

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 this  
3 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 applicable,  
9 to any other person paying the legal fees;

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

12 (3) the lawyer or law firm provides the written notice before accepting representation or  
13 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 for the~~  
16 ~~payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's~~  
17 ~~estate or to one or more specified persons;~~

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

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

24 ~~(3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement~~  
25 ~~plan, even though the plan is based in whole or in part on a profit-sharing arrangement.~~

26 ~~(bc) A~~ lawyer may permit a person to recommend, retain, or pay the lawyer to render legal services for  
27 another. A lawyer shall not form a partnership with a nonlawyer if any of the activities of the  
28 partnership consist of the practice of law.

29 ~~(ed) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the~~  
30 ~~partnership consist of the practice of law. A lawyer shall not permit a person who recommends,~~

31 ~~employs or pays the lawyer to render legal services for another to direct or regulate the lawyer's~~  
32 ~~professional judgment in rendering such legal services.~~

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

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

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

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

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

#### 44 **Comments**

45 [1] ~~The provisions of this Rule express traditional limitations on sharing fees. These~~  
46 ~~limitations are to protect the lawyer's professional independence of judgment. The provisions of~~  
47 this Rule are to protect the lawyer's professional independence of judgment, to assure that the  
48 lawyer is loyal to the needs of the client, and to protect clients from the disclosure of their  
49 confidential information. Where someone other than the client pays the lawyer's fee or salary, or  
50 recommends employment of the lawyer, that arrangement does not modify the lawyer's  
51 obligation to the client and may not interfere with the lawyer's professional judgment. ~~As stated~~  
52 ~~in paragraph (c), such arrangements should not interfere with the lawyer's professional~~  
53 ~~judgment.~~

54 [2] Paragraphs (b), (c), (d), and (e) permit individual lawyers or law firms to pay for client  
55 referrals, share fees with nonlawyers, or allow third party retention in a context that does not  
56 change the business model or structure of the lawyer's or firm's practice. Paragraphs (b), (c), (d),  
57 and (e) do not permit any fee sharing or third party retention or other business relationships that  
58 change the business model or structure of the firm's practice, amounting to nonlawyer  
59 investment, ownership, or the practical equivalent. ~~Such relationships are only permitted subject~~  
60 ~~to Rule 5.4B and Utah Supreme Court Standing Order No. 15. Whether in accepting or paying~~

61 for referrals, or fee-sharing, the lawyer must protect the lawyer's professional judgment, ensure  
62 the lawyer's loyalty to the client, and protect client confidences.

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

67 [3] This Rule differs from the ABA Model Rule.

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

**Rule 5.4B. Professional Independence of a Lawyer**

(a) Notwithstanding Rule 5.4A, and if permitted by Utah Supreme Court Standing Order No. 15, a lawyer may provide legal services pursuant to section (b) of 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 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 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 employment 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 partnering 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.

31 | [2] The Rule also expresses traditional limitations on permitting a third party to direct or  
32 | regulate the lawyer's professional judgment in rendering legal services to another. See also Rule  
33 | 1.8(f) (lawyer may accept compensation from a third party as long as there is no interference  
34 | with the lawyer's independent professional judgment and the client gives informed consent).

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