

Order

Michigan Supreme Court
Lansing, Michigan

June 8, 2010

Marilyn Kelly,
Chief Justice

ADM File No. 2009-06

Michael F. Cavanagh
Elizabeth A. Weaver
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman
Diane M. Hathaway,
Justices

Amendment of Rule 5.4
of the Michigan Rules of
Professional Conduct

On order of the Court, notice of the proposed change and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following amendments of Rule 5.4 of the Michigan Rules of Professional Conduct are adopted, effective September 1, 2010.

[The present language is amended as indicated below by underlining for new text and strikeover for text that has been deleted.]

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 ~~pursuant to the provisions of Rule 1.17;~~ and
- (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 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;
 - (2) a nonlawyer is a corporate director or officer thereof, or one who occupies a 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.

Comment

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.

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 consent).

~~A lawyer does not violate this rule by affiliating with or being employed by an organization such as a union sponsored prepaid legal services plan, provided the structure of the organization permits the lawyer independently to exercise professional judgment on behalf of a client.~~

Staff Comment: The primary amendment of MRPC 5.4 adds proposed paragraph (a)(4), which specifically allows a lawyer to "share court-awarded legal fees with a

nonprofit organization that employed, retained, or recommended employment of the lawyer in the matter.”

The staff comment is not an authoritative construction by the Court.



I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

June 8, 2010

Corbin R. Davis

Clerk