

1 **Rule 5.4. Professional independence of a lawyer.**

2 (a) A lawyer may provide legal services pursuant to this Rule only if there is at all times  
3 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 may permit a person to recommend, retain, or pay the lawyer to render legal  
8 services for another.

9 (c) Referral fees are prohibited.

10 (d) Fee sharing with a lawyer is permissible only as provided in Rule 5.8.

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

12 (1) the fee to be shared is reasonable and the fee-sharing arrangement has been  
13 authorized as required by Utah Supreme Court Standing Order No. 15;

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

16 (3) the written notice describes the relationship with the nonlawyer, including the fact  
17 of the fee-sharing arrangement; and

18 (4) the lawyer or law firm provides the written notice before accepting representation  
19 or before sharing fees from an existing client.

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

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

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

31 **Comments**

32 [1] The provisions of this Rule are to protect the lawyer's professional independence of  
33 judgment, to assure that the lawyer is loyal to the needs of the client, and to protect clients  
34 from the disclosure of their confidential information. Where someone other than the  
35 client pays the lawyer's fee or salary, manages the lawyer's work, or recommends  
36 retention of the lawyer, that arrangement does not modify the lawyer's obligation to the  
37 client. As stated in paragraph (a), such arrangements must not interfere with the lawyer's  
38 professional judgment. See also [Rule 1.8\(f\)](#) (lawyer may accept compensation from a third  
39 party as long as there is no interference with the lawyer's independent professional  
40 judgment and the client gives informed consent). This Rule does not lessen a lawyer's  
41 obligation to adhere to the Rules of Professional Conduct and does not authorize a  
42 nonlawyer to practice law by virtue of being in a business relationship with a lawyer. It  
43 may be impossible for a lawyer to work in a firm where a nonlawyer owner or manager  
44 has a duty to disclose client information to third parties, as the lawyer's duty to maintain  
45 client confidences would be compromised.

46 [2] The Rule also expresses traditional limitations on permitting a third party to direct or  
47 regulate the lawyer's professional judgment in rendering legal services to another. See  
48 also [Rule 1.8\(f\)](#) (lawyer may accept compensation from a third party as long as there is  
49 no interference with the lawyer's independent professional judgment and the client gives  
50 informed consent).

51 [3] ~~Fee sharing arrangements with nonlawyers are governed by Supreme Court Standing~~  
52 ~~Order No. 15.~~ [Fee sharing and referral fees are addressed in Rules 1.0, 1.5, 5.4 and 5.8.](#)

53 [\[4\] An agreement under which a lawyer who provides any legal services on a matter](#)  
54 [receives a portion of the legal fee ultimately paid to another lawyer constitutes fee sharing](#)  
55 [as defined in Rule 1.0, even when the lawyer's services occur only at the inception of the](#)  
56 [representation.](#)

57 [\[5\] Before engaging in any fee sharing arrangement, lawyers should be familiar with Utah](#)  
58 [law regarding prohibitions on kickbacks.](#) ~~Paragraph (c) permits individual lawyers or~~  
59 ~~law firms to pay for client referrals, share fees with nonlawyers, or allow third party~~  
60 ~~retention. In each of these instances, the financial arrangement must be reasonable,~~  
61 ~~authorized as required under Supreme Court Standing Order No. 15, and disclosed in~~  
62 ~~writing to the client before engagement and before fees are shared. Whether in accepting~~  
63 ~~or paying for referrals, or fee sharing, the lawyer must protect the lawyer's professional~~  
64 ~~judgment, ensure the lawyer's loyalty to the client, and protect client confidences.~~

65 [\[64\]](#) Paragraph ~~(e)~~ permits individual lawyers or law firms to enter into business or  
66 employment relationships with nonlawyers, whether through nonlawyer ownership or  
67 investment in a law practice, joint venture, or through employment by a nonlawyer  
68 owned entity. In each instance, the nonlawyer owned entity must be approved by the  
69 Utah Supreme Court for authorization under [Standing Order No. 15](#).

70 [\[65\]](#) This Rule differs from the ABA Model Rule. ~~Additional changes have been made to~~  
71 ~~the comments.~~

72 *Effective date: 05/01/2021*