

**Rule 1.5.1 [2-200] Fee Divisions Among Lawyers  
(Commission's Proposed Rule Adopted on September 25 – 26, 2015 – Clean Version)**

- (a) Lawyers who are not in the same law firm\* shall not divide a fee for legal services unless:
  - (1) the lawyers enter into a written\* agreement to divide the fee;
  - (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
  - (3) the total fee charged by all lawyers is not increased solely by reason of the agreement to divide fees.
- (b) This Rule does not apply to a division of fees pursuant to court order.

**PROPOSED RULE OF PROFESSIONAL CONDUCT 1.5.1**  
**(Current Rule 2-200)**  
**Fee Divisions Among Lawyers**

**EXECUTIVE SUMMARY**

The Commission for the Revision of the Rules of Professional Conduct (“Commission”) has evaluated current rule 2-200 (Financial Arrangements Among Lawyers) in accordance with the Commission Charter, with a focus on the function of the rule as a disciplinary standard, and with the understanding that rule comments should be included only when necessary to explain a rule and not for providing aspirational guidance. In addition, the Commission considered the national standard of the American Bar Association (“ABA”) counterpart, Model Rule 1.5(e) (concerning fee divisions among lawyers) and the Restatement of Law Governing Lawyers counterpart, Restatement § 47 (Fee Splitting Between Lawyers Not In The Same Firm). The result of the Commission’s evaluation is proposed rule 1.5.1 (Fee Divisions Among Lawyers). This proposed rule has been adopted by the Commission for submission to the Board of Trustees for public comment authorization. A final recommended rule will follow the public comment process.

A key topic addressed by this proposed rule is the regulation of fee sharing by lawyers who are not in the same law firm, including typical referral fees. Most states follow Model Rule 1.5(e) that permits lawyers to divide a fee only to the extent that the referring lawyer is compensated for work actually done on the matter or if the referring lawyer assumes joint responsibility for the matter. The California rule is one of a minority of states that permits a “pure referral fee,” i.e., California permits lawyers to be compensated for referring a matter to another lawyer without requiring the referring lawyer’s continued involvement in the matter. In *Moran v. Harris* (1982) 131 Cal.App.3d 913, the California Court of Appeal held that the payment of referral fees is not contrary to public policy. The court stated, “If the ultimate goal is to assure the best possible representation for a client, a forwarding fee is an economic incentive to less capable lawyers to seek out experienced specialists to handle a case. Thus, with marketplace forces at work, the specialist develops a continuing source of business, the client is benefited and the conscientious, but less experienced lawyer is subsidized to competently handle the cases he retains and to assure his continued search for referral of complex cases to the best lawyers in particular fields.” (Id. at 921-922.) The Commission’s study found that no case since *Moran* had questioned the policy of permitting pure referral fees. In fact, the ABA’s Ethics 2000 Commission itself had recommended that the Model Rules permit pure referral fees, but that position was rejected by the ABA House of Delegates.

That is not to say that the proposed rule remains the same as the current rule. Rather, proposed rule 1.5.1 implements two material changes intended to increase protection for clients. First, the agreement between the lawyers to divide a fee must now be in writing and second, the client must consent to the division after full disclosure at or near the time that the lawyers enter into the agreement to divide the fee. Under current rule 2-200, there is no express requirement that the agreement between the lawyers be in writing and case law has held that client consent to the fee division need not be obtained until the fee is actually divided, which might not occur until years after the lawyers have entered into their agreement. These changes were made because an underlying reason for the rule is to assure that the client’s representation is not adversely affected as a result of an agreement to divide a fee. Deferring disclosure and client consent to the time the fee is divided denies

the client a meaningful opportunity to consider the concerns the rule is intended to address. (See *Mink v. Maccabee* (2004) 121 Cal.App.4th 835.)

In addition, proposed rule 1.5.1 tentatively includes the provision in current rule 2-200 permitting a gift or gratuity for a client referral (rule 2-200(B)). This is tentative because the Commission's work on the lawyer advertising and solicitation rule is pending and the provision on gifts or gratuities will be considered for inclusion in that rule.

Rule 1.5.1 [2-200] ~~Financial Arrangements~~ Fee Divisions Among Lawyers  
(Redline Comparison of the Proposed Rule to Current California Rule)

- (Aa) ~~A member~~ Lawyers who are not in the same law firm\* shall not divide a fee for legal services ~~with a lawyer who is not a partner of, associate of, or shareholder with the member~~ unless:
- (1) the lawyers enter into a written\* agreement to divide the fee;
  - (~~4~~2) ~~The~~ the client has consented in writing ~~thereto,\*~~ 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 ~~has been made in writing~~ to the client of: (i) the fact that a division of fees will be made ~~and,~~ (ii) the identity of the lawyers or law firms\* that are parties to the division, and (iii) the terms of ~~such~~ the division; and
  - (~~2~~3) ~~The~~ the total fee charged by all lawyers is not increased solely by reason of the ~~provision for division of fees and is not unconscionable as that term is defined in rule 4-200~~ agreement to divide fees.
- (b) This Rule does not apply to a division of fees pursuant to court order.