Atticus

Ethical Fee-Sharing

A 50-State Survey & Practical Guide

Dear Colleague,

This guide addresses a question that most lawyers are familiar with but that very few of us can answer in detail: When can one lawyer pay another in exchange for a client referral?

Few topics are as polarizing. In some parts of the bar, referral-driven "fee-sharing" is ubiquitous — and viewed as a core part of the legal profession. There, many lawyers treat the practice with such a blasé attitude that they routinely violate state laws. In other parts of the bar, fee-sharing is nearly unheard-of — and often considered unsavory or prohibited. There, the concept instills such fear that some lawyers refuse to engage in conduct that is actually permitted and ethical.

Why this disconnect? The answer is simple: The rules governing fee-sharing are extraordinarily confusing. They are poorly written and oddly structured. They vary widely among jurisdictions. And until now, they have never been addressed in a single comprehensive source.

This document represents our attempt to change that. Here, we've pulled together 50 states' worth of rules, ethics opinions, and caselaw — as well as academic research and first-person experience — into a practical and detailed guide to fee-sharing law in every major U.S. jurisdiction. We needed a guide like this, so we made one. We hope that by sharing it, we're able to spare you the extensive journey we endured to become experts on this topic.

You should know that we're biased: Atticus is a private public-interest law firm that earns fees *exclusively* through fee-sharing. That means, of course, that we have a major stake in convincing others that the practice is legal. But it also means our interest is greater than anyone's in ensuring that fee-sharing is done ethically, in a way clearly permitted and encouraged by law. Regardless, we don't ask you to take our word for it: the sources cited here should speak for themselves.

Please don't hesitate to reach out if you have questions, comments, or concerns. We find this subject fascinating and are always happy to discuss it.

Yours sincerely,

Samuel Byker
Managing Attorney
Atticus Law, P.C.
sam@atticus.law

ALABAMA follows the Model Rules for most cases, but applies a more relaxed standard to contingency cases. In representations where a lawyer is paid hourly or on a flat-fee basis, division of fees is permitted so long as the referring lawyer "assumes joint responsibility for the representation" and other standard requirements are met. In representations where a lawyer is paid on contingency, division of fees is permitted even without joint responsibility.[1]

> Joint Responsibility Defined: Like the Model Rules, Alabama doesn't explicitly outline what "joint responsibility" requires, but simply states that it "entails the obligations stated in Rule 5.1."[2] Essentially, this means that a referring lawyer takes on an ethical obligation to assure that the receiving lawyer provides adequate representation and abides by the rules of professional conduct, and may be disciplined for failing to fulfill this obligation.[3]

ALASKA follows the Model Rules: division of fees is permitted so long as the referring lawyer "assumes joint responsibility for the representation" and other standard requirements are met.[4]

> Joint Responsibility Defined: Like the Model Rules, Alaska doesn't explicitly outline what "joint responsibility" requires, but simply states that it "entails financial and ethical responsibility for the representation as if the lawyers were associated in a partnership." [5] This means that a referring lawyer takes on an ethical obligation to assure that the receiving lawyer provides adequate representation and abides by the rules of professional conduct, and may be disciplined for failing to fulfill this obligation.[6]

---

1. **Alabama Rules of Professional Conduct, Rule 1.5(e)** ("A division of fee between lawyers who are not in the same firm, including a division of fees with a referring lawyer, may be made only if: (1) Either (a) the division is in proportion to the services performed by each lawyer, or (b) by written agreement with the client, each lawyer assumes joint responsibility for the representation, or (c) in a contingency fee case, the division is between the referring or forwarding lawyer and the receiving lawyer; (2) The client is advised of and does not object to the participation of all the lawyers involved; (3) The client is advised that a division of fee will occur; and (4) The total fee is not clearly excessive.")

   Alabama explicitly permits division of fees with out-of-state lawyers. *See* **Cunningham v. Langston, Frazer, Sweet & Freese, P.A., 727 So. 2d 800, 806 (Ala. 1999)** (holding that a fee-sharing agreement between a referring Mississippi lawyer and a receiving Alabama lawyer was valid and enforceable).

2. **Alabama Rules of Professional Conduct, Rule 1.5(e), Comment *Division of Fee*** ("Joint responsibility for the representation entails the obligations stated in Rule 5.1 for purposes of the matter involved.") *See* **Alabama Rules of Professional Conduct, Rule 5.1** ("(a) A partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct. (b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct. (c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if: (1) The lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or (2) The lawyer is a partner in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.")

3. See "Joint Responsibility Generally" at end of document.

4. **Alaska Rules of Professional Conduct, Rule 1.5(e)** ("A division of a fee between lawyers who are not in the same firm may be made only if: (1) the division is in proportion to the contribution of each firm or, by written agreement with the client, each firm assumes joint responsibility for the representation; (2) the client agrees to the participation of each firm, including the share each firm will receive, and the participation is confirmed to the client in writing; and (3) the total fee is reasonable.)

5. **Alaska Rules of Professional Conduct, Rule 1.5 Comment *Division of Fee*** ("Joint responsibility for the representation entails financial and ethical responsibility for the representation as if the lawyers were associated in a partnership.")

6. See "Joint Responsibility Generally" at end of document.

ARIZONA follows the Model Rules: division of fees is permitted so long as the referring lawyer "assumes joint responsibility for the representation" and other standard requirements are met. [7]

> Joint Responsibility Defined: To bear joint responsibility in Arizona, the referring lawyer must take on vicarious liability to the client for any act of malpractice committed by the receiving lawyer. No other obligations are required.[8]

ARKANSAS follows the Model Rules: division of fees is permitted so long as the referring lawyer "assumes joint responsibility for the representation" and other standard requirements are met.[9]

---

7. **Arizona Rules of Professional Conduct, ER 1.5(e)** ("A division of a fee between lawyers who are not in the same firm may be made only if: (1) the division is in proportion to the services performed by each lawyer or each lawyer receiving any portion of the fee assumes joint responsibility for the representation; (2) the client agrees, in a writing signed by the client, to the participation of all the lawyers involved and the division of fees and responsibilities between lawyers; and (3) the total fee is reasonable.")

   Arizona explicitly permits division of fees with out-of-state lawyers (provided the client consents). **State Bar of Arizona Ethics Opinion 10-04** (**"**An Arizona lawyer may divide a fee with a lawyer admitted in another United States jurisdiction if the client consents to the arrangement in writing, each lawyer receiving any portion of the fee assumes joint responsibility for the representation, and the total fee is reasonable. In addition to complying with these general rules regarding fee division, the out-of-state lawyer must be in good standing, admitted in a United States jurisdiction, and providing services to the Arizona client in association with a lawyer who is admitted to practice in Arizona and who actively participates in the matter. The client must consent in writing to the fee division, acknowledge the out-of-state lawyer is not admitted in Arizona, and consent to the out-of-state lawyer's representation. The out-of-state lawyer must either ensure that he or she is admitted pro hac vice in order to provide legal services that require pro hac vice admission or be eligible to provide temporary legal services in Arizona pursuant to ER 5.5 [which permits out-of-state lawyers to provide legal services on a temporary basis in Arizona provided the services, among other options, "are undertaken in association with a lawyer who is admitted to practice in Arizona and who actively participates in the matter"].")

8. **State Bar of Arizona ethics Opinion 04-02** ("Under Arizona's recently revised ER 1.5(e), the requisite "joint responsibility" exists if the referring attorney assumes financial responsibility for any malpractice that occurs during the course of the representation. . . . Interpreting "joint responsibility" as synonymous with joint liability allows flexibility in structuring the relationship among the attorneys and client involved. A referring attorney may, but is not necessarily required, to also have ongoing supervisory responsibilities or other substantive involvement in the matter.")

9. **Arkansas Rules of Professional Conduct, Rule 1.5(e)** "(A division of fee between lawyers who are not in the same firm may be made only if: (1) the division is in proportion to the services performed by each lawyer or, by written agreement with the client, each lawyer assumes joint responsibility for the representation; (2) the client is advised of and does not object to the participation of all the lawyers involved; and (3) the total fee is reasonable.")

   Arkansas allows non-resident attorneys to associate with Arkansas attorneys, provided specific criteria are met. **Ex Parte Arkansas Bar Ass'n., 258 Ark. 1027, 528 S.W.2d 140 (1975) [note: link is to Westlaw, opinion is not publicly available]** ("A lawyer residing outside the State of Arkansas who has been admitted to practice law in the Supreme Court of the United States or in the United States Court of Appeals for the circuit in which he resides or in the Supreme Court or the highest appellate court of the state of his residence, and who is in good standing in the court of his admission, will be permitted by comity and by courtesy to appear, file pleadings and conduct the trial of cases in all courts of the State of Arkansas, but any trial court, by rule adopted in compliance with Rule XII of the Uniform Rules for Circuit, Chancery and Probate Courts, may require such non-resident attorney to associate with him a lawyer residing and admitted to practice in the State of Arkansas upon whom notices may be served and may also require that the Arkansas lawyer associated be responsible to the court in which the case is pending for the progress of the case, insofar as the interest represented by him and the non-resident lawyer is concerned. Unless the State in which the said non-resident lawyer resides likewise accords similar comity and courtesy to Arkansas lawyers who may desire to appear and conduct cases in the courts of that State, this privilege will not be extended to such non-resident lawyer. A non-resident lawyer will not be permitted to engage in any case in an Arkansas court unless he first signs a written statement, to be filed with the court, in which the non-resident lawyer submits himself to all disciplinary procedures applicable to Arkansas lawyers.")

Joint Responsibility Defined: Like the Model Rules, Arkansas doesn't explicitly outline what "joint responsibility" requires, but simply states that it "entails financial and ethical responsibility for the representation as if the lawyers were associated in a partnership." [10] This means that a referring lawyer takes on an ethical obligation to assure that the receiving lawyer provides adequate representation and abides by the rules of professional conduct, and may be disciplined for failing to fulfill this obligation.[11]

CALIFORNIA applies a more relaxed standard than the Model Rules: division of fees is permitted, provided that the client consents in writing to the terms of the division and the total fee is not increased by virtue of the referral. Joint responsibility is not required.[12]

CONNECTICUT applies a more relaxed standard than the Model Rules: division of fees is permitted, provided that the total fee is reasonable and that the client is advised in writing that a division of fees will occur. Joint responsibility is not required.[13]

---

10. **Arkansas Rules of Professional Conduct, Rule 1.5 *Comment [7]*** ("Joint responsibility for the representation entails financial and ethical responsibility for the representation as if the lawyers were associated in a partnership.")

11. See "Joint Responsibility Generally" at end of document.

12. **[Before November 1, 2018]** **California Rules of Professional Conduct, Rule 2-200** ("(A) A member shall not divide a fee for legal services with a lawyer who is not a partner of, associate of, or shareholder with the member unless: (1) The client has consented in writing thereto after a full disclosure has been made in writing that a division of fees will be made and the terms of such division; and (2) The total fee charged by all lawyers is not increased solely by reason of the provision for division of fees and is not unconscionable as that term is defined in rule 4-200.")

    [After November 1, 2018] **California Rules of Professional Conduct, Rule 1.5.1** ("(a) Lawyers who are not in the same law firm shall not divide a fee for legal services unless: (1) the lawyers enter into a written agreement to divide the fee; (2) the client has consented in writing either at the time the lawyers enter into the agreement to divide the fee or as soon thereafter as reasonably practicable, after a full written disclosure to the client of: (i) the fact that a division of fees will be made; (ii) the identity of the lawyers or law firms that are parties to the division; and (iii) the terms of the division; and (3) the total fee charged by all lawyers is not increased solely by reason of the agreement to divide fees.") *See* **California Commission for the Revision of the Rules of Professional Conduct, New Rule of Professional Conduct 1.5.1, Executive Summary** ("The California rule is one of a minority of states that permits a 'pure referral fee,' i.e., California permits lawyers to be compensated for referring a matter to another lawyer without requiring the referring lawyer's continued involvement in the matter. In Moran v. Harris (1982) 131 Cal.App.3d 913, the California Court of Appeal held that the payment of referral fees is not contrary to public policy. The court stated, 'If the ultimate goal is to assure the best possible representation for a client, a forwarding fee is an economic incentive to less capable lawyers to seek out experienced specialists to handle a case. Thus, with marketplace forces at work, the specialist develops a continuing source of business, the client is benefited and the conscientious, but less experienced lawyer is subsidized to competently handle the cases he retains and to assure his continued search for referral of complex cases to the best lawyers in particular fields.' (Id. at 921-922.) The Commission's study found that no case since Moran had questioned the policy of permitting pure referral fees. In fact, the ABA's Ethics 2000 Commission itself had recommended that the Model Rules permit pure referral fees, but that position was rejected by the ABA House of Delegates.")

13. **Connecticut Rules of Professional Conduct, Rule 1.5(e)** ("A division of fee between lawyers who are not in the same firm may be made only if: (1) The client is advised in writing of the compensation sharing agreement and of the participation of all the lawyers involved, and does not object; and (2) The total fee is reasonable.")

    Connecticut explicitly permits division of fees with out-of-state lawyers. **Informal Opinions of the CBA Committee on Professional Ethics, Opinion 91-7 [note: link is to Bloomberg; opinion is not publicly available]** ("A lawyer who practices law in another jurisdiction may refer a case to a lawyer in Connecticut and retain a portion of the fee, provided that the total fee is reasonable and the client does not object to the fee-splitting agreement. The ethics rules in Connecticut do not require that lawyers who share fees also undertake joint responsibility for cases.")

COLORADO has the most confusing and misunderstood fee-sharing rules of any state. In reality, the state follows the Model Rules: division of fees is permitted so long as the referring lawyer "assumes joint responsibility for the representation" and other standard requirements are met.[14] However, thanks to a poorly worded rule found in no other state — and, until recently, a lack of caselaw interpreting it — many lawyers in Colorado still believe that division of fees between a referring and receiving law firm is prohibited. We'll discuss the text of the state's rules, the confusion surrounding them, and their recently clarified meaning.

Prohibition of "Referral Fees" & Resulting Confusion

Colorado's Rule 1.5(e) reads (in its entirety) "Referral fees are prohibited."[15] But what is a "referral fee"? The state's rules, and comments thereto, offer no definition — one Colorado ethics attorney we spoke with called them "slightly clearer than mud." Adding to the confusion, Colorado Rule 1.5(d) expressly permits division of fees between lawyers based on "joint responsibility" — exactly the same language that other states regularly cite as *enabling* "legitimate referral fees."[16]

As a result, the rule can be read in two very different ways:

1. Rule 1.5(e) prohibits any fee between a referring and receiving lawyer — even one that would otherwise be permitted by Rule 1.5(d). (This would make Colorado the only state in the country with such a rule.)

2. Rule 1.5(e) prohibits only so-called "pure" or "naked" referral fees (*not* accompanied by joint responsibility), which aren't covered by Rule 1.5(d). (This would bring Colorado in line with the majority of other states.)

The discussion surrounding the Rules' adoption strongly supports the second reading, but it has no binding force.[17] And for decades, no Colorado court had reason to rule on the

---

14. **Colorado Rules of Professional Conduct, Rule 1.5(d)** ("Other than in connection with the sale of a law practice pursuant to Rule 1.17, a division of a fee between lawyers who are not in the same firm may be made only if: (1) the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation; (2) the client agrees to the arrangement, including the basis upon which the division of fees shall be made, and the client's agreement is confirmed in writing; and (3) the total fee is reasonable.") *See also* **Colorado Bar Association, Formal Ethics Opinion 106** ("Colo. RPC 1.5(d) governs division of fees between lawyers not in the same firm, and prescribes the manner in which fees may be divided. It prohibits such divisions unless the client consents to the employment of an additional lawyer after a full disclosure of the division of fees to be made, the total fee is reasonable, and the division is set forth in writing and signed by the lawyers and by the client with informed consent. If referral fees or fees paid to a legal service organization are based on fees generated by representation of a referred client, one of these rules may be implicated.")

15. **Colorado Rules of Professional Conduct, Rule 1.5(e)** ("Referral fees are prohibited.") *See also* **Colorado Bar Association, Formal Ethics Opinion 106** ("A Colorado lawyer may neither pay nor accept a referral fee. Colo. RPC 1.5(e) explicitly prohibits referral fees. The Colorado Bar Association Ethics Committee (Committee) has opined informally that an attorney licensed to practice law in Colorado may not accept a referral fee from a lawyer in another state that permits such fees.")

16. See notes below for Florida, Texas, and Wisconsin, among others.

17. *See* **Colorado Supreme Court Standing Committee On The Colorado Rules Of Professional Conduct, Report And Recommendations Concerning The American Bar Association Ethics 2000 Model Rules Of Professional Conduct (December 30, 2005) at 30** ("Proposed section (e) continues the Colorado prohibition on referral fees (although proposed section (d) (which largely incorporates the language of New Model Rule 1.5(e), concerning the division of a fee among lawyers who are not in the same firm) authorizes fee sharing in circumstances that the Current Colorado Rule does not)"); **Id.**

issue. In the absence of clear case law, most lawyers in Colorado chose to exercise caution and avoid any arrangement that could be perceived as a referral fee. As a result, Colorado remains the only state in country where most plaintiffs' lawyers — the part of the profession most commonly associated with fee-sharing — refuse to take part in a division of fees stemming from a referral.[18]

The Rules Clarified: Division of Fees is Permitted

In 2017 a Colorado Court of Appeals finally clarified the issue, finding unequivocally in favor of the second reading above: Rule 1.5(e) prohibits only "pure" or "naked" referral fees, *not* the kind of arrangements covered by Rule 1.5(d). In *Larson v. Grinnan*, a three-judge panel held unanimously that an agreement between two lawyers to divide fees in exchange for a referral was permitted and enforceable, despite objections from one of the lawyers that Rule 1.5(e) prohibited such a division of fees.[19] (The court ultimately remanded the decision for a determination of whether the referring law firm had in fact borne "joint responsibility" as required by Rule 1.5(d), but made clear that if so, the "referral fee" would have to be paid.[20]) This was the first court decision we're aware of that considered the interplay of Rule 1.5(d) and Rule 1.5(e), and it made clear that Colorado follows the Model Rules.

Three ethics lawyers (two based in Colorado, one with a national practice) confirmed this interpretation. Many Colorado lawyers still believe that fee-sharing tied to a referral is prohibited, but we believe this will shift over time as more lawyers realize the new state of affairs and such arrangements become more common.

Joint Responsibility Defined

Like the Model Rules, Colorado's Rules don't explicitly outline what "joint responsibility" requires, but simply states that it "entails financial and ethical representation as if the

---

at 31 ("[The new version of Rule 1.5(d)] may lead to additional situations of fee sharing that some may equate with "referral fees.").

18. This is based on a number of discussions with Colorado attorneys and in-state ethics counsel.

19. ***Scott R. Larson, P.C. v. Grinnan*, 2017 COA 85.** As relevant here, attorney Michael Grinnan referred a case to attorney Scott Larson. At the time of the referral, both parties agreed to a fee-sharing arrangement in which Grinnan would receive an unspecified percentage of the fee (despite doing little or no subsequent work). After a successful resolution resulted in quite a large fee, Larson refused to pay Grinnan a substantial share, and as a defense argued that Rule 1.5(e) prohibited such an arrangement. The trial court awarded Grinnan 20% of the total fee, on the ground that "common practice in the legal community in the State of Colorado" would give "the attorney who originated the client . . . one-quarter to one-third of the fee." **¶ 17**. The Court of Appeals held that Rule 1.5(e) did not bar such a fee. **¶ 15** ("Rule 1.5(e) prohibits referral fees. Even so, Rule 1.5(d) provides that lawyers may divide a fee under certain circumstances.").

20. **Id. ¶ 68**. Since the trial court hadn't made a finding as to whether Grinnan complied with the requirement of Rule 1.5(d) that he bear "joint responsibility," it remanded the case for that decision to be made. ("The court shall make further findings on the existing record. If the court finds that Grinnan assumed ethical responsibility, then the court's fee award stands, subject to an appeal by Larson. But if the court finds that Grinnan did not assume ethical responsibility, then he is only entitled to fees in proportion to the services he performed, with the referral fees to be reallocated to Larson, subject to an appeal by Grinnan.")

lawyers were associated in a partnership."[21] In *Larson v. Grinnan*, the court made explicit what this standard requires: The referring lawyer must bear both "financial responsibility" — vicarious liability for any act of malpractice by the receiving lawyer — and "ethical responsibility" — a duty to actively monitor the progress of the case, make reasonable efforts to ensure the receiving lawyer conforms to the Rules of Professional Conduct, and remain available to the client throughout the duration of the case.[22]

DELAWARE applies a more relaxed standard than the Model Rules: division of fees is permitted, provided that the total fee is reasonable and the client is advised in writing that a division of fees will occur. Joint responsibility is not required.[23]

D.C. follows the Model Rules: division of fees is permitted so long as the referring lawyer "assumes joint responsibility for the representation" and other standard requirements are met.[24]

Joint Responsibility Defined: Like the Model Rules, D.C. doesn't explicitly outline what "joint responsibility" requires, but simply states that it "entails the obligations stated in Rule 5.1."[25] Essentially, this means that a referring lawyer takes on an ethical obligation to

---

21. **Colorado Rules of Professional Conduct, Rule 1.5 *Comment [7]*** ("Joint responsibility for the representation entails financial and ethical responsibility for the representation as if the lawyers were associated in a partnership.")

22. ***Scott R. Larson, P.C. v. Grinnan*, 2017 COA 85** at **¶ 31** ("Comment 7 treats joint responsibility as involving two components: financial responsibility and ethical responsibility"), **¶ 42** ("Therefore, we adopt the joint and several or vicarious liability test for financial responsibility"), and **¶ 66** ("In sum, the more balanced view requires that to assume ethical responsibility, the referring lawyer must: actively monitor the progress of the case; "make reasonable efforts to ensure that the firm [of the lawyer to whom the case was referred] has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct," Colo. RPC 5.1(a); and remain available to the client to discuss the case and provide independent judgment as to any concerns the client may have that the lawyer to whom the case was referred is acting in conformity with the Rules of Professional Conduct.")

23. **Delaware Lawyers' Rules of Professional Conduct, Rule 1.5(e)** ("A division of fee between lawyers who are not in the same firm may be made only if: (1) the client is advised in writing of and does not object to the participation of all the lawyers involved; and (2) the total fee is reasonable.") *See also* **Delaware Lawyers' Rules of Professional Conduct, Rule 1.5 *Comment [7]*** ("Paragraph (e) permits the lawyers to divide a fee without regard to whether the division is in proportion to the services each lawyer renders or whether each lawyer assumes responsibility for the representation as a whole, so long as the client is advised in writing and does not object, and the total fee is reasonable. It does not require disclosure to the client of the share that each lawyer is to receive.")

24. **D.C. Rules of Professional Conduct: Rule 1.5(e)** ("A division of a fee between lawyers who are not in the same firm may be made only if: (1) The division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation. (2) The client is advised, in writing, of the identity of the lawyers who will participate in the representation, of the contemplated division of responsibility, and of the effect of the association of lawyers outside the firm on the fee to be charged; (3) The client gives informed consent to the arrangement; and (4) The total fee is reasonable.)

25. **D.C. Rules of Professional Conduct: Rule 1.5 *Comment [10]*** ("Joint responsibility for the representation entails the obligations stated in Rule 5.1 for purposes of the matter involved. Permitting a division on the basis of joint responsibility, rather than on the basis of services performed, represents a change from the basis for fee divisions allowed under the prior Code of Professional Responsibility. The change is intended to encourage lawyers to affiliate other counsel, who are better equipped by reason of experience or specialized background to serve the client's needs, rather than to retain sole responsibility for the representation in order to avoid losing the right to a fee.") *See* **D.C. Rules of Professional Conduct: Rule 5.1** ("(a) A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm or government agency, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm or agency conform to the Rules of Professional Conduct. (b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct. (c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if: (1) The lawyer orders or, with knowledge of the specific conduct, ratifies the conduct

assure that the receiving lawyer provides adequate representation and abides by the rules of professional conduct, and may be disciplined for failing to fulfill this obligation.[26] The comments to D.C.'s rule also suggests that the referring lawyer takes on vicarious liability to the client for any malpractice committed by the receiving lawyer.[27] No other obligations are required.[28]

FLORIDA follows the Model Rules: division of fees is permitted so long as the referring lawyer "assumes joint responsibility for the representation" and other standard requirements are met.[29]

Joint Responsibility Defined: To bear joint responsibility in Florida, the referring lawyer must take on vicarious liability to the client for any act of malpractice committed by the receiving lawyer. No other obligations are required.[30]

Fee-Sharing Cap in Contingency Cases: In personal injury, wrongful death, and products liability cases, Florida caps the portion of a fee that may be paid to a referring lawyer at 25%.[31]

---

involved; or (2) The lawyer has direct supervisory authority over the other lawyer or is a partner or has comparable managerial authority in the law firm or government agency in which the other lawyer practices, and knows or reasonably should know of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.")

26. See "Joint Responsibility Generally" at end of document.

27. **D.C. Rules of Professional Conduct: Rule 1.5 *Comment [11]*** ("The lawyer who refers the client to another lawyer, or affiliates another lawyer in the representation, remains fully responsible to the client, and is accountable to the client for deficiencies in the discharge of the representation by the lawyer who has been brought into the representation.")

28. **D.C. Rules of Professional Conduct: Rule 1.5 *Comment [12]*** ("The concept of joint responsibility does not require the referring lawyer to perform any minimum portion of the total legal services rendered. The referring lawyer may agree that the lawyer to whom the referral is made will perform substantially all of the services to be rendered in connection with the representation, without review by the referring lawyer. Thus, the referring lawyer is not required to review pleadings or other documents, attend hearings or depositions, or otherwise participate in a significant and continuing manner.)

29. **Florida Rules of Professional Conduct, Rule 4-1.5(g)** ("Subject to the provisions of subdivision (f)(4)(D), a division of fee between lawyers who are not in the same firm may be made only if the total fee is reasonable and: (1) the division is in proportion to the services performed by each lawyer; or (2) by written agreement with the client: (A) each lawyer assumes joint legal responsibility for the representation and agrees to be available for consultation with the client; and (B) the agreement fully discloses that a division of fees will be made and the basis upon which the division of fees will be made.")

A Florida attorney may divide a fee with an out-of-state attorney, as long as the referring attorney complies with Rule 4-1.5. *See* **Florida Bar Ethics Opinion 90-8**.

30. ***Noris v. Silver*, 701 So.2d 1238, 1240 (Fla. Dist. Ct. App. 1997) [note: link is to Westlaw, opinion is not publicly available]** (Holding that "the requisite 'joint responsibility' exists if the referring attorney assumes financial responsibility for any malpractice that occurs during the course of the representation.")

31. **Florida Rules of Professional Conduct, Rule 4-1.5(f)(4)** ("A lawyer who enters into an arrangement for, charges, or collects any fee in an action or claim for personal injury or for property damages or for death or loss of services resulting from personal injuries based upon tortious conduct of another, including products liability claims, whereby the compensation is to be dependent or contingent in whole or in part upon the successful prosecution or settlement thereof shall do so only under the following requirements: . . . (D) As to lawyers not in the same firm, a division of any fee within subdivision (f)(4) shall be on the following basis: (i) To the lawyer assuming primary responsibility for the legal services on behalf of the client, a minimum of 75% of the total fee. (ii) To the lawyer assuming secondary responsibility for the legal services on behalf of the client, a maximum of 25% of the total fee. Any fee in excess of 25% shall be presumed to be clearly excessive. (iii) The 25% limitation shall not apply to those cases in which 2 or more lawyers or firms accept substantially equal active participation in

GEORGIA follows the Model Rules: division of fees is permitted so long as the referring lawyer "assumes joint responsibility for the representation" and other standard requirements are met.[32]

> Joint Responsibility Defined: Like the Model Rules, Georgia doesn't explicitly outline what "joint responsibility" requires, but simply states that it "entails financial and ethical responsibility for the representation as if the lawyers were associated in a partnership."[33] This means that a referring lawyer takes on an ethical obligation to assure that the receiving lawyer provides adequate representation and abides by the rules of professional conduct, and may be disciplined for failing to fulfill this obligation.[34]

HAWAII is one of only two states that follow a stricter standard than the Model Rules: Division of fees is permitted so long as the referring lawyer "assumes joint responsibility for the representation" and other standard requirements are met, but the share of fees each lawyer receives must be in proportion to the services they perform.[35]

> Joint Responsibility Defined: Like the Model Rules, Hawaii doesn't explicitly outline what "joint responsibility" requires, but simply states that it "entails financial and ethical responsibility for the representation as if the lawyers were associated in a partnership."[36] This means that a referring lawyer takes on an ethical obligation to assure that the receiving lawyer provides adequate representation and abides by the rules of professional conduct, and may be disciplined for failing to fulfill this obligation.[37]

---

the providing of legal services. [There, court approval is required.] . . . (iv) The percentages required by this subdivision shall be applicable after deduction of any fee payable to separate counsel retained especially for appellate purposes.")

The cap cannot easily be circumvented; obtaining a higher share of a fee requires true equal participation by both lawyers. *See* **Florida Rules of Professional Conduct, Rule 4-1.5 Comment *Referral fees and practices*** ("A secondary lawyer shall not be entitled to a fee greater than the limitation set forth in rule 4-1.5(f)(4)(D)(ii) merely because the lawyer agrees to do some or all of the following: (a) consults with the client; (b) answers interrogatories; (c) attends depositions; (d) reviews pleadings; (e) attends the trial; or (f) assumes joint legal responsibility to the client. However, the provisions do not contemplate that a secondary lawyer who does more than the above is necessarily entitled to a larger percentage of the fee than that allowed by the limitation. . . .")

32. **Georgia State Bar Handbook, Rule 1.5 (e)** ("A division of a fee between lawyers who are not in the same firm may be made only if: the division is in proportion to the services performed by each lawyer or, by written agreement with the client, each lawyer assumes joint responsibility for the representation; the client is advised of the share that each lawyer is to receive and does not object to the participation of all the lawyers involved; and the total fee is reasonable.")

33. **Georgia State Bar Handbook, Rule 1.5 *Comment [7]*** ("Joint responsibility for the representation entails financial and ethical responsibility for the representation.")

34. See "Joint Responsibility Generally" at end of document.

35. **Hawaii Rules of Professional Conduct, Rule 1.5(e)** ("A division of fees between lawyers who are not in the same firm may be made only if: (1) the division is in proportion to the services performed by each lawyer and, by written agreement with the client, each lawyer assumes joint responsibility for the representation; (2) the client is advised of and does not object to the participation of all the lawyers involved; and (3) the total fee is reasonable.")

36. **Hawaii Rules of Professional Conduct, Rule 1.5 *Comment [7]*** ("Joint responsibility for the representation entails financial and ethical responsibility for the representation as if the lawyers were associated in a partnership.")

37. See "Joint Responsibility Generally" at end of document.

Proportionality Defined: We know of no meaningful Hawaii caselaw assessing whether a division of fees qualifies as proportional to the services performed, particularly in a referral context. However, we're confident that the "services" in question include those performed *before* the referral in addition to those performed after. (For example, a law firm might refer a case to a trial specialist and do little work after that point, but there's no question it could take a substantial portion of the fee for its work managing the case prior to that point.) As a result, Atticus justifies its share of a fee in part based on the services rendered by Atticus in making a client aware of the opportunity to hire an attorney, counseling the client in detail during the early stages of his or her case and helping him or her decide whether to retain an attorney, vetting potential attorneys, and ultimately arranging full-scope representation for the client. (We also count our efforts monitoring the progress of the case, and communicating with the client as needed for the duration of the representation, but often these are fairly minor.) Unlike in other states, we assess a fair share of each fee on a case-by-case basis, with the understanding that it may need to be reassessed once the case is complete.

IDAHO follows the Model Rules: division of fees is permitted so long as the referring lawyer "assumes joint responsibility for the representation" and other standard requirements are met.[38]

Joint Responsibility Defined: Like the Model Rules, Idaho doesn't explicitly outline what "joint responsibility" requires, but simply states that it "entails financial and ethical responsibility for the representation as if the lawyers were associated in a partnership."[39] This means that a referring lawyer takes on an ethical obligation to assure that the receiving lawyer provides adequate representation and abides by the rules of professional conduct, and may be disciplined for failing to fulfill this obligation.[40]

ILLINOIS follows the Model Rules: division of fees is permitted so long as the referring lawyer "assumes joint financial responsibility for the representation" and other standard requirements are met.[41]

---

38. **Idaho Rules of Professional Conduct, Rule 1.5(e)** ("A division of a fee between lawyers who are not in the same firm may be made only if: (1) the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation; (2) the client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing; and (3) the total fee is reasonable.")

39. **Idaho Rules of Professional Conduct, Rule 1.5 *Comment [7]*** ("Joint responsibility for the representation entails financial and ethical responsibility for the representation as if the lawyers were associated in a partnership.")

40. See "Joint Responsibility Generally" at end of document.

41. Note that Illinois explicitly references and approves of fee-sharing tied to referrals. **Illinois Rules of Professional Conduct, Rule 1.5(e)** ("(e) A division of a fee between lawyers who are not in the same firm may be made only if: (1) the division is in proportion to the services performed by each lawyer, or if the primary service performed by one lawyer is the referral of the client to another lawyer and each lawyer assumes joint financial responsibility for the representation; (2) the client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing; and (3) the total fee is reasonable.") *See also* **Illinois Rules of Professional Conduct, Rule 1.5 Comment [7]** ("Paragraph (e) permits the lawyers to divide a fee either on the basis of the proportion of services they render or, where the primary service performed by one lawyer is the referral of the client to another lawyer, if each lawyer assumes financial responsibility for the representation as a whole. In addition, the client must agree to the arrangement, including the share that each lawyer is to receive, and the agreement must be confirmed in writing. Contingent fee agreements must be in a writing signed by the client . . . .")

Joint Responsibility Defined: To bear joint responsibility in Illinois, the referring lawyer must take on vicarious liability to the client for any act of malpractice committed by the receiving lawyer. No other obligations are required.[42]

INDIANA follows the Model Rules: division of fees is permitted so long as the referring lawyer "assumes joint responsibility for the representation" and other standard requirements are met.[43]

Joint Responsibility Defined: Like the Model Rules, Indiana doesn't explicitly outline what "joint responsibility" requires, but simply states that it "entails financial and ethical responsibility for the representation as if the lawyers were associated in a partnership."[44] This means that a referring lawyer takes on an ethical obligation to assure that the receiving lawyer provides adequate representation and abides by the rules of professional conduct, and may be disciplined for failing to fulfill this obligation.[45]

IOWA follows the Model Rules: division of fees is permitted so long as the referring lawyer "assumes joint responsibility for the representation" and other standard requirements are met.[46]

Joint Responsibility Defined: Like the Model Rules, Iowa doesn't explicitly outline what "joint responsibility" requires, but simply states that it "entails financial and ethical responsibility for the representation as if the lawyers were associated in a partnership."[47] This means that a referring lawyer takes on an ethical obligation to assure that the receiving lawyer provides adequate representation and abides by the rules of professional conduct, and may be disciplined for failing to fulfill this obligation.[48]

---

42. **Illinois Judicial Ethics Committee Opinion Number 94-16 [note: link is to Westlaw; opinion is not publicly available]** ("[joint responsibility] consists solely of potential financial responsibility for any malpractice action against the recipient of the referral.") *See also* **Illinois Rules of Professional Conduct, Rule 1.5 Comment [7]** ("Joint financial responsibility for the representation entails financial responsibility for the representation as if the lawyers were associated in a general partnership.") *See also* **Elane v. St. Bernard Hosp., 284 Ill. App. 3d 865, 871, 672 N.E.2d 820, 824 (1996) [note: link is to Westlaw; opinion is not publicly available]** (holding that a referral agreement in which the referring attorney remained legally responsible for the performance of services required under Rule 1.5 of the Illinois Rules of Professional Conduct fulfilled the requirements of Rule 1.5.)

43. **Indiana Rules of Professional Conduct, Rule 1.5(e)** ("A division of a fee between lawyers who are not in the same firm may be made only if: (1) the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation; (2) the client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing; and (3) the total fee is reasonable.")

44. **Indiana Rules of Professional Conduct, Rule 1.5 Comment [7]** ("Joint responsibility for the representation entails financial and ethical responsibility for the representation as if the lawyers were associated in a partnership.")

45. See "Joint Responsibility Generally" at end of document.

46. **Iowa Rules of Professional Conduct, Rule 32: 1.5(e)** ("A division of a fee between lawyers who are not in the same firm may be made only if: (1) the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation; (2) the client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing; and (3) the total fee is reasonable.")

47. **Iowa Rules of Professional Conduct, Rule 32: 1.5 *Comment [7]*** ("Joint responsibility for the representation entails financial and ethical responsibility for the representation as if the lawyers were associated in a partnership.")

48. See "Joint Responsibility Generally" at end of document.

KANSAS applies a more relaxed standard than the Model Rules: division of fees is permitted, provided that the total fee is reasonable and the client is advised that a division of fees will occur and does not object. Joint responsibility is not required.[49]

KENTUCKY follows the Model Rules: division of fees is permitted so long as the referring lawyer "assumes joint responsibility for the representation" and other standard requirements are met.[50]

> Joint Responsibility Defined: Like the Model Rules, Kentucky doesn't explicitly outline what "joint responsibility" requires, but simply states that it "entails financial and ethical responsibility for the representation as if the lawyers were associated in a partnership."[51] This means that a referring lawyer takes on an ethical obligation to assure that the receiving lawyer provides adequate representation and abides by the rules of professional conduct, and may be disciplined for failing to fulfill this obligation.[52]

LOUISIANA applies a unique standard with no analogue in the Model Rules: division of fees is permitted, so long as the referring lawyer "renders meaningful legal services" and other standard requirements are met.[53]

---

49. **Kansas Rules of Professional Conduct, Rule 1.5(g)** ("A division of fee, which may include a portion designated for referral of a matter, between or among lawyers who are not in the same firm may be made if the total fee is reasonable and the client is advised of and does not object to the division.") *See also* **Kansas Rules of Professional Conduct, Rule 1.5 *Comment [4]*** ("Paragraph (g) permits the lawyers to divide a fee by agreement between the participating lawyers if the client is advised, does not object, and the total fee is reasonable. It does not require disclosure to the client of the share that each lawyer is to receive.")

50. **Rules of the Supreme Court of Kentucky, Rule 3.130 (1.5)(e)** ("A division of a fee between lawyers who are not in the same firm may be made only if: (1) the division is in proportion to the services performed by each lawyer, or, each lawyer assumes joint responsibility for the representation; (2) the client agrees to the arrangement and the agreement is confirmed in writing; and (3) the total fee is reasonable.")

51. **Rules of the Supreme Court of Kentucky, Rule 3.130 (1.5) *Comment 7*** ("Joint responsibility for the representation entails financial and ethical responsibility for the representation as if the lawyers were associated in a partnership.")

52. **Ethics Opinion KBA E-366** ("The Committee stated that "assumption of responsibility does not require substantial services to be performed by the lawyer since assumption of responsibility is the alternative to a division of fees in proportion to services performed. The Committee is also of the opinion that assumption of 'joint responsibility for the representation' includes assumption of responsibility comparable to that of a partner in a law firm under similar circumstances, including financial responsibility, ethical responsibility for actions of other partners in a law firm in accordance with Rule 5.1, and the same responsibility to assure adequacy of representation and adequate client communication that a partner would have for a matter handled by another partner in the firm under similar circumstances."); **Rules of the Supreme Court of Kentucky, Rule 3.130 (5.1)** ("(a) A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct. (b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct. (c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if: (1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.")

53. **Louisiana Rules of Professional Conduct, Rule 1.5(e)** ("A division of fee between lawyers who are not in the same firm may be made only if: (1) the client agrees in writing to the representation by all of the lawyers involved, and is advised in writing as to the share of the fee that each lawyer will receive; (2) the total fee is reasonable; and (3) each lawyer renders meaningful legal services for the client in the matter.")

Meaningful Services Defined: Louisiana doesn't explicitly outline what constitutes "meaningful services" in a given representation, but it's clear that "the referring attorney must participate in the representation of the client" — the mere act of a referral alone is insufficient.[54] Atticus justifies a division of fees primarily based on the services we render to a client both prior to and after a referral: making a client aware of the opportunity to hire an attorney, counseling the client in detail during the early stages of his or her case and helping him or her decide whether to retain an attorney, vetting potential attorneys, arranging full-scope representation for the client, and continuing to monitor the case and communicate with the client for the duration of the representation. These are all "legal services" that can only be offered by a licensed attorney, and we certainly believe they qualify as "meaningful." (In many referrals, of course, the referring lawyer performs few or none of these services.)

MAINE applies a more relaxed standard than the Model Rules: division of fees is permitted, provided that the total fee is reasonable and the client consents in writing to the terms of the division. Joint responsibility is not required.[55]

MARYLAND follows the Model Rules: division of fees is permitted so long as the referring lawyer "assumes joint responsibility for the representation" and other standard requirements are met.[56]

---

54. **Louisiana Bar Association Rules of Professional Conduct Committee Public Opinion 12-RPCC-018** ("Regardless of licensure status, Rule 1.5 does not permit fee sharing as a means for payment of a 'referral fee' between lawyers who are not in the same firm when the referring lawyer has not 'render[ed] meaningful legal services for the client in the matter'"); **Dukes v. Matheny, No. 2002-0652 (La. App. 1 Cir. 2/23/04); 878 So. 2d 517, 521 [note: link is to Westlaw, opinion is not publicly available]** ("Notably, the law does not provide a basis for recovering a fee [solely] for the referral of a legal matter by one attorney to another. To be entitled to recover a portion of the contingency fee generated in a referred matter, the referring attorney must participate in the representation of the client."). *See also* **Louisiana Civil Law Treatise § 16.14 Division of fees among attorneys [note: link is to Westlaw, treatise is not publicly available]** ("An attorney may associate another attorney in the prosecution or defense of a legal matter. Each attorney may receive a portion of the fee, if the client is advised of such association and of the share of the fee that each lawyer will receive, and if each lawyer in such an arrangement performs 'meaningful legal services.' . . . The division of the fee depends upon the agreement of the attorneys.")

55. **Maine Rules of Professional Conduct, Rule 1.5(e)** ("A lawyer shall not divide a fee for legal services with another lawyer who is not a partner in or associate of the lawyer's law firm or office unless: (1) after full disclosure, the client consents to the employment of the other lawyer and to the terms for the division of the fees, confirmed in writing; and (2) the total fee of the lawyers does not exceed reasonable compensation for all legal services they rendered to the client."). *See also* **Maine Rules of Professional Conduct, Rule 1.5 Comment [7]** ("Paragraph (e) permits the lawyers to divide a fee subject to certain conditions. The client must consent to the employment of the other lawyer and to the terms for the division of the fees, after full disclosure, which disclosure must be confirmed in writing. In addition, the total fee must be reasonable. Contingent fee agreements must be in a writing signed by the client and must otherwise comply with paragraph (c) of this Rule.)

56. **Maryland Attorneys' Rules of Professional Conduct, Rule 1.5(e)** ("A division of a fee between attorneys who are not in the same firm may be made only if: (1) the division is in proportion to the services performed by each attorney or each attorney assumes joint responsibility for the representation; (2) the client agrees to the joint representation and the agreement is confirmed in writing; and (3) the total fee is reasonable.")

Note that a State Bar ethics opinion from 1988 suggests that an attorney residing in Maryland but not barred there would be unable to bear joint responsibility for a case litigated in Maryland. *See* **Maryland State Bar Association Ethics Opinion 1988-58**. It's not clear if this would still apply today. And regardless, we believe it is inapposite for attorneys not living in Maryland, since they — unlike attorneys living in Maryland but not barred there — may be admitted pro hac vice. *See, e.g.,* **Local Rule 101(1)(b)(v)** ("An attorney, who . . . maintains any law office in Maryland, is ineligible for admission pro hac vice.)

Joint Responsibility Defined: Like the Model Rules, Maryland doesn't explicitly outline what "joint responsibility" requires, but simply states that it "entails financial and ethical responsibility for the representation as if the lawyers were associated in a partnership."[57] This means that a referring lawyer takes on an ethical obligation to assure that the receiving lawyer provides adequate representation and abides by the rules of professional conduct, and may be disciplined for failing to fulfill this obligation.[58]

MASSACHUSETTS applies a more relaxed standard than the Model Rules: division of fees is permitted, provided that the total fee is reasonable and that the client consents to division in writing at (or before) the time he or she signs an overall fee agreement. Joint responsibility is not required.[59]

MICHIGAN applies a more relaxed standard than the Model Rules: division of fees is permitted, provided that the total fee is reasonable and that the client is advised and does not object. Joint responsibility is not required.[60]

MINNESOTA follows the Model Rules: division of fees is permitted so long as the referring lawyer "assumes joint responsibility for the representation" and other standard requirements are met.[61]

Joint Responsibility Defined: Like the Model Rules, Minnesota doesn't explicitly outline what "joint responsibility" requires, but simply states that it "entails financial and ethical

---

57. **Maryland Attorneys' Rules of Professional Conduct, Rule 1.5 *Comment 7*** ("Joint responsibility for the representation entails financial and ethical responsibility for the representation as if the attorneys were associated in a partnership.")

58. See "Joint Responsibility Generally" at end of document.

59. **Massachusetts Rules of Professional Conduct, Rule 1.5(e)** ("A division of a fee (including a referral fee) between lawyers who are not in the same firm may be made only if the client is notified before or at the time the client enters into a fee agreement for the matter that a division of fees will be made and consents to the joint participation in writing and the total fee is reasonable. This limitation does not prohibit payment to a former partner or associate pursuant to a separation or retirement agreement.") *See also* **Massachusetts Rules of Professional Conduct, Rule 1.5 *Comment 7A*** ("Unlike ABA Model Rule 1.5(e), Paragraph (e) does not require that the division of fees be in proportion to the services performed by each lawyer or require the lawyer to assume joint responsibility for the representation in order to be entitled to a share of the fee. The Massachusetts rule does not require disclosure of the fee division that the lawyers have agreed to, but if the client requests information on the division of fees, the lawyer is required to disclose the share of each lawyer.)

60. **Michigan Rules of Professional Conduct, Rule 1.5(e)** ("A division of a fee between lawyers who are not in the same firm may be made only if: (1) the client is advised of and does not object to the participation of all the lawyers involved; and (2) the total fee is reasonable."); *see also* **Rule 1.5 *Comment: Division of Fee*** ("Paragraph (e) permits the lawyers to divide a fee on agreement between the participating lawyers if the client is advised and does not object. It does not require disclosure to the client of the share that each lawyer is to receive.")

    Michigan expressly permits division of fees with out-of-state lawyers. **State Bar of Michigan Opinion RI-199**. However, the referral fee must comply with the rules of both states. **Id.** ("Although the Michigan lawyer is allowed to pay a referral fee under MRPC 1.5(e), the ethics of the out-of-state lawyer accepting the referral fee depends upon the ethics rules which bind the out-of-state lawyer. The terms of the referral fee must comport with the ethics rules of both jurisdictions.")

61. **Minnesota Rules of Professional Conduct, Rule 1.5(e)** ("A division of a fee between lawyers who are not in the same firm may be made only if: (1) the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation; (2) the client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing; and (3) the total fee is reasonable."

responsibility for the representation as if the lawyers were associated in a partnership."[62] This means that a referring lawyer takes on an ethical obligation to assure that the receiving lawyer provides adequate representation and abides by the rules of professional conduct, and may be disciplined for failing to fulfill this obligation.[63]

MISSISSIPPI follows the Model Rules: division of fees is permitted so long as the referring lawyer "assumes joint responsibility for the representation" and other standard requirements are met.[64]

Joint Responsibility Defined: Like the Model Rules, Mississippi doesn't explicitly outline what "joint responsibility" requires, but simply states that it "entails the obligations stated in Rule 5.1."[65] Essentially, this means that a referring lawyer takes on an ethical obligation to assure that the receiving lawyer provides adequate representation and abides by the rules of professional conduct, and may be disciplined for failing to fulfill this obligation.[66] Mississippi has proven willing to hold a referring lawyer vicariously liable to a client for a receiving lawyer's malpractice.[67]

MISSOURI follows the Model Rules: division of fees is permitted so long as the referring lawyer "assumes joint responsibility for the representation" and other standard requirements are met.[68]

Joint Responsibility Defined: Like the Model Rules, Missouri doesn't explicitly outline what "joint responsibility" requires, but simply states that it "entails financial and ethical

---

62. **Minnesota Rules of Professional Conduct, Rule (1.5) *Comment 7*** ("Joint responsibility for the representation entails financial and ethical responsibility for the representation as if the lawyers were associated in a partnership.")

63. See "Joint Responsibility Generally" at end of document.

64. **Mississippi Rules of Professional Conduct, Rule 1.5(e)** ("A division of fee between lawyers who are not in the same firm may be made only if: (1) the division is in proportion to the services performed by each lawyer or, by written agreement with the client, each lawyer assumes joint responsibility for the representation; (2) the client is advised of and does not object to the participation of all the lawyers involved; and (3) the total fee is reasonable.")

65. **Mississippi Rules of Professional Conduct, Rule 1.5 Comment Division of Fee** ("Joint responsibility for the representation entails the obligations stated in Rule 5.1 for purposes of the matter involved.) *See* **Mississippi Rules of Professional Conduct, Rule 5.1** ("(a) A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the rules of professional conduct. (b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the rules of professional conduct. (c) A lawyer shall be responsible for another lawyer's violation of the rules of professional conduct if: (1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or (2) the lawyer is a partner in the law firm or has comparable managerial authority in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.")

66. See "Joint Responsibility Generally" at end of document.

67. *See* ***Duggins v. Guardianship of Washington Through Huntley*, 632 So.2d 420, 428-29 (Miss. 1993) [note: link is to Westlaw, opinion is not publicly available]** (imposing vicarious liability on a lawyer who referred a client to another lawyer (and earned a referral fee) after the receiving lawyer committed flagrant malpractice, based on principles of partnership and joint venture — though not directly discussing "joint responsibility" or Rule 1.5 in any way)

68. **Missouri Rules of Professional Conduct, Rule 4-1.5(e)** ("A division of a fee between lawyers who are not in the same firm may be made only if: (1) the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation; (2) the client agrees to the association and the agreement is confirmed in writing; and (3) the total fee is reasonable.")

responsibility for the representation as if the lawyers were associated in a partnership."[69] This means that a referring lawyer takes on an ethical obligation to assure that the receiving lawyer provides adequate representation and abides by the rules of professional conduct, and may be disciplined for failing to fulfill this obligation.[70]

MONTANA follows the Model Rules: division of fees is permitted so long as the referring lawyer "assumes joint responsibility for the representation" and other standard requirements are met.[71]

Joint Responsibility Defined: Montana offers no formal definition of joint responsibility, and we've been unable to find a case construing its requirements. However, we know that Rule 1.5(e) was revised in 2004 to confirm with the Model Rules.[72] Therefore, we believe the generally accepted Model Rules interpretation applies: a referring lawyer takes on an ethical obligation to assure that the receiving lawyer provides adequate representation and abides by the rules of professional conduct, and may be disciplined for failing to fulfill this obligation.[73]

NEBRASKA follows the Model Rules: division of fees is permitted so long as the referring lawyer "assumes joint responsibility for the representation" and other standard requirements are met.[74]

Joint Responsibility Defined: Like the Model Rules, Nebraska doesn't explicitly outline what "joint responsibility" requires, but simply states that it "entails financial and ethical responsibility for the representation as if the lawyers were associated in a partnership."[75] This means that a referring lawyer takes on an ethical obligation to assure that the receiving lawyer provides adequate representation and abides by the rules of professional conduct, and may be disciplined for failing to fulfill this obligation.[76]

---

69. **Missouri Rules of Professional Conduct, Rule 4-1.5 *Comment 7*** ("Joint responsibility for the representation entails financial and ethical responsibility for the representation as if the lawyers were associated in a partnership.")

70. See "Joint Responsibility Generally" at end of document.

71. **Montana Rules of Professional Conduct, Rule 1.5(e)** ("A division of a fee between lawyers who are not in the same firm may be made only if: (1) the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation; (2) the client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing; and (3) the total fee is reasonable.")

72. **Pumphrey v. Empire Lath & Plaster, 2006 MT 255, ¶ 21, 334 Mont. 102, 108, 144 P.3d 813, 817 [note: link is to Westlaw, opinion is not publicly available]** ("Rule 1.5(e) provides the three conditions under which lawyers who are not in the same firm may make a division of fees. Montana revised Rule 1.5(e) to conform to the American Bar Association's (ABA) Model Rule 1.5(e) in February of 2004.")

73. See "Joint Responsibility Generally" at end of document.

74. **Nebraska Rules of Professional Conduct, § 3-501.5(e)** ("A division of a fee between lawyers who are not in the same firm may be made only if: (1) the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation; (2) the client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing; and (3) the total fee is reasonable.")

75. **Nebraska Rules of Professional Conduct, § 3-501.5 *Comment 7*** ("Joint responsibility for the representation entails financial and ethical responsibility for the representation as if the lawyers were associated in a partnership.")

76. See "Joint Responsibility Generally" at end of document.

NEVADA applies a more relaxed standard than the Model Rules: division of fees is permitted, provided that the total fee is reasonable and the client agrees to the terms of the division in writing. Joint responsibility is not required.[77]

NEW HAMPSHIRE applies a more relaxed standard than the Model Rules: division of fees is permitted, provided that the total fee is reasonable and that the client agrees to the fact of the division in writing. Joint responsibility is not required.[78]

NEW JERSEY follows the Model Rules: division of fees is permitted so long as the referring lawyer "assumes joint responsibility for the representation" and other standard requirements are met.[79] However, the state waives the joint responsibility requirement when the referral is made to an attorney who is "certified" in a given area of practice (as discussed below).

> Joint Responsibility Defined: New Jersey offers no formal definition of joint responsibility, and we've been unable to find a case construing its requirements. Therefore, we look to the Model Rules: by the generally accepted standard, a referring lawyer takes on an ethical obligation to assure that the receiving lawyer provides adequate representation and abides by the rules of professional conduct, and may be disciplined for failing to fulfill this obligation. [80]

---

77. **Nevada Rules of Professional Conduct, Rule 1.5(e)** ("A division of a fee between lawyers who are not in the same firm may be made only if: (1) Reserved; (2) The client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing; and (3) The total fee is reasonable.")

    Nevada expressly permits division of fees with out-of-state lawyers. **State Bar of Nevada Standing Committee on Ethics and Professional Responsibility, Formal Opinion No. 4** ("The division of fees with out-of-state counsel is permissible, provided the requirements [for such a division] are met, and [the prohibition on unauthorized practice by out-of-state lawyers] is not violated.")

78. **New Hampshire Rules of Professional Conduct, Rule 1.5(f)** ("A division of fee between lawyers who are not in the same firm may be made only if: (1) the division is made either: a. in reasonable proportion to the services performed or responsibility or risks assumed by each, or b. based on an agreement with the referring lawyer; (2) in either case above, the client agrees in a writing signed by the client to the division of fees; (3) in either case, the total fee charged by all lawyers is not increased by the division of fees and is reasonable.") *See also* **New Hampshire Rules of Professional Conduct, Ethics Committee Comment** ("The New Hampshire rule differs markedly from the ABA Model Rule because it allows so-called "naked" referral fees. The ABA Model Rule allows a division of a fee between lawyers not in the same law firm only where each lawyer actively participates in a matter or assumes joint responsibility and risk for the representation of the client. The New Hampshire rule changes this requirement and allows a division of fee with a forwarding lawyer, regardless of the work performed or responsibility assumed, provided that the client consents in writing to the division of fees and the total fee is not increased because of the fee division and is reasonable. This change from the ABA Model Rule and from the previous New Hampshire rule is intended to facilitate the association of alternate counsel in order to best serve the client and is often but not exclusively used when the division is between a referring lawyer and a trial lawyer.")

79. **New Jersey Rules of Professional Conduct, Rule 1.5(e)** ("Except as otherwise provided by the Court Rules, a division of fee between lawyers who are not in the same firm may be made only if: (1) the division is in proportion to the services performed by each lawyer, or, by written agreement with the client, each lawyer assumes joint responsibility for the representation; and (2) the client is notified of the fee division; and (3) the client consents to the participation of all the lawyers involved; and (4) the total fee is reasonable.")

80. See "Joint Responsibility Generally" at end of document.

Exception for "Certified Attorneys": New Jersey provides official certification to attorneys in certain specialties, based on their education and experience.[81] When a case is referred to a New Jersey attorney certified by the state as an expert in "civil trial[s]", "criminal trial[s]," "municipal court trial[s]", or "workers' compensation," joint responsibility is *not* required for division of fees.[82]

NEW MEXICO follows the Model Rules: division of fees is permitted so long as the referring lawyer "assumes joint responsibility for the representation" and other standard requirements are met.[83]

Joint Responsibility Defined: Like the Model Rules, New Mexico doesn't explicitly outline what "joint responsibility" requires, but simply states that it "entails the obligations stated in Rule 5.1."[84] Essentially, this means that a referring lawyer takes on an ethical obligation to assure that the receiving lawyer provides adequate representation and abides by the rules of professional conduct, and may be disciplined for failing to fulfill this obligation.[85]

---

81. *See* **New Jersey State Judiciary Rule 1:39** ("An attorney of the State of New Jersey may be certified as a civil trial attorney, a criminal trial attorney, a matrimonial law attorney, a workers' compensation law attorney, or a municipal court trial attorney, or in more than one designated area of practice, but only on establishing eligibility and satisfying requirements regarding education, experience, knowledge, and skill for each designated area of practice as set forth below.")

82. **New Jersey State Judiciary Rule 1:39-6(d)** ("A certified attorney who receives a case referral from a lawyer who is not a partner in or associate of that attorney's law firm or law office may divide a fee for legal services with the referring attorney or the referring attorney's estate. The fee division may be made without regard to services performed or responsibility assumed by the referring attorney, provided that the total fee charged the client relates only to the matter referred and does not exceed reasonable compensation for the legal services rendered therein. The provisions of this paragraph shall not apply to matrimonial law matters that are referred to certified attorneys.") *See also* **New Jersey Supreme Court Advisory Committee on Professional Ethics, Opinion 694** ("In the case of certified attorneys, R. 1:39-6(d) eliminates only the requirement that the division of fees be in proportion to the services performed by each lawyer, or that each assumes joint responsibility for the representation under RPC 1.5(e)(1). The conditions of client consent and reasonableness of the total fee remain relevant."), *accord* **Weiner & Mazzei, P.C. v. Sattiraju Law Firm, PC (N.J. Super. Ct. App. Div. May 25, 2016) [note: link is to Westlaw, opinion is not publicly available]**.

83. **New Mexico Rules of Professional Conduct, Rule 16-105(E)** ("A division of fee between lawyers who are not in the same firm may be made only if: (1) the division is in proportion to the services performed by each lawyer or, by written agreement with the client, each lawyer assumes joint responsibility for the representation; (2) the client is advised of and does not object to the participation of all the lawyers involved; and (3) the total fee is reasonable.")

84. **New Mexico Rules of Professional Conduct, Rule 16-105 *Comment [5]*** ("Joint responsibility for the representation entails the obligations stated in Rule 5.1 [sic — this passage appears to have been copied directly from the Model Rules, though New Mexico's numbering is different] for purposes of the matter involved.) *See* **New Mexico Rules of Professional Conduct, Rule 16-501** ("A. Compliance With Rules. A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct. B. Responsibility for Other Lawyer's Violations. A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if: (1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or (2) the lawyer is a partner in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but failed to take reasonable remedial action.")

    New Mexico expressly permits division of fees with out-of-state lawyers. **New Mexico Bar Association Advisory Opinion 1983-2** ("An arrangement between lawyers of different states is not prohibited so long as the limitations of each lawyer with regard to the practice in each state is clearly represented to all clients and the public. . . Thus, as long as the lawyer admitted in New Mexico does the legal acts considered the practice of law in New Mexico, the consulting arrangement would not be a violation of ethics.")

85. See "Joint Responsibility Generally" at end of document.

NEW YORK follows the Model Rules: division of fees is permitted so long as the referring lawyer "assumes joint responsibility for the representation" and other standard requirements are met.[86]

> Joint Responsibility Defined: To bear joint responsibility in New York, the referring lawyer must take on vicarious liability to the client for any act of malpractice committed by the receiving lawyer. No other obligations are required.[87]

NORTH CAROLINA follows the Model Rules: division of fees is permitted so long as the referring lawyer "assumes joint responsibility for the representation" and other standard requirements are met.[88]

> Joint Responsibility Defined: Like the Model Rules, North Carolina doesn't explicitly outline what "joint responsibility" requires, but simply states that it "entails financial and ethical responsibility for the representation as if the lawyers were associated in a partnership."[89] This means that a referring lawyer takes on an ethical obligation to assure that the receiving lawyer provides adequate representation and abides by the rules of professional conduct, and may be disciplined for failing to fulfill this obligation.[90]

---

86. **New York Rules of Professional Conduct, Rule 1.5(g)** ("A lawyer shall not divide a fee for legal services with another lawyer who is not associated in the same law firm unless: (1) the division is in proportion to the services performed by each lawyer or, by a writing given to the client, each lawyer assumes joint responsibility for the representation; (2) the client agrees to employment of the other lawyer after a full disclosure that a division of fees will be made, including the share each lawyer will receive, and the client's agreement is confirmed in writing; and (3) the total fee is not excessive.")

    New York expressly permits division of fees with out-of-state lawyers. **New York State Bar Association Ethics Opinion 864** ("Lawyers from other U.S. jurisdictions are "lawyers" within the meaning of Rule 1.5(g), and New York lawyers may share fees with lawyers from other U.S. jurisdictions as long as the fee-sharing arrangement complies with the terms of Rule 1.5(g).")

87. ***Aiello v. Adar*, 193 Misc.2d 649 (N.Y. Misc. 2002) at 660** ("Joint responsibility is synonymous with joint and several liability. When lawyers assume "joint responsibility" in order to share a fee under NY-DR § 2-107 [a substantially similar precursor to Rule 1.5(g)] without regard to work performed, they are ethically obligated to accept vicarious liability for any act of malpractice that occurs during the course of the representation. Although the harsh financial consequences of NY-DR § 2-107 create a strong incentive for the referring lawyer to keep himself/herself abreast of the manner in which the matter is being handled by the receiving lawyer, the rule does not create an ethical obligation to supervise the receiving attorney's work."), *accord* **N.Y. County Lawyers' Association Comm. Professional Ethics Opinion 715 (1996) [note: link is to Westlaw, opinion is not publicly available]**.

88. **North Carolina Rules of Professional Conduct, Rule 1.5(e)** ("A division of a fee between lawyers who are not in the same firm may be made only if: (1) the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation; (2) the client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing; and (3) the total fee is reasonable.")

    North Carolina expressly permits division of fees with out-of-state lawyers. **North Carolina Rules of Professional Conduct, Rule 1.5 *Comment [8]*** ("A lawyer may divide a fee with an out-of-state lawyer who refers a matter to the lawyer if the conditions of paragraph (e) are satisfied.")

89. **North Carolina Rules of Professional Conduct, Rule 1.5 *Comment [8]*** ("Joint responsibility for the representation entails financial and ethical responsibility for the representation as if the lawyers were associated in a partnership.")

90. See "Joint Responsibility Generally" at end of document.

NORTH DAKOTA follows the Model Rules: division of fees is permitted so long as the referring lawyer "assumes joint responsibility for the representation" and other standard requirements are met.[91]

> Joint Responsibility Defined: Like the Model Rules, North Dakota doesn't explicitly outline what "joint responsibility" requires, beyond stating that each lawyer must "assume responsibility for the representation as a whole."[92] We believe this standard mirrors that of the Model Rules: A referring lawyer takes on an ethical obligation to assure that the receiving lawyer provides adequate representation and abides by the rules of professional conduct, and may be disciplined for failing to fulfill this obligation.[93]

OHIO follows the Model Rules: division of fees is permitted so long as the referring lawyer "assumes joint responsibility for the representation" and other standard requirements are met.[94]

> Joint Responsibility Defined: Like the Model Rules, Ohio doesn't explicitly outline what "joint responsibility" requires, but simply states that it "entails financial and ethical responsibility for the representation as if the lawyers were associated in a partnership."[95] This means that a referring lawyer takes on an ethical obligation to assure that the receiving lawyer provides adequate representation and abides by the rules of professional conduct, and may be disciplined for failing to fulfill this obligation.[96] Ohio's rule adds a specific requirement that the referring lawyer "agrees to be available for consultation with

---

91. **North Dakota Rules of Professional Conduct, Rule 1.5(e)** ("A division of fee between lawyers who are not in the same firm may be made only if: (1) the division of fee is in proportion to the services performed by each lawyer or each lawyer, by written agreement, assumes joint responsibility for the representation; (2) after consultation, the client consents in writing to the participation of all the lawyers involved; and (3) the total fee is reasonable.")

92. **North Dakota Rules of Professional Conduct, Rule 1.5 *Comment [7]*** ("Paragraph (e) permits the lawyers to divide a fee . . . by agreement between the participating lawyers if all assume responsibility for the representation as a whole and the client is consulted and does not object. It does not require disclosure to the client of the share that each lawyer is to receive.")

93. See "Joint Responsibility Generally" at end of document.

94. **Ohio Rules of Professional Conduct, Rule 1.5(e)** ("Lawyers who are not in the same firm may divide fees only if all of the following apply: (1) the division of fees is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation and agrees to be available for consultation with the client; (2) the client has given written consent after full disclosure of the identity of each lawyer, that the fees will be divided, and that the division of fees will be in proportion to the services to be performed by each lawyer or that each lawyer will assume joint responsibility for the representation; (3) except where court approval of the fee division is obtained, the written closing statement in a case involving a contingent fee shall be signed by the client and each lawyer and shall comply with the terms of division (c)(2) of this rule; (4) the total fee is reasonable.")

95. **Ohio Rules of Professional Conduct, Rule 1.5 *Comment [7]*** ("Joint responsibility for the representation entails financial and ethical responsibility for the representation as if the lawyers were associated in a partnership."); **The Supreme Court of Ohio Board of Commissioners on Grievances and Discipline Opinion 2003-3** ("This Board agrees that "assume responsibility" under DR 2-107(A) includes financial responsibility as well as ethical responsibility to assure adequate representation and adequate client communication. A lawyer who assumes responsibility should be available to both the client and the other fee-sharing lawyer as needed throughout the representation and should remain knowledgeable about the progress of the legal matter.")

96. See "Joint Responsibility Generally" at end of document.

the client" — which we believe is probably a necessary component of joint responsibility in any state.[97]

OKLAHOMA follows the Model Rules: division of fees is permitted so long as the referring lawyer "assumes joint responsibility for the representation" and other standard requirements are met.[98]

> Joint Responsibility Defined: Like the Model Rules, Oklahoma doesn't explicitly outline what "joint responsibility" requires, but simply states that it "entails financial and ethical responsibility for the representation as if the lawyers were associated in a partnership."[99] This means that a referring lawyer takes on an ethical obligation to assure that the receiving lawyer provides adequate representation and abides by the rules of professional conduct, and may be disciplined for failing to fulfill this obligation.[100]

OREGON applies a more relaxed standard than the Model Rules: division of fees is permitted, provided that the total fee is reasonable and that the client gives informed consent. Joint responsibility is not required.[101]

PENNSYLVANIA applies a more relaxed standard than the Model Rules: division of fees is permitted, provided that the total fee is reasonable and that the client is advised and does not object. Joint responsibility is not required.[102]

PUERTO RICO imposes no restrictions whatsoever on division of fees. The subject is simply not addressed in the territory's Canons of Professional Ethics, and therefore any reasonable arrangement should be permissible.[103]

---

97. **Ohio Rules of Professional Conduct, Rule 1.5(e)** (above)

98. **Oklahoma Rules of Professional Conduct, Rule 1.5(e)** ("A division of a fee between lawyers who are not in the same firm may be made only if: (1) the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation; (2) the client agrees to the arrangement and the agreement is confirmed in writing; and (3) the total fee is reasonable.")

99. **Oklahoma Rules of Professional Conduct, Rule 1.5 *Comment [7]*** ("Joint responsibility for the representation entails financial and ethical responsibility for the representation as if the lawyers were associated in a partnership.")

100. See "Joint Responsibility Generally" at end of document.

101. **Oregon Rules of Professional Conduct, Rule 1.5(d)** ("A division of a fee between lawyers who are not in the same firm may be made only if: (1) the client gives informed consent to the fact that there will be a division of fees, and (2) the total fee of the lawyers for all legal services they rendered the client is not clearly excessive.")

102. **Pennsylvania Rules of Professional Conduct (Code § 81.4), Rule 1.5(e)** ("A lawyer shall not divide a fee for legal services with another lawyer who is not in the same firm unless: (1) the client is advised of and does not object to the participation of all the lawyers involved, and (2) the total fee of the lawyers is not illegal or clearly excessive for all legal services they rendered the client."); **Pennsylvania Rules of Professional Conduct (Code § 81.4), Rule 1.5 *Comment [4]*** ("Paragraph (e) permits the lawyers to divide a fee if the total fee is not illegal or excessive and the client is advised and does not object. It does not require disclosure to the client of the share that each lawyer is to receive.")

103. *See* **Puerto Rico Canons of Professional Ethics [in Spanish]**. From informal conversations with Puerto Rico attorneys, it appears that division of fees — including division with mainland law firms tied to client referrals — is a fairly common practice and not considered ethically suspect.

Puerto Rico has not adopted the ABA Model Rules of Professional Conduct (or any part thereof). *See* **American Bar Association, *Jurisdictions That Have Adopted the ABA Model Rules of Professional Conduct* (2018)**.

RHODE ISLAND follows the Model Rules: division of fees is permitted so long as the referring lawyer "assumes joint responsibility for the representation" and other standard requirements are met.[104]

> Joint Responsibility Defined: To bear joint responsibility in New York, the referring lawyer must take on vicarious liability to the client for any act of malpractice committed by the receiving lawyer. No other obligations are required.[105]

SOUTH CAROLINA follows the Model Rules: division of fees is permitted so long as the referring lawyer "assumes joint responsibility for the representation" and other standard requirements are met.[106]

> Joint Responsibility Defined: South Carolina doesn't explicitly outline what "joint responsibility" requires, but simply states that it "entails financial and ethical responsibility for the representation as if the lawyers were associated in a partnership."[107] This means that a referring lawyer takes on an ethical obligation to assure that the receiving lawyer provides adequate representation and abides by the rules of professional conduct, and may be disciplined for failing to fulfill this obligation.[108]

---

104. **Rhode Island Rules of Professional Conduct, Rule 1.5(e)** ("A division of a fee between lawyers who are not in the same firm may be made only if: (1) the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation; (2) the client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing; and (3) the total fee is reasonable."

    Rhode Island expressly permits division of fees with out-of-state lawyers. **Rhode Island Supreme Court Ethics Advisory Panel Opinion No. 97-16** ("The Panel is also of the opinion that a Rhode Island lawyer may share a fee with an out-of-state attorney provided the Rhode Island attorney, by written agreement with the client, assumes joint responsibility, i.e., accepts the financial consequences of the referral, and provided further that sharing a fee is permitted under the ethical rules of the other state.")

105. **Rhode Island Supreme Court Ethics Advisory Panel Opinion No. 97-16** ("The Panel agrees with the New York City Committee on Professional Ethics which has stated that 'joint responsibility' is synonymous with joint and several liability, and further agrees that the 'joint responsibility' requirement is financial and does not impose an obligation on the referring attorney to supervise the receiving attorney. . . . In order to share a fee without regard to work performed, lawyers are ethically obligated under Rule 1.5(e) to accept vicarious liability for any malpractice that occurs during the course of the representation.")

106. **South Carolina Rules of Professional Conduct, Rule 1.5(e)** ("A division of a fee between lawyers who are not in the same firm may be made only if: (1) the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation; (2) the client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing; and (3) the total fee is reasonable.")

107. **South Carolina Rules of Professional Conduct, Rule 1.5 *Comment [7]*** ("Joint responsibility for the representation entails financial and ethical responsibility for the representation as if the lawyers were associated in a partnership. A lawyer who assumes joint responsibility should be available to both the client and the other fee-sharing lawyer as needed throughout the representation and should remain knowledgeable about the progress of the legal matter.")

108. See "Joint Responsibility Generally" at end of document.

SOUTH DAKOTA follows the Model Rules: division of fees is permitted so long as the referring lawyer "assumes joint responsibility for the representation" and other standard requirements are met.[109]

> Joint Responsibility Defined: South Dakota offers no formal definition of joint responsibility, and we've been unable to find a case construing its requirements. Therefore, we look to the Model Rules: By the generally accepted standard, a referring lawyer takes on an ethical obligation to assure that the receiving lawyer provides adequate representation and abides by the rules of professional conduct, and may be disciplined for failing to fulfill this obligation.[110]

TENNESSEE follows the Model Rules: division of fees is permitted so long as the referring lawyer "assumes joint responsibility for the representation" and other standard requirements are met.[111]

> Joint Responsibility Defined: Like the Model Rules, Tennessee doesn't explicitly outline what "joint responsibility" requires, but simply states that it "entails the obligations stated in Rule 5.1."[112] Essentially, this means that a referring lawyer takes on an ethical obligation to assure that the receiving lawyer provides adequate representation and abides by the rules of professional conduct, and may be disciplined for failing to fulfill this obligation.[113]

TEXAS follows the Model Rules: division of fees is permitted so long as the referring lawyer "assumes joint responsibility for the representation" and other standard requirements are met.[114]

---

109. **South Dakota Rules of Professional Conduct, Rule 1.5(e)** ("A division of a fee between lawyers who are not in the same firm may be made only if: (1) the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation; (2) the client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing; and (3) the total fee is reasonable.")

110. See "Joint Responsibility Generally" at end of document.

111. **Tennessee Rules of Professional Conduct, Rule 1.5(e)** ("A division of a fee between lawyers who are not in the same firm may be made only if: (1) the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation; (2) the client agrees to the arrangement, and the agreement is confirmed in writing; and (3) the total fee is reasonable.")

112. **Tennessee Rules of Professional Conduct, Rule 1.5 *Comment [7]*** ("Joint responsibility for the representation entails the obligations stated in RPC 5.1 for purposes of the matter involved.") *See* **Tennessee Rules of Professional Conduct, Rule 5.1** ("(a) A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct. (b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct. (c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if: (1)the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or (2)the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.")

113. See "Joint Responsibility Generally" at end of document.

114. **Texas Disciplinary Rules of Professional Conduct, Rule 1.04(f)** ("A division or arrangement for division of a fee between lawyers who are not in the same firm may be made only if: (1) The division is: (i) In proportion to the professional services performed by each lawyer; or(ii) Made between lawyers who assume joint responsibility for the representation; and (2) The client consents in writing to the terms of the arrangement prior to the time of the association or referral proposed, including: (i) The identity of all lawyers or law firms who will participate in the fee-sharing agreement, and (ii) Whether fees will be divided based on the proportion of services performed or by lawyers agreeing to assume joint responsibility for the

History: Prior to 2005, Texas permitted division of fees *without* joint responsibility. But in that year, the state adopted the recommendations of a blue-ribbon "Referral Fee Task Force" convened by the state bar, which moved Texas in line with the majority of other states.[115] Thanks to the task force's work, Texas rules are among the most detailed and specific of any state, but generally mirror the Model Rules in key respects.

Joint Responsibility Defined: Texas defines "joint responsibility" far more explicitly than the Model Rules. In order to qualify for division of fees based on joint responsibility, a referring lawyer must (1) "assure adequacy of representation" (by investigating the client's matter and selecting a lawyer competent to handle it), and (2) "provide adequate client communication" (by monitoring the case for its duration, ensuring the client is made aware of key developments, and remaining responsive to client questions).[116] The rules decline to

---

representation, and (iii) The share of the fee that each lawyer or law firm will receive or, if the division is based on the proportion of services performed, the basis on which the division will be made; and (4) The aggregate fee does not violate paragraph (a) ['A lawyer shall not enter into an arrangement for, charge, or collect an illegal fee or unconscionable fee. A fee is unconscionable if a competent lawyer could not form a reasonable belief that the fee is reasonable.']") *See also* **Texas Disciplinary Rules of Professional Conduct, Rule 7.03(c) (**"A lawyer, in order to solicit professional employment, shall not pay, give, advance, or offer to pay, give, or advance anything of value . . . provided however, this provision does not prohibit the payment of legitimate referral fees as permitted by Rule 1.04(f)".)

[115]**.** The task force concluded that division of fees between referring and receiving lawyers was beneficial for public policy and should be permitted, but that requiring joint responsibility would add additional safeguards. *See* **State Bar of Texas, Referral Fee Task Force: Final Report And Recommendations (2004) at 13 (**"Based upon numerous authorities and the copious amounts of testimony received during the public hearings, the Task Force concluded that in many instances (if not the vast majority), the payment of referral fees encourages lawyers who might not otherwise be qualified to handle a case to refer the clients to lawyers who do possess the requisite qualifications; is not viewed negatively by the clients who pay them; and, at least when accompanied by ethically appropriate post-referral behavior by the lawyers involved, is not unconscionable. Therefore, the Task Force concludes that, as long as they are subject to proper safeguards, referral fees do further the goals of our profession.")

[116]. Prior to making the referral, the referring lawyer must "conduct a reasonable investigation of the client's legal matter and refer the matter to a lawyer whom the referring or associating lawyer reasonably believes is competent to handle it." After the referral, the referring lawyer must "monitor the matter throughout the representation and ensure that the client is informed of those matters that come to that lawyer's attention and that a reasonable lawyer would believe the client should be aware." (This does *not* require reviewing all documents but "only that the referring lawyer be reasonably informed of the matter, respond to client questions, and assist the handling lawyer when necessary.") **Texas Disciplinary Rules of Professional Conduct, Rule 1.04(f), *Comment 13*** ("Joint responsibility for the representation entails ethical and perhaps financial responsibility for the representation. The ethical responsibility assumed requires that a referring or associating lawyer make reasonable efforts to assure adequacy of representation and to provide adequate client communication. Adequacy of representation requires that the referring or associating lawyer conduct a reasonable investigation of the client's legal matter and refer the matter to a lawyer whom the referring or associating lawyer reasonably believes is competent to handle it. See Rule 1.01. Adequate attorney-client communication requires that a referring or associating lawyer monitor the matter throughout the representation and ensure that the client is informed of those matters that come to that lawyer's attention and that a reasonable lawyer would believe the client should be aware. See Rule 1.03. Attending all depositions and hearings or requiring that copies of all pleadings and correspondence be provided areferring or associating lawyer is not necessary in order to meet the monitoring requirement proposed by this rule. These types of activities may increase the transactional costs, which ultimately the client will bear and unless some benefit will be derived by the client, they should be avoided. The monitoring requirement is only that the referring lawyer be reasonably informed of the matter, respond to client questions, and assist the handling lawyer when necessary. Any referral or association of other counsel should be made based solely on the client's best interest.") *See also* ***Id., Comment* 14** ("[T]he minimum activities that must be undertaken by referring or associating lawyers pursuant to an arrangement for a division of fees are substantially greater than those assumed by a lawyer who forwarded a matter to other counsel, undertook no ongoing obligations with respect to it, and yet received a portion of the handling lawyer's fee once the matter was concluded, as was permitted under the prior version of this rule.")

say whether assuming joint responsibility imposes vicarious liability for malpractice, but leave open the possibility that it may.[117]

Disclosure Timing: Texas is unique among states in requiring that lawyers obtain written client consent "prior to making a referral."[118] The rule doesn't clarify the meaning of "prior to," but based on the discussions surrounding the rule's drafting, we believes that Atticus' standard practice — obtaining client consent to the full terms of the referral via an addendum to the receiving counsel's engagement letter — is sufficient.[119]

UTAH follows the Model Rules: division of fees is permitted so long as the referring lawyer "assumes joint responsibility for the representation" and other standard requirements are met.[120]

Joint Responsibility Defined: Like the Model Rules, Utah doesn't explicitly outline what "joint responsibility" requires, but simply states that it "entails financial and ethical responsibility for the representation as if the lawyers were associated in a partnership."[121] This means that a referring lawyer takes on an ethical obligation to assure that the receiving lawyer provides adequate representation and abides by the rules of professional conduct, and may be disciplined for failing to fulfill this obligation.[122]

---

[117]. **Texas Disciplinary Rules of Professional Conduct, Rule 1.04(f), *Comment 14*** ("Whether [the actions required to qualify for division of fees based on joint responsibility] suffice to make [a referring] lawyer . . . responsible for the professional misconduct of [a receiving] lawyer . . . and, if so, to what extent, are intended to be resolved by Texas Civil Practice and Remedies Code, ch. 33 [discussing third-party liability in civil suits generally, without any specific reference to attorney malpractice], or other applicable law.")

[118]. **Texas Disciplinary Rules of Professional Conduct, Rule 1.04(f)(2)** ("The client [must] consent[] in writing to the terms of the arrangement prior to the time of the association or referral proposed.")

[119]. The task force's discussion makes clear that the clause is designed to prevent lawyers from seeking client consent only after the referral has become a *fait accompli*. *See* **State Bar of Texas, Referral Fee Task Force: Final Report And Recommendations (2004) at 17** ("[T]hese changes will ensure that the client . . . must affirmatively consent in writing to the arrangement prior to the time of the association or referral proposed. The old days of clients learning for the first time the terms of any fee-splitting arrangement when they are provided a distribution sheet at the conclusion of the representation are no longer.") Later, the task force states that lawyers must obtain consent for the referral "prior to *its taking effect*" (emphasis added), ***id.* at 26**. A referral "takes effect," of course, when the receiving lawyer is formally engaged. At Atticus, our referrals take effect only when a client signs an engagement letter with their lead counsel. We believe that providing a written disclosure and consent form *with* that engagement letter, and giving a client the chance to review both in one sitting before signing, is sufficient to satisfy the terms of the rule (particularly since our clients already know to expect that a referral will occur).

[120]. **Utah Rules of Professional Conduct, Rule 1.5(e)** ("A division of a fee between lawyers who are not in the same firm may be made only if: (e)(1) the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation; (e)(2) the client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing; and(e)(3) the total fee is reasonable.")

[121]. **Utah Rules of Professional Conduct, Rule 1.5 *Comment [7]*** ("Paragraph (e) permits the lawyers to divide a fee either on the basis of the proportion of services they render or if each lawyer assumes responsibility for the representation as a whole. In addition, the client must agree to the arrangement, including the share that each lawyer is to receive, and the agreement must be confirmed in writing. Contingent fee agreements must be in a writing signed by the client and must otherwise comply with paragraph (c) of this Rule. Joint responsibility for the representation entails financial and ethical responsibility for the representation as if the lawyers were associated in a partnership."

[122]. See "Joint Responsibility Generally" at end of document.

VERMONT follows the Model Rules: division of fees is permitted so long as the referring lawyer "assumes joint responsibility for the representation" and other standard requirements are met.[123]

> Joint Responsibility Defined: Like the Model Rules, Vermont doesn't explicitly outline what "joint responsibility" requires, but simply states that it "entails financial and ethical responsibility for the representation as if the lawyers were associated in a partnership."[124] This means that a referring lawyer takes on an ethical obligation to assure that the receiving lawyer provides adequate representation and abides by the rules of professional conduct, and may be disciplined for failing to fulfill this obligation.[125]

VIRGINIA applies a more relaxed standard than the Model Rules: division of fees is permitted, provided that the total fee is reasonable and that the client consents to the terms of the division and the involvement of each lawyer prior to the start of the representation. Joint responsibility is not required.[126]

WASHINGTON follows the Model Rules: division of fees is permitted so long as the referring lawyer "assumes joint responsibility for the representation" and other standard requirements are met.[127]

> Joint Responsibility Defined: Like the Model Rules, Washington doesn't explicitly outline what "joint responsibility" requires, but simply states that it "entails financial and ethical responsibility for the representation as if the lawyers were associated in a partnership."[128] This means that a referring lawyer takes on an ethical obligation to assure that the

---

123. **Vermont Rules of Professional Conduct, Rule 1.5(e)** ("A division of a fee between lawyers who are not in the same firm may be made only if: (1) the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation; (2) the client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing; and (3) the total fee is reasonable.")

124. **Vermont Rules of Professional Conduct, Rule 1.5 Comment [7]** ("Joint responsibility for the representation entails financial and ethical responsibility for the representation as if the lawyers were associated in a partnership.")

125. See "Joint Responsibility Generally" at end of document.

126. **Virginia State Bar Professional Guidelines, Rule 1.5(e)** ("A division of a fee between lawyers who are not in the same firm may be made only if: (1) the client is advised of and consents to the participation of all the lawyers involved; (2) the terms of the division of the fee are disclosed to the client and the client consents thereto; (3) the total fee is reasonable; and (4) the division of fees and the client's consent is obtained in advance of the rendering of legal services, preferably in writing.")

Virginia expressly permits division of fees with out-of-state attorneys. **Virginia State Bar Legal Ethics Opinion 1130** (holding that a fee division between a Virginia lawyer and a D.C. lawyer "would not be improper")

127. **Washington Rules of Professional Conduct, Rule 1.5(e)** ("A division of a fee between lawyers who are not in the same firm may be made only if: (1) (i) the division is in proportion to the services provided by each lawyer or each lawyer assumes joint responsibility for the representation; (ii) the client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing; and (iii) the total fee is reasonable; or (2) the division is between the lawyer and a duly authorized lawyer referral service of either the Washington State Bar Association or of one of the county bar associations of this state."

128. **Washington Rules of Professional Conduct, Rule 1.5 *Comment [7]*** ("Joint responsibility for the representation entails financial and ethical responsibility for the representation as if the lawyers were associated in a partnership.")

receiving lawyer provides adequate representation and abides by the rules of professional conduct, and may be disciplined for failing to fulfill this obligation.[129]

WEST VIRGINIA has the simplest fee-sharing rules of any state: any division of fees is acceptable, provided the client agrees to the referral.[130]

WISCONSIN follows the Model Rules, with a slight change in wording: division of fees is permitted so long as the referring lawyer "assumes the same ethical responsibility for the representation as if [he or she] were partners in the same firm [as the receiving lawyer]" and other standard requirements are met.[131] "

> Same Ethical Responsibility Defined: Though "same ethical responsibility" appears synonymous with "joint responsibility" (the term used in most states),[132] Wisconsin lays out its requirements far more explicitly than the Model Rules. In order to qualify for division of fees based on "same ethical responsibility," a referring lawyer must verify the receiving lawyer's competence, obtain the client's informed consent to the referral and its terms, actively monitor the case, and take action to correct any ethical issues that arise.[133]

---

129. See "Joint Responsibility Generally" at end of document.

130. **West Virginia Rules of Professional Conduct, Rule 1.5, *Comment 5*** ("When a lawyer refers a case to another lawyer or law firm, a division of fees may be made if the client agrees that the case may be referred to the other lawyer or law firm.") The text of Rule 1.5 itself doesn't limit (or even mention) division of fees in any way.

131. **Wisconsin Rules of Professional Conduct for Attorneys, Rule SCR 20:1.5(e)** ("A division of a fee between lawyers who are not in the same firm may be made only if the total fee is reasonable and: (1) the division is based on the services performed by each lawyer, and the client is advised of and does not object to the participation of all the lawyers involved and is informed if the fee will increase as a result of their involvement; or (2) the lawyers formerly practiced together and the payment to one lawyer is pursuant to a separation or retirement agreement between them; or (3) pursuant to the referral of a matter between the lawyers, each lawyer assumes the same ethical responsibility for the representation as if the lawyers were partners in the same firm, the client is informed of the terms of the referral arrangement, including the share each lawyer will receive and whether the overall fee will increase, and the client consents in a writing signed by the client."); *see also* **Wisconsin Rules of Professional Conduct for Attorneys, Rule SCR 20:1.5 Case Notes** ("Paragraph (e) differs from the Model Rule in several respects. The division of a fee "based on" rather than "in proportion to" the services performed clarifies that fee divisions need not consist of a percentage calculation. The rule also recognizes that lawyers who formerly practiced together may divide a fee pursuant to a separation or retirement agreement between them. In addition, the standards governing referral arrangements are made more explicit.")

132. *See* **Wisconsin Rules of Professional Conduct for Attorneys, SCR 20:1.5 Comment [7]** ("Paragraph (e) permits the lawyers to divide a fee either on the basis of the proportion of services they render or if each lawyer assumes responsibility for the representation as a whole. . . Joint responsibility for the representation entails financial and ethical responsibility for the representation as if the lawyers were associated in a partnership.")

133. **State Bar of Wisconsin Ethics Opinion EF-10-02** ("In summary, lawyers who seek to receive or agree to pay a referral fee assume the following ethical responsibilities: When considering the possible referral of a matter in return for a fee, the lawyer must first discuss the matter with the client and obtain the client's informed consent to contact the potential receiving lawyer. The referring lawyer has a duty to refer matters only to lawyers who the referring lawyer reasonably believes are competent to handle the matter. The referring lawyer must obtain the client's consent in a writing signed by the client, to the terms of the referral. The referring lawyer retains a lawyer-client relationship with the client, and so has a responsibility to monitor the progress of the case and remain available to the client. This may be achieved by regular, periodic contacts with the receiving lawyer, the client or both. Should the referring lawyer become aware of unethical or otherwise improper conduct by the receiving lawyer, or if there is reason to believe that the receiving lawyer is not providing competent representation to the client, the referring lawyer must take reasonable steps to address the problems. The referring lawyer maintains financial responsibility for the representation. The receiving lawyer is obligated to cooperate with the referring lawyer in fulfilling these responsibilities.")

The rules decline to say whether assuming joint responsibility imposes vicarious liability for malpractice, but leave open the possibility that it may.[134]

WYOMING is one of only two states that follow a stricter standard than the Model Rules: Division of fees is permitted so long as the referring lawyer "assumes joint responsibility for the representation" and other standard requirements are met, but the share of fees each lawyer receives must be in proportion to the services they perform.[135]

Joint Responsibility Defined: Like the Model Rules, Wyoming doesn't explicitly outline what "joint responsibility" requires, but simply states that it "entails financial and ethical responsibility for the representation as if the lawyers were associated in a partnership."[136] This means that a referring lawyer takes on an ethical obligation to assure that the receiving lawyer provides adequate representation and abides by the rules of professional conduct, and may be disciplined for failing to fulfill this obligation.[137]

Proportionality Defined: We know of no meaningful Wyoming caselaw assessing whether a division of fees qualifies as proportional to the services performed, particularly in a referral context. However, we're confident that the "services" in question include those performed *before* the referral in addition to those performed after. (For example, a law firm might refer a case to a trial specialist and do little work after that point, but there's no question it could take a substantial portion of the fee for its work managing the case prior to that point.) As a result, Atticus justifies its share of a fee in part based on the services rendered by Atticus in making a client aware of the opportunity to hire an attorney, counseling the client in detail during the early stages of his or her case and helping him or her decide whether to retain an attorney, vetting potential attorneys, and ultimately arranging full-scope representation for the client. (We also count our efforts monitoring the progress of the case, and communicating with the client as needed for the duration of the representation, but often these are fairly minor.) Unlike in other states, we assess a fair

---

134. **State Bar of Wisconsin Ethics Opinion EF-10-02 (initially quoting Ethics Opinion E-00-01)** ("'The question of the legal liability of a referring lawyer for the manner in which the client's matter is handled to completion is a question of law. However . . . [t]he duty of joint responsibility imports a serious responsibility as a lawyer and is not a mere hand off of the case to another lawyer to handle in his or her own unfettered discretion. This opinion earlier noted the Comments to SCR 20:1.5 that relate the duty of joint responsibility for a referring lawyer to the responsibility of a partner or a lawyer having supervisory authority of another lawyer in a law firm. See SCR 20:5.1. In a law firm, that responsibility is one of vicarious liability unless that liability is adjusted by the implementation and operation of limited liability law. . . .' The Committee hereby reaffirms this portion of E-00-01 and, while noting that a violation of SCR 20:1.5(e)(3) does not *ipso facto* establish liability of any lawyer, urges referring lawyers to be mindful of all responsibilities which are attendant to a lawyer-client relationship.") In other words, the state ethics rules cannot impose civil liability, but civil law might hold a referring lawyer vicariously liable nonetheless.

135. **Wyoming Rules of Professional Conduct for Attorneys at Law, Rule 1.5(e)** ("A division of a fee between lawyers who are not in the same firm may be made only if: (1) the division is in proportion to the services performed by each lawyer and, each lawyer assumes joint responsibility for the representation; (2) the client is informed of the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing; and (3) the total fee is reasonable.")

136. **Wyoming Rules of Professional Conduct for Attorneys at Law, Rule 1.5 Comment [7]** ("Joint responsibility for the representation entails financial and ethical responsibility for the representation as if the lawyers were associated in a partnership.")

137. See "Joint Responsibility Generally" at end of document.

share of each fee on a case-by-case basis, with the understanding that it may need to be reassessed once the case is complete.

JOINT RESPONSIBILITY GENERALLY. In most states, a lawyer who refers a client to another lawyer must "assume[] joint responsibility for the representation" if she wishes to share in the ultimate legal fee. However, few states' rules go into detail on what duties constitute "joint responsibility." In general, the American Bar Association has interpreted the rule as requiring a referring lawyer to bear (1) financial liability in the event of malpractice by the receiving firm, and (2) ethical responsibility for ensuring adequacy of representation — but *not* requiring any actual legal work on the case.[138] We've discussed this at great length with ethics counsel, and the consensus is that in most states, a referring lawyer could be subject to discipline for failing to adequately monitor a receiving lawyer who committed malpractice, and could potentially be subject to vicarious civil liability for that receiving lawyer's malpractice. However, there are few examples of either discipline or liability being imposed, and in most states the Rules of Professional Conduct aren't themselves a basis for civil liability. As a practical matter, committing in writing to "assume joint responsibility for the representation as required by applicable law" appears to be a sufficient step to enable rules-compliant fee-sharing.

138. *See* **ABA Informal Ethics Op. 85-1514 (1985)** (Joint responsibility "does not require substantial services to be performed by the [referring] lawyer since assumption of responsibility is the alternative to a division of fees in proportion to services performed." However, the referring lawyer must assume duties "comparable to that of a partner in a law firm," including "financial responsibility" for any of the other lawyers' acts of malpractice, "ethical responsibility for the actions of [the other lawyers] in accordance with Model Rule 5.1," and the "same responsibility to assure adequacy of representation and adequate client communication.")