

ETHICS & REFERRALS



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DIVIDING LEGAL FEES WITH A NON-LAWYER

THE GENERAL RULE: DR 3-102:

- DR 3-102

A lawyer shall not share
legal fees with a non-lawyer.

THREE EXCEPTIONS:

A. A lawyer or law firm shall not share legal fees with a non-lawyer, except that:

1. An agreement by a lawyer with his or her firm, partner, or associate may provide for the payment of money, over a reasonable period of time after a lawyer's death, to the lawyer's estate or to one or more specified persons.
2. A lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer that proportion of the total compensation which fairly represents the services rendered by the deceased lawyer.
3. A lawyer or law firm may compensate a non-lawyer employee, or include a non-lawyer employee in a retirement plan, based in whole or in part on a profit-sharing arrangement.

RULE 1.5. FEES AND DIVISION OF FEES

(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.

ATTORNEY COMPENSATION IF CLIENT DISCHARGES ATTORNEY DURING THE CASE

- “with cause”- the attorney has no right to compensation
- “without cause”- quantum meruit



DIVISION OF ATTORNEY FEES BETWEEN INCOMING AND OUTGOING COUNSEL

- Quantum Meruit is a Latin phrase meaning “what one has earned.”

Considerations:

- ✓ evidence of the time spent and skill required in the case
- ✓ the complexity of the matter
- ✓ the attorney’s experience, ability, and reputation
- ✓ the client’s benefit from the services
- ✓ the fee usually charged by other attorneys for similar services

REFERRING YOUR CLIENT TO A NON-LAWYER

ETHICS OPINION 1086

Conclusion: An attorney may not accept a fee or commission from an investment firm for referring the client to such firm where the money to be invested arises from an engagement in which the lawyer represented the client because the fee creates a non-consentable conflict. (Rules: 1.7(a)(2), 1.7(b), 1.8(f)).

PITFALLS TO AVOID IN PRACTICE WHEN DEALING WITH REFERRING COUNSEL

- Legal malpractice
- Contingency fee cases
- Florida oranges
- Juror Sympathy
- Defendant in a lawsuit

