

**Rules 5.4 [1-320, 1-310, 1-600] Financial and Similar Arrangements with Nonlawyers
(Commission's Proposed Rule Adopted on November 13 – 14, 2015 – Clean Version)**

- (a) A lawyer or law firm* shall not share legal fees directly or indirectly with a nonlawyer or with an organization that is not authorized to practice law, except that:
 - (1) an agreement by a lawyer with the lawyer's firm,* partner,* or associate may provide for the payment of money or other consideration 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 lawyer purchasing the practice of a deceased, disabled or disappeared lawyer may pay the agreed-upon purchase price, pursuant to Rule 1.17, to the lawyer's estate or other representative;
 - (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, provided the plan does not otherwise violate these Rules or the State Bar Act;
 - (4) a lawyer or law firm* may pay a prescribed registration, referral, or other fee to a lawyer referral service established, sponsored and operated in accordance with the State Bar of California's Minimum Standards for Lawyer Referral Services; or
 - (5) a lawyer or law firm* may share with or pay a court-awarded legal fee 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 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 independent professional judgment or interfere with the lawyer-client relationship in rendering legal services.
- (d) A lawyer shall not practice with or in the form of a professional corporation or other organization authorized to practice law for a profit if:
 - (1) a nonlawyer owns any interest in it, except that a fiduciary representative of a lawyer's estate may hold the lawyer's stock or other interest for a reasonable* time during administration;
 - (2) a nonlawyer is a director or officer of the corporation or occupies a position of similar responsibility in any other form of organization; or

- (3) a nonlawyer has the right or authority to direct or control the lawyer's independent professional judgment.
- (e) The Board of Trustees 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 lawyers. A lawyer shall not accept a referral from, or otherwise participate in, a lawyer referral service unless it complies with such Minimum Standards for Lawyer Referral Services.
- (f) A lawyer shall not practice with or in the form of a nonprofit legal aid, mutual benefit or advocacy group if the nonprofit organization allows any third person* or organization to interfere with the lawyer's independent professional judgment, or with the lawyer-client relationship, or allows or aids any person,* organization or group to practice law in violation of these Rules or the State Bar Act.

Comment

[1] 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 independent professional judgment of the lawyer or lawyers in the firm* and does not violate these Rules or the State Bar Act. 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.

[2] Paragraph (a) also does not prohibit payment to a nonlawyer third-party for goods and services provided to a lawyer or law firm;* 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 concluded matters that the third-party collects on the lawyer's behalf.

[3] Paragraph (a)(5) permits a lawyer to share with or pay court-awarded legal fees to nonprofit 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 1.0, Comment [5] on financial support for programs providing pro bono legal services.

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

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Synopsis of Public Comments**

TOTAL = XX **A = X**
D = X
M = X
NI = X

No.	Commenter/Signatory	Comment on Behalf of Group?	A/D/M/NI ¹	Rule Section or Cmt.	Comment	RRC Response
Public Hearing	Responsive Law (Gordon, Tom) (Provided oral public hearing testimony on July 26, 2016. See pages 43-46 of the public hearing transcript.)	Yes	D	5.4	<p>Nonlawyers should be permitted to invest in law firms as long as lawyer's professional judgment isn't compromised.</p> <p>Recounts examples under current rules where attorneys place their financial interests above those of their clients.</p> <p>Outside ownership will increase access to justice. Cites H&R Block as an example of a large company that has made tax work more available to the public.</p> <p>Outside ownership will allow lawyers to focus on what they are trained to do as opposed to the business of the law firm.</p> <p>Recent law grads can get training at these types of firms which is less likely at smaller firms.</p> <p>That the rule should just contain the language in paragraph (c) to protect the public while allowing outside ownership.</p>	<p>No change to the report is recommended. It is outside of the scope of the Commission to draft Rules that conflict with established California law. Ownership interests by non-lawyers in California law firms are prohibited. California Business and Professions Code Section 6125 states, "No person shall practice law in California unless the person is an active member of the State Bar." California law has long limited the practice of law to Lawyers. "(I)ndividuals may not, either singly or in association, engage in the practice of the law without having a special license so to do, and hence the individuals forming this corporation could not, under the section of the code relied upon, gain any other or further right by the act of incorporation than that lawfully possessed by them, either singly or in the aggregate, without incorporation." <i>People v. Merchants Protective Corp.</i>, 189 Cal. 531 (1922). The</p>

¹ A = AGREE with proposed Rule

D = DISAGREE with proposed Rule

M = AGREE ONLY IF MODIFIED

NI = NOT INDICATED

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						Business and Professions Code Section specifically allows the establishment of law corporations. Law corporations are limited by California Business and Professions Code § 6165 which provides that "...each director, shareholder, and each officer of a law corporation shall be a licensed person as defined in the Professional Corporation Act, or a person licensed to render the same professional services in the jurisdiction or jurisdictions in which the person practices."