use of a retired lawyer's name in the firm name was permissible, and decided to use the Rule 1.17 definition of retired rather than the OCA definition. The committee did opine, however, that they may not have decided the same way had the purchaser not been affiliated with the firm prior to purchase. The Committee also noted that two opinions (Opinions 148 and 850) were modified in light of the opinion in 1168.

II. Issues Regarding End of Representation/Missing Client

In NYSBA Opinion 1163, March 11, 2019, the Committee answered a tricky inquiry involving a missing client. In the facts presented, the lawyer had negotiated a settlement for the client, sent the terms of settlement to the client with a letter which provided that the representation was concluded. There was a subsequent issue regarding the settlement, and the opposing party brought a motion. The lawyer tried to contact the client by phone, email and mail without success. The lawyer asked the Committee to define his duties regarding disclosure of the end of the representation, disclosure that the client could not be found, answering the opposing motion, and moving to formally withdraw.

An obligation to make a motion to withdraw, continues to exist until a stipulation of discontinuance is filed. If there is no stipulation of discontinuance, the lawyer must make the motion. However, in preparing the motion to withdraw, the lawyer must be careful not to disclose any client confidences (perhaps including his disappearance), unless ordered by the court to do so. NYSBA Opinion 1057 (2015) requires the lawyer to cite "professional considerations" as the reason for terminating the representation. NYSBA Opinion 787 (2005) discusses the steps an attorney must take when a client is missing.

If a stipulation has already been filed, the lawyer may disclose that the representation of the client is terminated, and then the lawyer has no obligation regarding the motion.

III. Issues Regarding Client Files

NYSBA Opinion 1164 (March 21, 2019) concerns what the lawyer is to do when a client requests not only the return of a document, but the destruction of all copies of the document. Recognizing that, as a general rule, an attorney may have an interest in maintaining (at his or her own expense) a copy of a client's file, the Committee determined that the attorney may comply with such a request, if there is a reason for the client's insistence of the destruction of the document, and that the attorney may condition such a destruction upon the client providing a release and hold harmless agreement.

Opinion 1164 cites back to NYSBA Opinion 1142 (2018) which gives general parameters regarding the return of files that are stored in electronic form. This comprehensive opinion culls from other opinions and cases and provides a good outline for the storage and maintenance of client files and related issues. These principles include:

1. Except for certain documents that must be kept in the original (wills, deeds, original contracts, promissory notes), documents may be kept in any form, including electronic form, on microfilm, or in cloud-based storage.

2. As a general rule, a former client is entitled to his or her client file, and the lawyer must promptly deliver the file upon request.

3. Fees for copying or assembling the file may be charged to the client provided a) the client hasn't already been charged for the cost of assembling the file under the retainer agreement; b) the copies to be charged are for the client's benefit, not the lawyer's. Where the client is entitled to return of his or her documents, a copy kept by the lawyer is for the lawyer's benefit and cannot be charged to the client.

4. Where the file is exclusively electronic, the lawyer may deliver the file in electronic form or allow access to the electronic file from the cloud. If the client cannot access the file in electronic form, the lawyer must make every effort to provide the file in a

form that the client can access. If the client requests that the documents be printed out, the lawyer may charge for the reasonable costs of doing so.

IV. Issues Regarding Fee Divisions

During the past year, the Committee on Professional Ethics issued two opinions regarding the sharing of legal fees with a party who is not a lawyer licensed to practice in New York. In NYSBA Opinion 1159 (December 14, 2018), the Committee considered the circumstances that fees may be split with a deceased lawyer's estate.

Consider the following case:

Lawyer A is the sole owner of a law firm which handles plaintiff's personal injury cases on contingent fee. He hires Lawyer B as an associate to work on the files. Lawyer A dies unexpectedly, without a succession plan. Lawyer B continues to work on the files, and also brings in new cases. Lawyer A's estate continues to hold the interest in the firm, and eventually dissolves the firm. Lawyer B starts her own firm and all of the clients of Lawyer A's firm sign new retainers with Lawyer B. The Estate has demanded a share of the fees for the cases which originated with Lawyer A's firm.

1. Can the Lawyer B continue to work in the firm while the Estate owns it?
2. Can Lawyer B pay the Estate any portion of the fees?

The Committee says yes to both questions, limited to Rule 5.4 (d)(1) and (a)(2).

Rule 5.4(d) prohibits a lawyer from practicing in a firm which is owned (in whole or in part) or controlled by a non-lawyer. Rule 5.4(d)(1) provides an exception where the firm is owned by the representative of the lawyer's estate, for a reasonable time during the estate administration.

Rule 5.4(a) generally prohibits the sharing of a fee with a non-lawyer, or working in a law firm which is owned by a non-lawyer. There are three exceptions in Rule 5.4(a):

"(1) an agreement by a lawyer with the lawyer's firm or another lawyer associated in the firm may provide for the payment of money, over a reasonable period of time after the lawyer's death to the lawyer's estate or to one or more specified persons.

"(2) a lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer that portion of the total compensation that fairly represents the services rendered by the deceased lawyer.

"(3) a lawyer or law firm may compensate a nonlawyer employee or include a nonlawyer employee in a retirement plan based in whole or in part on a profit-sharing arrangement."

In the case given, there is no succession plan and so no agreement as contemplated by Rule 5.4(a)(1). However, Lawyer B can provide to the estate "that portion of the total compensation that fairly represents the services" by Lawyer A. Any fee in excess of this amount would be prohibited.

In NYSBA 1160 (January 2, 2019), the Committee considered a situation where the New York lawyer wishes to affiliate in some manner with a lawyer who is licensed to practice in a state other than New York, but is admitted to practice before the federal courts in New York. [This is possible for cases like bankruptcy or tax where the underlying law and procedure is federal.] The proposed arrangement does not include federal cases in which both attorneys would work. It was explained that the contemplated arrangement would ease referrals of clients to each other. While the Committee acknowledged that there can be affiliations and partnerships of lawyers across multiple jurisdictions, based upon each lawyer practicing only in the jurisdictions(s) in which he or she is licensed. Here, the lawyer's admission to the Federal District Court is not the equivalent of the license to practice. Sharing of fees between attorneys cannot be a pure "referral fee" with the referring attorney maintaining no responsibility. Rule 1.5(g). The problem with the proposed affiliation is that when the non-licensed attorney receives a portion of a fee earned by the licensed lawyer, either he or she is not maintaining any responsibility or he or she is engaged in the unlawful practice of law. The former would run afoul of Rule 1.5(g), and the latter runs afoul of Rule 5.5(b), which provides that "A lawyer shall not aid a nonlawyer in the unauthorized practice of law.

Interestingly, the Committee had previously permitted a fee split between a lawyer practicing in another state, who refers his client to the lawyer in New York, so long as the lawyer in the other state remains responsible, without defining the way the out of state lawyer would remain responsible. NYSBA Opinion 864 (2011). However, this was a one time referral, not an

affiliation. Presumably, the out of state attorney could be admitted on the case pro haec vice, or could remain responsible for issues which are entail provisions of law in the client's home state.

In ABA Formal Opinion 487, the Standing Committee on Ethics and Professional Responsibility outlined the steps that a lawyer who is replacing another lawyer in representation of the client on a contingent fee should take to inform the client that the fee may be split with the former attorney. The Committee based this opinion on Rules 1.5(b) and (c) which require the lawyer to inform the client as to general rates of fees in Rule 1.5(b) and how the fee is to be computed in Rule 1.5(c), and recommended that this explanation be made in the original agreement with the client, although it permitted a later separate agreement.

The Committee also commented on the role of the successor attorney in addressing the predecessor's claim to a portion of the fee. The successor's work may include an assessment of the legitimacy of the claim to the fee or to an assessment of the amount of the fee earned. The successor has a duty to hold the fee in trust under Rule 1.15 until the division is concluded.

V. Issues Regarding Social Media

On May 11, 2017, the NYSBA Commercial and Federal Litigation Section issued its updated "Social Media Ethics Guidelines." It may be accessed here: http://www.nysba.org/workarea/DownloadAsset.aspx?id=77534

These guidelines provide an extensive review of many topics of interest to trial lawyers including Attorney Competence, Attorney Advertising, Furnishing Legal Advice through Social Media, Use of Evidence from Social Media, Communicating with Clients Regarding Social Media, Jurors and Social Media, and Communicating with a Judicial Officer Through Social Media.

Part 5, "Communicating with Clients," is excerpted below.

Since its dissemination, the Court of Appeals has decided ***Forman v. Henkin***, 30 N.Y.3d 656 (2018), which provided that normal discovery rules would apply to the discoverability of social media postings, and that any discovery request must be "reasonably likely to yield relevant evidence."

The following are the guidelines and some explanatory material from the NYSBA Commercial and Federal Litigation Section "Social Media Ethics Guidelines" (2017), Part 5:

5. Communicating with Clients:

Guideline No. 5.A: Removing Existing Social Media Information

"A lawyer may advise a client as to what content may be maintained or made non-public on her social media account, including advising on changing her privacy and/or security settings. A lawyer may also advise a client as to what content may be "taken down" or removed, whether posted by the client or someone else. However, the lawyer must be cognizant of preservation obligations applicable to the client and/or matter, such as a statute, rule, regulation, or common law duty relating to the preservation of information, including legal hold obligations. Unless an appropriate record of the social media content is preserved, a party or nonparty may not delete information from a social media account that is subject to a duty to preserve."

There is a duty to ensure that potentially relevant information is preserved, but there is no obligation to show the material to the public, and the lawyer may advise his or her client to "privatize" the information. This guideline is based upon N.Y.C.L.A. Formal Opinion 745 (2013), NCSBA Formal Opinion 2014-5; Phila.Bar Ass'n Opinion 2014-5, FBA Opinion 14-1 (2015, as revised 2016).

Guideline No. 5.B.: Adding New Social Media Content

"A lawyer may advise a client with regard to posting new content on social media, as long as the proposed content is not known to be false by the lawyer. A lawyer also may not 'direct or facilitate the client's publishing of false or misleading information that may be relevant to a claim.'"

The advice can include reviewing the material before posting, advising that there be no postings, and advising the client on the discoverability of social media postings. PBA Opinion 2014-300.

Guideline No. 5.C.: False Media Statements

"A lawyer is prohibited from proffering, supporting, or using false statements if she learns from a client's social media posting that a client's lawsuit involves the assertion of material false factual statements or evidence supporting such a conclusion and if proper inquiry of the client does not negate that conclusion."

See Rule 3.1(a).

Guideline No. 5.D: A Lawyer's Use of Client-Provided Social Media Information

"A lawyer may review a represented person's non-public social media information provided to the lawyer by her client, as long as the lawyer did not cause or assist the client to: (i) inappropriately obtain non-public information from the represented person; (ii) invite the represented person to take action without the advice of his or her lawyer; or (iii) otherwise overreach with respect to the represented person."

The client may communicate with a represented party, but the lawyer must be careful not to assist the client to seek confidential information inappropriately, or participate in the communication. Rule 4.2(b).

The lawyer must also be cautious if the client plans to "friend" the represented person. Some ethical opinions allow that the client send a "friend" request or "follow" the person, and provide the information to the lawyer, but the lawyer cannot direct the client to do so. NHBA Opinion 2012-13/05. ABA Opinion 11-461 (2011) permits the lawyer to give substantial assistance including subjects to be addressed and review of potential correspondence between the client and the represented party.

Guideline No. 5E: Maintaining Client Confidences and Confidential Information

"Subject to the attorney-client privilege rules, a lawyer is prohibited from disclosing client confidences and confidential information relating to the legal representation of a client, unless the client has provided informed consent. Social media activities and a lawyer's website or blog must comply with these limitations.

"A lawyer should also be aware of potential risks created by social media services, tools or practices that seek to create new user connections by importing contacts or connecting platforms. A lawyer should understand how the service, tool or practice operates before using it and consider whether any activity places client information and confidences at risk.

"Where a client has posted an online review of the lawyer or her services, the lawyer's response, if any, shall not reveal confidential information relating to the representation of the client. Where a lawyer uses a social media account to communicate with a client or otherwise store client confidences, the lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure or use of, or unauthorized access to, such an account."

This guideline requires safeguards to protect client information as required by Rule 1.9. Regarding the response to online reviews, see PBA Opinion 2014-300, Texas State Bar Opinion 662, and DC Bar Ethics Opinion 370.

VI. Issues Regarding Litigation Funding

What started as a source of emergency funding for plaintiffs has blossomed into a multi-billion dollar industry. There are several ethical issues which can be raised regarding various forms of funding, including plaintiff loans for non-litigation costs, client loans for litigation costs, and attorney loans for litigation costs.

Case 1: Plaintiff is injured in an automobile accident, which has prevented him from working. Plaintiff retains you to represent him. Defendant has $100,000 coverage and you have demanded the policy, but there has been only a $25,000 offer, so you put the case in suit. Plaintiff complains that he has bills to pay and limited money and no ability to borrow from friends or family or to put any more on his credit card. He has seen the late night advertisements by SqueezeDry Funding and asks you if he should borrow from SqueezeDry or someone else.

(a) Suppose you know a funding source (SmoothOperator) that gives better terms that SqueezeDry? Can you refer Plaintiff to them?

Rule 1.7(a)(2) (see page 17) and 1.8(a) (see page 18) put limitations on business relationships between lawyers and clients. If you have any ownership interest in SmoothOperator, you cannot refer Plaintiff as it would constitute making a loan to the Plaintiff which is prohibited under 1.8(e) and you cannot take a share of Plaintiff's cause of action under 1.8(i). NYSBA Opinion 666(1994)

If SmoothOperator is owned by a member of your family, you are also prohibited from referring the Plaintiff: NYSBA Opinion 855 (2011) regarding ownership by lawyer's spouse; ***In Re Cellino,*** 21 AD3d 229 (4th Dept. 2005) regarding ownership by lawyer's cousin; ***S.D. v. St. Luke's Cornwall***

Hospital, 63 Misc.3d 384 (2019) regarding ownership by lawyer's brother. At very least, full disclosure and compliance with Rule 1.8(a) would be required.

If you have a relationship with SmoothOperator, other than ownership, you may be able to refer Plaintiff to them, with full disclosure and Plaintiff's informed consent. Rule 1.8(a) controls and requires three steps: (1) the transaction has to be fair to the client and set out in writing that can be easily understood by the client; (2) the client is advised in writing that he or she should consider independent legal advice and be given an adequate opportunity to do so; (3) the client gives informed consent of both the terms of the transaction, the lawyer's role, and whether the lawyer is representing the client in the transaction. A business relationship which triggers Rule 1.8(a) includes receipt of a referral fee or like benefit, prior representation of SmoothOperator [***Leon v. Martinez,*** 84 NY2d 83 (1994), and even a long history with SmoothOperator.

(b) Suppose Plaintiff tells you that he can't hold out any longer and you must either settle for the $25,000 or he's going to go to SqueezeDry for a loan. What do you do? Are you sure your advice is in Plaintiff's best interests and not your own? If Plaintiff goes to SqueezeDry and borrows $25,000, are there any conflicts of interest as you negotiate a settlement or push to go to trial?

(c) Do you help your client negotiate with the ALF supplier? Are there terms of the agreement that are in your best interests but not your client's?

(d) Suppose SqueezeDry or SmoothOperator requires that Plaintiff turn over all papers including attorney's work product and confidential information? Or suppose SqueezeDry or SmoothOperator require Plaintiff not to change law firms without their permission?

Informed consent regarding these risks and alternative provisions may be necessary and are certainly preferable. There are Ethics Opinions from other states that require informed consent regarding waiver of the attorney-client privilege or regarding the sharing of attorney work product. One opinion requires the lawyer to inform the ALF supplier in writing that the client, not the funding company, retains the right to control the litigation.

Case #2: Plaintiff claims medical malpractice against a number of doctors and a hospital. Under the retainer agreement, the attorney retains the right to ask the client for payment of disbursements as a condition for the attorney to proceed in the case. After the completion of discovery, there is an offer of settlement, that the attorney advises the Plaintiff to consider but Plaintiff refuses. Attorney tells the Plaintiff that he must advance the litigation costs, or else the attorney will move to withdraw. Plaintiff goes to Love Litigation, Inc. to borrow the money for litigation costs.

(a) What are Attorney's obligations? What if there is a relationship between Attorney and LoveLitigation, Inc.? What if Plaintiff is suing as PNG of injured child?

See ***S.D. v. St. Luke's Cornwall Hospital***, 63 Misc.3d 384 (Sup.Ct. Orange Co. 2019).

Case #3: You are commencing product liability actions against a pharmaceutical company, claiming failure to warn of a dangerous side effect of a drug. You think you can attract a lot of plaintiffs, but you don't have sufficient capital to finance what will likely be a lengthy case. You seek a loan from Lawyer Savior, Inc., secured by your office's fixtures and accounts receivable. Interest rate is at fair market value for this type of loan. The retainer agreement is for a contingent fee with the pay back of all disbursements.

(a) Can you pass along the interest you paid on the loan? How about a surcharge?

Rule 1.5(a) Reasonableness of Fee; Rule 1.8(a) Requirement of Informed Consent

Other Issues:

Legislation (Disclosure, Consumer Protection)
Disclosure to a Mediator or Arbitrator
Actions on behalf of an infant or AIP

VII. Other Issues Regarding Conflicts in Representation

Case #4: Mother is driver in automobile rear-ended by Defendant. Mother is injured, as are her two daughters who are back seat passengers. The daughters are 18 and 16 at the time of the accident. The three of them come to see you to represent them. What do you do?

Case #5: You represent defendants in automobile cases for XYZ Insurance Co. They send you a case to represent the owner (and policy holder) and her boyfriend driver. Owner was not in the car at the time of the accident. What do you do?

Case #6: You represent two injured passengers in the same car. You sue both drivers. You learn that the total insurance coverage will not be sufficient to compensate both passengers. What do you do?

Rule 1.7: Conflict of interest: current clients.

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if a reasonable lawyer would conclude that either:

(1) the representation will involve the lawyer in representing differing interests; or
(2) there is a significant risk that the lawyer's professional judgment on behalf of a client will be adversely affected by the lawyer's own financial, business, property or other personal interests.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
(2) the representation is not prohibited by law;
(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
(4) each affected client gives informed consent, confirmed in writing.

Rule 1.8: Current Clients: Specific Conflict of Interest Rules

(a) A lawyer shall not enter into a business transaction with a client if they have differing interests therein and if the client expects the lawyer to exercise professional judgment therein for the protection of the client, unless:

(1) the transaction is fair and reasonable to the client and the terms of the transaction are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;

(2) the client is advised in writing of the desirability of seeking, and is given a reasonable opportunity to seek, the advice of independent legal counsel on the transaction; and

(3) the client gives informed consent, in a writing signed by the client to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

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(e) While representing a client in connection with contemplated or pending litigation, a lawyer shall not advance or guarantee financial assistance to the client, except that:

(1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter;

(2) a lawyer representing an indigent or pro bono client may pay court costs and expenses of litigation on behalf of the client; and

(3) a lawyer, in an action in which an attorney's fee is payable in whole or in part as a percentage of the recovery in the action, may pay on the lawyer's own account court costs and expenses of litigation. In such case, the fee paid to the lawyer from the proceeds of the action may include an amount equal to such costs and expenses incurred.

(f) A lawyer shall not accept compensation for representing a client, or anything of value related to the lawyer's representation of the client, from one other than the 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

(g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, absent court approval, unless each client gives informed consent in a writing signed by the client. The lawyer's disclosure shall include the

existence and nature of all the claims involved and the participation of each person in the settlement.

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(i) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

(1) acquire a lien authorized by law to secure the lawyer's fee or expenses; and

(2) contract with a client for a reasonable contingent fee in a civil matter subject to Rule 1.5(d) or other law or court rule.

Rule 1.9: Duties to Former Clients

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

See, ***Keller v. Kruger***, 41 Misc.3d 1204(A) (Sup.Ct. Kings Co. 2013); defense lawyer cannot represent both owner and operator if there is any issue of permissive use.

Pasquis v. Osorio, 58 Misc.3d 1204(A) (Sup.Ct. Kings Co. 2017); attorney disqualified from representing either of driver and passenger in same car

Shelby v. Blakes, 129 AD3d 823 (2d Dept 2015) and ***Quinn v. Walsh***, 18 AD3d 638 (2d Dept. 2005) where attorney represented both driver and passenger in rear ender, attorney precluded from collecting any attorneys fees.

Key v. Arrow Limo, Inc., 44 Misc.3d 1213(A) (Sup.Ct. Kings Co. 2014); mother driver cannot be PNG, mother and adult passenger cannot settle; attorney disqualified

Marinozzi v. Sanders, 37 Misc.3d 1225(A) (Sup. Ct. Orange Co. 2012); while opposing party lacks standing to move to disqualify, court can disqualify sua sponte. Defense attorney cannot represent both doctor and nurse midwife in medical malpractice action, disqualified from representing any.

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Sharon Stern Gerstman, Esq.
Magavern Magavern Grimm LLP
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