

1 **Rule 5.4A. Professional Independence of a Lawyer.**

2 (a) A lawyer or law firm may provide legal services pursuant to sections (b) and (c) of
3 this Rule only if there is at all times no interference with the lawyer's:

4 (1) professional independence of judgment;

5 (2) duty of loyalty to a client; and

6 (3) protection of client confidences.

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

8 (1) the lawyer or law firm provides written notice to the affected client and, if
9 applicable, to any other person paying the legal fees;

10 (2) the written notice describes the relationship with the nonlawyer, including
11 the fact of the fee-sharing arrangement; and

12 (3) the lawyer or law firm provides the written notice before accepting
13 representation or before sharing fees from an existing client.

14 ~~(b) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:~~

15 ~~(1) an agreement by a lawyer with the lawyer's firm, partner or associate may provide~~
16 ~~for the payment of money, over a reasonable period of time after the lawyer's death, to~~
17 ~~the lawyer's estate or to one or more specified persons;~~

18 ~~(2)(i) a lawyer who purchases the practice of a deceased, disabled or disappeared~~
19 ~~lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other~~
20 ~~representative of that lawyer the agreed upon purchase price; and~~

21 ~~(2)(ii) a lawyer who undertakes to complete unfinished legal business of a deceased~~
22 ~~lawyer may pay to the estate of the deceased lawyer that proportion of the total~~
23 ~~compensation which fairly represents the services rendered by the deceased lawyer;~~
24 ~~and~~

25 ~~(3) a lawyer or law firm may include nonlawyer employees in a compensation or~~
26 ~~retirement plan, even though the plan is based in whole or in part on a profit sharing~~
27 ~~arrangement.~~(bc) A lawyer may permit a person to recommend, retain, or pay the
28 lawyer to render legal services for another.~~A lawyer shall not form a partnership with a~~
29 ~~nonlawyer if any of the activities of the partnership consist of the practice of law.~~

30 (ed) A lawyer shall not form a partnership with a nonlawyer if any of the activities of
31 the partnership consist of the practice of law.~~A lawyer shall not permit a person who~~
32 ~~recommends, employs or pays the lawyer to render legal services for another to direct~~
33 ~~or regulate the lawyer's professional judgment in rendering such legal services.~~

34 ~~(de)~~ A lawyer shall not practice with or in the form of a professional corporation or
35 association authorized to practice law for a profit, if:

36 (1) a nonlawyer owns any interest therein, except that a fiduciary representative
37 of the estate of a lawyer may hold the stock or interest of the lawyer for a
38 reasonable time during administration;

39 (2) a nonlawyer is a corporate director or officer thereof or occupies the position
40 of similar responsibility in any form of association other than a corporation; or

41 (3) a nonlawyer has the right to direct or control the professional judgment of a
42 lawyer.

43 (ef) A lawyer may practice in a non-profit corporation which is established to serve the
44 public interest provided that the nonlawyer directors and officers of such corporation
45 do not interfere with the independent professional judgment of the lawyer.

46 **Comments**

47 ~~[1] The provisions of this Rule express traditional limitations on sharing fees. These~~
48 ~~limitations are to protect the lawyer's professional independence of judgment. The~~
49 provisions of this Rule are to protect the lawyer's professional independence of
50 judgment, to assure that the lawyer is loyal to the needs of the client, and to protect
51 clients from the disclosure of their confidential information. Where someone other than

52 the client pays the lawyer's fee or salary, or recommends employment of the lawyer,
53 that arrangement does not modify the lawyer's obligation to the client and may not
54 interfere with the lawyer's professional judgment. ~~As stated in paragraph (c), such~~
55 ~~arrangements should not interfere with the lawyer's professional judgment.~~

56 [2] Paragraphs (b), (c), (d), and (e) permit individual lawyers or law firms to pay for
57 client referrals, share fees with nonlawyers, or allow third party retention in a context
58 that does not change the business model or structure of the lawyer's or firm's practice.
59 Paragraphs (b), (c), (d), and (e) do not permit any fee sharing or third party retention or
60 other business relationships that change the business model or structure of the firm's
61 practice, amounting to nonlawyer investment, ownership, or the practical equivalent.
62 Such relationships are only permitted subject to Rule 5.4B and Utah Supreme Court
63 Standing Order No. 15. Whether in accepting or paying for referrals, or fee-sharing, the
64 lawyer must protect the lawyer's professional judgment, ensure the lawyer's loyalty to
65 the client, and protect client confidences.

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

71 [3] This Rule differs from the ABA Model Rule.

72 ~~[a] Paragraph (a)(4) of the ABA Model Rule was not adopted because it is inconsistent~~
73 ~~with the provisions of Rule 7.2(b), which prohibit the sharing of attorney's fees. Rule~~
74 ~~5.4(e) addresses a lawyer practicing in a non-profit corporation that serves the public~~
75 ~~interest. There is no similar provision in the ABA Model Rules.~~

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