

APPENDIX D — MODEL AND STATE RULES SUMMARIZED

	C34	MC ²	MR ³	E2K	ALI	AL	AZ	CA	CO ⁵
DIVISION MUST BE									
in proportion to services, and lawyers assume joint responsibility in writing									
conditioned on joint responsibility							X		
in proportion to services and responsibility		X							
in proportion to services; or lawyers assume joint responsibility in writing			X	X	X				
based on division of service or responsibility	X								
in proportion to services and responsibility; or with forwarding lawyer who assumes responsibility a partner would have									
in proportion to services; or based on joint responsibility in written agreement with client; or with forwarding lawyer						X ⁴			
CLIENT CONSENT¹									
in writing				X			X	X	
to terms					X			X	
to share/basis				X					
to effect of division on fee									
to fact of division of fee		X		X	X	X		X	
to division of responsibility									
to employment/participation of lawyer		X	X	X	X	X	X		
TOTAL FEE									
not in excess of reasonable compensation for all legal services									
not clearly in excess of reasonable compensation for all legal services		X							
not increased by division								X	
reasonable			X	X	X		X		
not clearly excessive						X			

not unconscionable									X	
	CT	DE	DC	FL ⁷	HA	IL	KS	ME	MA	MI
DIVISION MUST BE										
in proportion to services, and lawyers assume joint responsibility in writing					X					
conditioned on joint responsibility										
in proportion to services and responsibility										
in proportion to services; or lawyers assume joint responsibility in writing			X ⁶	X ⁷						
based on division of service or responsibility										
in proportion to services and responsibility; or with forwarding lawyer who assumes responsibility a partner would have						X				
in proportion to services; or based on joint responsibility in written agreement with client; or with forwarding lawyer										
CLIENT CONSENT ¹										
in writing		X	X	X ⁷		X				
to terms								X		
to share/basis				X ⁷		X ⁸				
to effect of division on fee			X							
to fact of division of fee	X			X ⁷		X	X		X	
to division of responsibility			X			X				
to employment/participation of lawyer	X	X	X		X	X		X	X	X
TOTAL FEE										
not in excess of reasonable compensation for all legal services								X		
not clearly in excess of reasonable compensation for all legal services										
not increased by division										
reasonable	X	X	X		X	X	X		X	X
not clearly excessive										
not unconscionable										

	MN	NV	NH	NY	NC	OH	OR	PA	TX	VA
DIVISION MUST BE										
in proportion to services, and lawyers assume joint responsibility in writing										
conditioned on joint responsibility										
in proportion to services and responsibility										
in proportion to services; or lawyers assume joint responsibility in writing	X	X		X	X	X				
based on division of service or responsibility			X							
in proportion to services and responsibility; or with forwarding lawyer who assumes responsibility a partner would have										
in proportion to services; or based on joint responsibility in written agreement with client; or with forwarding lawyer									X	
CLIENT CONSENT¹										
in writing		X			X	X				X ¹¹
to terms						X				X
to share/basis	X				X					
to effect of division on fee										
to fact of division of fee			X	X			X			
to division of responsibility										
to employment/participation of lawyer	X	X	X	X	X	X	X	X	X	X
TOTAL FEE										
not in excess of reasonable compensation for all legal services				X						
not clearly in excess of reasonable compensation for all legal services							X	X ⁹		
not increased by division										
reasonable	X	X	X		X	X				X
not clearly excessive										
not unconscionable									X ¹⁰	

	WA ¹²	WV	WI	WY
DIVISION MUST BE				
in proportion to services, and lawyers assume joint responsibility in writing				X ¹⁴
conditioned on joint responsibility				
in proportion to services and responsibility				
in proportion to services; or lawyers assume joint responsibility in writing	X	X ¹³	X	
based on division of service or responsibility				
in proportion to services and responsibility; or with forwarding lawyer who assumes responsibility a partner would have				
in proportion to services; or based on joint responsibility in written agreement with client; or with forwarding lawyer				
CLIENT CONSENT ¹				
in writing				
to terms				
to share/basis				
to effect of division on fee			X	
to fact of division of fee				
to division of responsibility				
to employment/participation of lawyer	X	X	X	X
TOTAL FEE				
not in excess of reasonable compensation for all legal services				
not clearly in excess of reasonable compensation for all legal services				
not increased by division				
reasonable	X	X	X	X
not clearly excessive				
not unconscionable				

1. "Client consent" is used as a shorthand for various formulations of client involvement, such as "consents . . . after full disclosure", "advised [or informed] of and does not object to", "signing a writing which discloses", etc.

2. The Model Code provision is in effect in two states, Iowa and Nebraska.

3. The Model Rule provision is in effect in twenty-one states: Alaska, Arkansas, Georgia, Idaho, Indiana, Kentucky, Louisiana, Maryland, Mississippi, Missouri, Montana, New Jersey, New Mexico, North Dakota, Oklahoma, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont.

4. Alabama: A division of fees is permitted with a forwarding lawyer only in contingent fee cases.

5. Colorado: Referral fees are expressly prohibited.

6. District of Columbia: Assumption of joint responsibility need not be in writing. The client must be advised of the division of responsibility.

7. Florida: If the fee division is based on the lawyers' joint responsibility, the lawyers must also agree to be available for consultation with the client. The client's written consent to the fee division is required only if it is based on the lawyers' joint responsibility. In personal injury cases, contingent fees are capped, the lawyer with primary responsibility must receive at least 75% of the fee, and the lawyer with secondary responsibility can receive no more than 25% of the fee.

8. Illinois: The client must sign a writing that discloses "(1) the amount of participation in the fee received with regard to the particular matter; (2) any other form of remuneration passing to the referring lawyer from the receiving lawyer, whether or not with regard to the particular matter; and (3) an established practice of referrals to and from or from and to the receiving lawyer and the referring lawyer."

9. Pennsylvania: The total fee also must not be illegal.

10. Texas: "A fee is unconscionable if a competent lawyer could not form a reasonable belief that the fee is reasonable."

11. Virginia: The client's consent must be obtained in advance of the rendition of legal services, preferably in writing.

12. Washington: There are no restrictions on a fee divided with a duly authorized referral service of the state bar or a county bar.

13. West Virginia: "The requirements of 'services performed' and 'joint responsibility' shall be satisfied in contingent fee cases when: (1) a lawyer who is regularly engaged in the full time practice of law evaluates a case and forwards it to another lawyer who is more experienced in the area or field of law being referred; (2) the client is advised that the lawyer who is more experienced in the area or field of law being referred will be primarily responsible for the litigation and that there will be a division of fees; and, (3) the total fee charged the client is reasonable and in keeping with what is usually charged for such matters in the community."

14. Wyoming: The rule adds: "A lawyer shall not pay or receive a fee or commission solely for referring a case to another lawyer."