

PROFESSIONAL LIABILITY UPDATE

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FEE-SPLITTING

California Law

By Jordan Rojas

Mink v. Maccabee (2004) 121 Cal.App.4th 835

The Second District holds that a fee-splitting agreement between lawyers does not require the client's written consent prior actual division of fees.

Attorney Lyle Mink brought suit against attorney Dan Maccabee to recover attorney's fees pursuant to a retainer agreement, and Maccabee cross-complained for an attorney referral fee in a separate matter. The trial court sustained Mink's demurrer to the cross-complaint on the basis that Maccabee had not obtained written client consent pursuant to 2-200 of the California Rules of Professional Conduct ("Rule 2-200"). The client agreed in writing to the referral arrangement well after the matter had been successfully resolved and the agreement was not signed by Mink. The cross-complaint also included a cause of action in quantum meruit which the trial court dismissed.

The Court of Appeal reversed holding Rule 2-200 cannot reasonably be read to require the client's written consent prior to commencement of work or at any other time prior to the actual division of fees. The court further held that the rule does not include a requirement that the

fee-splitting agreement between the attorneys be in writing.

The court also reversed the trial court's dismissal of Maccabee's quantum meruit claim. The court relied on the recent California Supreme Court opinion in *Huskinson & Brown v. Wolf* (2004) 32 Cal.4th 453, (Professional Liability Update No. 172) which held that while a lawyer promised a referral fee may not recover for breach of contract in the absence of the client's written consent to the fee splitting arrangement, the attorney may recover under the theory of quantum meruit for the services rendered even in the absence of the client's written consent.

Comment: Although *Mink* does not require the client's consent to a fee-splitting arrangement prior to the division of fees or a written fee-splitting agreement between the attorneys, the court noted that written agreements are preferable to oral agreements, and written consent obtained early in the

process is preferable to those obtained later.

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