

## Joint Ventures and Associating Counsel: What Are The Ethical Rules?

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In virtually every state, joint ventures between lawyers and law firms are permissible so long as such arrangements comply with the applicable ethical rules. In most states, a division of fees between lawyers who are not in the same law firm is permissible so long as: (1) the client is properly advised and consents to such division and (2) the fee and fee split meet such additional ethical requirements as are set forth by the applicable state. In Virginia, Rule 1.5(e), Virginia Rules of Professional Conduct, Virginia State Bar, states:

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.

The Virginia State Bar contemplates that there will be situations in which joint ventures and associating counsel will take place. Indeed, the "Comment" by the Virginia State Bar regarding the "Division of Fee" states: "A division of fee refers to a single billing to a client covering the fee of two or more lawyers who are not in the same firm. A division of fee facilitates association of more than one lawyer in a matter in which neither alone could serve the client as well, and most often is used when the fee is contingent and the division is between a referring lawyer and a trial specialist". Moreover, the Virginia State Bar comments that Rule 1.5 (e) eliminated the requirement "that each lawyer involved in a fee-splitting arrangement assume full responsibility to the client, regardless of the degree of the lawyer's continuing participation" in order "to encourage referrals under appreciate circumstances". In fact, in its Comment to Rule 1:1, dealing with a lawyer's competence, the Virginia State Bar states:

"In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer's personal experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give the matter and whether it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question."

In this era of ever increasing complexity and specialization, joint ventures and associating counsel often is advisable and in the best interests of the client. The Virginia State Bar not only has clear ethical rules permitting joint venturing and associating counsel, but encourages such relationships between lawyers and law firms in appropriate circumstances.

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