

Colo. R. Prof'l. Cond. 5.4

Rule 5.4 - Professional Independence of a Lawyer

- (a) A lawyer or law firm shall not share legal fees with a nonlawyer other than an LLP, except that:
- (1) an agreement by a lawyer with the lawyer's firm, partner, LLP, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's or the LLP's death, to the lawyer's or the LLP's estate or to one or more specified persons;
 - (2) a lawyer who undertakes to complete unfinished legal business of a deceased lawyer or LLP may pay to the estate of the deceased lawyer or LLP that proportion of the total compensation which fairly represents the services rendered by the deceased lawyer or LLP;
 - (3) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer or LLP may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer or LLP the agreed-upon purchase price;
 - (4) 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; and
 - (5) a lawyer may share court-awarded legal fees with a nonprofit organization that employed, retained or recommend employment of the lawyer in the matter.
- (b) A lawyer shall not form a partnership with a nonlawyer other than an LLP if any of the activities of the partnership 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 professional judgment in rendering such legal services.
- (d) A lawyer shall not practice with or in the form of a professional company that is authorized to practice law for a profit, if
- (1) A nonlawyer other than an LLP owns any interest therein, except that a fiduciary representative of the estate of a lawyer or LLP may hold the stock or interest of the lawyer or LLP for a reasonable time during administration; or
 - (2) A nonlawyer has the right to direct or control the professional judgment of a lawyer.
- (d-1) An LLP shall not have the right to direct or control the professional judgment of a lawyer.
- (e) A lawyer shall not practice with or in the form of a professional company that is authorized to practice law for a profit except in compliance with C.R.C.P. 265.
- (f) For purposes of this Rule, a "nonlawyer" other than an LLP" includes (1) a lawyer or LLP who has been disbarred, (2) a lawyer or LLP who has been suspended and who must petition for reinstatement, (3) a lawyer or LLP who is subject to an interim suspension

pursuant to C.R.C.P. 242.22,(4) a lawyer or LLP who is on inactive status pursuant to C.R.C.P. 227(A)(6), (5) a lawyer or LLP who has been permitted to resign under C.R.C.P. 227(A)(8), or (6) a lawyer or LLP who, for a period of six months or more, has been (i) on disability inactive status pursuant to C.R.C.P. 243.6or(ii) suspended pursuant to C.R.C.P. 227(A)(4), 242.23, 242.24, or 260.6.

RPC 5.4

Entire rule amended and adopted June 12, 1997, effective 7/1/1997; entire Appendix repealed and readopted April 12, 2007, effective 1/1/2008; (d) amended and (e) and (f) added and Comment amended and effective 2/26/2009; amended February 22, 2018, effective 2/22/2018; amended and adopted by the Court, En Banc, May 20, 2021, effective 7/1/2021; amended and adopted by the Court, En Banc, effective 11/16/2023.

COMMENT

[1] The provisions of this Rule express traditional limitations on sharing fees. These limitations are to protect the lawyer's professional independence of judgment on behalf of the lawyer's client. Moreover, since a lawyer should not aid or encourage a nonlawyer to practice law, the lawyer should not practice law or otherwise share legal fees with a nonlawyer. This does not mean, however, that the pecuniary value of the interest of a deceased lawyer in the lawyer's firm or practice may not be paid to the lawyer's estate or specified persons such as the lawyer's spouse or heirs. In like manner, profit-sharing retirement plans of a lawyer or law firm which include nonlawyer office employees are not improper. These limited exceptions to the rule against sharing legal fees with nonlawyers are permissible since they do not aid or encourage nonlawyers to practice law. Where someone other than the client pays the lawyer's fee or salary, or recommends employment of the lawyer, that arrangement does not modify the lawyer's obligation to the client. As stated in paragraph (c) such arrangements should not interfere with the lawyer's professional judgment on behalf of the lawyer's client. A lawyer should, however, make full disclosure of such arrangements to the client; and if the lawyer or client believes that the effectiveness of lawyer's representation has been or will be impaired thereby, the lawyer should take proper steps to withdraw from representation of the client.

[2] To assist a lawyer in preserving independence, a number of courses are available. For example, a lawyer may practice law in the form of a professional company, if in doing so the lawyer complies with all applicable rules of the Colorado Supreme Court. Although a lawyer may be employed by a business corporation with nonlawyers serving as directors or officers, and they necessarily have the right to make decisions of business policy, a lawyer must decline to accept direction of the lawyer's professional judgment from any nonlawyer. Various types of legal aid offices are administered by boards of directors composed of lawyers and nonlawyers. A lawyer should not accept employment from such an organization unless the board sets only broad policies and there is no interference in the relationship of the lawyer and the individual client the lawyer serves. Where a lawyer is employed by an organization, a written agreement that defines the relationship between the lawyer and the organization and provides for the lawyer's independence is desirable since it may serve to prevent misunderstanding as to their respective roles. Although other innovations in the means of supplying legal counsel may develop, the responsibility of the lawyer to maintain the lawyer's professional independence remains constant, and the legal profession must insure that changing circumstances do not result in loss of the professional independence of the lawyer.

[3] As part of the legal profession's commitment to the principle that high quality legal services should be available to all, lawyers are encouraged to cooperate with qualified legal assistance organizations providing prepaid legal services. Participation should at all times be in accordance with the basic tenets of the profession: independence, integrity, competence, and devotion to the interests of individual clients. A lawyer so participating should make certain that a relationship with a qualified legal assistance organization in no way interferes with the lawyer's

independent professional representation of the interests of the individual client. A lawyer should avoid situations in which officials of the organization who are not lawyers attempt to direct lawyers concerning the manner in which legal services are performed for individual members, and should also avoid situations in which considerations of economy are given undue weight in determining the lawyers employed by an organization or the legal services to be performed for the member or beneficiary rather than competence and quality of service. A lawyer interested in maintaining the historic traditions of the profession and preserving the function of a lawyer as a trusted and independent advisor to individual members of society should carefully assess those factors when accepting employment by, or otherwise participating in, a particular qualified legal assistance organization, and while so participating should adhere to the highest professional standards of effort and competence.

ANNOTATION Annotator's note. Rule 5.4 is similar to Rule 5.4 as it existed prior to the 2007 repeal and readoption of the Colorado rules of professional conduct. Relevant cases construing that provision have been included in the annotations to this rule. Transferring various ownership interests to lawyer employees of firm who did not receive profits and were not managers warranted suspension of one year and a day. Suspension appropriate because attorney made misrepresentations and was dishonest in such transfers. *People v. Reed*, 942 P.2d 1204 (Colo. 1997). Motion to dismiss should have been denied on the basis that a joint venturer cannot shield itself from liability on the grounds that the joint venture was prohibited by this rule of professional conduct. *Bebo Constr. Co. v. Mattox & O'Brien*, 998 P.2d 475 (Colo. App. 2000). An attorney's attempt to share legal fees with nonlawyers is professional misconduct. *People v. Easley*, 956 P.2d 1257 (Colo. 1998). Conduct violating this rule in conjunction with other disciplinary rules sufficient to justify suspension. *People v. Easley*, 956 P.2d 1257 (Colo. 1998).
