July 26, 2010 KEM E-mail to Difuntorum, McCurdy & Lee:

There's an errant "or" in 5.4. With the addition of (a)(5), the "or" after paragraph (a)(3) should be removed.

July 26, 2010 Difuntorum E-mail to KEM, cc McCurdy & Lee:

We'll fix this but did you happen to notice if the errant "or" appears in all of the usual places, clean landscape, middle column, etc….?

July 26, 2010 KEM E-mail to Difuntorum, McCurdy & Lee:

It's just about everywhere. Note also that in the comparison chart, there is no "or" after (a)(4) as there should be.

July 26, 2010 Difuntorum E-mail to Lee & KEM, cc McCurdy:

Here are the corrected documents for Rule 5.4. The extra "or" after (a)(3) has been removed from: the clean landscape; the comparison to the current California rule; the comparison to the final report PCD; and the Rule Comment Explanation. Also, in the Rule Comment Explanation (middle column, of course) I added the omitted "or" at the end of (a)(4). That's all.

Attached:
RRC -1-310X [5-4] - Compare -Rule & Comment Explanation - XDFT4 (07-26-10)-RD.doc
RRC - 1-310X [5-4] - Rule - XDFT10.1 (06-30-10) cf. CRPC 1-310X-1 (07-26-10)-RD.doc
RRC - 1-310X [5-4] - Rule - XDFT10.1 (06-30-10) - CLEAN-LANDSCAPE-(07-26-10)-RD.doc
RRC - 1-310X [5-4] - Rule - XDFT10.1 (06-30-10) cf. PCD.doc

July 26, 2010 KEM E-mail to Difuntorum, McCurdy & Lee:

I've reviewed all of these and they all look fine to me.

August 4, 2010 McCurdy E-mail to RRC:

To date, we have received 3 public comments for the rules currently circulating for public comment. Given the extremely short turn-around time between now and the next meeting, <u>it is important that all members read all comments as they are received</u>. I have attached copies of the following comments on the following rules, along with public commenter charts providing a synopsis of these comments:

Rule 1.0.1 – Peter Liederman
Rule 3.8 – Ventura DA – Michael Schwartz
Rule 5.4 – Thomas Quinn

The public comments will be sent out to the entire Commission as they are received, and will also be available at the Google site under the heading "COMMENTS BATCH Y": http://Sites.google.com

IMPORTANT: Please be advised that the assignments deadline is **Thursday, August 26th at 9:00 am**, due to the August 25th public comment deadline. This means that the usual opportunity for sending e-mail comments after receipt of the agenda materials will not be possible. Instead, all Commission members are asked to send e-mails responding to the public comment letters as they are distributed. Please send e-mail comments to the entire Commission to assure that leadership and the drafting teams can account for e-mail comments in preparing assignments.

Below is a list of the drafting teams assigned to each rule under consideration at the August meeting. Folders for each rule with the assignment background materials are available at the Google site under the heading "RULES BATCH Y." As updated public commenter charts become available we will send them to you by e-mail and post them at the Google site.

III.A. Rule 1.0.1 - Terminology [1-100(B)] – KEHR, Julien, Sapiro
III.B. Rule 2.1 - Advisor [N/A] – LAMPORT, Vapnek
III.C. Rule 3.3 - Candor Toward the Tribunal [5-200] – TUFT, Peck, Ruvolo, Sapiro
III.D. Rule 3.8 - Special Responsibilities of a Prosecutor [5-110] (At the direction of the Board of Governors, public comment is being solicited only as to paragraph (d).) – FOY, Peck, Tuft
III.E. Rule 4.2 - Communications with a Represented Person [2-100] – MARTINEZ/TUFT
III.F. Rule 5.4 - Financial and Similar Arrangements with Nonlawyers [1-310, 1-320, 1-600] – MOHR, Martinez, Peck, Tuft
III.G. Rule 8.4 - Misconduct [1-120] – VAPNEK/PECK, Tuft

We're in the home stretch!

Attached:
RRC - 1-100 [1-0-1] - Public Comment Chart - By Commenter - YDFT1 (08-04-10).doc
RRC - 5-110 [3-8] - Public Comment Chart - By Commenter - YDFT1 (08-04-10).doc
RRC - 1-310X [5-4] - Public Comment Chart - By Commenter - YDFT1 (08-04-10).doc
RRC - [3-8] - Public Comment Complete - REV (08-04-10).pdf
RRC - [5-4] - Public Comment Complete - REV (08-04-10).pdf
RRC - [1-0-1] - Public Comment Complete - REV (08-04-10).pdf

August 8, 2010 Sondheim E-mail to RRC re 5.4:

In my Aug. 4 email I indicated I would give you my views as to what might be done in response to comments on the rules. Here is my view as to what approach might be taken in response to the comment from Mr. Quinn.

The newest changes in this proposed rule relate to changing the title of the rule, providing clarifications in subparagraphs (b) and (d) (3), and making a change in comment [4] which is a nit. Mr. Quinn's comment does not directly respond to any of these changes. Rather he raises an issue which was inherent in the draft of this rule as previously circulated for public comment. Since no change was previously made along the lines suggested by Mr. Quinn, this issue was

previously resolved by the Commission and therefore in essence approved by RAC when it sent out the limited changes which were made by the Commission.

My viewpoint is only a suggestion to the members of the drafting committee on 5.4 who are, of course, free to recommend whatever they deem appropriate in response to Mr. Quinn's comments. For example, if persuaded by Mr. Quinn's comments, portions of the rule and comments might be deleted.

August 9, 2010 Difuntorum E-mail to KEM, cc McCurdy & Lee re 5.4:

Regarding the comment that has been received on Rule 5.4 and Harry's message to the Commission, my recollection is that the Commission actively discussed elimination of the existing rules that prohibit partnerships with nonlawyers and fee splits with nonlawyers, as the essence of any potential MDP reform. In both instances, I believe the concept received little or no support within the Commission. In addition, I do not believe any public comment or testimony prompted any change in this majority position. Pasted below are excerpts from the action summaries where I found early votes taken that effectively killed MDP. Do you have anything more in your notes that document the Commission's rejection of MDP?

-Randy D.

> **MEETING SUMMARY - OPEN SESSION - February 21, 2003**
>
> Mr. Tuft presented a February 20, 2003 memorandum on proposed amendments to RPC 1-310. The memorandum offered four discussion drafts of a proposed amended RPC 1-310. The Chair invited discussion of: (i) whether there should be any rule at all; and (ii) assuming some form of the rule is continued, the issues raised by the various directions for possible amendment. Among the points raised during the discussion were the following:
>
> (1) Most states have a rule like RPC 1-310 and consideration should be given to simply updating the rule in light of what the ABA and other states have done.
>
> (2) The threshold issue raised by RPC 1-310 is whether regulation of forms of practice is an appropriate subject for a rule of professional conduct.
>
> (3) Regulation of forms of practice poses a serious practical obstacle because it is very hard to define any particular form and new forms tend to emerge and defy existing definitions.
>
> (4) The concept of MDP seems to be aimed at permitting conduct that otherwise is regarded as prohibited.
>
> (5) Lack of enforcement is a problem with this rule since it addresses only one form of practice with a non-attorney.
>
> (6) The rule should be eliminated to allow new opportunities for innovative delivery of services at low prices to the consumer. The market place is best regulator for forms of practice. Rules 1-600 and 1-320 would afford adequate public protection in the absence of this rule.

(7) If this rule is deleted but rules 1-600 and 1-320 are continued, then it would still be helpful to have the requirement for lawyer independence expressed in a more direct manner. The purpose of the rule is to protect the independent professional judgement of attorneys to ensure the attorney is in control of the lawyer function. There is also concern for making the delivery of legal services available to the public.

(8) The rule is important because it protects the professional independence of a lawyer in circumstances where it is most vulnerable to outside influence – non-lawyer capital and equity control renders it impossible to maintain professional independence.

(9) Consideration should be given to the issue of whether the "for-profit" nature of a particular form of practice is a determinative factor.

(10) An amendment to the rule should be explored along the lines of MR 5.4(d).

(11) A lawyer's focus on demonstrating value to a client should not be distracted by a practical need to demonstrate value to a non-lawyer partner or shareholder.

(12) The Commission must be careful to avoid unintended consequences to the regulation of dual-occupation or dual-licensee activities.

(13) The real world is a multi-disciplinary world and the issue of how best to ensure that a lawyer is in command of lawyer functions, regardless of the form of practice, is an issue that should be discussed fully before proceeding to debate what type of rule, if any, is needed.

(14) Profit v. non-profit is not a productive line of inquiry, instead, the focus should be on balancing full-client service against necessary controls to ensure independent professional judgment.

(15) The requirement for professional independent judgment could be stated positively in a rule, i.e.," thou shalt maintain professional independent judgment."

(16) The regulation afforded by this rule is interrelated to the regulation of UPL and fee splits.

(17) The Commission must account for the variable of conduct involving the use of the internet for both advertising and rendering a variety of professional services.

(18) The ability of solos and small firms to enter into relationships that reduce the cost of professional services deserves as much attention as the conduct of national or global professional service firms.

(19) The broad policy discussion of the purpose of this rule suggests a inextricable connection between MJP and MDP.

Following discussion, the Commission considered a recommendation that the Commission adopt the position that there should be no rule, whatsoever, on the topic of 'forming a partnership with a non-lawyer.' A vote to ascertain consensus revealed little support for this position. The Commission voted 2 yes, 9 no, and no abstentions.

The Commission next considered a recommendation that a drafting team be assigned the task of developing an issues outline for further discussion of proposed amendments to RPC 1-310. The Commission determined to proceed with the issues outline by a vote

of 10 yes, 0 no, and 1 abstention. Mr. Martinez, Ms. Peck, and Mr. Tuft (designated lead) were assigned as the drafting team. In proceeding with an issues outline, it was agreed that ABA MR 5.4 would provide a framework for the issues outline and that the drafting team would address the threshold question of whether a rule of professional conduct should regulate a form of practice rather than lawyer conduct. It was further agreed that the members of this RPC 1-310 drafting team would assume responsibility to coordinate a study of two other rules involving lawyer independence, rules 1-320 and 1-600, as well as coordinating the study with rule 1-300(A) and (B). (See item III.D., last paragraph.)

MEETING SUMMARY - OPEN SESSION - July 11, 2003

D. Consideration of Rules: 1-300 (Unauthorized Practice of Law); 1-310 (Forming a Partnership With a Non-Lawyer); 1-320 (Financial Arrangements With Non-Lawyers); and 1-600 (Legal Service Programs)

The Commission reviewed consensus positions reached at the prior meetings, including the consensus to retain the concepts of RPC 1-300(A) and (B) and RPC 1-310.

Based on the summary of prior consensus positions, the Commission considered a recommendation to retain the concept of RPC 1-320(A). By a consensus vote of 9 yes, 0 no, and 2 abstentions, the Commission agreed to retain the concept of RPC 1-320(A).

August 9, 2010 KEM E-mail to Difuntorum, McCurdy & Lee re 5.4:

I did the same research you did. I recalled that Nace strongly chastised the Commission for not moving forward in this area and Raul explained that the drafters had attempted to do so but were unable to come up with a reasonable solution. I agree that the public comment we just received does not warrant any further change in the Rule. Ethics 20-20 might influence the approach California will take in this area, but I think it best at this stage to go with the Rule we have.

August 25, 2010 KEM E-mail to Drafters (Tuft, Martinez & Peck), cc Chair & Staff:

I've attached a public commenter chart for rule 5.4. Only 2 comments received, only one of which required a substantive response.

Please let me know if you have any questions or suggestions. If you agree it is ready to be sent to the Commission, then staff can implement that.

Attached:
RRC - 1-310X [5-4] - Public Comment Chart - By Commenter - YDFT1.2 (08-24-10).doc

August 25, 2010 Tuft e-mail to Drafters, cc Chair & Staff:

I would add the following to the RRC's substantive response:

> Rule 5.4 has received wide acceptance and currently no jurisdiction other than D.C. has a rule that allows for non-lawyer ownership in a law firm and then only if the law firm is

limited to providing legal services. Alternative business structures as the commenter suggests have yet to receive sufficient consideration to warrant a rule at variance with Rule 5.4.

August 25, 2010 Peck E-mail to Drafters, Chair & Staff:

I agree that Mark's comment should be added to Kevin's fine work. Thanks to you both.

August 25, 2010 KEM E-mail to Tuft, cc Drafters, Chair & Staff:

Thanks, Mark. Changes made in attached. Kevin

Attached:
RRC - 1-310X [5-4] - Public Comment Chart - By Commenter - YDFT1.3 (08-25-10)KEM-MLT.doc

Rule 5.4 Financial and Similar Arrangements With Nonlawyers
[Sorted by Commenter]

***TOTAL* = 2** **Agree = 1** **Disagree = _** **Modify = 1** **NI = _**

No.	Commenter	Position[1]	Comment on Behalf of Group?	Rule Paragraph	Comment	RRC Response
2	COPRAC	A			COPRAC supports the adoption of proposed Rule 5.4 and the Comments to the Rule.	No response required.
1	Quinn, Thomas C.	M	No		There are many cases and areas of the law that involve accounting issues. Thus it seems arbitrary to not allow lawyers and accountants to become partners if that relationship is strictly regulated. Otherwise, attorneys will simply farm out these services to accountants as hired experts and pass the cost along to the client, itself an accounting device to avoid "fee sharing" with the bottom line to the client being the same but the service and process provided being more cumbersome. By allowing accountants and lawyers to work together in firms, it would provide for greater efficiency in service and would potentially keep accountants working under greater legal oversight on a higher ethical basis.	The Commission voted overwhelmingly (9 to 2) to reject a motion not to adopt a rule counterpart to Model Rule 5.4. The Commission concluded that the rule is critical because it protects the professional independence of a lawyer in circumstances where it is most vulnerable to outside influence – non-lawyer capital and equity control renders it impossible to maintain professional independence. Rule 5.4 has received wide acceptance and currently no jurisdiction other than the District of Columbia has adopted a rule that allows for non-lawyer ownership in a law firm. Even there, such arrangements are permitted only if the law firm is limited to providing legal services. Alternative business structures as the commenter suggests have yet to receive sufficient consideration to warrant a rule at variance with Rule 5.4.

[1] A = AGREE with proposed Rule D = DISAGREE with proposed Rule M = AGREE ONLY IF MODIFIED NI = NOT INDICATED

Proposed Rule 5.4 [1-310][1-320][1-600]
"Financial and Similar Arrangements With Nonlawyers"

(**XDraft 10.1, 6/30/10**)

Summary: Proposed Rule 5.4, which is based on Model Rule 5.4, gathers together in a single rule, concepts which are intended to promote the independence of a lawyer's professional judgment, but which are currently found in three separate California Rules of Professional Conduct: rules 1-310, 1-320, and 1-600.

Comparison with ABA Counterpart

Rule	Comment
☑ ABA Model Rule substantially adopted	☐ ABA Model Rule substantially adopted
☐ ABA Model Rule substantially rejected	☐ ABA Model Rule substantially rejected
☐ Some material additions to ABA Model Rule	☑ Some material additions to ABA Model Rule
☐ Some material deletions from ABA Model Rule	☐ Some material deletions from ABA Model Rule
☐ No ABA Model Rule counterpart	☐ No ABA Model Rule counterpart

Primary Factors Considered

☐ ☐ Existing California Law

Rules	RPC 1-310, 1-320, 1-600
Statute	Business & Professions Code § 6155.
Case law	*Frye v. Tenderloin Housing Clinic, Inc*. (2006) 38 Cal.4th 23

☐ State Rule(s) Variations (In addition, see provided excerpt of selected state variations.)

☐ Other Primary Factor(s)

Rule Revision Commission Action/Vote to Recommend Rule Adoption

(13 Members Total – votes recorded may be less than 13 due to member absences)

Approved on 10-day Ballot, Less than Six Members Opposing Adoption ☐

Vote (see tally below) ☑

Favor Rule as Recommended for Adoption __9__
Opposed Rule as Recommended for Adoption __0__
Abstain __1__

Approved on Consent Calendar ☐

Approved by Consensus ☐

Minority/Position Included on Model Rule Comparison Chart ☑ Yes ☐ No

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Stakeholders and Level of Controversy

☑ No Known Stakeholders

☐ The Following Stakeholders Are Known:

☐ Very Controversial – Explanation:

☐ Moderately Controversial – Explanation:

☑ Not Controversial

COMMISSION FOR THE REVISION OF THE RULES OF PROFESSIONAL CONDUCT

Proposed Rule 5.4* Financial And Similar Arrangements With Nonlawyers

June 2010

(Proposed rule following June 15, 2010 public comment deadline.)

INTRODUCTION:

Proposed Rule 5.4 closely follows the black letter rule of Model Rule 5.4, which is intended to protect the independence of a lawyer's professional judgment. However, the Commission recommends revisions and additions to the black letter, as well as addition of commentary, to afford greater client protection by providing (i) broader prohibitions on a lawyer's conduct and on relationships into which the lawyer might enter that would pose a threat to the lawyer's exercise of independent professional judgment, and (ii) better guidance on the exceptions to these prohibitions that are permitted under the Rule. These revisions include: (1) a prohibition on sharing legal fees either "directly or indirectly" with a nonlawyer (see Explanation for paragraph (a)); (2) extending that prohibition to sharing legal fees with an organization not authorized to practice law (id.); (3) extending the prohibition on practicing law with nonlawyers in a "partnership" to practicing law with nonlawyers in any kind of "organization" (see Explanation for paragraph (b)); (4) cautioning that a lawyer must avoid interference not only with the lawyer's independence of judgment but also with the lawyer-client relationship (see Explanation for paragraph (c)); (5) carrying forward explicitly the implied prohibition in current rule 1-320(A)(4) on a lawyer accepting referrals from a lawyer referral service that does not comply with the Board of Governors Minimum Standards on lawyer referral services; and (6) adding an express provision that clarifies the concerns the Supreme Court expressed in *Frye v. Tenderloin Housing Clinic, Inc*. (2006) 38 Cal.4th 23, about lawyers practicing with nonprofit organizations that permits third parties to interfere with a lawyer's independence of judgment. (see Explanation for paragraph (f)).

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* Proposed Rule 5.4, XDraft 10.1 (6/30/10).

INTRODUCTION (Continued):

Minority. A minority of the Commission takes the position that proposed Rule 5.4 expands the monopoly granted lawyers contrary to *Cianci v. Superior Court* (1985) 40 Cal. 3d 903, 919. The minority contends that the Rule prevents large organizations such as Target from providing low-cost legal services in the same manner as they provide other professional services.

Public Comment. Following the initial public comment period, the Commission revised the Rule extensively to provide better guidance to lawyers not only as to what conduct and relationships are prohibited under the Rule, but also as to the kinds of conduct and relationships that are expressly allowed. After the subsequent public comment period, the Commission agreed with legal services stakeholders who objected to the complete deletion of Model Rule 5.4(a)(4). See explanation of paragraph (a)(5) and Comment [8].

Current California Law and Variations in Other Jurisdictions. Proposed Rule 5.4 gathers together in a single rule concepts which are intended to promote the independence of a lawyer's professional judgment, but which are currently found in three separate California Rules of Professional Conduct: rules 1-310, 1-320, and 1-600.

Every jurisdiction has adopted some version of Model Rule 5.4. Model Rule 5.4(a)(4) (sharing of court-awarded legal fees with a nonprofit organization), has been rejected or modified in numerous jurisdictions. For example, Connecticut, Illinois, Indiana, Iowa, and New York have rejected the provision. Minnesota and Rhode Island require court approval for such arrangements. Florida adds that such fees can also be shared with a "pro bono legal services organization." The District of Columbia and New Hampshire permit such sharing, whether or not court-awarded. The District of Columbia, perhaps because of the extensive government lobbying engaged in by law firms in that jurisdiction, is unique in broadly permitting a lawyer to practice in a partnership or organization with nonlawyers. See "Selected State Variations," below.

ABA Model Rule **Rule 5.4 Professional Independence Of A Lawyer**	**Commission's Proposed Rule*** **Rule 5.4 Financial and Similar Arrangements With Nonlawyers**	**Explanation of Changes to the ABA Model Rule**
(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:	(a) A lawyer or law firm shall not share legal fees directly or indirectly with a ~~nonlawyer, except~~person who is not a lawyer or with an organization that is not authorized to practice law. This paragraph does not prohibit:	The introductory paragraph to paragraph (a) is based on Model Rule 5.4(a), but has been modified in two important respects. First, the Rule carries forward the prohibition in current California rule 1-320 against sharing fees with a nonlawyer either directly or indirectly. The inclusion of the adverbs "directly or indirectly" was originally included in rule 1-320 to preclude lawyers from avoiding application of this client-protective rule by creatively structuring relationships with nonlawyers who send them clients. Proposed Comments [1A] and [1B] elaborate on the application of that term to lawyer's payment of nonlawyer employees and contractors. Second, paragraph (a) has been modified to add a prohibition against sharing legal fees with an organization not authorized to practice law. This same prohibition is found in current California rule 1-600, which regulates legal services programs. See also State Bar of California Minimum Standards for Lawyer Referral Services.
(1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;	(1) an agreement by a lawyer with the lawyer's firm, partner, or associate ~~may~~ to provide for the payment of money~~,~~ or other consideration at once or over a reasonable period of time after the lawyer's death~~,~~ to the lawyer's estate or to one or more specified persons;	Subparagraph (a)(1) is based on Model Rule 5.4(a)(1), but with a change to clarify that the payment permitted under the provision need not be made over a period of time but can be made at once, and that consideration other than money may be paid.

* Proposed Rule 5.4, XDraft 10.1 (6/30/10). Redline/strikeout showing changes to the ABA Model Rule

ABA Model Rule Rule 5.4 Professional Independence Of A Lawyer	Commission's Proposed Rule* Rule 5.4 Financial and Similar Arrangements With Nonlawyers	Explanation of Changes to the ABA Model Rule
(2) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price;	(2) ~~a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price;~~ any payment authorized by Rule 1.17;	Model Rule 5.4(a)(2) has been simplified by including a reference to proposed Rule 1.17.
(3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement; and	(3) a lawyer or law firm ~~may include~~ including nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement~~; and~~, provided the plan does not otherwise violate these Rules or the State Bar Act; or	The word "including" has been substituted for "may include" to conform to the Commission's recommended syntax for the introductory clause to this Rule ("does not prohibit"). The proviso clause has been carried forward from current California rule 1-320(A)(3).
	(4) the payment of a prescribed registration, referral, or other fee by a lawyer to a lawyer referral service established, sponsored and operated in accordance with the State Bar of California's minimum standards for a lawyer referral service in California.	Paragraph (a)(4) carries forward current California rule 1-320(A)(4). It is intended to provide an exception for lawyer's paying certain fees to lawyer referral services that are in compliance with the cited minimum standards.
(4) a lawyer may share court-awarded legal fees with a nonprofit organization that employed, retained or recommended employment of the lawyer in the matter.	(~~4~~5) a ~~lawyer may share~~lawyer's or law firm's payment of court-awarded legal fees ~~with~~to a nonprofit organization that employed, retained or recommended employment of the lawyer or law firm in the matter.	The public comment version of the proposed rule deleted Model Rule 5.4(a)(4) due to concerns about potential abuse by lawyers who form issue-specific nonprofit organizations primarily to generate legal fees. However, input was received from legal services organizations indicating that the complete deletion of this language would detrimentally impact common practices that are consistent with existing law. In response, the Commission added, as new paragraph (a)(5), a slightly modified version of the Model

ABA Model Rule Rule 5.4 Professional Independence Of A Lawyer	Commission's Proposed Rule* Rule 5.4 Financial and Similar Arrangements With Nonlawyers	Explanation of Changes to the ABA Model Rule
		Rule language. In addition, Comment [8] was revised to state: "Paragraph (a)(5) makes clear that a lawyer is permitted to pay court-awarded legal fees to non-profit legal aid, mutual benefit, and advocacy groups that are not engaged in the unauthorized practice of law. See *Frye v. Tenderloin Housing Clinic, Inc.* (2006) 38 Cal.4th 23 [40 Cal.Rptr.3d 221]. See also Rule 6.3. Regarding a lawyer's contribution of legal fees to a legal services organization, see Rule 6.1 Comment [4]."
(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.	(b) A lawyer shall not form a partnership or other organization with a ~~nonlawyer~~person who is not a lawyer if any of the activities of the partnership or other organization consist of the practice of law.	Paragraph (b) is based on Model Rule 5.4(b). The phrase "or other organization" has been added so a lawyer cannot avoid application of the Rule by entering into a non-partnership arrangement with a person who is not a lawyer. The phrase "person who is not a lawyer" has been substituted for "nonlawyer."
(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.	(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's provision of legal services, or otherwise to interfere with the lawyer's independence of professional judgment, or with the lawyer-client relationship, in rendering such legal services.	Paragraph (c) is based on Model Rule 5.4(c). The Model Rule provision has been revised to clarify that it is generally interference with a lawyer's decisions concerning the legal services that are being provided that interfere with the lawyer's professional judgment. In addition, to enhance client protection, a prohibition on permitting interference with the lawyer-client relationship has been added.
(d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:	(d) A lawyer shall not practice with or in the form of a professional corporation or ~~association~~ organization authorized to practice law for a profit~~,~~ if:	The introductory clause to paragraph (d) is based on Model Rule 5.4(d). The term "organization" has been substituted for "association" because the former term is broader in scope.

ABA Model Rule Rule 5.4 Professional Independence Of A Lawyer	Commission's Proposed Rule* Rule 5.4 Financial and Similar Arrangements With Nonlawyers	Explanation of Changes to the ABA Model Rule
(1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;	(1) a ~~nonlawyer~~person who is not a lawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;	Subparagraph (d)(1) is identical to Model Rule 5.4(d)(1), except that "person who is not a lawyer" has been substituted for "nonlawyer."
(2) a nonlawyer is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation ; or	(2) a ~~nonlawyer~~person who is not a lawyer is a corporate director or officer thereof or occupies ~~the~~a position of similar responsibility in any form of ~~association~~organization other than a corporation; or	Subparagraph (d)(2) is identical to Model Rule 5.4(d)(1), except that "person who is not a lawyer" has been substituted for "nonlawyer" and "organization" for "association." See Explanation of Changes for paragraph (d). The word "a" has been substituted for "the" because it refers back to the non-specific "director or officer."
(3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.	(3) a ~~nonlawyer~~person who is not a lawyer has the right or authority to direct, influence or control the professional judgment of a lawyer.	Subparagraph (d)(1) is identical to Model Rule 5.4(d)(1), except that "person who is not a lawyer" has been substituted for "nonlawyer". The word "influence" has been added to reach those situations where a nonlawyer might, by indirect means, seek to "influence" a lawyer's exercise of professional judgment.
	(e) A lawyer shall not accept a referral from, or otherwise participate in, a lawyer referral service unless it complies with the Rules and Regulations Pertaining to Lawyer Referral Services as adopted by the Board of Governors of the State Bar.	Paragraph (e) has no counterpart in the Model Rule. It carries forward the implied prohibition current found in California rule 1-320(A)(4).

ABA Model Rule Rule 5.4 Professional Independence Of A Lawyer	Commission's Proposed Rule* Rule 5.4 Financial and Similar Arrangements With Nonlawyers	Explanation of Changes to the ABA Model Rule
	(f) A lawyer shall not practice with or in the form of a non-profit legal aid, mutual benefit or advocacy group if the nonprofit organization allows any third person or organization to interfere with the lawyer's independence of professional judgment, or with the lawyer-client relationship, or allows or aids any person, organization or group that is not a lawyer or not otherwise authorized to practice law, to practice law unlawfully.	Paragraph (f) has no counterpart in the Model Rule. It has been added to address the concerns raised by the California Supreme Court in *Frye v. Tenderloin Housing Clinic, Inc*. (2006) 38 Cal.4th 23 [40 Cal.Rptr.3d 221].

ABA Model Rule **Rule 5.4 Professional Independence Of A Lawyer Comment**	**Commission's Proposed Rule** **Rule 5.4 Duty to Avoid Interference with a Lawyer's Professional Independence Comment**	**Explanation of Changes to the ABA Model Rule**
[1] The provisions of this Rule express traditional limitations on sharing fees. These limitations are to protect the lawyer's professional independence of judgment. Where someone other than the client pays the lawyer's fee or salary, or recommends employment of the lawyer, that arrangement does not modify the lawyer's obligation to the client. As stated in paragraph (c), such arrangements should not interfere with the lawyer's professional judgment.	[1] A lawyer is required to maintain independence of professional judgment in rendering legal services. The provisions of this Rule ~~express traditional limitations on sharing fees. These limitations are to~~ protect the lawyer's ~~professional~~ independence of professional judgment~~. Where someone other than~~ by restricting the ~~client pays the lawyer's fee or salary, or recommends employment~~sharing of ~~the lawyer, that arrangement does not modify the lawyer's obligation to the client. As stated in paragraph (c), such arrangements should not interfere~~fees with a person or organization that is not authorized to practice law and by prohibiting a nonlawyer from directing or controlling the lawyer's professional judgment when rendering legal services to another.	Comment [1] is based on Model Rule 5.4, cmt. [1]. It has been modified to focus on the policy that underlies the Rule – protecting the lawyer's independence of professional judgment.
[2] This 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).	~~[2] This 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).~~	The Commission recommends that Model Rule 5.4, cmt. [2], not be adopted. The Model Rule simply restates language from the black letter rule that is self-explanatory. The cross-reference to Rule 1.8(f) in the second sentence appears in Comment [4] as a reference to proposed Rule 1.8.6, the counterpart of Model Rule 1.8(f), together with references to other proposed Rules concerned with protection a lawyer's exercise of judgment. See also Explanation of Changes for Comment [4], below.

ABA Model Rule **Rule 5.4 Professional Independence Of A Lawyer** **Comment**	**Commission's Proposed Rule** **Rule 5.4 Duty to Avoid Interference with a Lawyer's Professional Independence** **Comment**	**Explanation of Changes to the ABA Model Rule**
	[2] The prohibition against sharing fees "directly or indirectly" in paragraph (a) does not prohibit a lawyer or law firm from paying a bonus to or otherwise compensating a nonlawyer employee from general revenues received for legal services, provided the arrangement does not interfere with the independence of professional judgment of the lawyer or lawyers in the firm and does not violate any other rule of professional conduct. However, a nonlawyer employee's bonus or other form of compensation may not be based on a percentage or share of fees in specific cases or legal matters.	Comment [2] has no counterpart in the Model Rule. It was added following public comment to address concerns that the phrase "directly or indirectly" was too broad and might sweep within it legitimate nonlawyer *employee* compensation methods and plans that do not pose a threat a lawyer's independence of judgment.
	[3] Paragraph (a) also does not prohibit the payment to a third party who is not a lawyer for goods and services to a lawyer or law firm even if the compensation for such goods and services is paid from the lawyer's or law firm's general revenues. However, the compensation to a nonlawyer third party may not be determined as a percentage or share of the lawyer's or law firm's overall revenues or tied to fees in particular cases or legal matters. A lawyer may pay to a nonlawyer third party, such as a collection agency, a percentage of past due or delinquent fees in matters that have been concluded that the third party collects on the lawyer's behalf.	Comment [3] has no counterpart in the Model Rule. It was added following public comment to address concerns that the phrase "directly or indirectly" was too broad and might sweep within it legitimate *nonlawyer consultant and contractor* compensation methods and plans that do not pose a threat a lawyer's independence of judgment.

ABA Model Rule Rule 5.4 Professional Independence Of A Lawyer Comment	Commission's Proposed Rule Rule 5.4 Duty to Avoid Interference with a Lawyer's Professional Independence Comment	Explanation of Changes to the ABA Model Rule
	[4] Other rules also protect the lawyer's independence of professional judgment. (See, e.g., Rule 1.5.1, Rule 1.8.6, and Rule 5.1.)	Similar to Model Rule 5.4, cmt. [2], proposed Comment [4] provides a cross-reference to Rule 1.8.6, as well as other Rules that operate to safeguard a lawyer's independence of professional judgment.
	[5] A lawyer's shares of stock in a professional law corporation may be held by the lawyer as a trustee of a revocable living trust for estate planning purposes during the lawyer's life, provided that the corporation does not permit any nonlawyer trustee to direct or control the activities of the professional law corporation.	Comment [5] has no counterpart in the Model Rule. It has been added to provide important guidance to lawyers in dealing with a situation involving firm ownership that often arises in estate planning.
	[6] The distribution of legal fees pursuant to a referral agreement between lawyers who are not associated in the same law firm is governed by Rule 1.5.1 and not this Rule.	Comment [6] has no counterpart in the Model Rule. It has been added to provide a cross-reference to the Rule that governs fee divisions among lawyers.
	[7] A lawyer's participation in a lawyer referral service established, sponsored, supervised, and operated in conformity with the Minimum Standards for a Lawyer Referral Service in California is encouraged and is not, of itself, a violation of this Rule. See also Business and Professions Code section 6155.	Comment [7] has no counterpart in the Model Rule. It has been added to clarify that a lawyer is not only permitted to participate in a lawyer referral service that complies with California law, but is also encouraged to do so, as such services contribute to increase access to justice.

ABA Model Rule Rule 5.4 Professional Independence Of A Lawyer Comment	Commission's Proposed Rule Rule 5.4 Duty to Avoid Interference with a Lawyer's Professional Independence Comment	Explanation of Changes to the ABA Model Rule
	[8] Paragraph (a)(5) makes clear that a lawyer is permitted to pay court-awarded legal fees to non-profit legal aid, mutual benefit, and advocacy groups that are not engaged in the unauthorized practice of law. See Frye v. Tenderloin Housing Clinic, Inc. (2006) 38 Cal.4th 23 [40 Cal.Rptr.3d 221]. See also Rule 6.3. Regarding a lawyer's contribution of legal fees to a legal services organization, see Rule 6.1 Comment [4].	Comment [8] has no counterpart in the Model Rule. Comment [8] and [9] have been added to clarify that this rule is intended to work in concert with the regulatory standards expressed by the Supreme Court in *Frye v. Tenderloin Housing Clinic, Inc.* (2006) 38 Cal.4th 23 [40 Cal.Rptr.3d 221]. See Explanation of Changes for paragraph (a)(5).
	[9] This Rule applies to group, prepaid, and voluntary legal service programs, activities and organizations and to non-profit legal aid, mutual benefit and advocacy groups. However, nothing in this Rule shall be deemed to authorize the practice of law by any such program, organization or group.	See Explanation of Changes for Comment [9].
	[10] This Rule is not intended to abrogate case law regarding the relationship between insurers and lawyers providing legal services to insureds. (See *Gafcon, Inc. v. Ponsor Associates* (2002) 98 Cal.App.4th 1388 [120 Cal.Rptr.2d 392].)	Comment [10] has no counterpart in the Model Rule. It has been carried over from the Discussion to current California rule 1-600. It is an important clarification that the Rule does not override common arrangements between lawyers and insurers in providing legal services to insureds.

Rule 5.4 ~~Duty to Avoid Interference with a Lawyer's Professional Independence~~: Financial and Similar Arrangements With Nonlawyers

(Redline Comparison of the Proposed Rule to the Public Comment Draft)

(a) A lawyer or law firm shall not share legal fees directly or indirectly with a person who is not a lawyer or with an organization that is not authorized to practice law. This paragraph does not prohibit:

(1) an agreement by a lawyer with the lawyer's firm, partner, or associate to provide for the payment of money or other consideration at once or over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;

(2) any payment authorized by Rule 1.17;

(3) a lawyer or law firm including nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement, provided the plan does not otherwise violate these Rules or the State Bar Act; or

(4) the payment of a prescribed registration, referral, or other fee by a lawyer to a lawyer referral service established, sponsored and operated in accordance with the State Bar of California's minimum standards for a lawyer referral service in California~~.~~; or

(5) a lawyer's or law firm's payment of court-awarded legal fees to a nonprofit organization that employed, retained or recommended employment of the lawyer or law firm in the matter.

(b) A lawyer shall not form a partnership or other organization with a ~~nonlawyer~~person who is not a lawyer if any of the activities of the partnership or other organization consist of the practice of law.

(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's provision of legal services, or otherwise to interfere with the lawyer's independence of professional judgment, or with the lawyer-client relationship, in rendering such legal services.

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

(1) a person who is not a lawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;

(2) a person who is not a lawyer is a corporate director or officer thereof or occupies a position of similar responsibility in any form of organization other than a corporation; or

(3) a person who is not a lawyer has the right or authority to direct, influence or control the professional judgment of a lawyer.

(e) A lawyer shall not accept a referral from, or otherwise participate in, a lawyer referral service unless it complies with the Rules and

Regulations Pertaining to Lawyer Referral Services as adopted by the Board of Governors of the State Bar.

(f) A lawyer shall not practice with or in the form of a non-profit legal aid, mutual benefit or advocacy group if the nonprofit organization allows any third person or organization to interfere with the lawyer's independence of professional judgment, or with the lawyer-client relationship, or allows or aids any person, organization or group that is not a lawyer or not otherwise authorized to practice law, to practice law unlawfully.

COMMENT

[1] A lawyer is required to maintain independence of professional judgment in rendering legal services. The provisions of this Rule protect the lawyer's independence of professional judgment by restricting the sharing of fees with a person or organization that is not authorized to practice law and by prohibiting a nonlawyer from directing or controlling the lawyer's professional judgment when rendering legal services to another.

[2] The prohibition against sharing fees "directly or indirectly" in paragraph (a) does not prohibit a lawyer or law firm from paying a bonus to or otherwise compensating a nonlawyer employee from general revenues received for legal services, provided the arrangement does not interfere with the independence of professional judgment of the lawyer or lawyers in the firm and does not violate any other rule of professional conduct. However, a nonlawyer employee's bonus or other form of compensation may not be based on a percentage or share of fees in specific cases or legal matters.

[3] Paragraph (a) also does not prohibit the payment to a nonlawyer third party for goods and services to a lawyer or law firm even if the compensation for such goods and services is paid from the lawyer's or law firm's general revenues. However, the compensation to a nonlawyer third party may not be determined as a percentage or share of the lawyer's or law firm's overall revenues or tied to fees in particular cases or legal matters. A lawyer may pay to a nonlawyer third party, such as a collection agency, a percentage of past due or delinquent fees in matters that have been concluded that the third party collects on the lawyer's behalf.

[4] Other rules also protect the lawyer's independence of professional judgment. See, e.g., ~~Rule~~Rules 1.5.1, ~~Rule~~ 1.8.6, and ~~Rule~~ 5.1.

[5] A lawyer's shares of stock in a professional law corporation may be held by the lawyer as a trustee of a revocable living trust for estate planning purposes during the lawyer's life, provided that the corporation does not permit any nonlawyer trustee to direct or control the activities of the professional law corporation.

[6] The distribution of legal fees pursuant to a referral agreement between lawyers who are not associated in the same law firm is governed by Rule 1.5.1 and not this Rule.

[7] A lawyer's participation in a lawyer referral service established, sponsored, supervised, and operated in conformity with the Minimum Standards for a Lawyer Referral Service in California is encouraged and is not, of itself, a violation of this Rule. See also Business and Professions Code section 6155.

[8] ~~Paragraphs~~Paragraph (a)~~ and ~~(~~b~~5) ~~do not prohibit the payment of~~makes clear that a lawyer is permitted to pay court-awarded legal fees to non-profit legal aid, mutual benefit, and advocacy groups that are not engaged in the unauthorized practice of law. ~~(~~See *Frye v. Tenderloin Housing Clinic, Inc.* (2006) 38 Cal.4th 23 [40 Cal.Rptr.3d 221]~~, see~~. See also Rule 6.3.~~)~~ Regarding a lawyer's contribution of legal fees to a legal services organization, see Rule 6.1 Comment [4].

[9] This Rule applies to group, prepaid, and voluntary legal service programs, activities and organizations and to non-profit legal aid, mutual benefit and advocacy groups. However, nothing in this Rule shall be deemed to authorize the practice of law by any such program, organization or group.

[10] This Rule is not intended to abrogate case law regarding the relationship between insurers and lawyers providing legal services to insureds. ~~(~~See *Gafcon, Inc. v. Ponsor Associates* (2002) 98 Cal.App.4th 1388 [120 Cal.Rptr.2d 392].~~)~~

Rule ~~1-320~~5.4: Financial and Similar Arrangements With ~~Non-Lawyers~~Nonlawyers

(Redline Comparison of the Proposed Rule to Current California Rule)

(~~A~~a) ~~Neither a member nor a~~A lawyer or law firm shall ~~directly or indirectly~~not share legal fees directly or indirectly with a person who is not a lawyer~~, except~~ or with an organization that is not authorized to practice law. This paragraph does not prohibit:

(1) ~~An~~an agreement ~~between~~by a ~~member and a law~~lawyer with the lawyer's firm, partner, or associate ~~may~~to provide for the payment of money ~~after the member's death to the member's estate~~ or ~~to one~~other consideration at once or ~~more specified persons~~ over a reasonable period of time~~;~~ after the lawyer's death, to the lawyer's estate or to one or more specified persons;

~~(2) A member or law firm undertaking to complete unfinished legal business of a deceased member may pay to the estate of the deceased member or other person legally entitled thereto that proportion of the total compensation which fairly represents the services rendered by the deceased member; or~~

(2) any payment authorized by Rule 1.17;

(3) ~~A member~~a lawyer or law firm ~~may include non-member~~including nonlawyer employees in a compensation~~, profit-sharing,~~ or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement, ~~if such~~provided the plan does not ~~circumvent~~otherwise violate these ~~rules~~Rules or ~~*Business and Professions Code section 6000 et seq.*~~the State Bar Act; or

(4) ~~A member may pay~~the payment of a prescribed registration, referral, or ~~participation~~other fee by a lawyer to a lawyer referral service established, sponsored~~,~~ and operated in accordance with the State Bar of California's ~~Minimum Standards~~minimum standards for a ~~Lawyer Referral Service~~lawyer referral service in California~~.~~; or

(5) a lawyer's or law firm's payment of court-awarded legal fees to a nonprofit organization that employed, retained or recommended employment of the lawyer or law firm in the matter.

~~(B) A member shall not compensate, give, or promise anything of value to any person or entity for the purpose of recommending or securing employment of the member or the member's law firm by a client, or as a reward for having made a recommendation resulting in employment of the member or the member's law firm by a client. A member's offering of or giving a gift or gratuity to any person or entity having made a recommendation resulting in the employment of the member or the member's law firm shall not of itself violate this rule, provided that the gift or gratuity was not offered or given in consideration of any promise, agreement, or understanding that such a gift or gratuity would be forthcoming or that referrals would be made or encouraged in the future.~~

~~(C) A member shall not compensate, give, or promise anything of value to any representative of the press, radio, television, or other communication medium in anticipation of or in return for publicity of the member, the law firm, or any other member as such in a news item, but the incidental provision of food or beverage shall not of itself violate this rule.~~

~~**Discussion:**~~

~~Rule 1-320(C) is not intended to preclude compensation to the communications media in exchange for advertising the member's or law firm's availability for professional employment.~~

~~Rule 1-310 Forming a Partnership With a Non-Lawyer~~

(b) A ~~member~~lawyer shall not form a partnership or other organization with a person who is not a lawyer if any of the activities of ~~that~~the partnership or other organization consist of the practice of law.

(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's provision of legal services, or otherwise to interfere with the lawyer's independence of professional judgment, or with the lawyer-client relationship, in rendering such legal services.

~~***Discussion:***~~

~~Rule 1-310 is not intended to govern members' activities which cannot be considered to constitute the practice of law. It is intended solely to preclude a member from being involved in the practice of law with *a person who is not a lawyer*.~~

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

(1) a person who is not a lawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;

(2) *a person who is not a lawyer* is a corporate director or officer thereof or occupies a position of similar responsibility in any form of organization other than a corporation; or

(3) a person who is not a lawyer has the right or authority to direct, influence or control the professional judgment of a lawyer.

(e) A lawyer shall not accept a referral from, or otherwise participate in, a lawyer referral service unless it complies with the Rules and Regulations Pertaining to Lawyer Referral Services as adopted by the Board of Governors of the State Bar.

~~Rule 1-600 Legal Service Programs~~

(~~A~~f) A ~~member~~lawyer shall not ~~participate in a nongovernmental program, activity,~~practice with or ~~organization furnishing, recommending, or paying for~~in the form of a non-profit legal ~~services~~aid, ~~which~~mutual benefit or advocacy group if the nonprofit organization allows any third person or organization to interfere with the ~~member's~~lawyer's independence of professional judgment, or with the ~~client~~ lawyer-client relationship, or allows ~~unlicensed persons~~or aids any person, organization or group that is not a lawyer or not otherwise authorized to practice law, ~~or allows any third person or organization~~ to ~~receive directly or indirectly any part of the consideration paid to the member except as permitted by these rules, or otherwise violates the State Bar Act or these rules~~practice law unlawfully.

~~(B) The Board of Governors of the State Bar shall formulate and adopt Minimum Standards for Lawyer Referral Services, which, as from time to time amended, shall be binding on members.~~

~~**Discussion:**~~ **COMMENT**

[1] A lawyer is required to maintain independence of professional judgment in rendering legal services. The provisions of this Rule protect the lawyer's independence of professional judgment by restricting the sharing of fees with a person or organization that is not authorized to practice law and by prohibiting a nonlawyer from directing or controlling the lawyer's professional judgment when rendering legal services to another.

[2] The prohibition against sharing fees "directly or indirectly" in paragraph (a) does not prohibit a lawyer or law firm from paying a bonus to or otherwise compensating a nonlawyer employee from general revenues received for legal services, provided the arrangement does not interfere with the independence of professional judgment of the lawyer or lawyers in the firm and does not violate any other rule of professional conduct. However, a nonlawyer employee's bonus or other form of compensation may not be based on a percentage or share of fees in specific cases or legal matters.

[3] Paragraph (a) also does not prohibit the payment to a nonlawyer third party for goods and services to a lawyer or law firm even if the compensation for such goods and services is paid from the lawyer's or law firm's general revenues. However, the compensation to a nonlawyer third party may not be determined as a percentage or share of the lawyer's or law firm's overall revenues or tied to fees in particular cases or legal matters. A lawyer may pay to a nonlawyer third party, such as a collection agency, a percentage of past due or delinquent fees in matters that have been concluded that the third party collects on the lawyer's behalf.

[4] Other rules also protect the lawyer's independence of professional judgment. See, e.g., Rules 1.5.1, 1.8.6, and 5.1.

[5] A lawyer's shares of stock in a professional law corporation may be held by the lawyer as a trustee of a revocable living trust for estate planning purposes during the lawyer's life, provided that the corporation does not permit any nonlawyer trustee to direct or control the activities of the professional law corporation.

[6] The distribution of legal fees pursuant to a referral agreement between lawyers who are not associated in the same law firm is governed by Rule 1.5.1 and not this Rule.

[7] ~~The~~A lawyer's participation ~~of a member~~ in a lawyer referral service established, sponsored, supervised, and operated in conformity with the Minimum Standards for a Lawyer Referral Service in California is encouraged and is not, of itself, a violation of ~~these rules~~this Rule. See also *Business and Professions Code section* 6155.

~~Rule 1-600 is not intended to override any contractual agreement or relationship between insurers and insureds regarding the provision of legal services.~~

~~Rule 1-600 is not intended to apply to the activities of a public agency responsible for providing legal services to a government or to the public.~~

~~For purposes of paragraph (A), "a nongovernmental program, activity, or organization" includes, but is not limited *to group, prepaid, and voluntary legal service programs, activities*, or *organizations.*~~

[8] Paragraph (a)(5) makes clear that a lawyer is permitted to pay court-awarded legal fees to non-profit legal aid, mutual benefit, and advocacy groups that are not engaged in the unauthorized practice of law. See *Frye v. Tenderloin Housing Clinic, Inc.* (2006) 38 Cal.4th 23 [40 Cal.Rptr.3d 221]. See also Rule 6.3. Regarding a lawyer's contribution of legal fees to a legal services organization, see Rule 6.1 Comment [4].

[9] This Rule applies *to group, prepaid, and voluntary legal service programs, activities* and *organizations* and to non-profit legal aid, mutual benefit and advocacy groups. However, nothing in this Rule shall be deemed to authorize the practice of law by any such program, organization or group.

[10] This Rule is not intended to abrogate case law regarding the relationship between insurers and lawyers providing legal services to insureds. See *Gafcon, Inc. v. Ponsor Associates* (2002) 98 Cal.App.4th 1388 [120 Cal.Rptr.2d 392].

Rule 5.4: Financial and Similar Arrangements With Nonlawyers

(Commission's Proposed Rule – Clean Version)

(a) A lawyer or law firm shall not share legal fees directly or indirectly with a person who is not a lawyer or with an organization that is not authorized to practice law. This paragraph does not prohibit:

(1) an agreement by a lawyer with the lawyer's firm, partner, or associate to provide for the payment of money or other consideration at once or over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;

(2) any payment authorized by Rule 1.17;

(3) a lawyer or law firm including nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement, provided the plan does not otherwise violate these Rules or the State Bar Act; or

(4) the payment of a prescribed registration, referral, or other fee by a lawyer to a lawyer referral service established, sponsored and operated in accordance with the State Bar of California's minimum standards for a lawyer referral service in California; or

(5) a lawyer's or law firm's payment of court-awarded legal fees to a nonprofit organization that employed, retained or recommended employment of the lawyer or law firm in the matter.

(b) A lawyer shall not form a partnership or other organization with a person who is not a lawyer if any of the activities of the partnership or other organization consist of the practice of law.

(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's provision of legal services, or otherwise to interfere with the lawyer's independence of professional judgment, or with the lawyer-client relationship, in rendering such legal services.

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

(1) a person who is not a lawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;

(2) a person who is not a lawyer is a corporate director or officer thereof or occupies a position of similar responsibility in any form of organization other than a corporation; or

(3) a person who is not a lawyer has the right or authority to direct, influence or control the professional judgment of a lawyer.

(e) A lawyer shall not accept a referral from, or otherwise participate in, a lawyer referral service unless it complies with the Rules and Regulations Pertaining to Lawyer Referral Services as adopted by the Board of Governors of the State Bar.

(f) A lawyer shall not practice with or in the form of a non-profit legal aid, mutual benefit or advocacy group if the nonprofit organization allows any third person or organization to interfere with the lawyer's

independence of professional judgment, or with the lawyer-client relationship, or allows or aids any person, organization or group that is not a lawyer or not otherwise authorized to practice law, to practice law unlawfully.

COMMENT

[1] A lawyer is required to maintain independence of professional judgment in rendering legal services. The provisions of this Rule protect the lawyer's independence of professional judgment by restricting the sharing of fees with a person or organization that is not authorized to practice law and by prohibiting a nonlawyer from directing or controlling the lawyer's professional judgment when rendering legal services to another.

[2] The prohibition against sharing fees "directly or indirectly" in paragraph (a) does not prohibit a lawyer or law firm from paying a bonus to or otherwise compensating a nonlawyer employee from general revenues received for legal services, provided the arrangement does not interfere with the independence of professional judgment of the lawyer or lawyers in the firm and does not violate any other rule of professional conduct. However, a nonlawyer employee's bonus or other form of compensation may not be based on a percentage or share of fees in specific cases or legal matters.

[3] Paragraph (a) also does not prohibit the payment to a nonlawyer third party for goods and services to a lawyer or law firm even if the compensation for such goods and services is paid from the lawyer's or law firm's general revenues. However, the compensation to a nonlawyer third party may not be determined as a percentage or share of the lawyer's or law firm's overall revenues or tied to fees in particular cases or legal matters. A lawyer may pay to a nonlawyer third party, such as a collection agency, a percentage of past due or delinquent fees in matters that have been concluded that the third party collects on the lawyer's behalf.

[4] Other rules also protect the lawyer’s independence of professional judgment. See, e.g., Rules 1.5.1, 1.8.6, and 5.1.

[5] A lawyer’s shares of stock in a professional law corporation may be held by the lawyer as a trustee of a revocable living trust for estate planning purposes during the lawyer’s life, provided that the corporation does not permit any nonlawyer trustee to direct or control the activities of the professional law corporation.

[6] The distribution of legal fees pursuant to a referral agreement between lawyers who are not associated in the same law firm is governed by Rule 1.5.1 and not this Rule.

[7] A lawyer’s participation in a lawyer referral service established, sponsored, supervised, and operated in conformity with the Minimum Standards for a Lawyer Referral Service in California is encouraged and is not, of itself, a violation of this Rule. See also Business and Professions Code section 6155.

[8] Paragraph (a)(5) makes clear that a lawyer is permitted to pay court-awarded legal fees to non-profit legal aid, mutual benefit, and advocacy groups that are not engaged in the unauthorized practice of law. See *Frye v. Tenderloin Housing Clinic, Inc.* (2006) 38 Cal.4th 23 [40 Cal.Rptr.3d 221]. See also Rule 6.3. Regarding a lawyer’s contribution of legal fees to a legal services organization, see Rule 6.1 Comment [4].

[9] This Rule applies to group, prepaid, and voluntary legal service programs, activities and organizations and to non-profit legal aid, mutual benefit and advocacy groups. However, nothing in this Rule shall be deemed to authorize the practice of law by any such program, organization or group.

[10] This Rule is not intended to abrogate case law regarding the relationship between insurers and lawyers providing legal services to insureds. See *Gafcon, Inc. v. Ponsor Associates* (2002) 98 Cal.App.4th 1388 [120 Cal.Rptr.2d 392].

Rule 5.4: Professional Independence of a Lawyer

STATE VARIATIONS

(The following is an excerpt from Regulation of Lawyers: *Statutes and Standards* (2010 Ed.) by Steven Gillers, Roy D. Simon and Andrew M. Perlman.)

California: Rule 1-310 forbids lawyers to form partnerships with nonlawyers if ''any of the activities of that partnership consist of the practice of law.'' Rule 1-320 forbids sharing legal fees with nonlawyers with exceptions, including those described in Rules 5.4(1) and (3).

Colorado: Colorado restores language from the 1983 version of ABA Model Rule 5.4 providing that ''a lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer that proportion of the total compensation which fairly represents the services rendered by the deceased lawyer.'' Colorado Rule 5.4(d) provides that a lawyer shall not practice with or in the form of a professional corporation, association, or limited liability company, authorized to practice law for a profit, ''except in accordance with C.R.C.P. 265 and any successor rule or action adopted by the Colorado Supreme Court.''

Connecticut: Connecticut omits ABA Model Rule 5.4(a)(4) (relating to fee sharing with nonprofit organizations).

District of Columbia: D.C. Rules 5.4(a)(4) and (b), which are unique in the United States, permit fee sharing between lawyers and nonlawyers ''in a partnership or other form of organization which meets the requirements of paragraph (b).'' Paragraph (b) provides:

> (b) A lawyer may practice law in a partnership or other form of organization in which a financial interest is held or managerial authority is exercised by an individual nonlawyer who performs professional services which assist the organization in providing legal services to clients, but only if:
>
> (1) The partnership or organization has as its sole purpose providing legal services to clients;
>
> (2) All persons having such managerial authority or holding a financial interest undertake to abide by these Rules of Professional Conduct;
>
> (3) The lawyers who have a financial interest or managerial authority in the partnership or organization undertake to be responsible for the nonlawyer participants to the same extent as if nonlawyer participants were lawyers under Rule 5.1;

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(4) The foregoing conditions are set forth in writing.

In addition, D.C. Rule 5.4(a)(5) permits a lawyer to ‘‘share legal fees, whether awarded by a tribunal or received in settlement of a matter, with a nonprofit organization that employed, retained, or recommended employment of the lawyer in the matter and that qualifies under Section 501(c)(3) of the Internal Revenue Code.‘‘

Florida: In place of ABA Model Rule 5.4(a)(2), Florida retains the language from the 1983 Model Rule providing that ‘‘a lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer that proportion of the total compensation which fairly represents the services rendered by the deceased lawyer.‘‘

Florida Rule 4-8.6 describes the business entities through which lawyers may practice law and forbids practice other than through ‘‘officers, directors, partners, agents, or employees who are qualified to render legal services in this state.‘‘ Further, only persons who are so qualified may serve as ‘‘a partner, manager, director, or executive officer‘‘ of such an entity. Florida has substantially adopted Rule 5.4(a)(4).

Georgia adopts the pre-2002 version of ABA Model Rule 5.4 verbatim, but also restores language from the 1983 Model Rule permitting a lawyer who completes the unfinished business of a deceased lawyer to pay the deceased lawyer’s estate ‘‘that proportion of the total compensation which fairly represents the services rendered by the deceased lawyer.‘‘

Illinois: In the rules effective January 1, 2009, Illinois tracks the Model Rule. Illinois Rule 5.4(d)(2) permits a nonlawyer to serve as secretary for a professional corporation or for-profit association authorized to practice law ‘‘if such secretary performs only ministerial duties.‘‘

Indiana deletes ABA Model Rule 5.4(a)(4).

Iowa deletes ABA Model Rule 5.4(a)(4).

Kansas: Kansas replaces ABA Model Rule 5.4(a)(2) with language from the 1983 version of ABA Model Rule 5.4 providing that ‘‘a lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer that proportion of the total compensation which fairly represents the services rendered by the deceased lawyer.‘‘ Kansas makes no reference to the purchase of a law practice or to Rule 1.17, which Kansas has not adopted.

Maryland restores language from the 1983 version of ABA Model Rule 5.4 providing that ‘‘a lawyer who undertakes to complete unfinished legal business of a deceased, retired, disabled, or suspended lawyer may pay to that lawyer or that lawyer’s estate the proportion of the total compensation which fairly represents the services rendered by the former lawyer.‘‘

Massachusetts: Rule 5.4(a) allows a lawyer or law firm to share ‘‘a statutory or tribunal-approved‘‘ legal fee with ‘‘a qualified legal assistance organization that referred the

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matter to the lawyer or law firm‘‘ if the organization is not for profit and tax-exempt, the fee is made in connection with a proceeding to advance the organization’s purposes, and the client consents. The Comment to this rule explains that the ‘‘financial needs of these organizations, which serve important public ends, justify a limited exception to the prohibition against fee-sharing with nonlawyers.‘‘ The Comment also explains that the exception does not extend to fees generated in connection with proceedings unrelated to the organization’s tax-exempt purpose, ‘‘such as generating business income for the organization.‘‘ Massachusetts Rule 5.4(b) prohibits a lawyer from forming a partnership ‘‘or other business entity‘‘ with a nonlawyer if any of the activities of the ‘‘entity‘‘ consist of the practice of law.

Minnesota: Rule 5.4(a)(4) permits a lawyer to share court-awarded fees with a nonprofit organization only ‘‘subject to full disclosure and court approval,‘‘ and Rule 5.4(a)(5) restores language from the 1983 version of ABA Model Rule 5.4 providing that ‘‘a lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer the proportion of the total compensation that fairly represents the services rendered by the deceased lawyer.‘‘

Missouri: Missouri restores language from the 1983 version of ABA Model Rule 5.4(a) permitting a lawyer who completes unfinished legal business of a deceased lawyer to pay the deceased lawyer’s estate ‘‘that proportion of the total compensation that fairly represents the services rendered by the deceased lawyer.‘‘

New Hampshire: Rule 5.4(a)(4) permits a lawyer to ‘‘share legal fees with a nonprofit organization that employed, retained or recommended employment of the lawyer in the matter,‘‘ whether or not the fees are ‘‘court-awarded.‘‘

New York: In the rules effective April 1, 2009, Rule 5.4 is substantially the same as the Model Rule except New York omits Rule 5.4(a)(4).

North Carolina omits ABA Model Rule 5.4(d)(2) and adds Rule 5.4(a)(3), which permits a lawyer who undertakes to complete unfinished legal business of a deceased lawyer ‘‘or a disbarred lawyer‘‘ may pay to the estate of the deceased lawyer ‘‘or to the disbarred lawyer‘‘ that proportion of the total compensation which fairly represents the services rendered by the deceased lawyer ‘‘or the disbarred lawyer.‘‘

Ohio: Rule 5.4 permits a lawyer to ‘‘share legal fees with a non-profit organization that recommended employment of the lawyer in the matter,‘‘ whether or not the fees are court-awarded, provided that the nonprofit organization complies with Ohio’s Supreme Court Rules governing lawyer referral and information services.

Oklahoma: Rule 5.4(2A) adds language from the 1983 version of ABA Model Rule 5.4 providing that ‘‘a lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer that proportion of the total compensation which fairly represents the services rendered by the deceased lawyer.‘‘ Oklahoma Rule 5.4(d) says, in brackets: ‘‘The concept of this

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subsection of the ABA Model Rule is addressed in the Comment.‘‘ Oklahoma’s Comment says that Rule 5.4(a) ‘‘does not prohibit a lawyer from *voluntarily* sharing court-awarded legal fees with a nonprofit organization that employed, retained or recommended employment of the lawyer in the matter. This shall not be deemed a sharing of attorneys fees.‘‘ (Emphasis added.)

Oregon adds a new Rule 5.4(e) providing that a lawyer ‘‘shall not refer a client to a nonlawyer with the understanding that the lawyer will receive a fee, commission or anything of value in exchange for the referral, but a lawyer may accept gifts in the ordinary course of social or business hospitality.‘‘

Pennsylvania adds Rule 5.4(d)(4), which provides that ‘‘in the case of any form of association other than a professional corporation, the organic law governing the internal affairs of the association provides the equity owners of the association with greater liability protection than is available to the shareholders of a professional corporation.‘‘ Rule 5.4(d) concludes by stating that subparagraphs (d)(1)-(3) ‘‘shall not apply to a lawyer employed in the legal department of a corporation or other organization.‘‘

Rhode Island: After some uncertainty over whether Rhode Island would subscribe to the position in Rule 5.4(a)(4), as described in Selected State Variations for our 2008 edition, Rhode Island has adopted the following version of ABA Model Rule 5.4(a)(4):

> (4) a lawyer or law firm may agree to share a statutory or tribunal-approved fee award, or a settlement in a matter eligible for such an award, with an organization that referred the matter to the lawyer or law firm if: (i) the organization is one that is not for profit; (ii) the organization is tax-exempt under federal law; (iii) the fee award or settlement is made in connection with a proceeding to advance one or more of the purposes by virtue of which the organization is tax-exempt; and (iv) the tribunal approves the fee-sharing arrangement.

Texas: Under Texas Rule 5.04(a)(1), either a lawyer’s agreement or a lawful court order may provide for the payment of money over time to the lawyer’s estate ‘‘to or for the benefit of the lawyer’s heirs or personal representatives, beneficiaries, or former spouse, after the lawyer’s death or as otherwise provided by law or court order.‘‘

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Rule 5.4 – Public Comment – File List

Y-2010-531 Thomas Quinn [5.4]

Y-2010-534e COPRAC [5.4]

THE STATE BAR OF CALIFORNIA

PROPOSED RULES OF PROFESSIONAL CONDUCT
PUBLIC COMMENT FORM

INSTRUCTIONS: This form allows you to submit your comments by entering them into the text box below and/or by uploading files as attachments. We ask that you comment on ***one*** Rule per form submission and that you choose the proposed Rule from the drop-down box below.
All information submitted is regarded as public record.

DEADLINE TO SUBMIT COMMENT IS: AUGUST 23, 2010

Your Information

Professional Affiliation

Commenting on behalf of an organization
- Yes
- No

*** Name** Thomas C. Quinn

*** City** Lower Lake

*** State** California

*** Email address**
(You will receive a copy of your comment submission.) tcquinn2@live.com

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The following proposed rules can be viewed by clicking on the links below:

Rule 1.0.1 [1-100(B)] | Rule 2.1 [n/a] | Rule 3.3 [5-200] | Rule 3.8 [5-110]
Rule 4.2 [2-100] | Rule 5.4 [1-310, 1-320, 1-600] | Rule 8.4 [1-120] | Discussion Draft [All Rules]

*** Select the Proposed Rule that you would like to comment on from the drop down list.**
5.4 Financial and Similar Arrangements With Nonlawyers

*****
From the choices below, we ask that you indicate your position on the Proposed rule. This is not required and you may type a comment below or provide an attachment regardless of whether you indicate your position from the choices.
- AGREE with this proposed Rule
- DISAGREE with this proposed Rule
- AGREE ONLY IF MODIFIED

ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below.

I saw much discussion about this issue previously, particularly as it relates to accountants and attorneys. There are many cases and areas of the law that involve accounting issues. Thus it seems arbitrary to not allow lawyers and accountants to become partners if that relationship is strictly regulated. Otherwise attorneys will simply farm out these services to accountants as hired experts and pass the cost along to the client, itself an accounting device to avoid "fee sharing" with the bottom line to the client being the same but the service and process provided being more cumbersome. By allowing accountants and lawyers to work together in firms would provide for greater efficiency in service and would potentially keep accountants working under greater legal oversight on a higher ethical basis. Moreover, correct me if I am wrong, it seems I saw somewhere that the rule as currently iterated places limitations on how those persons who are both accountants and lawyers present themselves to clients. Surely they should be able to represent clients in that dual capacity without fictional shifts or walls between their two professional personas, something that creates unneeded administrative and clerical

ENTER COMMENTS HERE.

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THE STATE BAR OF CALIFORNIA

COMMITTEE ON PROFESSIONAL RESPONSIBILITY AND CONDUCT

180 HOWARD STREET, SAN FRANCISCO, CA 94105-1639

TELEPHONE: (415) 538-2161

August 9, 2010

Harry B. Sondheim, Chair
Commission for the Revision of the
Rules of Professional Conduct
State Bar of California
180 Howard Street
San Francisco, CA 94105

RE: Proposed Rule 5.4

Dear Mr. Sondheim:

The State Bar of California's Committee on Professional Responsibility and Conduct (COPRAC) appreciates the opportunity to comment on the proposed amendments to the Rules of Professional Conduct of the State Bar of California, pursuant to the request of the Board Committee on Regulation, Admissions & Discipline Oversight (RAD) for public comment.

COPRAC has reviewed the provisions of proposed Rule 5.4 – Financial and Similar Arrangements with Nonlawyers. COPRAC supports the adoption of proposed Rule 5.4 and the Comments to the Rule.

Thank you for your consideration of our comments.

Very truly yours,

Carole J. Buckner

Carole Buckner, Chair
Committee on Professional
Responsibility and Conduct

cc: Members, COPRAC