

Rule 5.4. Professional Independence of a Lawyer

(a) A lawyer may provide legal services pursuant to this Rule only if there is at all times no interference with the lawyer's:

- (1) professional independence of judgment,
- (2) duty of loyalty to a client, and
- (3) protection of client confidences.

(b) A lawyer may permit a person to recommend, retain, or pay the lawyer to render legal services for another.

(c) A lawyer or law firm may share legal fees with a nonlawyer if:

- (1) the fee to be shared is reasonable and the fee-sharing arrangement has been authorized as required by Utah Supreme Court Standing Order No. 15;
- (2) the lawyer or law firm provides written notice to the affected client and, if applicable, to any other person paying the legal fees;
- (3) the written notice describes the relationship with the nonlawyer, including the fact of the fee-sharing arrangement; and
- (4) the lawyer or law firm provides the written notice before accepting representation or before sharing fees from an existing client.

(d) A lawyer may practice law with nonlawyers, or in an organization, including a partnership, in which a financial interest is held or managerial authority is exercised by one or more persons who are nonlawyers, provided that the nonlawyers or the organization has been authorized as required by Utah Supreme Court Standing Order No. 15 and provided the lawyer shall:

- (1) before accepting a representation, provide written notice to a prospective client that one or more nonlawyers holds a financial interest in the organization in which the lawyer practices or that one or more nonlawyers exercises managerial authority over the lawyer; and

(2) set forth in writing to a client the financial and managerial structure of the organization in which the lawyer practices.

Comments

[1] The provisions of this Rule are to protect the lawyer's professional independence of judgment, to assure that the lawyer is loyal to the needs of the client, and to protect clients from the disclosure of their confidential information. Where someone other than the client pays the lawyer's fee or salary, manages the lawyer's work, or recommends retention of the lawyer, that arrangement does not modify the lawyer's obligation to the client. As stated in paragraph (a), such arrangements must not interfere with the lawyer's professional judgment. See also Rule 1.8(f) (lawyer may accept compensation from a third party as long as there is no interference with the lawyer's independent professional judgment and the client gives informed consent). This Rule does not lessen a lawyer's obligation to adhere to the Rules of Professional Conduct and does not authorize a nonlawyer to practice law by virtue of being in a business relationship with a lawyer. It may be impossible for a lawyer to work in a firm where a nonlawyer owner or manager has a duty to disclose client information to third parties, as the lawyer's duty to maintain client confidences would be compromised.

[2] The Rule also expresses traditional limitations on permitting a third party to direct or regulate the lawyer's professional judgment in rendering legal services to another. See also Rule 1.8(f) (lawyer may accept compensation from a third party as long as there is no interference with the lawyer's independent professional judgment and the client gives informed consent).

[3] Paragraph (c) permits individual lawyers or law firms to pay for client referrals, share fees with nonlawyers, or allow third party retention. In each of these instances, the financial arrangement must be reasonable, authorized as required under Supreme Court Standing Order No. 15, and disclosed in writing to the client before engagement and before fees are shared. Whether in accepting or paying for referrals, or fee-sharing,

the lawyer must protect the lawyer's professional judgment, ensure the lawyer's loyalty to the client, and protect client confidences.

[4] Paragraph (d) permits individual lawyers or law firms to enter into business or employment relationships with nonlawyers, whether through nonlawyer ownership or investment in a law practice, joint venture, or through employment by a nonlawyer owned entity. In each instance, the nonlawyer owned entity must be approved by the Utah Supreme Court for authorization under Standing Order No. 15.

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