



# The State Bar *of California*

## OFFICE OF PROFESSIONAL COMPETENCE

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Date: June 24, 2020

To: Members, Committee on Professional Responsibility and Conduct

From: Stephen Bundy, David Carr, Justin Fields

Subject: Explanatory Memo re Proposed Revisions to Rule 5.4

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The working group considered all the public comments received concerning the proposed revisions to rule 5.4 (Financial and Similar Arrangements with Nonlawyers) as recommended by the Task Force on Access Through Innovation of Legal Services.

The working group was persuaded by the California Lawyers Association's (CLA) recommendation that the proposed new exception for the division of legal fees arising from a settlement with a qualified non-profit was significant enough to merit its own new subsection (a)(6).

The working group also agreed with CLA's comment that such a fee division would in fact be a significant development requiring communication to the client. This concern was also raised by Leigh Ferrin on behalf of the Public Law Center as an important safeguard against abuse. Other comments expressed concern that limiting the fee sharing exception to organizations that qualify as a 501(c)(3) does not provide enough client protection on its own, absent disclosure to the client of the fee division. The working group noted that current rule 1.5.1 (Fee Divisions Among Lawyers) allows for the division of fees between lawyers, each of whom is subject to the Rules of Professional Conduct, only after specific conditions are met, including a written fee division agreement between the dividing lawyers or law firms, written consent of the client, and that the total fee not increase by reason of the division.

In light of the fact that fee divisions between lawyers and non-lawyers has thus far been generally prohibited outside the current exceptions contained in rule 5.4(a), the working group determined that the same safeguards contained in rule 1.5.1 should apply to fee divisions between lawyers and 501(c)(3) nonprofit organizations in the settlement context, where the fee-setting process is not public or subject to the protective supervision of a court. The public policy underlying rule 1.5.1 is to ensure that cases are not steered to a lawyer solely based on

who might pay the most generous fee rather than a lawyer who might serve the client's interests best. Because the same potential for abuse exists in division of fees derived from settlements with 501(c)(3) nonprofit organizations, the working group believes the same safeguards should apply.

The working group does not believe that requiring these established safeguards would interfere with the intended purpose of the rule change in increasing access to justice.