



The State Bar *of California*

E.1 & 2. ATT1 Proposed Rules
06-05-20 Meeting
Open Session

OFFICE OF PROFESSIONAL
COMPETENCE

Date: June 2, 2020

To: Members, Committee on Professional Responsibility and Conduct

From: Andrew Tuft, Supervising Attorney

Subject: Proposed Rules of Professional Conduct 1.1 & 5.4 - Discussion of Public Comments Received and Possible Approval Following Consideration

Dear Committee Members,

On March 12, 2020, the State Bar Board of Trustees approved for a 60-day public comment period proposed revisions to Rules of Professional Conduct 1.1 and 5.4, as recommended by the Task Force on Access Through Innovation of Legal Services (ATILS). The Board also directed COPRAC to review and consider any public comments received regarding these revised rules.

At COPRAC's meeting on April 16, 2020, Steve Bundy, David Carr, and Justin Fields volunteered to serve as a working group (Working Group) to initially review the public comments received. This Working Group met on May 27, 2020 to review all of the public comments received on rules 1.1 and 5.4 and following their review they recommend the following:

Rule 1.1

After having considered the public comments received, the Working Group recommends the approval of the revisions to rule 1.1 as recommended by ATILS. Please review the public comments received concerning rule 1.1 (included in original agenda materials) and the public commenter chart drafted by the Working Group (attached to this memo). The task for the full Committee is to determine whether to recommend approval of the rule as proposed after consideration of the public comments, and approve a public commenter chart reflecting the Committee's consideration of the public comments.

Rule 5.4

After having considered the public comments received, the Working Group requests input from the full Committee. Several of the public comments received raise issues that were considered by ATILS when drafting the revisions to rule 5.4. Other comments raise new observations including, for example, whether the exception to sharing a non-court awarded fee with a non-profit organization should be limited to those fees that are “recovered from the opposing party”¹ and/or whether the rule should affirmatively state the lawyer has an obligation to communicate to the client the fact of the fee sharing with the non-profit.

Attached to this memo is draft public commenter chart, created by staff, which offers proposed responses to the comments previously considered by ATILS. This chart also includes comments the Working Group requests Committee input on which are highlighted in blue.

In order the focus the discussion during the meeting, the Working Group recommends consideration of the following:

1. Does the sharing of a fee with a non-profit implicate different ethical issues if the fee sharing arises from a settlement as opposed to being court awarded? If so, should any additional safeguards or limits be considered?
 - a. For example, the D.C. Rule of Professional Conduct 5.4, Comment [11] limits the sharing of a fee that arises from a settlement with a 501(c)(3) to those fees that “are recovered from the other side.”
2. Specific considerations with respect to communicating with a client:
 - a. Is the fee split between a lawyer and a non-profit organization a significant development that should be communicated to the client?
 - b. Does this type of fee split require the client’s informed written consent?
 - i. Note that a fee split between lawyers in different law firms require informed written consent by the client under rule 1.5.1. Is this situation a stronger or weaker case for requiring informed written consent?
 - c. If informed written consent is required under these circumstances, should the lawyer be required to provide a full written disclosure to the client as described in rule 1.5.1(a)(2)?
 - d. If some form of notice or consent is required, when should the lawyer provide or seek it?
3. Does the fee splitting arrangement of this kind raise other professional responsibility issues that should be identified in the rule?
4. How strongly does the fact that an organization qualifies as a 501(c)(3) tend to decrease or increase the regulatory concerns described above?

¹ See, [District of Columbia Rule of Professional Conduct 5.4, Comment \[11\]](#).

TOTAL = 13 **S = 4**
SM = 3
O = 6
NP = 0

**Proposed Rule 1.1, Comment [1] - Competence
Synopsis of Public Comments**

No.	Commenter/Signatory	Comment on Behalf of Group?	Preferred Alternative / Position¹	Comment	COPRAC Response
1	Young, Michael (4-02-20)	N	O	None	No response required.
2	Matthew (04-02-20)	N	S	It is crucial in this day and age to have all practicing attorneys aware of the potential impact, positive or negative, of technologies that are, or can be, involved in their practice of law. It is a disservice to clients when attorneys do not take full advantage of available technology, particularly if due to ignorance of the technology's existence and/or benefits, to aid their practice.	The Committee agrees with the comment in support. The Committee supports the revisions as proposed.
3	Lester, Mark (04-30-20)	N	O	The proposed change to Rule 1.1 adds a Comment stating that the duty of professional competence includes keeping abreast of technology that is employed in law practice. I am concerned that the amendment would hand a vague, hard to define, and potentially dangerous tool to State Bar prosecutors. This seems to be a solution in search of a problem.	<p>The addition of this Comment to rule 1.1 is consistent with the Comments to the ABA Model Rule as adopted by a majority of U.S. jurisdictions. (See: https://www.lawsitesblog.com/tech-competence.) It is also consistent with California ethics opinions. (See: State Bar Formal Op. Nos. 2010-179 and 2012-184.)</p> <p>The addition of this Comment to rule 1.1 does not establish a disciplinary standard independent of the obligations imposed by the rule. Rule 1.1 prohibits a lawyer from “intentionally, recklessly, with gross negligence, or repeatedly” failing to</p>

¹ S = Support SM = Support If Modified O = Oppose NP = No Position

TOTAL = 13 **S = 4**
SM = 3
O = 6
NP = 0

**Proposed Rule 1.1, Comment [1] - Competence
Synopsis of Public Comments**

No.	Commenter/Signatory	Comment on Behalf of Group?	Preferred Alternative / Position ¹	Comment	COPRAC Response
					perform legal services with competence. The Comment clarifies that the duty includes keeping abreast of technology employed in the practice of law. Unless the lawyer's conduct is intentional, reckless or grossly negligent, a single failure would not constitute grounds for discipline. This is a reasonable minimum public protection standard for a lawyer's familiarity with technology used in the practice of law.
4	Gorton, James (05-04-20)	N	O	<p>Changes to the Rules as to technological competence are far too vague and open to abusive enforcement. What is needed is specific guidance in each area of technology if this 'reform' is to be adopted.</p> <p>Any rule to be adopted should recognize that technological competence may be satisfied by having adequate staff or independent contractor fulfillment.</p>	<p>The addition of this Comment to rule 1.1 is consistent with the Comments to the ABA Model Rule as adopted by a majority of U.S. jurisdictions. (See: https://www.lawsitesblog.com/tech-competence.) It is also consistent with California ethics opinions. (See: State Bar Formal Op. Nos. 2010-179 and 2012-184.)</p> <p>Guidance in the use of technology has been provided in various ethics opinions. The Comment is intended to alert lawyers to the fact that the duty of competence includes keeping abreast of technology utilized in the practice of law and not that a lawyer should be required to become an expert in relevant technology. A lawyer would not necessarily be required to become an expert in a particular area of technology, but instead might be expected</p>

TOTAL = 13 **S = 4**
SM = 3
O = 6
NP = 0

**Proposed Rule 1.1, Comment [1] - Competence
Synopsis of Public Comments**

No.	Commenter/Signatory	Comment on Behalf of Group?	Preferred Alternative / Position¹	Comment	COPRAC Response
					to associate with someone else who is, which rules 1.1(c) and 5.3 explicitly recognize.
5	Griepp, Galen (05-04-20)	N	O	The proposed change to Rule 1.1 adds a Comment stating that the duty of professional competence includes keeping abreast of technology that is employed in law practice. I am concerned that the amendment would hand a vague, hard to define, and potentially dangerous tool to State Bar prosecutors. This seems to be a solution in search of a problem.	The addition of this Comment to rule 1.1 does not establish a disciplinary standard independent of the obligations imposed by the rule. Rule 1.1 prohibits a lawyer from “intentionally, recklessly, with gross negligence, or repeatedly” failing to perform legal services with competence. The Comment clarifies that the duty includes keeping abreast of technology employed in the practice of law. Unless the lawyer’s conduct is intentional, reckless or grossly negligent, a single failure would not constitute grounds for discipline. This is a reasonable minimum public protection standard for a lawyer’s familiarity with technology used in the practice of law.
6	Sirkin, Mina (05-05-20)	N	O	This is a slippery slope. Technology is changing on a daily basis. As soon as a lawyer learns one thing, the tech system has changed. I think the rule is too risky for lawyers, especially those above 50 years old. It prejudices good older attorneys and subjects them to unnecessary discipline.	The addition of this Comment to rule 1.1 does not establish a disciplinary standard independent of the obligations imposed by the rule. Rule 1.1 prohibits a lawyer from “intentionally, recklessly, with gross negligence, or repeatedly” failing to perform legal services with competence. The Comment clarifies that the duty includes keeping abreast of technology employed in the practice of law. Unless the lawyer’s conduct is intentional,

TOTAL = 13 **S = 4**
SM = 3
O = 6
NP = 0

**Proposed Rule 1.1, Comment [1] - Competence
Synopsis of Public Comments**

No.	Commenter/Signatory	Comment on Behalf of Group?	Preferred Alternative / Position ¹	Comment	COPRAC Response
					<p>reckless or grossly negligent, a single failure would not constitute grounds for discipline. This is a reasonable minimum public protection standard for a lawyer's familiarity with technology used in the practice of law.</p> <p>The Comment does not, and cannot be read, as requiring that a lawyer become an expert in relevant technology. The Comment alerts lawyers to the fact that they have a duty to provide their clients with competent legal services which, in some instances, would call for the lawyer to employ technology in the representation. The duty highlighted by the Comment, like other duties under Rule 1.1, can be satisfied in the ways explicitly permitted by the Rules, including associating with someone who is more expert in the technology, as rules 1.1(c) and 5.3 explicitly recognize.</p>
7	Gonzales, Efrain (05-08-20)	N	O	<p>Attorneys like any other business needs to advertise their service, however is a misleading information when Law firms advertise the amount of money they were able to be awarded in any case.</p> <p>I believe that law firms should not advertise any amount of judgement because people will think that they will</p>	<p>This comment does not specifically address the proposed revision to rule 1.1.</p> <p>Nonetheless, the Committee observes Rule of Professional Conduct 7.1 prohibits false or misleading communications about the lawyer or the lawyer's services. Additionally, Comment [4] to rule 7.1 states that a "communication that</p>

TOTAL = 13
S = 4
SM = 3
O = 6
NP = 0

**Proposed Rule 1.1, Comment [1] - Competence
Synopsis of Public Comments**

No.	Commenter/Signatory	Comment on Behalf of Group?	Preferred Alternative / Position ¹	Comment	COPRAC Response
				received that amount of money.	truthfully reports a lawyer's achievements on behalf of clients or former clients . . . may be misleading if presented so as to lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters without reference to the specific factual and legal circumstances of each client's case."
8	California Commission on Access to Justice (Kaddoura) (05-12-20)	Y	S	The California Commission on Access to Justice supports the proposed amendment to California Rule of Professional Conduct 1.1), and encourages the State Bar to continue to look for ways to highlight and address the needs of low- and moderate-income people who participate in the justice system including through technology and innovation.	The Committee agrees with the comment in support. The Committee supports the revisions as proposed.
9	Orange County Bar Association (Garner) (05-14-20)	Y	SM	There is a danger that this Comment will lead to lawyers being held responsible for keeping up with changes in areas of the law unrelated to their practice. The proposed Comment should be revised to state: "The duties set forth in this rule include the duty to keep abreast of <u>the relevant</u> changes in the law and its practice, including the benefits and risks associated with relevant	The addition of this Comment does not change the law, but instead highlights for busy practitioners an important aspect of existing law. It is consistent with the Comments to the ABA Model Rule as adopted by a majority of U.S. jurisdictions. (See: https://www.lawsitesblog.com/tech-competence .) It is also consistent with California ethics opinions based on existing law. (See: State Bar Formal Op. Nos. 2010-179 and 2012-184.)

TOTAL = 13
S = 4
SM = 3
O = 6
NP = 0

**Proposed Rule 1.1, Comment [1] - Competence
Synopsis of Public Comments**

No.	Commenter/Signatory	Comment on Behalf of Group?	Preferred Alternative / Position ¹	Comment	COPRAC Response
				technology, <u>as applicable to the particular lawyer's practice.</u> "	The Comment does not give rise to any risk that lawyers will be disciplined for failure to keep up in areas unrelated to their practice, because the text of the Rule is the only basis on which discipline can be imposed, and the duty stated there applies only to the lawyer's performance of legal services in the lawyer's practice. Accordingly, the Comment would not provide any basis for disciplining a lawyer on the basis of changes, legal or technical, unrelated to the lawyer's practice.
10	Legal Aid Association of California (Newman) (05-15-20)	Y	S	We support the proposed amended California Rule of Professional Conduct 1.1.	The Committee agrees with the expressed position in support. The Committee supports the revisions as proposed.
11	Los Angeles County Bar Association Professional Responsibility and Ethics Committee (Kreuger) (05-15-20)	Y	SM	<p>The Los Angeles County Bar Association Professional Responsibility and Ethics Committee opposes proposed Comment [1] to rule 1.1 as unnecessary and as not providing clear guidance to practitioners because of the risk that the lawyer may be held responsible for changes unrelated to the provision of legal services or the lawyer's practice. It proposes a revised version as follows:</p> <p>[1] Under paragraph (b), learning and skill necessary for the performance of a legal service includes keeping abreast of changes in the law and the benefits and risks associated with relevant</p>	The addition of this Comment does not change the law, but instead highlights for practitioners an important aspect of existing law. The Committee believes that there is clear value in drawing the attention of the practicing bar to this aspect of their duty of competence. The Comment is consistent with the Comments to the ABA Model Rule as adopted by a majority of U.S. jurisdictions. (See: https://www.lawsitesblog.com/tech-competence .) It is also consistent with California ethics opinions based on existing law. (See: State Bar Formal Op. Nos. 2010-179 and 2012-184.)

TOTAL = 13 **S = 4**
SM = 3
O = 6
NP = 0

**Proposed Rule 1.1, Comment [1] - Competence
Synopsis of Public Comments**

No.	Commenter/Signatory	Comment on Behalf of Group?	Preferred Alternative / Position ¹	Comment	COPRAC Response
				technology applicable to such service.	The Comment does not give rise to any risk that lawyers will be disciplined for failure to keep up with changes in areas unrelated to the practice of law or their specific practice, because the text of the Rule is the only basis on which discipline can be imposed, and the duty stated there applies only to the lawyer's performance of legal services. Accordingly, the Comment would not provide any basis for disciplining a lawyer on the basis of changes, legal or technical, unrelated to the lawyer's practice.
12	California Lawyers Association Ethics Committee (Majchrzak) (05-18-20)	Y	SM	<p>The Committee recommends considering whether an amendment is necessary to add understanding and, if it is, to consider whether to use language more closely mirroring from ABA Model Rule 1.1, comment 8, rather than the proposed language, such as "To maintain or acquire the requisite learning and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology."</p> <p>Among the reasons given for considering such a change are that the proposed comment might be read as expanding the rule and that it might be</p>	<p>We note that the CLA Comment indicates that no member of the CLA Committee opposed the inclusion of this concept in the comments.</p> <p>The reasons suggested for altering the Comment are not persuasive. The Comment does not expand Rule 1.1— instead it highlights for practitioners an important aspect of existing law. It is consistent with the Comments to the ABA Model Rule as adopted by a majority of U.S. jurisdictions. (See: https://www.lawsitesblog.com/tech-competence.) It is also consistent with California ethics opinions based on existing law. (See: State Bar Formal Op. Nos. 2010-179 and 2012-184.)</p>

TOTAL = 13 S = 4
 SM = 3
 O = 6
 NP = 0

**Proposed Rule 1.1, Comment [1] - Competence
 Synopsis of Public Comments**

No.	Commenter/Signatory	Comment on Behalf of Group?	Preferred Alternative / Position ¹	Comment	COPRAC Response
				read as negating the Rule's permission to achieve competency by associating or consulting with another competent lawyer or by relying on persons expert in the relevant technology.	The Comment also cannot and does not affect or repeal other portions of Rule 1.1. Rule 1.1 prohibits a lawyer from "intentionally, recklessly, with gross negligence, or repeatedly" failing to perform legal services with competence. Unless the lawyer's failure was intentional, reckless or grossly negligent, a single failure would not constitute grounds for discipline. In addition, the Comment does not require that the lawyer become personally expert in technologies used in the lawyer's practice; the provisions of the Rules explicitly permitting a lawyer to fulfil the lawyer's duties under the Rule by associating a lawyer or other person who has such expertise are unaffected. See Rules 1.1(c) and 5.3.
13	San Diego County Bar Association (Berenson) (05-18-20)	Y	S	<p>The San Diego County Bar Association believes that further elaboration on lawyers' duty to keep up with relevant technology is appropriate. We recommend adding a second sentence to comment [1] as follows:</p> <p>The duties set forth in this rule include the duty to keep abreast of relevant changes in the law and its practice, including the benefits and risks associated with relevant technology,</p>	<p>The Committee does not agree an additional sentence is necessary.</p> <p>The Comment is not changing existing law, but highlighting an aspect of existing law that is recognized in the relevant authorities. It does not create a new duty or modify or change the text of the Rule in any way. Because the duty highlighted in the Comment is one imposed under Rule 1.1, it can be fulfilled in any manner permitted by the Rule, including by</p>

TOTAL = 13	S = 4 SM = 3 O = 6 NP = 0
------------	------------------------------------

Proposed Rule 1.1, Comment [1] - Competence Synopsis of Public Comments					
No.	Commenter/Signatory	Comment on Behalf of Group?	Preferred Alternative / Position ¹	Comment	COPRAC Response
				before performance is required. A lawyer may satisfy this duty by acquiring sufficient learning and skill or by associating with a professional whom the lawyer reasonably believes to be competent.	complying with rules that explicitly permit a lawyer to associate a person with greater expertise in the relevant technology, as rules 1.1(c) and 5.3—and the relevant ethics authorities--explicitly recognize. Nothing in the Comment suggests or implies otherwise.

TOTAL = S = 0
SM =
O =
NP = 0

**Proposed Rule 5.4 – Financial and Similar Arrangements with Nonlawyers
Synopsis of Public Comments**

No.	Commenter/Signatory	Comment on Behalf of Group?	Preferred Alternative / Position ¹	Comment	COPRAC Response
1	Passmore, Crispin (03-19-20)	N	SM	The proposals are weak and insignificant though they should not be opposed. They should also be modified to allow non-lawyer ownership in for profit organisations.	ATILS' public comment version of a proposed amended rule 5.4 was submitted to the Board together with an explicit clarification that ATILS also recommended ongoing further study of revisions to rule 5.4. On May 14, 2020, the Board acted to authorize a working group to continue the work of ATILS and specifically included a reference to rule 5.4 as one aspect of the continued reform efforts. Accordingly, implementation of the proposed amendment to rule 5.4 does not prejudice further study and proposed revisions to the rule.
2	California Advocates for Nursing Home Reform (Prescott) (04-16-20)	Y	O	<p>Rule 5.4 (a)(5), as written, shall allow any lawyer or law firm to share settlement fees, directly or indirectly, with any nonprofit 501(c)(3) that recommends any matter to them. The matter doesn't even have to be connected to the 501(c)(3)'s mission statement.</p> <p>Rule 5.4 (a)(5) would be a tremendous financial incentive for questionable non-profits to search for viable California cases that they could direct to a California attorney or attorney group that would agree to give them a "finder's fee" if there was a settlement.</p>	

¹ S = Support SM = Support If Modified O = Oppose NP = No Position

TOTAL = S = 0
SM =
O =
NP = 0

**Proposed Rule 5.4 – Financial and Similar Arrangements with Nonlawyers
Synopsis of Public Comments**

No.	Commenter/Signatory	Comment on Behalf of Group?	Preferred Alternative / Position ¹	Comment	COPRAC Response
				We recommend that Rule 5.4(a)(5) be amended to strike the term “recommends” or, at a minimum, include language that would create the requirement for a nexus between the referring 501(c)(3)’s mission statement and the matter being referred to the attorney.	
3	Lester, Mark (04-30-20)	N	O	With respect to the proposal to change Rule 5.4 to allow lawyers to share fees with nonprofits, there is a clear upside but also risk. Although many nonprofits provide legal services to the underserved, it is also so easy to become a nonprofit that virtually anyone can become a non-profit. Moreover, there is already very little enforcement of the rule barring 501(c)(3)’s from involvement in political causes. This relaxation could exacerbate these problems.	A special status to nonprofit practice of law activity is already present in case law (see, e.g., <i>Frye v. Tenderloin Housing Clinic, Inc.</i> (2006) 38 Cal. 4th 23), statute (see, e.g., Corporations Code §13406(b)), and in the current version of rule 5.4 (see para. (a)(5)). ATILS discussed both the pros and cons, including the con of possible abuse (e.g., the Trevor Law Group disciplinary matter) but found that the need to promote access should be pursued. In addition, this revision is patterned after District of Columbia Rule of Professional Conduct 5.4 (a)(5) and we are unaware of any increased consumer harm due to this exception in D.C.
4	Ferrin, Leigh (05-01-20)	Y (Public Law Center)	S	PLC generally supports the proposed Rule 5.4. PLC only works in civil courts, where the majority of all cases are settled. Even in settlement, some attorneys fees are left to be determined by the court, leading to a court ordered fee award, which would fall under the current Rule 5.4.	

TOTAL = S = 0
SM =
O =
NP = 0

**Proposed Rule 5.4 – Financial and Similar Arrangements with Nonlawyers
Synopsis of Public Comments**

No.	Commenter/Signatory	Comment on Behalf of Group?	Preferred Alternative / Position ¹	Comment	COPRAC Response
				<p>However, many civil cases are fully settled out of court, and PLC would not want to be put in a position where the opposing party knew there were restrictions on how fees could be shared depending on whether the fees were court-ordered or through settlement.</p> <p>PLC appreciates the cross-reference to the other Rules of Professional Conduct, such as notification to the client, which should also provide some protection against abuses. PLC would encourage the State Bar to implement a reporting requirement for cases where fees are shared with a non-profit as a result of a settlement, or conduct periodic audits of settlement awards to identify abuses. While this could create an additional administrative burden, PLC believes the number of cases the State Bar would need to monitor would be relatively minimal.</p>	
5a, 5b	Gorton, James (05-04-20)	N	O	The fact that this is proposed to be limited to non-profits is not helpful or relevant in that the formation of a non-profit is a matter of filing a page of paper with the Secretary of State and paying a small fee. Anyone at all may do so and claim such status, using it as a shield to engage and control	A special status to nonprofit practice of law activity is already present in case law (see, e.g., <i>Frye v. Tenderloin Housing Clinic, Inc.</i> (2006) 38 Cal. 4th 23), statute (see, e.g., Corporations Code §13406(b)), and in the current version of rule 5.4 (see para. (a)(5)). ATILS discussed both the pros and cons, including the con of possible

TOTAL = **S = 0**
 SM =
 O =
 NP = 0

**Proposed Rule 5.4 – Financial and Similar Arrangements with Nonlawyers
Synopsis of Public Comments**

No.	Commenter/Signatory	Comment on Behalf of Group?	Preferred Alternative / Position ¹	Comment	COPRAC Response
				<p>attorneys without reference to their duties to the persons who should be their clients.</p> <p>If the intent is sincere, then the rule should require that the entity be recognized as a 501(c)(3) charity by the IRS and have also filed and been approved by Franchise Tax Board as such. Requiring the foregoing would at least limit the potentially abusive oversight by non-attorneys to true public charities, not simply nonprofits, which may be formed and operated by anyone with \$30 in their pocket.</p>	<p>abuse (e.g., the Trevor Law Group disciplinary matter) but found that the need to promote access should be pursued. The proposed exception would apply only to bona fide § 501(c)(3) entities that are recognized by the IRS. In addition, this revision is patterned after District of Columbia Rule of Professional Conduct 5.4 (a)(5) and we are unaware of any increased consumer harm due to this exception in D.C.</p>
6	Sirkin, Mina (05-05-20)	N	O	<p>Because anyone can become a non-profit entity, this proposal is opposed because it leaves a way for Amazon, LegalZoom and others like it to create an non-profit arm and share fees with attorneys, thereby indirectly controlling the attorneys.</p>	<p>A special status to nonprofit practice of law activity is already present in case law (see, e.g., <i>Frye v. Tenderloin Housing Clinic, Inc.</i> (2006) 38 Cal. 4th 23), statute (see, e.g., Corporations Code §13406(b)), and in the current version of rule 5.4 (see para. (A)(5)). ATILS discussed both the pros and cons, including the con of possible abuse (e.g., the Trevor Law Group disciplinary matter) but found that the need to promote access should be pursued. The proposed exception would apply only to bona fide § 501(c)(3) entities that are recognized by the IRS. In addition, this revision is patterned after District of Columbia Rule of Professional Conduct 5.4 (a)(5) and we are unaware of any</p>

TOTAL = **S = 0**
SM =
O =
NP = 0

**Proposed Rule 5.4 – Financial and Similar Arrangements with Nonlawyers
Synopsis of Public Comments**

No.	Commenter/Signatory	Comment on Behalf of Group?	Preferred Alternative / Position ¹	Comment	COPRAC Response
					increased consumer harm due to this exception in D.C.
7	Weinmann, Lisa (05-05-20)	N	O	There has not been any type of request from members of the Bar or the public for this proposed rule. Please postpone this decision during this time.	ATILS charter directed the task force to consider ways to address the needs of low and moderate income consumers of legal services, including recommending rule changes to improve access to justice in the “people law” sector. The 2019 CA Justice Gap Study confirms the need for the rule change which is patterned after the District of Columbia Rule of Professional Conduct 5.4(a)(5).
8	California Commission on Access to Justice (05-12-20)	Y	S	The California Commission on Access to Justice supports the proposed amendment to California Rule of Professional Conduct 5.4, and encourages the State Bar to continue to look for ways to highlight and address the needs of low- and moderate-income people who participate in the justice system including through financial support of legal services and through technology and innovation.	The Committee agrees with the comment in support. The Committee supports the revisions as proposed.
9	Orange County Bar Association (05-14-20)	Y	O	We recognize the policy interest in allowing nonprofit organizations to share in legal fees, but we believe any rule permitting it in the context of out-of-court resolution must be limited to those organizations that qualify as a 501(c)(3) under the Internal Revenue	

TOTAL = S = 0
SM =
O =
NP = 0

**Proposed Rule 5.4 – Financial and Similar Arrangements with Nonlawyers
Synopsis of Public Comments**

No.	Commenter/Signatory	Comment on Behalf of Group?	Preferred Alternative / Position ¹	Comment	COPRAC Response
				<p>Code; and, should be limited to fee-shifting cases and emphasize the lawyer’s obligation to exercise independent professional judgment (similar to Comment [11] to District of Columbia Rule of Professional Conduct 5.4) and the lawyer’s obligation to put the interests of the client first, before those of the lawyer or the nonprofit organization, in negotiating and documenting any settlement or other case resolution.</p> <p>We suggest changing the proposed new language in Comment [3] “as just one example” to “as just some examples,” because the sentence to which the phrase is added contains three, not just one, example.</p>	
10	Legal Aid Association of California (Newman) (05-15-20)	Y	S	We support the proposed amended California Rule of Professional Conduct 5.4 .	The Committee agrees with the comment in support. The Committee supports the revisions as proposed.
11	Los Angeles County Bar Association Professional Responsibility and Ethics Committee (Kreuger) (05-15-20)	Y	O	<p>At what point does the organization have to qualify under 501(C)(3)?</p> <p>It is uncertain what might be meant in saying that an organization “qualifies” under 501(C)(3). Does that mean the organization has IRS approval to receive gifts that can be tax deductible or that it might have IRS approval if it were to apply?</p>	

TOTAL = S = 0
SM =
O =
NP = 0

**Proposed Rule 5.4 – Financial and Similar Arrangements with Nonlawyers
Synopsis of Public Comments**

No.	Commenter/Signatory	Comment on Behalf of Group?	Preferred Alternative / Position ¹	Comment	COPRAC Response
				Is the authorized fee sharing limited to amounts awarded to the lawyer by the terms of the settlement? Does “arises from a settlement” refer only to a defendant’s contractual agreement to pay fees to a plaintiff’s lawyer? What if the lawyer has been financed either by the nonprofit organization or by someone else and wants to share some or all of those fees with the nonprofit organization, perhaps as a result of events that occurred during or even after the representation?	
12	Pangrle, Brian (05-17-20)	N	O	The proposed amended Rule 5.4 should not be adopted. The mission of the State Bar of California Task Force on Access Through Innovation of Legal Services changed, materially, from one of investing the use of technology to close the justice gap (2019 California Justice Gap Study) to one of effectively deregulating the practice of law per an economic ideology that has been a contributor to inequality, which is an underlying root cause of the access to justice and justice gap problem.	ATILS charter directed the task force to consider ways to address the needs of low and moderate income consumers of legal services, including recommending rule changes to improve access to justice in the “people law” sector. The 2019 CA Justice Gap Study confirms the need for the rule change which is patterned after the District of Columbia Rule of Professional Conduct 5.4(a)(5).
13	California Lawyer’s Association Ethics Committee (Majchrzak) (05-18-20)	Y	SM	Because the current proposed amendment combines two distinct exceptions into a single paragraph which may result in confusion in interpreting its meaning, we believe	

TOTAL = S = 0
SM =
O =
NP = 0

**Proposed Rule 5.4 – Financial and Similar Arrangements with Nonlawyers
Synopsis of Public Comments**

No.	Commenter/Signatory	Comment on Behalf of Group?	Preferred Alternative / Position ¹	Comment	COPRAC Response
				<p>the proposed change should be broken out into a separate subparagraph (6) and read as follows:</p> <p>(6) where a nonprofit organization qualified under IRS Code section 501(c)(3) employs, retains, recommends, or facilitates employment of a lawyer in a matter where the legal fees arise from settlement, the lawyer or law firm may share or pay the legal fee to that nonprofit organization.</p> <p>We also believe such a fee split would constitute a significant development to be communicated to the lawyer's client as required by Rule 1.4 and Business and Professions Code section 6068, subdivision (m). (See proposed Comment [4] to Rule 5.4(a).) Notwithstanding the ability to share fees with a non-profit organization that is involved in referring the matter to the lawyer, it is important that the lawyer communicate the fee-sharing arrangement with the client and comply with the ethical duties under the Rules, the Business and Professions Code, and common law.</p>	

TOTAL = **S = 0**
 SM =
 O =
 NP = 0

**Proposed Rule 5.4 – Financial and Similar Arrangements with Nonlawyers
Synopsis of Public Comments**

No.	Commenter/Signatory	Comment on Behalf of Group?	Preferred Alternative / Position¹	Comment	COPRAC Response
14	The Lacuna Consortium (Deolus) (05-18-20)	Y	SM	The Consortium respectfully request for the Task Force and the State Bar to issue an amendment, clarification, declaration, or exception to Rule 5.4 that validates the structure of the Lacuna Coin Project, and clarifies that Guarantors in the form of solo practitioners, law firms, non-profit organizations, or clinics that participate in the Project and offer legal services in the absence of Contractors, would be compliant with Rule 5.4.	The Committee has not been charged with validating a specific application of the proposed rule change.