

**Table of Contents**

September 2, 2015 McCurdy Email to Drafting Team, cc Chair, Difuntorum, Mohr, Marlaud & Lee: ..... 1  
September 2, 2015 OCTC Memo re Rule 2-200 to Commission: ..... 1  
September 4, 2015 Ham Email to Drafting Team, cc Difuntorum, Mohr, A. Tuft, McCurdy & Lee:..... 1

**September 2, 2015 McCurdy Email to Drafting Team, cc Chair, Difuntorum, Mohr, Marlaud & Lee:**

The State Bar Office of Chief Trial Counsel (OCTC) memo providing comments on Rule 2-200 [1.5.1] was received and is attached. Please consider these comments prior to the September meeting.

Attached:

RRC2 - [1.1][1.3][1.4][1.5][1.5.1][5.1][5.2][5.3][5.4][8.4.1] - 09-02-15 OCTC Memo to RRC2.docx

RRC2 - [1.1][1.3][1.4][1.5][1.5.1][5.1][5.2][5.3][5.4][8.4.1] - 09-02-15 OCTC Memo to RRC2.pdf

**September 2, 2015 OCTC Memo re Rule 2-200 to Commission:**

\* \* \*

**F. Rule 2-200: Financial Arrangements Among Lawyers [Model Rule 1.5(e)]**

OCTC recommends that this rule remain a stand-alone rule and not part of rule 4-200. Financial agreements among lawyers is an issue distinct from charging a client an unconscionable or unreasonable fee.

Rule 2-200 should be amended to require that the client's written consent to a fee-sharing agreement be obtained prior to entering the agreement, not after, and certainly not after a fee has been divided. Additionally, the fee-sharing agreement should be in writing, a copy of which should be retained by the lawyers and a copy provided to the client. The rule should apply to court-awarded fees as well.

**September 4, 2015 Ham Email to Drafting Team, cc Difuntorum, Mohr, A. Tuft, McCurdy & Lee:**

I would like to comment on OCTC's proposals. Please add this email to the report.

Some of OCTC's comments are reflected in matters considered or which may be addressed by the proposed rule drafted by the subcommittee.

I have some concern about some of OCTC's proposals. For example, if the client must consent promptly to an agreement to split a fee, what is the public policy and public protection purpose served by imposing discipline if the client does not consent prior to entering into the agreement?

There are countervailing pragmatic and practical considerations which make that type of requirement a potential technical trap. I am not sure I understand why an attorney should be disciplined if he makes a good faith fee division agreement -- ultimately for client benefit -- which must be promptly approved by the client. In properly drafted agreements, client approval is a condition precedent to the effectiveness of the agreement. In practice, attorneys will reach an understanding on a division that is subject to acceptance and confirmation by the client. I see nothing improper about that, and nothing that justifies discipline.

One might ask why we regulate fee sharing at all if the overall fee charged is reasonable and the results obtained for the client are competent and professional. In the absence of an unconscionable fee or incompetent performance -- both disciplinable offenses -- there is nothing inherently venal about two attorneys working together and sharing a fee, or from one attorney paying another a referral fee, that merits attorney discipline.

I would need to understand more about OCTC's policy concerns before I would feel comfortable agreeing with some of these recommendations.