

4-5.4 | PROFESSIONAL INDEPENDENCE OF A LAWYER

(a) Sharing Fees with Nonlawyers. A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to 1 or more specified persons;

(2) a lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer that proportion of the total compensation that fairly represents the services rendered by the deceased lawyer;

(3) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, in accordance with the provisions of rule 4-1.17, pay to the estate or other legally authorized representative of that lawyer the agreed upon purchase price;

(4) bonuses may be paid to nonlawyer employees for work performed, and may be based on their extraordinary efforts on a particular case or over a specified time period. Bonus payments shall not be based on cases or clients brought to the lawyer or law firm by the actions of the nonlawyer. A lawyer shall not provide a bonus payment that is calculated as a percentage of legal fees received by the lawyer or law firm; and

(5) a lawyer may share court-awarded fees with a nonprofit, pro bono legal services organization that employed, retained, or recommended employment of the lawyer in the matter.

(b) Qualified Pension Plans. A lawyer or law firm may include nonlawyer employees in a qualified pension, profit-sharing, or retirement plan, even though the lawyer's or law firm's contribution to the plan is based in whole or in part on a profit-sharing arrangement.

(c) Partnership with Nonlawyer. A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.



(d) Exercise of Independent Professional Judgment. 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.

(e) Nonlawyer Ownership of Authorized Business Entity. A lawyer shall not practice with or in the form of a business entity authorized to practice law for a profit if:

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

(Amended June 8, 1989 (544 So.2d 193); amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended October 20, 1994 (644 So.2d 282); amended June 27, 1996, effective July 1, 1996 (677 So.2d 272); amended October 6, 2005, effective January 1, 2006 (916 So.2d 655); amended March 23, 2006, effective May 22, 2006 (933 So.2d 417).)

Comments

The provisions of this rule express traditional limitations on sharing fees. These limitations are to protect the lawyer's professional independence of judgment. 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 subdivision (d), such arrangements should not interfere with the lawyer's professional judgment.

This rule also expresses traditional limitations on permitting a third party to direct or regulate the lawyer's professional judgment in rendering legal services to another. See also rule 4-1.8(f) (lawyer may accept compensation from a third party as long as there is no interference with the lawyer's independent professional judgment and the client gives informed consent).

The prohibition against sharing legal fees with nonlawyer employees is not intended to prohibit profit-sharing arrangements that are part of a qualified pension, profit-sharing, or retirement plan. Compensation plans, as opposed to retirement plans, may not be based on legal fees.

