

## *I Want* A PIECE OF THE ACTION

**ATTORNEY MARIA REPRESENTS PLAINTIFFS IN PERSONAL INJURY CASES.** She is hired by client Casey to sue for damages resulting from an automobile accident. Casey signs a fee agreement that provides for Maria to receive a percentage of any future recovery.

Maria prepares and files the lawsuit on Casey's behalf. The defendant's answer includes a cross-claim against a third-party defendant, and Maria determines that she should also file a claim against the third-party defendant in order to protect Casey's interests.

When Maria performs a conflict check, she discovers that the third-party defendant is a longtime client of her firm. The resulting conflict of interest will prevent her from representing Casey. Before she refers the case to a new attorney, however, she wants to ensure that she is compensated for her role in bringing in and developing the case. She has about eight hours of time into the case up to this point.

She considers the following, in order of her preference:

- Maria receives 50% of any attorney fee earned by the new attorney for the representation of Casey.
- Maria receives a negotiated referral fee to compensate her only for making the referral to the new attorney.
- Maria receives a fee based on quantum meruit for the minimal work that she has put into the case so far.

According to a 2020 ethics opinion, which of these options is permissible under the Texas Disciplinary Rules of Professional Conduct?

- A. A 50% share of the ultimate recovery
- B. A fee to compensate for the referral only
- C. Quantum meruit for the work Maria performed prior to discovering the conflict
- D. B and C
- E. All of the above
- F. None of the above



### ABOUT THE CENTER

The Texas Center for Legal Ethics was created by three former chief justices of the Supreme Court of Texas to educate lawyers about ethics and professionalism. Lawyers can access the Texas Disciplinary Rules of Professional Conduct, the Texas Lawyer's Creed, and a variety of other online ethics resources by computer or smart device at [legalethicstexas.com](http://legalethicstexas.com).

### DISCLAIMER

The information contained in Ethics Question of the Month is intended to illustrate an ethics issue of general interest in the Texas legal community; it is not intended to provide ethics advice that applies regardless of particular facts. For specific legal ethics advice, readers are urged to consult the Texas Disciplinary Rules of Professional Conduct (including the official comments) and other authorities and/or a qualified legal ethics adviser.

**ANSWER:** Fee splitting is permitted in Texas under Rule 1.04(f) of the Texas Disciplinary Rules of Professional Conduct, provided that any division of fees is "(i) in proportion to the professional services performed by each lawyer; or (ii) made between lawyers who assume joint responsibility for the representation. . . ."

The Professional Ethics Committee for the State Bar of Texas considered this question in Ethics Opinion 688 (May 2020). The opinion concludes that a lawyer who must withdraw because of a conflict of interest cannot possibly assume "joint responsibility" for the ongoing representation. It also finds that, under these circumstances, a 50-50 fee division "cannot reasonably be considered a division in proportion to the professional services performed."

While the opinion does not take a position on whether a quantum meruit claim may violate Texas *law*, it does conclude that such an arrangement here does not violate the Texas Disciplinary Rules of Professional Conduct.

Finally, pure referral fees are not permitted under Rule 1.04(f) because they do not meet the proportion of services and joint responsibility requirements. The correct answer is C. For more analysis, go to [legalethicstexas.com/ethics-question-of-the-month](http://legalethicstexas.com/ethics-question-of-the-month).