

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

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

- 4 (1) professional independence of judgment;
- 5 (2) duty of loyalty to a client; and
- 6 (3) protection of client confidences.

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

- 8 (1) the lawyer or law firm provides written notice to the affected client and, if applicable,
9 to any other person paying the legal fees;
- 10 (2) the written notice describes the relationship with the nonlawyer, including the fact of
11 the fee-sharing arrangement; and
- 12 (3) the lawyer or law firm provides the written notice before accepting representation or
13 before sharing fees from an existing client.

14 (c) A lawyer may permit a person to recommend, retain, or pay the lawyer to render legal
15 services for another.

16 (d) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the
17 partnership consist of the practice of law.

18 (e) A lawyer shall not practice with or in the form of a professional corporation or association
19 authorized to practice law for a profit, if:

- 20 (1) a nonlawyer owns any interest therein, except that a fiduciary representative of the
21 estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time
22 during administration;
- 23 (2) a nonlawyer is a corporate director or officer thereof or occupies the position of
24 similar responsibility in any form of association other than a corporation; or
- 25 (3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

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

29 **Comments**

30 [1] The provisions of this Rule are to protect the lawyer's professional independence of
31 judgment, to assure that the lawyer is loyal to the needs of the client, and to protect clients from

32 the disclosure of their confidential information. Where someone other than the client pays the
33 lawyer's fee or salary, or recommends employment of the lawyer, that arrangement does not
34 modify the lawyer's obligation to the client and may not interfere with the lawyer's professional
35 judgment.

36 [2] Paragraphs (b), (c), (d), and (e) permit individual lawyers or law firms to pay for client
37 referrals, share fees with nonlawyers, or allow third party retention in a context that does not
38 change the business model or structure of the lawyer's or firm's practice. Paragraphs (b), (c), (d),
39 and (e) do not permit any fee sharing or third party retention or other business relationships that
40 change the business model or structure of the firm's practice, amounting to nonlawyer
41 investment, ownership, or the practical equivalent. Such relationships are only permitted subject
42 to Rule 5.4B and Utah Supreme Court Standing Order No. 15. Whether in accepting or paying
43 for referrals, or fee-sharing, the lawyer must protect the lawyer's professional judgment, ensure
44 the lawyer's loyalty to the client, and protect client confidences.

45 [3] This Rule differs from the ABA Model Rule.

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

2 (a) Notwithstanding Rule 5.4A, and if permitted by Utah Supreme Court Standing Order No.
3 15, a lawyer may provide legal services pursuant to section (b) of this Rule only if there is at all
4 times no interference with the lawyer's:

- 5 (1) professional independence of judgment,
6 (2) duty of loyalty to a client, and
7 (3) protection of client confidences.

8 (b) A lawyer may practice law with nonlawyers, or in an organization, including a
9 partnership, in which a financial interest is held or managerial authority is exercised by one or
10 more persons who are nonlawyers, provided that the lawyer shall:

- 11 (1) before accepting a representation, provide written notice to a prospective client that
12 one or more nonlawyers holds a financial interest in the organization in which the lawyer
13 practices or that one or more nonlawyers exercises managerial authority over the lawyer;
14 and
15 (2) set forth in writing to a client the financial and managerial structure of the
16 organization in which the lawyer practices.

17 **Comments**

18 [1] The provisions of this Rule are to protect the lawyer's professional independence of
19 judgment, to assure that the lawyer is loyal to the needs of the client, and to protect clients from
20 the disclosure of their confidential information. Where someone other than the client pays the
21 lawyer's fee or salary, manages the lawyer's work, or recommends retention of the lawyer, that
22 arrangement does not modify the lawyer's obligation to the client. As stated in paragraph (a),
23 such arrangements must not interfere with the lawyer's professional judgment. See also Rule
24 1.8(f) (lawyer may accept compensation from a third party as long as there is no interference
25 with the lawyer's independent professional judgment and the client gives informed consent).
26 This Rule does not lessen a lawyer's obligation to adhere to the Rules of Professional Conduct
27 and does not authorize a nonlawyer to practice law by virtue of being in a business relationship
28 with a lawyer. It may be impossible for a lawyer to work in a firm where a nonlawyer owner or
29 manager has a duty to disclose client information to third parties, as the lawyer's duty to
30 maintain client confidences would be compromised.

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