

**Vermont Rules of Professional Conduct**  
**Rule 5.4 – Professional Independence of a Lawyer**

*Disclaimer: Not an official copy. Check the official publication or Lexis for the rules as adopted by the Vermont Supreme Court.*

*This unofficial version was last updated on **November 14, 2022**.*

*Kennedy's Highlights*

*(NOT a substitute for full research of the rule & opinions/decisions on it)*

- Rule 5.4 has not been amended since 2009.
- Blog Posts related to Rule 5.4:
  - [Rethinking & Redesigning Legal Regulation](#)
  - [Is it time for nonlawyer ownership? An introduction to ABS?](#)
  - [What is ABS and who allows it?](#)
  - [ABS: Arguments in Favor](#)
  - [ABS: Arguments Against](#)
  - [ABS: How's it doing?](#)

**Rule 5.4. Professional Independence of a Lawyer.**

(a) 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 one or more specified persons;

(2) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price;

(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; and

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

(b) A lawyer shall not form a partnership with a nonlawyer 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 corporation or association authorized to practice law for 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;

(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.

[1] 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 paragraph (c), such arrangements should not interfere with the lawyer's professional judgment.

[2] 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 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).

### **Reporter's Notes — 2009 Amendment**

V.R.P.C. 5.4 is amended to conform to the changes in the Model Rule. The ABA Reporter's Explanation is as follows:

TEXT:

1. Paragraph (a)(4): Permit sharing of court awarded legal fees with nonprofit organization

This addition is proposed to clarify that a lawyer may share court-awarded legal fees with a nonprofit organization that employed, retained or recommended employment of the lawyer in the matter. The propriety of such fee-sharing arrangements was upheld in Formal Opinion 93-374 of the ABA Standing Committee on Ethics and Professional Responsibility. Other state ethics committees, however, while agreeing with the policy underlying the ABA Opinion, found violations of state versions of Rule 5.4 because the text of the Rule appeared to prohibit such feesharing. The Commission agrees with the ABA Standing Committee that the threat to independent professional judgment is less here than in circumstances where a for-profit organization is involved and is therefore recommending this change.

2. Paragraph (d)(2): Broaden to include nonlawyers who occupy positions with responsibilities similar to those of corporate directors or officers

The current Rule is too limited because it employs terminology peculiar to corporate law, and lawyers are now practicing in professional limited liability companies. When applied to a professional limited liability company, paragraph (d)(2) is intended to preclude a nonlawyer from serving as a manager in a company that is managed by managers rather than members and from serving in a position like that of a president, treasurer or secretary of a corporation.

COMMENT:

[2] This Comment provides a cross-reference to Rule 1.8(f) on payment of a client's fee by a third person. No change in substance is intended.