



# The State Bar of California

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## ACTION SUMMARY

**Task Force on Access Through Innovation of Legal Services  
Subcommittee on Rules and Ethics Opinions  
June 3, 2019  
10:00 a.m. – 1:00 p.m.**

## CONFERENCE CALL

**State Bar of California  
180 Howard Street, 8th Floor, Room 8B, San Francisco  
845 S. Figueroa Street, 2nd Floor, Room 2A, Los Angeles  
SF/LA, CA**

**Phone: 855-520-7605  
Pass Code: 2535410212#**

**Members Present:** Tara Burd (Chair), Kevin Mohr (Vice-Chair), Johann Drolshagen, Lori Gonzalez, Andrew Kucera, Daniel Rice, and Allen Rodriguez.

**Others Present:** Mia Ellis, Andrew Tuft, Joyce Raby, and Greg Fortescue

## ACTION SUMMARY

### A. Chair's Report

#### 1. **Roll Call**

The Chair called the meeting to order and asked staff to take a roll call of the task force members.

#### 2. **Call for Public Comment**

There was no one present to provide public comment.

#### 3. **Chair's Report**

None

#### 4. **Staff Report**

None

#### 5. **Approval of Action Summary from the May 13, 2019 Meeting**

Action summary was approved (4 yes, 0 no, 1 abstain)

## **Approval of Action Summary from the May 14, 2019 Meeting**

Action summary was approved (4 yes, 0 no, 1 abstain)

### **B. Action / Report and Recommendation**

1. Review and comment/discussion on Chair Tara Burd's February 10, 2019 memo regarding the Rules of Professional Conduct that constrain legal innovation  
*This item was not discussed.*

2. Report on the adoption of a new Comment [1] to rule 1.1  
*This item was not discussed.*

3. Report and recommendation on the adoption of proposed rule 5.4 as amended

*Motion: Replace previously approved rule 5.4(a)(5) with revised 5.4(a)(5) as amended*

(5) a lawyer may share with or pay a legal fee, including but not limited to a fee awarded by a tribunal or received in settlement of a matter, to a nonprofit organization that (i) employed, retained, recommended, or facilitated employment of the lawyer in the matter and (ii) qualifies under Section 501(c)(3) of the Internal Revenue Code

*Vote: 4 yes, 0 no, 1 abstain*

*Motion: Adopt new Comment [4] as amended*

[4] A nonprofit organization that provides logistical or operational support, such as physical facilities or clerical assistance to a lawyer, facilitates the employment of the lawyer as provided in paragraph (a)(5).

*Vote: 4 yes, 0 no, 1 abstain*

*Motion: Adopt proposed rule 5.4 as amended and recommend for consideration by the Task Force*

*[See attachment for text of the proposed rule.]*

*Vote: 4 yes, 0 no, 1 abstain*

*Motion: Recommend a 2nd alternative to proposed rule 5.4 to the Task Force for consideration*

*Vote: 4 yes, 1 no, 0 abstain*

*Motion: Adopt proposed rule 5.4 as Alternative 2 and recommend for consideration by the Task Force*

*[See attachment for text of the proposed rule.]*

*Vote: 5 yes, 0 no, 0 abstain*

4. Recommend proposed changes to the Rules of Professional Conduct in response to recommended new entity regulation models  
*This item was not discussed.*
5. Recommend proposed changes to Rules of Professional Conduct pertaining to multi-disciplinary practice delivery models  
*This item was not discussed.*

### **ADJOURN**

*In compliance with the Americans with Disabilities Act, those requiring accommodations at this meeting should notify Lauren McCurdy at (415) 538-2107. Please provide notification at least 72 hours prior to the meeting to allow sufficient time to make arrangements for accommodations at this meeting.*

The notice and agenda is available at: <http://board.calbar.ca.gov/Committees.aspx>.

**[Alternative 1] Proposed Rule 5.4 Financial and Similar Arrangements with Nonlawyers**

- (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;
  - (5) a lawyer may share with or pay a legal fee, including but not limited to a fee awarded by a tribunal or received in settlement of a matter, to a nonprofit organization that (i) employed, retained, recommended, or facilitated employment of the lawyer in the matter and (ii) qualifies under Section 501(c)(3) of the Internal Revenue Code;or
  - (6) a lawyer or law firm may share legal fees with a nonlawyer if the lawyer or law firm complies with the requirements set forth in paragraph (b).
- (b) A lawyer shall not practice law in a law firm in which individual nonlawyers in that firm hold a financial interest unless each of the following requirements is satisfied:
  - (1) the firm's sole purpose is providing legal services to clients;
  - (2) the nonlawyers provide services that assist the lawyer or law firm in providing legal services to clients;
  - (3) the nonlawyers have no power to direct or control the professional judgment of a lawyer;
  - (4) the nonlawyers state in writing that they have read and understand the Rules of Professional Conduct, the State Bar Act and other laws regulating lawyer conduct and agree in writing to undertake to conform their conduct to the Rules, the State Bar Act and other laws regulating lawyer conduct;
  - (5) the lawyer partners in the law firm are responsible for these nonlawyers to the same extent as if the nonlawyers were lawyers under rule 5.1;

- (6) compliance with the foregoing conditions is set forth in writing.
- (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 fiduciary representative of a lawyer's estate may hold the lawyer's stock or other interest for a reasonable\* time during administration.
- (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\* to interfere with the lawyer's independent professional judgment, or with the lawyer-client relationship, or allows or aids any person\* 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] A nonprofit organization that provides logistical or operational support, such as physical facilities or clerical assistance to a lawyer, facilitates the employment of the lawyer as provided in paragraph (a)(5).

[5] 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].)

[6] Paragraph (c) is not intended to alter or diminish a lawyer's obligations under rule 1.8.6 (Compensation from One Other Than Client).

**[Alternative 2] Proposed Rule 5.4 Financial Arrangements with Nonlawyers**

A lawyer or law firm shall not share a legal fee with a person or organization not authorized to practice law unless:

- (a) the lawyer or law firm enters into a written agreement to share the fee with the person or organization not authorized to practice law;
- (b) the client has consented in writing, either at the time of the agreement to share fees or as soon thereafter as reasonably practicable, after a full written disclosure to the client of:
  - (1) the fact that the fee will be shared with a person or organization not authorized to practice law;
  - (2) the identity of the person or organization; and
  - (3) the terms of the fee sharing;
- (c) there is no interference with the lawyer's independent professional judgment or with the lawyer-client relationship; and
- (d) the total fee charged is not unconscionable as that term is defined in rule 1.5 and is not increased solely by reason of the agreement to share the fee.