

Rule 5.4 Duty to Avoid Interference with a Lawyer's Professional Independence
(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.
- (b) A lawyer shall not form a partnership or other organization with a nonlawyer 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 to direct 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 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 (a) and (b) do not prohibit the payment of 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.)
- [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].)