

An Exception that Proves the Rule:
Fee Sharing with Nonlawyer Qualified Legal Assistance Organizations
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It is well known that, as a general rule, lawyers and law firms are not permitted to share legal fees with nonlawyers. This directive is explicitly set forth in Mass. R. Prof. C. 5.4(a).

Less well known, however, are the several exceptions to this same rule. In particular, and the focus of this article, Mass. R. Prof. C. 5.4(a)(4), in effect since 1998 and as amended effective May 1, 2016, allows a lawyer or law firm 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” if the qualified legal assistance organization referred the case to the lawyer or law firm and the client, after being informed that a division of fees will be made, consents to the sharing of the fees and the total fee is reasonable. The 2016 amendments simplify the rule by deleting additional requirements, some of which were in any event duplicative given the definition of a qualified legal assistance organization. The rule now reads as follows:

RULE 5.4 PROFESSIONAL INDEPENDENCE OF A LAWYER

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(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 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.

Although the usual concept of a “qualified legal assistance organization” might be that of a traditional provider of legal services to low-income clients, the phrase as defined by Mass. R. Prof. C. 1.0(j) is not so

limited. “Qualified legal assistance organization” is defined by this rule as follows:

RULE 1.0 TERMINOLOGY

(j) “Qualified legal assistance organization” means a legal aid, public defender, or military assistance office; or a 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, is not designed to procure financial benefit or legal work for a lawyer as a private practitioner, does not infringe the individual member’s freedom as a client to challenge the approved counsel or to select outside counsel at the client’s expense, and is not in violation of any applicable law.

Rule 1.0(j) does not further define “members or beneficiaries,” but the spirit of the rule suggests that the terms should be read broadly.

What does and does not constitute “receiv[ing] no profit” for purposes of this definition is elaborated upon in comment 8 to Rule 1.0:

The final category of qualified legal assistance organization requires that the organization “receives no profit from the rendition of legal services.” That condition refers to the entire legal services operation of the organization; it does not prohibit the receipt of a court-awarded fee that would result in a “profit” from that particular lawsuit. An award of attorneys’ fees that leads to an operating gain in a fiscal year does not create a “profit” for purposes of this subparagraph.

Read in light of the definition in Rule 1.0(j), Rule 5.4(a)(4) also does not require a qualified legal assistance organization to have an attorney on staff in order to be eligible for fee-sharing. To the contrary, comment 3 to Rule 5.4 explicitly states that paragraph (a)(4) is a “limited exception to the prohibition against fee-sharing with nonlawyers,” justified by “[t]he financial needs of these organizations, which serve important public ends...” A non-profit, community-based organization, for example, might therefore be a qualified legal assistance organization.

Whether any particular entity is a “qualified legal assistance organization” under Rule 1.0(j), much less whether it has met the additional

criteria for eligibility for fee-sharing under Rule 5.4(a)(4), is one of fact that this article cannot address. Both rules, as seen, have prerequisites that must be met. It is not, however, required that the organization itself be a legal services provider or that it have an attorney on staff.