You have requested that the Committee opine as to the propriety of the arrangement and, in particular, whether (1) the client's request for contractual reimbursement for legal consultation would violate the Attorney's ethical responsibility to preserve the client's secrets and confidences; (2) the payment of attorney fees would constitute fee-splitting with a nonlawyer since the payment is made from contract funds paid to therapist by employer; and (3) leaving Attorney's business cards in therapist's office constitutes improper solicitation of clients?

The primary disciplinary rules controlling the facts you describe are DR:5-106(A)(1) and (B) which require, respectively, that a lawyer shall not accept compensation for his legal services from one other than his client except with the consent of his client after full and adequate disclosure, and that a lawyer shall not permit a person who recommends, employs, or pays him to render legal services for another to direct or regulate his professional judgment in rendering such legal services. Additional pertinent disciplinary rules include DR:2-103(D), which prohibits a lawyer from compensating a person or organization to recommend or secure his employment by a client; DR:4-101(B)(1), which prohibits a lawyer from knowingly revealing a confidence or secret of his client; and DR:3-102, which prohibits a lawyer from sharing legal fees with a nonlawyer. Further guidance is available in Ethical Considerations EC:5-21, EC:5-22 and EC:5-23, all of which emphasize the need for a lawyer's judgment to be impervious to influence by a third party who compensates a lawyer for the provision of services to his client.

In the Committee's opinion, the primary concern under the circumstances you describe is the absolute avoidance of any influence upon the Attorney by either the employer or the therapist. Regardless of the source of funds for payment of Attorney's fees, that client
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is the individual employee who consults Attorney for legal assistance, and Attorney owes
to that client duties of zealous representation, the preservation of confidences and
secrets, and independent professional judgment. (See LE Op. 609) Within that attorney-
client relationship, loyalty to the client must not be compromised based upon any
extraneous relationships.

In considering the propriety of a similar fact situation, the Committee has earlier opined
that an attorney accepting compensation from a professional counselor service which
refers clients to an attorney for legal advice would not be a per se ethical violation of the
Code of Professional Responsibility. The Committee continues to be of the view that "[a] disclosure by an attorney to a professional counselor service of the purpose and length of
time spent with a client on a particular problem without the express informed consent of
the client would violate the provisions of DR:4-101." (See LE Op. 516) Under the facts
you have provided, however, the client will be billed directly for the initial consultation
and client will then seek reimbursement for Attorney fees from the therapist as a benefit
under the Employee Assistance Benefits program. Since reimbursement to the client is a
matter of the benefits available under a contractual arrangement between the employee
and employer, the consequences of such arrangements involve legal determinations
beyond the scope of the Committee. However, the Committee is of the opinion that since
disclosure is to be made by the client for purposes of reimbursement, it clearly would not
be tantamount to Attorney's disclosure of client's secrets or confidences and thus could
not be violative of DR:4-101.

Similarly, the Committee opines that the arrangement described is not, by definition,
violative of DR:3-102 since the client is receiving reimbursement after having paid
Attorney directly. Thus, under the facts you have provided, the Committee observes that
no monies pass between Attorney and therapist regardless of the basic source of the
reimbursement funds. ( Cf. LE Op. 609)

Finally, the Committee is of the opinion that prior LE Op. 682 is dispositive of the issue
you raise regarding the propriety of distributing Attorney's business cards through
therapist's office. The earlier opinion found that it is not improper for an attorney to give
his business cards to a third-party for distribution so long as the business cards are not
false, fraudulent, misleading or deceptive; the third-party distributing the cards makes no
statement that is false, fraudulent, misleading or deceptive and does not initiate contact
with the potential client under circumstances that might involve duress or intimidation;
and the attorney does not compensate the third-party for distributing his business cards.

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