



# The State Bar of California

## **Rule 1.5.1 Fee Divisions Among Lawyers (Rule Approved by the Supreme Court, Effective November 1, 2018)**

- (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.

### **Comment**

The writing\* requirements of paragraphs (a)(1) and (a)(2) may be satisfied by one or more writings.\*

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

**EXECUTIVE SUMMARY**

The Commission for the Revision of the Rules of Professional Conduct (“Commission”) evaluated current rule 2-200 (Financial Arrangements Among Lawyers) in accordance with the Commission Charter, including the national standard of the 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). Refer to proposed rule 7.2(b) for a discussion of current rule 2-200(B).

**Rule As Issued For 90-day Public Comment**

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 in proportion 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.)

### **Post-Public Comment Revisions**

After consideration of comments received in response to the initial 90-day public comment period, the Commission made a non-substantive change to clarify that compliance with paragraphs (a)(1) and (a)(2) may be satisfied in either a single document, or through separate documents. The Commission also made other non-substantive stylistic changes.

With these changes, the Commission voted to recommend that the Board adopt the proposed rule.

The Board adopted proposed rule 1.5.1 at its November 17, 2016 meeting.

### **Supreme Court Action (May 10, 2018)**

The Supreme Court approved the rule as modified by the Court to be effective November 1, 2018. In the enumerated list in subparagraph (a)(2), semicolons were substituted for commas.

**Rule ~~2-200 Financial Arrangements~~ 1.5.1 Fee Divisions Among Lawyers  
(Redline Comparison to the California Rule Operative Until October 31, 2018)**

- (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 the terms of such; (ii) the identity of the lawyers or law firms\* that are parties to the division; and (iii) the terms of 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.
- (B) ~~Except as permitted in paragraph (A) of this rule or rule 2-300, a member shall not compensate, give, or promise anything of value to any lawyer for the purpose of recommending or securing employment of the member or the member's law firm by a client, or as a reward for having made a recommendation resulting in employment of the member or the member's law firm by a client. A member's offering of or giving a gift or gratuity to any lawyer who has made a recommendation resulting in the employment of the member or the member's law firm shall not of itself violate this rule, provided that the gift or gratuity was not offered in consideration of any promise, agreement, or understanding that such a gift or gratuity would be forthcoming or that referrals would be made or encouraged in the future.~~

**Comment**

The writing\* requirements of paragraphs (a)(1) and (a)(2) may be satisfied by one or more writings.\*