

Rule 1.5.1 [2-200] Fee Divisions Among Lawyers

- (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 subsection (a) and (b) may be satisfied by one or more writings.

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Synopsis of Public Comments

TOTAL = 14	A = 5
	D = 6
	M = 3
	NI = 0

No.	Commenter/Signatory	Comment on Behalf of Group?	A/D/M/NI ¹	Rule Section or Cmt.	Comment	RRC Response
X-2016-11	Kreis, John (07-20-16)	No	D	1.5.1	There is no client prejudice by maintaining the current rule as is. Fees are fees; they are proper or they are not. Why should a client be asked to agree in writing to a referral fee arrangement? The stated purpose appears to be “to improve client protection.” However, clients will doubtless exploit this requirement to extract concessions from attorneys as to fees and the like.	The Rules of Professional Conduct have long required the client to consent in writing to a division of a fee. Requiring informed written consent to the division of a fee protects the public by allowing the client to decide whether a referral fee should be paid, to determine whether the client is paying a reasonable attorneys’ fee, and to insure that the lawyer working on the matter retains a sufficient economic interest in the matter to properly handle the client’s case. Nothing in the rule will allow clients to improperly exploit attorneys or force financial concessions with which the attorney does not agree.
X-2016-17	Ward, James (08-01-16)	No	D	1.5.1	Current California rule should not be changed.	The proposed rule provides greater clarity, should reduce disputes about divisions of attorneys’ fees, and will provide to clients information earlier and give them greater control over the handling of their matters.
X-2016-20	Reynolds, Pamela (08-01-16)	No	D	1.5.1	Many lawyers make referrals either because they are too busy or because the potential client is	The proposed Rule continues the existing California policy of allowing attorneys to pay a

¹ A = AGREE with proposed Rule D = DISAGREE with proposed Rule M = AGREE ONLY IF MODIFIED NI = NOT INDICATED

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					looking for services in an area that the lawyer doesn't practice in. If the current rule is changed to require a lawyer to stay involved in the matter, it will discourage referrals and, instead, clients will be required to go out on their own to find a lawyer when they could have had a really good referral.	"pure" referral fee Unlike ABA Model Rule 1.5(e), the proposed Rule does not include a requirement that the lawyer receiving the referral fee remain involved in the case. This reflects a long-standing policy decision to increase the incentive for lawyers to refer matters to other lawyers who might be better able to handle the matters. See Anthony comment (X-2016-38) and the Commission's response.
X-2016-22	Cisneros, Mariano (08-01-16)	No	D	1.5.1	The bar should not add additional regulations in the fee area because lawyers are becoming inundated with unfunded liabilities already. Commenter has been "involuntarily made into a collection agency for the state when it comes to Medi-Cal liens. In addition, there are the requirements for a Minor's Compromise of a Settlement. This is another layer of bureaucracy.	Existing Rule 2-200 requires client consent in writing to a fee division. The proposed rule continues that requirement, and also requires that the fee splitting agreement between the lawyers be in writing. This requirement protects the public by requiring a written agreement that sets forth the terms of the fee division. See also Response to Kreis. The Commission is unable to see how this Rule would create an "unfunded liability" for any lawyer.
X-2016-38	Anthony, Caleb J. (08-11-16)	No	D	1.5.1	There is great benefit to both the client and lawyers by keeping the "pure" referral fee system intact. Under our current rules, a lawyer is much more likely to refer a case	The Commission agrees. The proposed Rule continues the existing California policy that permits pure referral fees. Please see response to

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					to another lawyer who is better suited for a particular arena of law if he knows he'll get a "pure" referral fee. The client gets more competent representation, the initial lawyer gets his referral fee, and the latter lawyer is happy to have a case that is suited for him - everybody wins!	Reynolds (X-2016-20).
X-2016-41	Kavcioglu, Aren (08-15-16)	No	A	1.5.1	I strongly support the proposed changes to Rule 2-200. There is not a valid reason why a client's agreement to a fee division must be in writing, but the attorneys' division itself does not need to be. In <u>Mink v. Maccabee</u> (2004) 121 Cal.App.4th 835, the court held that the division of fees between attorneys need not be in writing. That "written agreements are preferable to oral ones, and that written consents obtained early in the process are preferable to those obtained after-the-fact." The decision was based upon a strict interpretation of the statute as written, not based upon what is preferable or what makes good sense. It is time to change the language of the statute.	No response required.
X-2016-43j	COPRAC (Baldwin) (08-18-16)	Yes	M	1.5.1	We are in accord with most of the proposed revisions. There is one issue of concern, however, that we wish to highlight for the Commission's further	The proposed rule does not prohibit the creation of a single agreement signed by the attorneys and the client, so long as the single document satisfies all elements of the

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					consideration. That issue relates to the language requiring <i>lawyers</i> dividing a fee to enter into a <i>written</i> agreement regarding the fee division. Because written disclosure and consent must be made to and obtained from the <i>client</i> in order to comply with the rule, requiring a separate written agreement as between the lawyers themselves seems redundant and unnecessary to further the goal of public protection. We therefore recommend that section (a)(1) of the proposed rule be removed.	rule. However, separate agreements are permissible. Attorneys may prefer to document their fee division agreement separately, in one writing, and submit a second writing to the client satisfying the disclosure and consent requirements of the rule.
X-2016-50	Gonzalez, Timothy (08-23-16)	No	A	1.5.1	I strongly support the proposed changes to Rule 2-200. The current rule, where the client's agreement to the fee division must be in writing, but the agreement between the attorneys does not need to be in writing, makes no sense and invites abuse.	No response required.
X-2016-66e	San Diego County Bar Association (SDCBA) (Rilely) (09-21-16)	Yes	A	1.5.1	We support this proposed rule as an improvement over current Rule 2-200 in that it requires the client's written consent when the lawyers enter into the agreement or as soon afterward as reasonably practicable.	No response required.
X-2016-77	Kreiss, John (09-26-16)	No	D	1.5.1	The fee to be charged by the attorney to whom the matter would be referred must be fully disclosed. The client can try to	As the Commission noted in response to the commenter's July 20, 2016 submission, under the existing rule, the

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					negotiate the fee or seek other counsel. The proposal will insure clients will demand the benefit of the referral fee, which defeats the purpose of the referral from the referring attorney. In a highly competitive market, growing more competitive by the day, the proponents aim at wiping out a marketing tool for lawyers, especially sole practitioners	client's written consent is required before a lawyer can share a fee with another lawyer. Therefore, disclosure and client consent is already required under the existing rule. The proposed rule protects the public by allowing the client to give informed consent to the proposed fee division promptly after the lawyers agree to a division of a fee, and requires that the terms of the lawyers' agreement be in writing, which will tend to reduce disputes concerning the terms or method to be employed in dividing the fee. (See also response to Kreis, X-2016-11, above.)
X-2016-81	Melchior, Kurt (09-26-16)	No	M	1.5.1	Proposed Rule 1.6 [1.5], as well as comments 2 and 3 to Proposed Rule.1.15, draw a line between a "true retainer" and a flat fee, and an advance deposit against future fees although the latter is only implied, not spelled out. I appreciate that State Bar Court precedent supports this distinction, but I think that it does not reflect reality -- specifically, in that there are fee agreements -- I have made some myself and seen a substantial number of others --	[Although filed under Rule 1.5.1, the commenter's submission appears to be directed at proposed Rule 1.5, where a response can be found.]

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					where the client agrees to pay what is both a flat fee and a prepayment of fees for certain designated work on the lawyer's part.	NI = 0
X-2016-104k	Office of Chief Trial Counsel (OCTC) (Dresser) (09-27-16)	Yes	A	1.5.1	OCTC supports this rule.	No response required.
X-2016-120a	LGBT Bar Association of Los Angeles (King) (10-03-16)	Yes	A	1.5.1	LGBT supports this rule.	No response required.
X-2016-130	Malamud, Brad (10-04-16)	No	M	1.5.1	<p>1. Section (b) should be expanded to define when it applies. Thus, "This Rule does not apply to a division of fees pursuant to court order" should include, "if the court order specifically allocates or shares fees among/between the attorneys and the attorneys provided the court notice that they would be dividing the fees based on the court's order."</p> <p>2. The case law assumes the parties will agree who is the "primary attorney" and who is the "outside lawyer" as the terms are used. Both terms are in need of a definition to clarify.</p>	<p>The Commission declines to make the suggested change. The proposed rule is a disciplinary rule governing the conduct of lawyers. It is not a procedural rule that regulates the conduct of proceedings in court. The language would infringe on a court's inherent authority to supervise the proceedings before it.</p> <p>2. The Commission declines to make the suggested change. The terms "primary" and "secondary" when used to describe a lawyer are not used in the rule and are unnecessary to its application.</p>