

ISSUE BRIEF

EXPANDING SOCIAL JUSTICE

FEE-SHARING BETWEEN NONPROFITS
AND THE PRIVATE BAR



Stephen and Sandra
SHELLER

CENTER *for* **SOCIAL JUSTICE**



Temple University Beasley School of Law

TABLE OF CONTENTS

Introduction	2
Background	4
Workers' Rights Movement	4
Worker Centers Can Do So Much More	4
Worker Centers Need Attorney Partnerships.....	5
How to Fee-Share	6
General Model.....	6
Ethical Considerations.....	7
Sharing Fees Between Lawyers and Nonprofit Organizations.....	7
Other Fee-Sharing Arrangements.....	9
Solicitation Issues.....	9
Structuring Arrangements.....	10
Why Share Fees?	11
Success Story	11
Endnotes	13
Appendix	15

This issue brief, prepared for the National Legal Advocacy Network (NLAN), was written by Tram Ha ('22) and BK Katzmann ('22), law students in the Social Justice Lawyering Clinic at the Stephen and Sandra Sheller Center for Social Justice at Temple University Beasley School of Law. They would like to thank Sheila Maddali, Chris Williams, Dave Palmer, and Melinda Katz for their guidance. These students were supervised by Professor Jennifer J. Lee. Amber Bethune designed the cover and other graphics.

© 2021 Sheller Center for Social Justice, Temple University Beasley School of Law

INTRODUCTION

The employment system has failed low-wage workers. Low-wage workers are all too vulnerable to exploitation such as wage theft, which includes the failure to pay minimum or overtime wages or for all hours worked.¹ Such workers may also face on-the-job discrimination, including racial or sexual harassment.² Further, low-wage workers disproportionately suffer from on-the-job injuries.³ Workers particularly affected by workplace issues include those that are immigrants, LGTBQ+, people with disabilities, and individuals who were formerly incarcerated.⁴ Yet workers fear raising issues in the workplace as they may experience retaliation in the form of decreased hours and pay, increased workloads, and termination.⁵

Nonprofit and community-based organizations are responding to this crisis. Specifically, worker centers are one type of community-based nonprofit organization that is taking steps to address the exploitation of workers. Worker centers have led the charge of the workers' rights movement by empowering workers to advocate for their rights and by supporting worker-led organizing efforts. Worker centers are commonly organized as 501(c)(3) organizations. These nonprofit organizations face challenges with their funding, limiting their ability to accomplish these important social justice goals.

Worker centers have on-the-ground knowledge about the legal violations experienced by workers. As a result, they often collaborate with attorneys and refer fee-generating legal cases. Collaborating attorneys can help make up for this funding gap by entering into fee-sharing arrangements with the nonprofit organization. In most jurisdictions, this type of fee sharing is allowed under Rule 5.4 of the ABA Rules of Professional Conduct.

For decades, nonprofit organizations have relied on legal fees as a source of funding to further social justice movements. Public interest organizations, such as the NAACP and ACLU, have relied on attorney's fees to sustain the work of their organizations.⁶ The Lawyers Committee for Civil Rights Under Law, for example, explains that it uses attorney's fees generated from fee-shifting civil rights statutes to not only deter future discriminatory conduct but also as a vital means of financing future civil rights litigation.⁷ It asks cooperating law firm attorneys to donate some or its entire share of attorney's fees back to its organization. The social justice challenges of today require innovative solutions to lead to systemic change. The push for "movement lawyers"—a term used to describe lawyers that can use the law to address community needs—demonstrates that attorneys can leverage legal resources to build and sustain movements.⁸ Nonprofit organizations with limited legal resources can work with attorneys to advance social justice movements through fee-sharing arrangements.

This issue brief will outline: (1) the necessity for fee-sharing arrangements for nonprofit organizations; (2) how fee-sharing arrangements can work and comply with rules of professional conduct; and (3) the advantages of fee-sharing arrangements for nonprofit organizations and attorneys.

BACKGROUND

Workers' Rights Movement

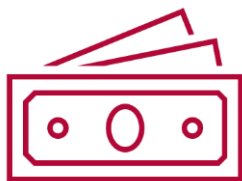
Nonprofit organizations, such as worker centers, play a crucial role in today's movement for low-wage workers. With the decline in union organizing, worker centers have stepped up to fill the void in collective organizing.⁹ While there is no exact figure on the total number of worker centers, there are estimated to be over 200 worker centers across the U.S.¹⁰ Among significant wins, worker centers have organized to increase the minimum wage and expand the protections offered by current labor and employment laws.



Worker centers are membership-based organizations that support and build community for low-wage workers, often focused on specific job sectors or communities.¹¹ They can offer various services to workers in their communities: English language classes, financial planning, employment referrals, and know-your-rights trainings.¹² These essential services to workers serve as an “entry point” for organizers to build the power and leadership of low-wage workers. Worker centers may also help support workers to engage in individual advocacy or organize campaigns against specific bad actor employers.¹³

In addition to these services, worker centers also address systemic change to protect workers. Worker centers are involved in larger campaigns to address the systemic barriers that workers face when advocating for their rights in the workplace.¹⁴ They have made significant strides, such as pushing for a higher and more inclusive minimum wage and strengthening enforcement and protections from retaliation.¹⁵ Through these efforts, worker centers are crucial to developing the collective power of low-wage workers.¹⁶

Worker Centers Can Do So Much More



By developing other sources of revenue, worker centers can build off their prior successes and expand their work to additional communities in need. Worker centers, like many nonprofit organizations, can face funding challenges in their operation. Worker centers can be funded by foundations, religious groups, unions, individuals, and government.¹⁷ Yet studies have shown that worker center funding may be unreliable.¹⁸ Worker centers can have difficulty repeating fund-raising success from one year to the next.¹⁹ As a result, they may face challenges keeping up with the staffing and logistical needs of the organization or growing their work to address community needs.²⁰

Worker Centers Need Attorney Partnerships



As nonprofit organizations that serve low-wage workers, worker centers are well positioned to partner with attorneys and law firms given the multitude of legal issues confronting such workers. They have intimate knowledge of the issues faced by low-wage workers on the job. Worker centers have well developed relationships with workers who are marginalized in the workplace, including those who typically lack access to attorneys and government agencies.

Many worker centers already hold legal clinics for workers to attend and ask questions. In these clinics, workers raise legal issues that are common to the low-wage workplace, such as wage complaints, workplace injuries, or discriminatory treatment.

Many worker centers seek to provide legal support to ensure that workers are able to assert their legal rights. Yet there are many legal cases that worker centers cannot take on. Most worker centers do not have attorneys on staff. Even if they do, a legal case may require specific expertise that the worker center does not have. Some cases too can potentially involve many workers that require lawyers or law firms with class action expertise. In these situations, worker centers will refer the potential cases to qualified and competent attorneys.

Legal assistance to enforce wage laws, for example, is particularly in high demand for low-wage workers. Worker centers have produced cases that have resulted in recovering thousands of dollars for low-wage workers.²¹ Several cases that have originated from worker centers have resulted in low-wage workers able to collect up to a million dollars.²² Wage theft cases, like other fee generating cases, provide the opportunity for attorneys to collect fees on top of the recovery that the worker receives.

In their daily work of supporting low-wage workers, worker centers may discover situations where employers have violated the rights of workers. As a result, worker centers are uniquely positioned to encounter and refer such to attorneys and form fee-sharing arrangements. The goal of such arrangements is to provide a referral fee or equivalent to the nonprofit organization that brought the case to the attorney. In turn, these fees help to sustain workers' rights movements by strengthening the on-the-ground work performed by these crucial nonprofit organizations. Fee sharing among worker centers and the private bar has found immense success in cities like Chicago, where the model has created sustainable funding for eight different worker centers.²³

In most of the United States, attorneys can share fees with nonprofit organizations that recommend them in a legal matter. Forty states and D.C. allow lawyer fee sharing with nonprofit organizations. Attorneys can readily partner with nonprofit organizations to create referral networks to support the workers' right movement.

HOW TO FEE-SHARE

This section will detail how fee sharing can work between a nonprofit organization, such as a worker center, and an attorney or law firm. First, it provides a general model of the basic referral and fee-sharing arrangement. Second, it considers how to comply with the relevant state’s rules of professional conduct governing the sharing of fees between nonprofit organizations and lawyers. Finally, it offers some ideas about how to specifically structure such arrangements.

General Model

Nonprofit organizations often identify individuals with potential legal claims through their day-to-day work with low-wage workers. Many of these legal claims, particularly for workers, arise from laws that have a fee-shifting provision or follow a contingent arrangement where attorneys receive compensation at the conclusion of a successful case. When a fee-sharing arrangement is in place (Figure 1), a portion of the attorney’s fees received will be allocated to the nonprofit organization to fund its ongoing efforts.

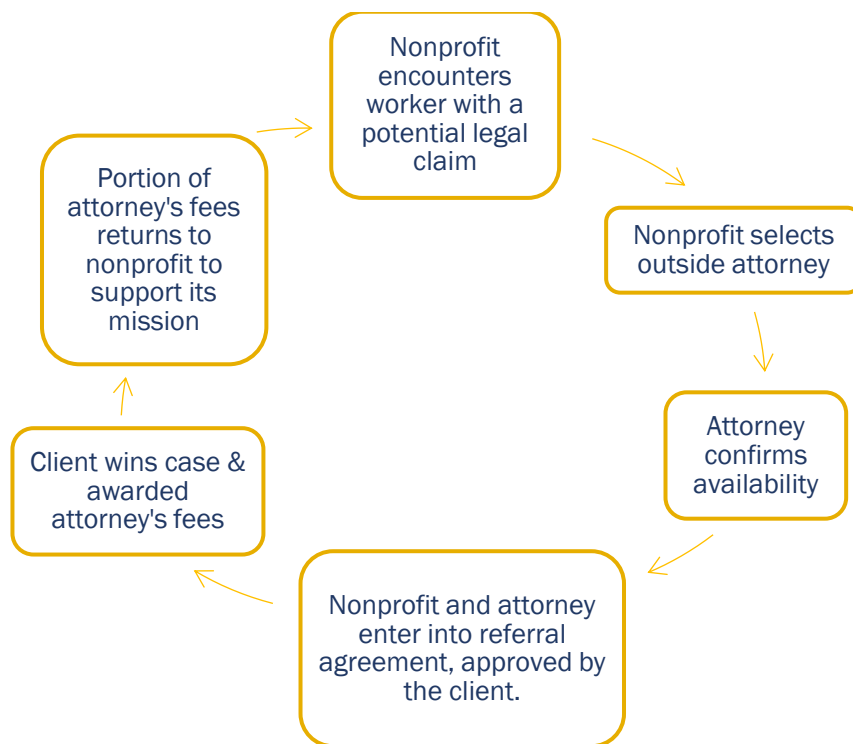


Figure 1. Fee-Sharing Arrangement

Ethical Considerations

Any fee-sharing arrangement must comply with the relevant state's rules of professional conduct governing the sharing of fees between lawyers and nonprofit organizations. Since the American Bar Association (ABA) endorsed these arrangements in a model rule almost twenty years ago, most states have adopted some form of this model rule. For the ten states that do not specifically allow fee sharing between lawyers and nonprofit organizations, it may be worth considering other types of arrangements. For example, fee sharing is permitted between lawyers at separate organizations or law firms, but each state's rules of professional conduct mandate specific requirements as to how to structure that relationship. Finally, fee-sharing arrangements do not typically violate rules of professional conduct prohibiting solicitation, but extra steps can be taken to avoid accusations of improper solicitation.



There is no one-size-fits-all approach because rules of professional conduct can vary from state-to-state. For this reason, we include an Appendix that tracks the exact language of each jurisdiction's rules.

Sharing Fees Between Lawyers and Nonprofit Organizations

The majority of states currently permit fee-sharing arrangements with nonprofit organizations, such as worker centers, under their rules of professional conduct. ABA Model Rule 5.4, titled "Professional Independence of a Lawyer," establishes the general rule that "[a] lawyer or law firm shall not share legal fees with a nonlawyer."²⁴ The reason for this rule is to protect the lawyer's professional independence of judgment. In certain situations, sharing legal fees would not interfere with the independent judgment of the lawyer. These situations have been incorporated as major exceptions to Rule 5.4.

Back in 2000, the ABA introduced the exception that allows for fees to be shared with nonprofit organizations.²⁵

ABA Model Rule 5.4(a)(4)

A lawyer may share court-awarded legal fees with a nonprofit organization that employed, retained, or recommended employment of the lawyer in the matter.

Since its adoption by the ABA,²⁶ twenty-five states have adopted the exact wording of Rule 5.4(a)(4) (Figure 2). Another fifteen states and the District of Columbia have variations on Rule 5.4(a)(4), permitting lawyer fee sharing with nonprofit organizations. Only ten states still prohibit direct fee sharing between lawyers and nonprofit organizations.

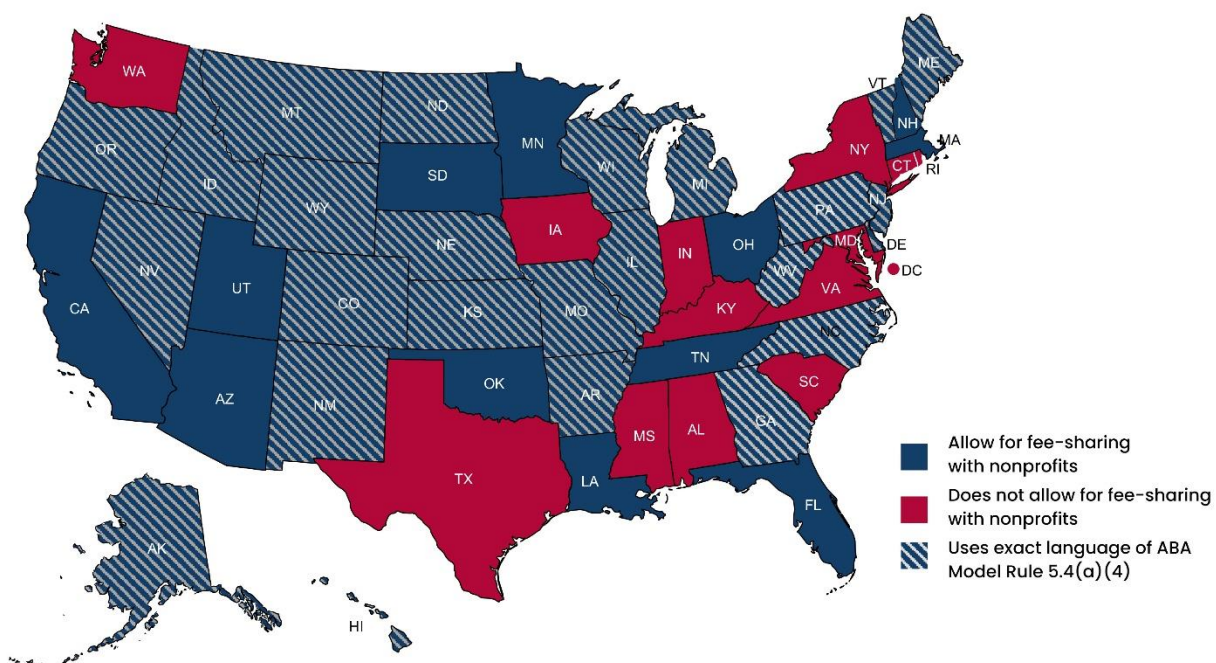


Figure 2. Ethics Rules and Fee Sharing with Nonprofit Organizations

For those states that have adopted a variation of Rule 5.4(a)(4), some add additional requirements. For example, some states require that the nonprofit organization is a “501(c)(3)” tax exempt organization.

Other states expand the circumstances under which fees can be shared. Rule 5.4(a)(4) limits fee sharing to fees that are “court-awarded.” Many cases, however, end with an out-of-court settlement between the parties rather than a final ruling from a court. Some jurisdictions have expanded Rule 5.4(a)(4) by removing the requirement that such fees be “court-awarded” or including other ways that legal fees can be earned (e.g., as part of the settlement of a case): Arizona, Connecticut, D.C., Massachusetts, New Hampshire, Rhode Island, and Utah.

27

Some of the recent changes, like in Arizona and Utah, are motivated by the desire to increase access to justice for their residents.²⁸ In particular, these changes are about exploring creative ways to more flexibly allow lawyers and non-lawyers to practice law. In the process, they have amended their rules to expand the ability of lawyers to share fees, without any limitations, with non-lawyers.²⁹

For more details state-by-state, see the Appendix.

Other Fee-Sharing Arrangements

In states where fee sharing directly between a lawyer and nonprofit organization is not allowed, there may be other rules that allow for a different arrangement that could potentially bring funding back to nonprofit organizations. For example, fee-sharing arrangements between lawyers, such as an arrangement between a legal services organization and a private attorney or law firm, is permissible in all states. A legal services organization might primarily provide legal services to low-wage workers but also engage in other activities, such as worker education and organizing.

In almost all states, some form of ABA Model Rule 1.5(e) applies to these arrangements. Rule 1.5(e) requires that the division of fees be proportional to the work performed by each lawyer or that each lawyer assume “joint responsibility to share fees.”³⁰ “Joint responsibility” means that the referring attorney retains financial and ethical responsibility as if they were in a partnership with the receiving attorney.³¹ To ensure that the attorney meets this responsibility in practice, the referring attorney should maintain malpractice insurance because financial responsibility means assuming responsibility for any claims of malpractice.³² To comply with the rules of professional conduct requirements, referring attorneys must ensure the competence of the other attorney³³ and follow the rules on conflict of interest.³⁴ It also requires a written agreement with consent from the client. For state-by-state variations to Rule 1.5(e), see the Appendix.

Solicitation Issues

A fee-sharing arrangement should pose no problem with the rules of professional conduct that prohibit solicitation. ABA Model Rule 7.3 prohibits live person-to-person solicitation of prospective clients.³⁵ Attorneys are not allowed to engage in a direct personal encounter to “sell” their services to a potential client who needs legal help. This rule seeks to protect against the potential for overreach, undue influence, and intimidation by the lawyer.³⁶

Solicitation issues should not arise with fee-sharing arrangements with nonprofit organizations. Solicitation is “a communication initiated by or on behalf of a lawyer or law firm that is directed to a specific person the lawyer knows or reasonably should know needs legal services in a particular matter.”³⁷ Attorneys who are referred cases by nonprofit organizations are not engaged in solicitation because they are not initiating communications directed to specific clients. Rather, only nonprofit organizations are in initial contact with potential clients. These nonprofit organizations are in contact with the workers for purposes that are central to their mission, such as building membership and providing services. Through this work, they may refer clients in need of legal services to attorneys. The decision is left to the worker to decide whether to hire that attorney or even pursue further legal action at all.

Attorneys that are part of a referral network of a nonprofit organization can take extra care to not even give the “appearance” of soliciting services from potential clients. They can do so by never initiating communications with potential clients. Rather, they should wait for the workers to be in contact with them after a referral has been made from the nonprofit organization. Attorneys should also not have exclusive referral arrangements between worker centers and the attorney or law firm to avoid solicitation concerns.

Structuring Arrangements

When a nonprofit organization refers a case to an attorney, they should enter into a case-by-case referral agreement to ensure consent among all parties. This agreement should detail how the nonprofit will share a percentage of the attorney’s fees. These fees will be paid upon the successful resolution of the case.

A written agreement will spell out the referral fee, often based on a percentage of attorney’s fees obtained, plus any expenses spent by the organization on behalf of the worker. While referral fees can vary significantly based on the custom and practice within a specific geographic area, the percentages for attorneys referring cases to other attorneys commonly range from 25% to 33% of the total attorney’s fees.³⁸

A Referral Agreement should include the:

- ✓ purpose of the referral agreement
- ✓ respective roles and responsibilities of the nonprofit and attorney
- ✓ fee-sharing percentage to be paid to the nonprofit
- ✓ timing for payment of fees to the nonprofit

This written agreement should also be signed by the worker. It is good practice to ensure that the worker understands how fees are being shared between the nonprofit organization and lawyer. In particular, it is important to emphasize that the fee sharing will not reduce the amount awarded or recovered by the worker.

Nonprofit organizations that regularly refer cases to attorneys on an informal basis eventually may wish to establish a more formal referral network. Specifically, nonprofit organizations can develop relationships with various attorneys that have expertise in different areas of the law where workers are often in need of legal services. With a referral network, nonprofit organizations can help to establish clear norms for how the relationship will work and a mechanism for referring clients on an ongoing basis.

WHY SHARE FEES?

Fee-sharing arrangements have many mutual benefits for nonprofit organizations and attorneys. For example, for worker centers, these arrangements can provide a sustainable funding stream to continue the vital work of expanding access to legal support for workers. The sharing of fees with worker centers that do on-the-ground work with low-wage workers can help expand the resources of these organizations. Worker centers fill an important need for low-wage workers. Beyond the supportive services they provide, they empower low-wage workers to advocate for opportunity and economic security at work. They are uniquely positioned to both support workers after legal violations have occurred and actively work on campaigns to ensure that workers have adequate protection. Worker centers, for example, have played a crucial role in getting laws enacted that help to protect low-wage workers, such as providing paid sick leave and increasing protections against wage theft.⁴⁰

Success Story

In Chicago, a small worker's rights organization provided services to low-wage workers, including legal clinics. During these clinics, it encountered workers that had suffered legal violations and referred these workers to private attorneys. With these referrals, it created fee-sharing arrangements as a method of sustaining and growing the organization. Its success led to the creation of the Raise the Floor Alliance (RTF). RTF now funds eight different worker centers that help low-wage workers advocate for fair and safe work conditions.³⁹

Further, by connecting low-wage workers with competent and trusted legal representation, worker centers are providing workers with access to justice. These are low-wage workers who might not otherwise seek legal services because of fear, language barriers, or lack of familiarity with their legal rights. Worker centers can identify issues and provide appropriate referrals to attorneys that are experienced in handling specific kinds of worker cases. These collaborative relationships with attorneys help further the mission of worker centers by supporting low-wage workers to enforce their legal rights.

For attorneys participating in a fee-sharing arrangement, they benefit from receiving potential clients. Because worker centers work directly on-the-ground within communities, they are able to uncover systemic or widespread legal issues that might otherwise remain hidden to the legal system.⁴¹ Worker centers directly connect with workers, build a trusting relationship with the worker, and help them to identify legal violations that exist in the workplace. After the referral, worker centers can continue to support attorneys in the legal work by helping to connect with workers who may be transient or have language barriers. As a result, worker centers are well-positioned to provide ongoing support to attorneys who receive referrals.

Finally, fee-sharing arrangements can connect attorneys to the larger movement for workers' rights. In this movement, worker centers and other nonprofit organizations have emerged to address the multitude of issues that low-wage workers face.⁴² They are one of the drivers of the workers' rights movement because they support and facilitate the collective organizing of low-wage workers. Through fee-sharing arrangements, attorneys can support nonprofit organizations engaged in this significant work of empowering and organizing workers to fight for social justice.

ENDNOTES

- ¹ DAVID COOPER & THERESA KROEGER, EMPLOYEES STEAL BILLIONS FROM WORKERS PAYCHECKS EACH YEAR 2 (2017), <https://www.epi.org/publication/employers-steal-billions-from-workers-paychecks-each-year/>.
- ² VALERIE WILSON & WILLIAM M. RODGERS III, BLACK-WHITE WAGE GAPS EXPAND WITH RISING INEQUALITY 4-5 (2016), <https://www.epi.org/publication/black-white-wage-gaps-expand-with-rising-wage-inequality/>; Yuki Noguchi, *Low-Wage Workers Say #MeToo Movement Is a Chance for Change*, NPR (Feb. 6, 2018), <https://www.npr.org/2018/02/06/583428098/low-wage-workers-say-metoo-movement-is-a-chance-for-change> (last visited Dec. 5, 2020).
- ³ DAVID MICHAELS, OSHA, ADDING INEQUALITY TO INJURY: THE COSTS OF FAILING TO PROTECT WORKERS ON THE JOB 5 (2015), https://www.osha.gov/Publications/inequality_michaels_june2015.pdf.
- ⁴ See, e.g., Sally C. Moyce & Marc Schenker, *Migrant Workers and Their Occupational Health and Safety*, 39 ANN. REV. PUB. HEALTH 351, 352-53 (2018); Brad Sears & Christy Mallory, UCLA Williams Inst., Documented Evidence of Employment Discrimination & Its Effects on LGBT People 1-3 (2011), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Effects-LGBT-Employ-Discrim-Jul-2011.pdf>; Alison Barkoff & Emily B. Read, *Employment of People with Disabilities: Recent Successes and an Uncertain Future*, 42 HUMAN RTS. 8, 8-9 (2017); KIMBERLY G. WHITE, ELI MOORE, TAMISHA WALKER & STEPHEN MENENDIAN, U.C. BERKELEY HAAS INST., ENDING LEGAL BIAS AGAINST FORMERLY INCARCERATED PEOPLE 3-4 (2019).
- ⁵ RAISE THE FLOOR ALLIANCE & NAT'L ECON. & SOC. RTS. INITIATIVE, CHALLENGING THE BUSINESS OF FEAR 12 (2016).
- ⁶ See Roy D. Simon Jr., *Fee Sharing Between Lawyers and Public Interest Groups*, 98 YALE L.J. 1069, 1074 (1989).
- ⁷ *Are Attorney's Fees Recovered in Litigation? Pro Bono*, LAWYER'S COMMITTEE FOR CIVIL RIGHTS, <https://lawyerscommittee.org/project/pro-bono/> (last visited Dec. 22, 2020).
- ⁸ Alexi Nunn Freeman & Jim Freeman, *It's About Power, Not Policy: Movement Lawyering for Large-Scale Social Change*, 23 CLINICAL L. REV. 147, 151 (2016).
- ⁹ UNITED WORKERS CONGRESS, THE RISE OF WORKER CENTERS AND THE FIGHT FOR A FAIR ECONOMY 3 (2014), http://www.unitedworkerscongress.org/uploads/2/4/6/6/24662736/_uwc_rise_of_worker_centers-_sm.pdf.
- ¹⁰ *Id.* at 4.
- ¹¹ JANICE FINE, WORKER CENTERS: ORGANIZING COMMUNITIES AT THE EDGE OF THE DREAM, ECON. POL'Y INST. BRIEFING PAPER 4 (2005).
- ¹² UNITED WORKERS CONGRESS, *supra* note 9, at 4.
- ¹³ *Id.*
- ¹⁴ *Id.*
- ¹⁵ *Id.* at 13.
- ¹⁶ Fine, *supra* note 11, at 10.
- ¹⁷ KIM BOBO & MARIÉN CASILLAS PABELLÓN, THE WORKER CENTER HANDBOOK: A PRACTICAL GUIDE TO STARTING AND BUILDING THE NEW LABOR MOVEMENT 38-43 (2016).
- ¹⁸ Leslie Gates et al., *Sizing Up Worker Center Income (2008-2014): A Study of Revenue Size, Stability, and Streams*, in NO ONE SIZE FITS ALL: WORKER ORGANIZATION, POLICY, AND MOVEMENT IN A NEW ECONOMIC AGE 44 (Janice Fine et al. eds., 2018).
- ¹⁹ *Id.*
- ²⁰ VICTOR NARRO, SABA WAHEED & JASMINE POYAOAN, UCLA LABOR CENTER, BUILDING A MOVEMENT TOGETHER: WORKER CENTERS AND LABOR UNION AFFILIATIONS 17 (2015), <https://www.labor.ucla.edu/publication/building-a-movement-together-workers-centers-and-labor-union-affiliations-2/>.
- ²¹ Fine, *supra* note 11, at 11.
- ²² *Id.*

²³ See *infra* note 39.

²⁴ MODEL RULES OF PRO. CONDUCT r. 5.4 (AM. BAR ASS'N 2020).

²⁵ Minutes from ABA – Ctr. for Pro. Resp. Comm'n on Evaluation of the Rules of Pro. Conduct (Sept. 15-17, 2000), https://www.americanbar.org/groups/professional_responsibility/policy/ethics_2000_commission/e2k_09_15mtg/.

²⁶ *Ethics 2000 Commission*, AM. BAR ASS'N, https://www.americanbar.org/groups/professional_responsibility/policy/ethics_2000_commission/ (last visited Dec. 12, 2020).

²⁷ As of the date of this publication, the California Bar was considering amending its Rule 5.4 to allow non-court awarded fees to be shared with non-profits in certain circumstances. Proposed Amended California Rule of Professional Conduct 5.4 [Financial and Similar Arrangements with Nonlawyers, THE STATE BAR OF CALIFORNIA, <https://www.calbar.ca.gov/About-Us/Our-Mission/Protecting-the-Public/Public-Comment/Public-Comment-Archives/2020-Public-Comment/Proposed-Amended-California-Rule-of-Professional-Conduct-54-Financial-and-Similar-Arrangements-with-Nonlawyers> (last visited Jan. 22, 2021).

²⁸ Press Release, Utah Courts, To Tackle the Unmet Legal Needs Crisis, Utah Supreme Court Unanimously Endorses a Pilot Program to Assess Changes to the Governance of the Practice of Law (Aug. 13, 2020), <https://www.utcourts.gov/utc/news/2020/08/13/to-tackle-the-unmet-legal-needs-crisis-utah-supreme-court-unanimously-endorses-a-pilot-program-to-assess-changes-to-the-governance-of-the-practice-of-law/>; Press Release, Ariz. Sup. Ct., Arizona Supreme Court Makes Generational Advance in Access to Justice (Aug. 27, 2020), <https://www.azcourts.gov/Portals/201/Press%20Releases/2020Releases/082720RulesAgenda.pdf>.

²⁹ UTAH RULES OF PRO. CONDUCT r. 5.4A(b); ARIZ. RULES OF PRO. CONDUCT ER 5.4 (abrogated 2020).

³⁰ MODEL RULES OF PRO. CONDUCT r. 1.5 (AM. BAR ASS'N 2020).

³¹ MODEL RULES OF PRO. CONDUCT r. 1.5 cmt. (AM. BAR ASS'N 2018).

³² See David D. Dodge, *Eye on Ethics: Fee-Splitting Cautions*, ARIZ. ATT'Y, Nov. 2005, at 10.

³³ MODEL RULES OF PRO. CONDUCT r. 1.5 cmt. (AM. BAR ASS'N 2018) (citing r. 1.1).

³⁴ ABA Comm. on Ethics & Pro. Responsibility, Formal Op. 474 (2016).

³⁵ MODEL RULES OF PRO. CONDUCT r. 7.3 (AM. BAR ASS'N 2019).

³⁶ MODEL RULES OF PRO. CONDUCT r. 7.3 cmt. (AM. BAR ASS'N 2019).

³⁷ MODEL RULES OF PRO. CONDUCT r. 7.3 (AM. BAR ASS'N 2019) (emphasis added).

³⁸ See, e.g., Joy A. Bruner, *Practice Tips: Referral Fee Basics*, FLA. BAR NEWS (Sept. 27, 2019), <https://www.floridabar.org/the-florida-bar-news/referral-fee-basics/>; Helen W. Gunnarsson, *Fee Not-So-Simple: Referral Fee Dos and Don'ts*, 93 ILL. BAR J. 236 (2005), <https://www.isba.org/ibj/2005/05/feenotsosimplereferalfeedosanddont>; Steven Susser, *Contingency and Referral Fees for Business Disputes: A Primer*, MICH. BAR J., Nov. 2011, at 38; *Referral Fee Policy*, AITKEN * AITKEN * COHN, <https://www.aitkenlaw.com/referral-fee-policy/> (last visited Dec. 12, 2020); *What is a Reasonable Fee These Days?*, SHEFF LAW, <https://www.shefflaw.com/reasonable-fee-days/> (last visited Dec. 12, 2020).

³⁹ Zoom Interview with Chris Williams, Co-Director of NLAN (Oct. 26, 2020).

⁴⁰ See, e.g., *Winning Minimum Wages and Paid Leave from Coast to Coast*, CTR. FOR POPULAR DEMOCRACY (June 10, 2016), <https://populardemocracy.org/blog/winning-minimum-wage-raises-and-paid-leave-coast-coast/>; Nicole Hallett, *The Problem of Wage Theft*, 37 YALE L. & POL'Y REV. 93, 116 (2018).

⁴¹ See Fine, *supra* note 11, at 13-14.

⁴² Nicole Hallett, *From the Picket Line to the Courtroom: A Labor Organizing Privilege to Protect Workers*, 39 N.Y.U. REV. L. & SOC. CHANGE 475, 477 (2015).

APPENDIX

Fee Sharing with Nonprofit Organizations State-by-State

The following chart presents the rules of professional conduct applicable to fee sharing between lawyers and nonprofit organizations. Because most jurisdictions follow the ABA Model Rule, differences are noted in blue. Last updated November 22, 2020.

ABA Model Rule 5.4 - Professional Independence of a Lawyer

(a)(4) a lawyer may share court-awarded legal fees with a nonprofit organization that employed, retained or recommended employment of the lawyer in the matter.

State	Fee Sharing with Nonprofits	Rule
Alabama	Not allowed	No exception for sharing of fees with nonprofit organizations
Alaska	Allowed	Follows Model Rule
Arizona	Allowed	No restrictions on fee sharing with non-lawyers
Arkansas	Allowed	Follows Model Rule
California	Allowed	5.4(a)(5) a lawyer or law firm* may share with or pay a court-awarded legal fee to a nonprofit organization that employed, retained or recommended employment of the lawyer or law firm* in the matter. (An asterisk (*) denotes terminology defined in rule 1.0.1).
Colorado	Allowed	Follows Model Rule
Connecticut	Allowed	5.4(a)(4) A lawyer may share legal fees from a court award or settlement with a nonprofit organization that employed, retained, or recommended employment of the lawyer in the matter.
D.C.	Allowed	5.4(a)(5) A lawyer may share legal fees, whether awarded by a tribunal or received in settlement of a matter, with a nonprofit organization that employed, retained, or recommended employment of the lawyer in the matter and that qualifies under Section 501(c)(3) of the Internal Revenue Code.
Delaware	Allowed	Follows Model Rule
Florida	Allowed for certain organizations	Rules Regulating the Fla. Bar, 4-5.4(a)(5) a lawyer may share court-awarded fees with a nonprofit, pro bono legal services organization that employed, retained, or recommended employment of the lawyer in the matter.
Georgia	Allowed	Follows Model Rule
Hawaii	Allowed	Follows Model Rule
Idaho	Allowed	Follows Model Rule
Illinois	Allowed	Follows Model Rule
Indiana	Not allowed	No exception for sharing of fees with nonprofit organizations

Iowa	Not allowed	No exception for sharing of fees with nonprofit organizations
Kansas	Allowed	Follows Model Rule
Kentucky	Not allowed	No exception for sharing of fees with nonprofit organizations
Louisiana	Allowed - through referral program operated by non-profit organization	5.4(a)(5) a lawyer may share legal fees as otherwise provided in Rule 7.2(c)(13) 7.2(c)(13) Payment for Recommendations; Lawyer Referral Service Fees. A lawyer shall not give anything of value to a person for recommending the lawyer's services, except that a lawyer ... may pay the usual charges of a lawyer referral service or other legal service organization only as follows: (A) A lawyer may pay the usual, reasonable and customary charges of a lawyer referral service operated by the Louisiana State Bar Association ... or any other not-for-profit organization, provided the lawyer referral service: (i) refers all persons who request legal services to a participating lawyer; (ii) prohibits lawyers from increasing their fee to a client to compensate for the referral service charges; and (iii) fairly and equitably distributes referral cases among the participating lawyers, within their area of practice, by random allotment or by rotation.
Maine	Allowed	Follows Model Rule
Maryland	Allowed	19-305.4(a)(5) an attorney may share court-awarded legal fees with a nonprofit organization that employed, retained or recommended employment of the attorney in the matter.
Massachusetts	Allowed for "qualified legal assistance organizations" as long as no profit	5.4(a)(4) a lawyer or law firm may agree to share a statutory or tribunal-approved fee award, or a settlement in a matter eligible for such an award, with a qualified legal assistance organization [bona fide organization that recommends, furnishes or pays for legal services to its members or beneficiaries, provided the office, service, or organization receives no profit from the rendition of legal services] that referred the matter to the lawyer or law firm, if the client consents, after being informed that a division of fees will be made, to the sharing of the fees and the total fee is reasonable.
Michigan	Allowed	Follows Model Rule
Minnesota	Allowed with court approval	5.4(a)(4) subject to full disclosure and court approval, a lawyer may share court-awarded legal fees with a nonprofit organization that employed, retained, or recommended employment of the lawyer in the matter
Mississippi	Not allowed	No exception for sharing of fees with nonprofit organizations
Missouri	Allowed	Follows Model Rule in Supreme Court Rules 4–5.4(a)(5))
Montana	Allowed	Follows Model Rule
Nebraska	Allowed	Follows Model Rule in § 3–505.4(a)(4)
Nevada	Allowed	Follows Model Rule
New Hampshire	Allowed	5.4(a)(4) a lawyer may share [court-awarded] legal fees with a nonprofit organization that employed, retained or recommended employment of the lawyer in the matter.
New Jersey	Allowed	Follows Model Rule in 5.4(a)(5)
New Mexico	Allowed	Follows Model Rule in 16–504(A)(5) (in State Court Rule 16)
New York	Not allowed	No exception for sharing of fees with nonprofit organizations
North Carolina	Allowed	Follows Model Rule in 5.4(a)(5) (of the Revised Rules of Professional Conduct of the N.C. State Bar)

North Dakota	Allowed	Follows Model Rule
Ohio	Allowed if a lawyer referral service	5.4(a) (4) a lawyer may share court-awarded legal fees with a nonprofit organization that employed or retained for recommended the lawyer in the matter; (5) a lawyer may share legal fees with a nonprofit organization that recommended employment of the lawyer in the matter, if the nonprofit organization complies with Rule XVI of the Supreme Court Rules for the Government of the Bar of Ohio. (Rule XVI requires the nonprofit organization to be a lawyer referral and information service that meets specific criteria).
Oklahoma	Allowed	5.4(a)(4) [The concept of this subsection of the ABA Model Rule is addressed in the Comment.] Comment [1A] Subsection (a) does not prohibit a lawyer from voluntarily sharing court-awarded legal fees with a nonprofit organization that employed, retained or recommended employment of the lawyer in the matter. This shall not be deemed a sharing of attorneys fees.
Oregon	Allowed	Follows model rule
Pennsylvania	Allowed	Follows model rule in 5.4(a)(5)
Rhode Island	Allowed with various rules	5.4(a)(4) a lawyer or law firm may agree to share a statutory or tribunal-approved fee award, or a settlement in a matter eligible for such an award , with an organization that referred the matter to the lawyer or law firm if: (i) the organization is one that is not for profit; (ii) the organization is tax-exempt under federal law; (iii) the fee award or settlement is made in connection with a proceeding to advance one or more of the purposes by virtue of which the organization is tax-exempt; and (iv) the tribunal approves the fee-sharing arrangement.
South Carolina	Not allowed	No exception for sharing of fees with nonprofit organizations
South Dakota	Allowed for some nonprofits	5.4(a)(5) A lawyer may share court-awarded legal fees with a nonprofit 501 (c)(3) or 501 (c)(6) organization that employed, retained or recommended employment of the lawyer in the matter.
Tennessee	Allowed	5.4(a)(4) a lawyer may share a court-awarded fee with a client represented in the matter or with a non-profit organization that employed, retained, or recommended employment of the lawyer in the matter; (6) a lawyer may pay to a registered non-profit intermediary organization a referral fee calculated by reference to a reasonable percentage of the fee paid to the lawyer by the client referred to the lawyer by the intermediary organization.
Texas	Not allowed	No exception for sharing of fees with nonprofit organizations
Utah	Allowed	5.4A(b) A lawyer or law firm may share legal fees with a nonlawyer if: (1) the lawyer or law firm provides written notice to the affected client and, if applicable, to any other person paying the legal fees; (2) the written notice describes the relationship with the nonlawyer, including the fact of the fee-sharing arrangement; and (3) the lawyer or law firm provides the written notice before accepting representation or before sharing fees from an existing client.
Vermont	Allowed	Follows Model Rule
Virginia	Not allowed	No exception for sharing of fees with nonprofit organizations
Washington	Not allowed	No exception for sharing of fees with nonprofit organizations
West Virginia	Allowed	Follows Model Rule

Wisconsin	Allowed	Follows Model Rule in Supreme Court Rules 20:5.4(a)(4)
Wyoming	Allowed	Follows Model Rule in 5.4(a)(5)

Fee Sharing Among Attorneys State-by-State

The following chart presents the rules of professional conduct applicable to fee sharing among lawyers at different firms or organizations. Because most jurisdictions follow the ABA Model Rules, differences are noted in blue. Last updated November 22, 2020.

ABA Model Rule 1.5 Fee Sharing Among Lawyers

(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.

State	Rule
Alabama	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.
Alaska	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.
Arizona	1.5(e) Two or more firms jointly working on a matter may divide a fee paid by a client if: (1) the firms disclose to the client in writing how the fee will be divided and how the firms will divide responsibility for the matter among themselves; (2) the client consents to the division of fees, in a writing signed by the client; (3) the total fee is reasonable; and (4) the division of responsibility among firms is reasonable in light of the client's need that the entire representation be completely and diligently completed.
Arkansas	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;

	<p>(2) the client is advised of and does not object to the participation of all the lawyers involved; and</p> <p>(3) the total fee is reasonable.</p>
California	<p>1.5.1(a) Lawyers who are not in the same law firm* shall not divide a fee for legal services unless:</p> <p>(1) the lawyers enter into a written* agreement to divide the fee;</p> <p>(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</p> <p>(3) the total fee charged by all lawyers is not increased solely by reason of the agreement to divide fees.</p> <p>1.5.1(b) This rule does not apply to a division of fees pursuant to court order.</p> <p>(An asterisk (*) denotes terminology defined in rule 1.0.1).</p>
Colorado	<p>1.5(d) ... a division of a fee between lawyers who are not in the same firm may be made only if:</p> <p>(1) the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation;</p> <p>(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</p> <p>(3) the total fee is reasonable.</p> <p>1.5(e) Referral fees are prohibited.</p>
Connecticut	<p>1.5(e) A division of fee between lawyers who are not in the same firm may be made only if:</p> <p>[the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation]</p> <p>(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</p> <p>(2) The total fee is reasonable.</p>
D.C.	<p>1.5(e) A division of a fee between lawyers who are not in the same firm may be made only if:</p> <p>(1) The division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation;</p> <p>(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;</p> <p>(3) The client gives informed consent to the arrangement; and</p> <p>(4) The total fee is reasonable</p>
Delaware	<p>1.5(e) A division of fee between lawyers who are not in the same firm may be made only if:</p> <p>[the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation]</p> <p>(1) the client is advised in writing of and does not object to the participation of all the lawyers involved; and</p> <p>(2) the total fee is reasonable.</p>
Florida (Rules	<p>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:</p>

Regulating the Fla. Bar, ch. 4)	(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. 4-1.5(f)(4)(D) delineates exact percentage requirements for lawyers assuming primary vs. secondary responsibility.
Georgia	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, by written agreement with the client, each lawyer assumes joint responsibility for the representation; (2) 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 (3) the total fee is reasonable.
Hawaii	1.5(f) 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.
Idaho	Follows Model Rule
Illinois	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 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.
Indiana	Follows Model Rule
Iowa	Follows Model Rule in 32:1.5(e)
Kansas	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. [the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation]
Kentucky	SCR 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, including the share each lawyer will receive, and the agreement is confirmed in writing; and (3) the total fee is reasonable.
Louisiana	1.5(e) A division of 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 each lawyer assumes joint responsibility for the representation] (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;

	<p>(2) the total fee is reasonable; and</p> <p>(3) each lawyer renders meaningful legal services for the client in the matter.</p>
Maine	<p>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:</p> <p>(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</p> <p>(2) the total fee of the lawyers does not exceed reasonable compensation for all legal services they rendered to the client.</p>
Maryland	Follows Model Rule
Massachusetts	<p>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.</p>
Michigan	<p>1.5(e) A division of a fee between lawyers who are not in the same firm may be made only if:</p> <p>[the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation]</p> <p>(1) the client is advised of and does not object to the participation of all the lawyers involved; and</p> <p>(2) the total fee is reasonable.</p>
Minnesota	Follows Model Rule
Mississippi	<p>1.5(e) A division of fee between lawyers who are not in the same firm may be made only if:</p> <p>(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;</p> <p>(2) the client is advised of and does not object to the participation of all the lawyers involved; and</p> <p>(3) the total fee is reasonable.</p>
Missouri	<p>Supreme Court Rules 4–1.5(e) A division of a fee between lawyers who are not in the same firm may be made only if:</p> <p>(1) the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation;</p> <p>(2) the client agrees to the association, including the share each lawyer will receive, and the agreement is confirmed in writing; and</p> <p>(3) the total fee is reasonable.</p>
Montana	Follows Model Rule
Nebraska	Follows Model Rule in § 3–501.5(e)
Nevada	<p>1.5(e) A division of a fee between lawyers who are not in the same firm may be made only if:</p> <p>(1) Reserved;</p> <p>(2) The client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing; and</p> <p>(3) The total fee is reasonable.</p>
New Hampshire	<p>1.5(f) A division of fee between lawyers who are not in the same firm may be made only if:</p> <p>(1) the division is made either:</p> <p>a. in reasonable proportion to the services performed or responsibility or risks assumed by each, or</p> <p>b. based on an agreement with the referring lawyer;</p>

	<p>(2) in either case above, the client agrees in a writing signed by the client to the division of fees;</p> <p>(3) in either case, the total fee charged by all lawyers is not increased by the division of fees and is reasonable.</p>
New Jersey	<p>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:</p> <p>(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</p> <p>(2) the client is notified of the fee division; and</p> <p>(3) the client consents to the participation of all the lawyers involved; and</p> <p>(4) the total fee is reasonable.</p>
New Mexico	Follows Model Rule in State Court Rule 16–105(F)
New York	<p>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:</p> <p>(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;</p> <p>(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</p> <p>(3) the total fee is not excessive.</p>
North Carolina	Follows Model Rule in Revised Rules of Professional Conduct of the North Carolina State Bar 1.5(e)
North Dakota	<p>1.5(e) A division of fee between lawyers who are not in the same firm may be made only if:</p> <p>(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;</p> <p>(2) after consultation, the client consents in writing to the participation of all the lawyers involved [including the share each lawyer will receive]; and</p> <p>(3) the total fee is reasonable.</p>
Ohio	<p>1.5(e) Lawyers who are not in the same firm may divide fees only if all of the following apply:</p> <p>(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;</p> <p>(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;</p> <p>(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) [on contingent fees] of this rule</p>
Oklahoma	<p>1.5(e) A division of a fee between lawyers who are not in the same firm may be made only if:</p> <p>(1) the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation;</p> <p>(2) the client agrees to the arrangement, [including the share each lawyer will receive,] and the agreement is confirmed in writing; and</p> <p>(3) the total fee is reasonable.</p>
Oregon	1.5(d) A division of a fee between lawyers who are not in the same firm may be made only if:

	<p>[the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation;]</p> <p>(1) the client gives informed consent to the fact that there will be a division of fees, and</p> <p>(2) the total fee of the lawyers for all legal services they rendered the client is not clearly excessive.</p>
Pennsylvania	<p>1.5(e) A lawyer shall not divide a fee for legal services with another lawyer who is not in the same firm unless:</p> <p>[the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation;]</p> <p>(1) the client is advised of and does not object to the participation of all the lawyers involved, and</p> <p>(2) the total fee of the lawyers is not illegal or clearly excessive for all legal services they rendered the client.</p>
Rhode Island	Follows Model Rule
South Carolina	Follows Model Rule
South Dakota	Follows Model Rule
Tennessee	<p>1.5(e) A division of a fee between lawyers who are not in the same firm may be made only if:</p> <p>(1) the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation;</p> <p>(2) the client agrees to the arrangement, [including the share each lawyer will receive,] and the agreement is confirmed in writing; and</p> <p>(3) the total fee is reasonable.</p>
Texas	<p>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:</p> <p>(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</p> <p>(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 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</p> <p>(3) the aggregate fee is not unconscionable (per 1.4(a): A fee is unconscionable if a competent lawyer could not form a reasonable belief that the fee is reasonable)</p> <p>1.04(g) Every agreement that allows a lawyer or law firm to associate other counsel ... or to refer the person to other counsel ... shall be confirmed by an arrangement conforming to paragraph (f). ... No attorney shall collect or seek to collect fees or expenses in connection with any such agreement that is not confirmed in that way, except for:</p> <p>(1) the reasonable value of legal services provided to that person; and</p> <p>(2) the reasonable and necessary expenses actually incurred on behalf of that person.</p>
Utah	Removed 1.5(e) in August 2020
Vermont	Follows Model Rule
Virginia	<p>1.5(e) A division of a fee between lawyers who are not in the same firm may be made only if:</p> <p>[the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation;]</p>

	<p>(1) the client is advised of and consents to the participation of all the lawyers involved;</p> <p>(2) the terms of the division of the fee are disclosed to the client and the client consents thereto;</p> <p>(3) the total fee is reasonable; and</p> <p>(4) the division of fees and the client's consent is obtained in advance of the rendering of legal services, preferably in writing.</p>
Washington	<p>1.5(e) A division of a fee between lawyers who are not in the same firm may be made only if:</p> <p>(1)(i) the division is in proportion to the services provided by each lawyer or each lawyer assumes joint responsibility for the representation;</p> <p>(ii) the client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing; and</p> <p>(iii) the total fee is reasonable; or</p> <p>(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.</p>
West Virginia	<p>1.5 cmt. [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.</p>
Wisconsin	<p>Supreme Court Rules 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:</p> <p>(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</p> <p>(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.</p>
Wyoming	<p>Follows Model Rule</p>