DISTRICT OF COLUMBIA BAR
INNOVATIONS IN LEGAL PRACTICE COMMITTEE
REPORT FOR PUBLIC COMMENT ON PROPOSED REVISIONS TO D.C. RULES OF PROFESSIONAL CONDUCT 5.3, 5.4 and 5.7

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The views expressed in this report are those of the Innovations in Legal Practice Committee and not those of the D.C. Bar or its Board of Governors

June 23, 2025

REPORT FOR PUBLIC COMMENT OF THE INNOVATIONS IN LEGAL PRACTICE COMMITTEE OF THE DISTRICT OF COLUMBIA BAR

June 23, 2025

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APPENDICES

REPORT OF THE INNOVATIONS IN LEGAL PRACTICE COMMITTEE[1] FOR PUBLIC COMMENT

June 23, 2025

I. Summary of Proposals

The Innovations in Legal Practice Committee ("ILPC" or "Committee") proposes a change to Rule 5.4(b) that would allow D.C. Bar lawyers to cooperate and share fees with nonlawyers in a firm that has as its principal purpose the provision of legal services to clients, and any other services provided are law-related services. If adopted, this change would eliminate an unintended inconsistency that arose between Rule 5.4(b), adopted in 1991, that allows D.C. Bar lawyers to partner with nonlawyers only if the partnership or organization has as its sole purpose the provision of legal services to clients, and Rule 5.7, adopted 16 years later in 2007, which allows law firms without nonlawyer owners to provide law-related services. The ILPC has concluded that it was not intended that lawyers in a firm with nonlawyer owners as permitted in Rule 5.4(b) would be prohibited from practicing in and forming an organization that offers law-related services as is permitted under Rule 5.7 -- the constraints in Rule 5.4(b) that appear to permit law firms without nonlawyer partners to provide law-related services were unintended. Thus, the ILPC recommends a clarifying rule change to Rule 5.4(b)—a change that does not otherwise expand the "nonlawyer ownership rule" in existing Rule 5.4(b). Additional rule changes are recommended to ensure that nonlawyer owners are supervised by lawyers and to reiterate protections of the professional independence of lawyers. The ILPC recommends a change to Rule 5.4(b) and the Comments to clarify that the rule is not intended to be interpreted to include nonlawyer employees at law firms (for example, CFOs, IT personnel, HR managers, etc.) who have no ownership stake in the firm as being included in the rule. The ILPC has concluded that such an interpretation was never intended and is not consistent with practice around the country.

The ILPC also recommends that if a lawyer's representation involves nonlawyer owners, the lawyer must disclose this fact to a prospective client and give notice to existing clients. Finally, the ILPC recommends that law firms with nonlawyer owners be required to register with the D.C. Bar (name, contact information, place of business) and annually update the registration. The D.C. Bar may choose to require additional information.[2] Nonlawyer owners would be required to complete the D.C. Mandatory Course on the D.C. Rules of Professional Conduct and D.C. Practice.

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[1] Former Subgroup 1 members include: Professor Kathleen Clark, Richard J. Douglas, Geoffrey Klineberg, Allison LeFrak, Clinton McGrath, and Clarissa A. Rodriguez. As co-leader of Subgroup 1 from 2019 to 2023 and chair of the ILPC from 2018 to 2024, Charles "Rick" E. Talisman played a key leadership role in advancing the group's work, contributing significantly to its progress.

[2] Examples of additional information could include the number of nonlawyer owners, the degree of nonlawyer ownership and control, and the kinds of law-related services offered.

The proposed changes, if adopted, would not change on a practical level the existing ability of D.C. Bar lawyers to partner and share fees with nonlawyers in some limited circumstances – while maintaining the basic prohibition on fee sharing and the existing parameters of the limited exception to fee sharing that allows nonlawyers to hold a financial interest in a firm that provides legal or law-related services. However, the proposed changes would clarify what the ILPC believes are existing practices – that law firms with nonlawyer owners currently do provide law-related services to clients – and thus would eliminate the risk of unintended technical violations of Rule 5.4(b).[3]

A. Passive Investment and Multidisciplinary Practice – Future Study

Passive investment and multidisciplinary practice are currently prohibited by the Rules and the ILPC takes the position that further research and review should be conducted into permitting passive investment with appropriate regulation. By addressing nonlawyer ownership and fee sharing through changes to the D.C. Rules of Professional Conduct, these practices can be brought within the existing regulatory structure of the D.C. Bar and the D.C. Court of Appeals (the "Court"), thereby offering better client protection. The ILPC sees an opportunity to modernize the Rules to allow for passive investment, which would permit law firms to compete with technology companies that are able to generate capital and develop technological solutions to legal problems without the assistance of an attorney. Such modernization requires further study and is expected to be part of a future proposal by the Committee.

Currently, under existing Rule 5.4(b), which sets out the limited exception to the general prohibition on fee sharing with nonlawyers, District of Columbia lawyers may partner with nonlawyers only if the partnership or organization has as its sole purpose providing legal services to clients.[4] The nonlawyer in a law firm: (i) may hold a financial interest or exercise managerial authority in the law firm and (ii), must perform professional services which assist the law firm in providing legal services to clients. These nonlawyers must abide by the Rules of Professional Conduct as if they were lawyers. Lawyer partners and supervisors are vicariously liable for the

[3] During its study and research, the ILPC did not learn of any information that law firms with nonlawyer partners have interpreted Rule 5.4(b) to prohibit them from offering law-related services.

[4] Rule 5.4: Professional Independence of a Lawyer

> (b) A lawyer may practice law in a partnership or other form of organization in which a financial interest is held or managerial authority is exercised by an individual nonlawyer who performs professional services which assist the organization in providing legal services to clients, but only if:
> (1) The partnership or organization has as its sole purpose providing legal services to clients;
> (2) All persons having such managerial authority or holding a financial interest undertake to abide by these Rules of Professional Conduct;
> (3) The lawyers who have a financial interest or managerial authority in the partnership or organization undertake to be responsible for the nonlawyer participants to the same extent as if nonlawyer participants were lawyers under Rule 5.1;
> (4) The foregoing conditions are set forth in writing. https://www.dcbar.org/For-Lawyers/Legal-Ethics/Rules-of-Professional-Conduct/Law-Firms-and-Associations/Professional-Independence-of-a-Lawyer (Last visited April 10, 2025.)

ethical conduct of the nonlawyer partners; and the nonlawyers must not interfere with the lawyers' independent professional judgment. Passive investment is not permitted. The rule does not allow multidisciplinary practice because the sole purpose of the law firm must be the provision of legal services. The ILPC sees these existing prohibitions as an opportunity to modernize the Rules of Professional Conduct in a future iteration.

The existing exception permits nonlawyer professionals to work with lawyers in the delivery of legal services in a law firm without being relegated to the role of an employee only. Thus, law firms can attract and retain top expertise by offering nonlawyer professionals ownership interest with a financial interest in the firm. The law firm can offer more innovative and efficient legal services to clients. The current exception is seen in law firms that offer ownership interest to professionals serving in roles such as CFOs, IT and marketing professionals, executive directors, and individuals who work as consultants to lawyers (for example, a doctor or nurse in a medical malpractice law firm who evaluates cases). However, these nonlawyer professionals are not permitted to run their own separate practices or offer separate non-legal professional services within the firm.

B. The Current Landscape of Fee Sharing and Partnerships with Nonlawyers

Beginning in 1991 until January 1, 2021, the District of Columbia was the only jurisdiction in the United States that permitted lawyers to partner and share fees with nonlawyers in law firms -- albeit under limited circumstances set forth in Rule 5.4(b). However, the landscape has changed. During the time the ILPC has been studying these issues, Arizona eliminated its ethics rule, effective January 1, 2021, that prohibited practicing and sharing fees with nonlawyers. Since August 2020, Utah has permitted fee sharing and partnerships with nonlawyers through a "regulatory sandbox"[5] pilot program.[6] Illinois, Indiana, Texas, and Washington State are either studying the issues of fee sharing and partnership with nonlawyers or have made recommendations

[5] A regulatory sandbox is an approach to develop and test innovations on a limited basis otherwise not be permitted without going through typical regulatory approval and licensing requirements which are often time-consuming and costly. The financial-technology (or Fintech) area uses regulatory sandboxes to test new developments. Sometimes innovations that would otherwise be prohibited, like partnering with nonlawyers, is permitted. A streamlined application and approval process to take part in a regulatory sandbox is usually required.

[6] As of March 2025, at least 27 participants had left the sandbox or may be leaving under new rules that require that participants show that they will reach Utah consumers underserved by the legal market, and that the impact is substantial compared to an entity's overall reach. About 12 participants remain. Debra Cassens Weiss, Nearly 30 legal entities may leave Utah's regulatory sandbox program after state tightens rules, *ABA Journal* (Mar. 4, 2025), https://www.abajournal.com/news/article/nearly-30-legal-entities-may-leave-utahs-regulatory-sandbox-after-state-tightens-rules.

about it.[7] The State Bar of California's study was halted by state legislation,[8] and the Florida Bar's Board of Governors did not approve a recommendation for alternative business structures ("ABS") made by one of its committees.[9]

C. The Proposed Revisions

The proposed revisions are to D.C. Rules of Professional Conduct 5.3 – Responsibilities Regarding Nonlawyer Assistants; Rule 5.4 – Professional Independence of a Lawyer; and Rule 5.7 – Responsibilities Regarding Nonlawyer Assistants.

Rule 5.3 -Responsibilities Regarding Nonlawyer Assistants:

Modify the first sentence of Comment [1] to Rule 5.3 to include "nonlawyer" before "assistants" and add "and managers" to the list of nonlawyer assistants generally employed by lawyers.

Rule 5.4 – Professional Independence of a Lawyer:

Rule 5.4(b): Include "or law-related services."

Rule 5.4(b), Comment [5], and new Comment [6]: Delete the reference to "managerial authority" in Rule 5.4(b). Revise Comment [5] to clarify that nonlawyers who have a financial interest in a law firm are also referred to as "nonlawyer owners," and clarify that a lawyer's responsibilities for oversight of nonlawyer owners under Rule 5.4(b) are distinct from the lawyer's responsibilities for oversight of nonlawyer assistants under Rule 5.3.

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[7] Internationally, Australia (New South Wales, Victoria, South Australia, Northern Territory, Western Australia, and Tasmania) permits multidisciplinary practice firms and incorporated legal practices. England and Wales, and some Canadian provinces allow nonlawyer partnerships and fee sharing through organizations such as alternative business structures (ABS) or the regulatory sandbox model. Denmark, Germany, Italy and Spain also permit nonlawyer partnerships to varying degrees.

[8] *See* Brandon Lowery, How Calif.'s Political Gauntlet Crushed Legal Industry Reforms, *Law 360 Pulse*, Sept. 28, 2022, https://www.law360.com/pulse/articles/1534631/how-calif-s-political-gauntlet-crushed-legal-industry-reforms.

[9] See Debra Cassens Weiss, California Bill Signed into Law Restricting State Bar Sandbox Proposals, *ABA Journal* (Sept. 21, 2025), https://www.abajournal.com/news/article/california-bill-signed-into-law-restricts-state-bar- sandbox-proposals. See also Supreme Court Declines to Adopt Recommendations on Nonlawyer Ownership, Fee- Splitting, and Expanded Paralegal Work, *The Florida Bar News*, (Feb. 15, 2023), https://www.floridabar.org/the- florida-bar-news/supreme-court-declines-to-adopt-recommendations-on-nonlawyer-ownership-fee-splitting-and- expanded-paralegal-work/.

Add new Comment [6] to clarify that nonlawyers who hold managerial authority would be subject to the same level of supervision (by lawyers) as that of nonlawyer employees and managers in Rule 5.3and nonlawyer managers who hold a financial interest in a partnership or organization remain subject to the requirements in Rule 5.4(b). Renumber existing Comments [6] through [12].

Rule 5.4(b), (Renumbered) Comment [7]: Clarify that nonlawyer managers who do not have financial interests in the organization are governed by Rule 5.3.

Rule 5.4(b), (Renumbered) Comment [8]: Add "or law-related services." Add "marketing professionals" to the list of examples of law-related services.

Rule 5.4(b)(1): Delete the requirement that the partnership or organization with nonlawyer owners has as its "sole" purpose providing legal services to clients. Change to "principal" purpose and add to the purpose of providing legal services "and any other services provided are law-related services".

Rule 5.4(b)(2): Delete "persons having such managerial authority or" and add "nonlawyers" as those holding a financial interest.

Rule 5.4(b)(2)(i) and (ii): Move the requirement that all nonlawyers holding a financial interest "undertake to abide by these Rules of Professional Conduct" to a new subsection (i) of 5.4(b)(2). Add a new subsection (ii) to Rule 5.4(b)(2) to require that nonlawyer owners of a law firm must timely complete the D.C. Mandatory Course on the D.C. Rules of Professional Conduct and D.C. Practice as required by new admittees to the D.C. Bar unless the nonlawyer's principal office is located in another jurisdiction that requires a similar course for newly admitted attorneys. The deadline to take the mandatory course would be 12 months from the later of: 1) the nonlawyer's acquisition of a financial interest in the firm; or 2) the effective date of this rule.

Rule 5.4(b)(3): Add a new subsection (3) to 5.4(b) that "such nonlawyer owners may not interfere with the professional independence of lawyers in the partnership or organization with respect to providing legal services." Renumber existing 5.4(b)(3) and (4).

Rule 5.4(b)(6): Add a new subsection (6) to 5.4(b) to require that a partnership or organization with nonlawyer partners must register annually with the D.C. Bar (name,

contact information, place of business). The Bar may require additional information; examples could include information about the degree of nonlawyer ownership and control (e.g., the percentage of equity ownership and voting equity owned by nonlawyers; the number of nonlawyer owners) and the kinds of law-related services offered.

Rule 5.4(b)(7), and new Comment [13]: Add a new subsection (7) to Rule 5.4(b) to require that at the beginning of each legal representation for a new client, a lawyer who practices in a partnership or organization with nonlawyer owners that are involved in the representation must disclose this fact to the prospective client. Add new Comment [13] to include that notice of nonlawyer owners to existing clients should be provided.

Rule 5.4(c): Add "or a nonlawyer manager" to the group of individuals that are prohibited from interfering with the lawyer's professional judgment.

Rule 5.4 (d)(1)(2) and (3), (e), and new Comment [14]: Add new subsections (d)(1), (2) and (3), and (e); and a new Comment [14]. For jurisdictions that have less restrictive rules about nonlawyer owners of law firms, new subsections 5.4(d) and (e) would allow lawyers in the District to share legal fees and provide services to clients with firms from those jurisdictions if they do not interfere with the lawyer's professional judgment, the lawyer-client relationship, or the lawyer's obligation to comply with other applicable Rules of Professional Conduct. New Comment [14] would clarify that D.C. lawyers may cooperate with such partnerships or organizations as long as those organizations are operating in accordance with the rules of their home jurisdiction and not otherwise violating the D.C. Bar Rules of Professional Conduct.

Rule 5.7 –Responsibilities Regarding Law-Related Services

Expand the examples of law-related services in (Renumbered) Comment [9] to Rule 5.7 to include insurance and actuarial services; estate planning: technology services and consulting; privacy and cybersecurity services and analysis; government relations; public relations; other intellectual property; and e-discovery.

II. Innovations in Legal Practice Committee Mission

The ILPC studies issues arising from globalization in the practice of law that have a significant impact on law practice for members of the District of Columbia Bar and for the D.C. Bar as an

organization.[10] Among other issues, the Committee studies, monitors and addresses issues arising from changing models for obtaining and delivering legal services in the United States and abroad, including alternative legal services providers and business structures, and multi-disciplinary practice ("MDP"). Such issues may also include regulatory innovations for the public protection of consumers of legal services and the legal profession overall. Ongoing study and monitoring of developments positions the D.C. Bar to be proactive, if needed, in addressing issues arising from alternative business structures and MDP. The ILPC may make referrals to or collaborate with other Bar committees in the study of these issues as needed.

The Committee consists of 11 active members of the D.C. Bar and two nonlawyer professionals.

After meetings of the full ILPC on December 6, 2018, and April 18, 2019, the work of the Committee was divided into two subgroups modeled after the *Legal Market Landscape Report* (2018) by William D. Henderson which was commissioned by the State Bar of California. Henderson asserts that the legal market is divided into two segments: one serving individuals, and the other serving corporations, each of which has different economic drivers and is evolving in different ways.[11]

Subgroup 1 of the ILPC studied alternative ways of providing legal services to organizational (corporate) clients. On September 22, 2021, Subgroup 1 presented its proposed rule revisions to the full Committee, who approved the proposals. During the report drafting process, there were several delays due to the reassessment of advancements made in other jurisdictions, and new subgroup members and leadership. On May 1, 2025, Subgroup 1 presented revised proposed revisions and a report to the full Committee, who approved the proposals on May 16, 2025.

Subgroup 2 is studying alternative ways of providing legal services to individuals.

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[10] On September 18, 2018, the D.C. Bar Board of Governors approved the creation of the Global Legal Practice Committee; later renamed the Innovations in Legal Practice Committee ("ILPC" or "Committee") – a standing committee of the D.C. Bar. The ILPC is the successor to the Global Legal Practice Task Force that was approved by the Board of Governors in 2014 to explore issues arising from the globalization of legal practice that have an impact on members of the D.C. Bar and the Bar as an organization. The Task Force's Interim Report of May 10, 2016 to the Board included a recommendation for ongoing study and monitoring of developments in the areas of alternative business structures ("ABS") and multidisciplinary practice ("MDP"). The Board approved the recommendation on June 7, 2016. The Task Force also noted that the ABS/MDP issues identified for review may require additional in-depth study or the establishment of a separate task force or committee to study these issues and make recommendations as appropriate.

[11] William D. Henderson, *Legal Market Landscape Report*, STATE BAR OF CAL. (July 2018), http://board.calbar.ca.gov/docs/agendaItem/Public/agendaitem1000022382.pdf.

III. The Committee's Review, Scope of Study and Summary of Study Issues

A. Models and Trends Studied

Subgroup 1 studied global models and trends for the effective delivery of legal services to organizational clients. The subgroup studied:

- Alternative business structures ("ABS") -- a legal service business model that is different from a traditional sole proprietorship or partnership. An ABS can include a publicly traded law firm, external investment in a law firm, nonlawyer ownership of a law firm, or other ways to offer legal services outside of traditional models. ABS may allow for the provision of certain types of legal services by nonlawyers.

- Multidisciplinary practice ("MDP"), which is a type of ABS firm providing both legal and related nonlegal services.

- Alternative legal service providers ("ALSPs"), which provide corporate counsel and clients of law firms with specialized expertise and sophisticated technological solutions, often at lower costs than traditional law firms.

- Fee sharing and Fee splitting: What are the trends in permitting fee sharing with nonlawyers nationally and what would likely happen in the future? Prohibitions on fee sharing by lawyers with nonlawyers date back to 1729 in England. The ABA first adopted prohibitions against fee sharing in 1928 (Canon 34) in response to large corporations hiring lawyers to sell legal services to their customers. In 1983 the ABA adopted Model Rule of Professional Conduct Rule 5.4 prohibiting fee sharing and partnerships with nonlawyers. The prohibition on fee sharing is intended to protect attorney professional independence.

- Third-Party Litigation Funding/Financing -- Commonly involves a litigant obtaining financial assistance from a third-party funder (a "litigation funding company") in exchange for an interest, usually non- recourse, in the potential recovery from the litigation claim. Litigation funding companies may also provide funds directly to a litigant's attorney to cover litigation costs in exchange for a portion of the

- attorney's share of the recovery.[12] Litigation funding finances individual cases or a portfolio of cases.

- Passive or Outside Investment – A way for a law firm to obtain capital outside of traditional financing. These can be beneficial for newer law firms to fund operations costs. Firms could also structure fee sharing deals with other entities (litigation funders) to provide representation to litigants with few resources. Detractors have pointed to financial pressures that could potentially result in a loss of professional independence and control for attorneys, possible conflicts of interest between a passive investor and a client where the client may be unaware of the investor's interest in the firm, and concerns that litigation funders are becoming common and asserting excessive control in the cases they fund. the cases they fund.

B. Questions and Issues Studied

Questions and issues studied by Subgroup 1 included[13] whether there are effective models to recommend for the District of Columbia; if so, would they be permitted under our existing rules, and if not, what rules changes would be needed to make them work; and what kinds of and how many lawyers or firms in the District engage in fee sharing with nonlawyers under D.C. Rule of Professional Conduct 5.4(b), which permits fee sharing with nonlawyers in very limited circumstances?

Subgroup 1 ultimately focused on changes to Rule 5.4 and several other Rules of Professional Conduct to achieve its goals. It narrowed its inquiry to examining:

- Whether maintaining the existing prohibitions on fee sharing or fee splitting with nonlawyers, alternative business structures, and multi- disciplinary practice in the District of Columbia was beneficial to the business and profession of the practice of law in the District; beneficial to Bar members; and protected clients and the public; and are there reasons why we cannot or should not propose changes to permit these activities now.

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[12] See Giugi Carminati, Litigation Finance: A Modern Financial Tool for Corporate Counsel, *Am. Bar Ass'n Bus. L. Today* (Dec. 12, 2022), https://www.americanbar.org/groups/business_law/resources/business-law-today/2022-december/a-modern-financial-tool-for-corporate-counsel/.

[13] For a detailed discussion of the issues studied by Subgroup 1, see Appendix I - Questions and Issues Presented.

- The subgroup learned that contractual relationships are used as work-arounds for the above prohibitions and debated whether concepts such as the professional independence of a lawyer, attorney-client privilege or conflicts are still being preserved in light of the work-arounds. Are there service providers operating outside the scope of regulation because they are on the fringes of the unauthorized practice of law or are using work-arounds to circumvent the restrictions in Rule 5.4?

- The subgroup also learned that law firms are losing clients and business to other entities that provide a range of professional services (e.g., the Big 4 accounting firms, alternative legal service providers). The United States needs to compete with the legal services businesses abroad to stay competitive and relevant.

- Would clients benefit from changes to Rule 5.4; if so, how, and what kinds of clients? Would changes benefit Bar members; if so, how and in which practice areas and settings?

- Would there be any risk to clients or the larger public, and if so, what would it be? Would changes be detrimental to any Bar members? If so, how; and would it be in certain kinds of practice settings and areas?

- Should the change be implemented by a "regulatory sandbox" pilot program like that of Utah? Or should the changes be revisions to the Rules of Professional Conduct, which if adopted, would make the changes permanent?[14]

- Outside/passive investment and third-party litigation funding: should it be permitted/expanded, and if so, why and who would benefit?

- Should the registration and disclosure of law firms with nonlawyer partners be required? If so, what kind of information should be registered and disclosed, and to whom?

- How should MDP and ABS firms in other states with looser regulations than the District of Columbia (e.g., Arizona and Utah and possibly others in the future) be addressed? Should there be a change to a Rule of Professional Conduct (similar to Georgia's rule that allows Georgia attorneys to work with and share fees with lawyers and law firms outside of Georgia that permit nonlawyers to participate in the management, have equity ownership, or share in legal fees generated by such firms), or should it be addressed in a legal ethics opinion?

[14] *See* Appendix F – Discussions with Stakeholders and Experts.

IV. Research and Methodology[15]

Subgroup 1 studied existing D.C. Rule 5.4(b) that allows D.C. Bar members to partner with nonlawyers in law firms under limited circumstances and its impact in the District of Columbia since adoption of the Rule in 1991. The committee preferred to limit its initial proposal while leaving the broader questions of multidisciplinary practice open for future study. The committee believes that there is no reason for MDP to continue to be viewed as a threat to attorney professional independence, but did not want to get sidetracked by this issue and decided to consider the issue after assessing the Bar and Court's openness to progression on MDP.

The subgroup also studied financial investment in law firms by nonlawyer "silent" partners (passive investment) and third-party litigation funding. The subgroup believes that passive investment, properly regulated and limited in extent, is a beneficial method to allow acquisition of capital for new law firms and for investment in new technology that may be necessary for law firms if they want to innovate. It would help sustain and grow the legal profession. The subgroup anticipates exploring a concrete proposal about passive investment in a future report.

Ultimately, the subgroup focused its study on potential revisions to existing Rule 5.4(b).

Subgroup 1 met monthly or bi-monthly from October 2019 to August 2021 and subsequently as needed until April 2025. The members reviewed materials about alternative business structures and multidisciplinary practice and monitored the work and developments in other jurisdictions, including foreign jurisdictions, that allow lawyers to partner and share fees with nonlawyers in law firms. The subgroup reviewed policy statements and reports from the American Bar Association (ABA), the Conference of Chief Justices (CCJ), and the Institute for the Advancement of the American Legal System (IAALS).[16] Subgroup 1 met with representatives of the Board on

[15] *See* Appendices A through G: Appendix A – Reports and Policy Statements; Appendix B – Alternative Legal Service Providers (ALSPs) and the State of the Legal Market; Appendix C - D.C. Bar Special Committee on Multidisciplinary Practice 2001; Appendix D - Call for General Comment; Appendix E - Survey of Selected D.C. Bar Members; Appendix F - Discussions with Stakeholders and Experts; Appendix G - Status of Fee Sharing and Nonlawyer Ownership in the United States and Abroad

[16] *See* Appendix A – Reports and Policy Statements.

Professional Responsibility and the Office of Disciplinary Counsel,[17] and collaborated with representatives of the D.C. Bar's Rules of Professional Conduct Review Committee ("Rules Review Committee"), who attended and participated in several meetings of Subgroup 1.[18]

Subgroup 1 reviewed many studies, law review journal articles and research papers. It elicited the feedback and opinions of the corporate community for insight on the legal needs of corporate clients. It also sought feedback from other individuals knowledgeable about MDP and ABS and their use in other jurisdictions, and from younger lawyers, who might have an interesting perspective on law and technology, including the owners of a firm run by lawyers and data scientists that advises clients on managing the risks of artificial intelligence and data.

Subgroup 1:[19]

- Studied data from the Clio Legal Trends Report and reports from Thomson Reuters Institute/Said Business School at Oxford University and Georgetown Law Center on Ethics and the Legal Profession about alternative legal service providers and the state of the legal market (See Appendix B);

- Reviewed the 2001 report and proposals to change Rule 5.4 from the D.C. Bar Special Committee on Multidisciplinary Practice (See Appendix C);

- Solicited opinions from D.C. Bar members and others through a public Call for General Comment from January 3, 2020, to March 9, 2020.

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[17] Subgroup 1 met via Zoom with Hamilton P. "Phil" Fox III, Disciplinary Counsel for the Office of Disciplinary Counsel (ODC), James Phalen, Executive Attorney at the Board on Professional Responsibility (BPR), and Matt Kaiser, then-chair of the BPR and partner at KaiserDillon PLLC (speaking on his own behalf and not that of the BPR) on July 21, 2020.

[18] Subgroup 1 solicited informal feedback on its proposed rule revisions from representatives of the Rules of Professional Conduct Review Committee and held virtual meetings with Subgroup 1 and the Rules Review Committee representatives on May 4, May 20, June 22, and July 13, 2021. The ILPC is grateful for the feedback from the Rules Review Committee members and incorporated many of their suggestions into the proposed revisions. The representatives of the Rules Review Committee were Eric Hirschhorn, who attended the April 6, May 4, May 20, and June 22, 2021, meetings; Steuart Thomsen, who attended the July 13, 2021, meeting; and Elizabeth Simon, who attended all of the above referenced meetings. Hope Todd, D.C. Bar Associate Director, Legal Ethics, Regulation Counsel attended the May 4, May 20, and June 22, and July 13 meetings.

[19] The ILPC sought to understand the demand for legal services from corporate clients and drafted a questionnaire to solicit information about how corporations were using legal services, including alternative legal service providers, and whether corporations sought or would benefit from multidisciplinary practice or firms that had nonlawyer partners. The questionnaire was distributed by email to general counsels of Fortune 500 companies on March 31, 2020, shortly after "lock-down" began in response to the coronavirus pandemic. Despite extending the deadline to respond to May 15, 2020, and follow-up reminders to the target audience, the Committee received no response, which it attributes to the timing of the questionnaire.

- (The comments received in 2020 are not in response to the specific proposals the ILPC is now making in this report.) (See Appendix D);

- Gathered qualitative data through an online survey to selected D.C. Bar members from February 3, 2020, to February 13, 2020 (See Appendix E);

- Obtained information and insights through 23 discussions with 31 stakeholders and experts via Zoom from June 3, 2020, to September 30, 2020 (See Appendix F); and

- Monitored the status of rules about fee sharing and nonlawyer law firm ownership in the United States and abroad (See Appendix G).

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The Committee considered additional changes such as allowing outside investment, eliminating the prohibition on fee sharing entirely, allowing firms to engage in multidisciplinary practice or adopt alternative business structures. The Committee concluded that these potential changes to the Rules would delay the process of incremental but meaningful reforms that the committee now proposes and believes can be adopted relatively promptly. The Committee did receive some comments about the lack of access to capital, particularly with respect to small or start-up firms and intends to follow up these proposals with further study on passive investment in its continuing work.

V. Changes That Were Considered by the Committee, But Are Not Being Proposed, and Why

The Committee agreed that changes to Rule 5.4 were needed and supported by the research and study it conducted. Leaving the existing Rule 5.4 as is – the status quo – would not serve the members of the D.C. Bar in a market where traditional law firms are increasingly competing with entities that can offer a range of legal and other professional services to clients – services that clients are increasingly demanding. The question became: how much change was needed, and what kinds of changes would balance the objectives of helping D.C. Bar members compete with alternative business structures and alternative legal service providers in delivering legal services to corporate clients, thus sustaining a vibrant legal profession, with the need and desire to maintain the professional independence of attorneys, compliance with the Rules of Professional Conduct, and public protection?

Subgroup 1 discussed a range of potential changes –from keeping the existing Rule 5.4 unchanged – to proposing changes that would expand the existing circumstances under which D.C. Bar members could partner and share fees with nonlawyers – to eliminating Rule 5.4 altogether. These are further detailed in Appendix H of this report.

VI. Proposed Rule Changes and Why They Are Being Proposed for the District of Columbia

The ILPC recommends changes to Rules 5.3, 5.4, and 5.7. The proposed changes to Rule 5.4 address an unintended inconsistency or limitation between Rules 5.4 and 5.7. The proposed changes to Rules 5.3 and 5.7 are either simply conforming changes to be consistent with the new revisions to Rule 5.4 or modest updates.

The basic prohibition on fee sharing set forth in Rule 5.4 has not been changed. Nor has the ILPC's proposed changes to Rule 5.4(b) changed the basic parameters of the limited exception to fee sharing allowing nonlawyers to hold a financial interest in a District of Columbia law firm that has been part of the D.C. Rules of Professional Conduct for over thirty years. The ILPC propose updating and modernizing the Rule based on the thirty years of experience with it in the District and changes that were implemented in other jurisdictions – to date, primarily Arizona and Utah.[20]

A. Rule 5.3: Supervision of Nonlawyers; Responsibilities of Lawyers Regarding Nonlawyer Assistants

The first sentence of Comment [1] to Rule 5.3 would be modified to include **"nonlawyer"** before "assistants"; **"and managers"** would be added to the list of nonlawyer assistants generally employed by lawyers.

The proposed change to Comment [1] of Rule 5.3 is based upon a proposed change made to Rule 5.4(b) which would eliminate the category of nonlawyers with "managerial authority" from the exception. Thus, nonlawyer law firm "managers" would no longer be covered under Rule 5.4(b), for reasons explained below and lawyer partners would no longer "undertake to be responsible" for a nonlawyer manager's compliance with the Rules. However, because the proposed change would create a "gap" where a nonlawyer manager could act in contravention of the Rules without consequence for the supervising lawyers, the ILPC closed this "gap" in the Rules by including nonlawyer managers under Rule 5.3 by adding them in Comment [1]. As a result, a partner or

[20] Other jurisdictions that have changed their rules or have made proposals to permit nonlawyer ownership and fee sharing with nonlawyers believe that these changes would encourage investment, innovation and competition in the delivery of legal services, thus improving the delivery and affordability of legal services to individuals and small businesses. However, the focus of the subgroup's work and its rationale for its proposals is the alternative delivery of legal services to corporate clients.

other lawyer with comparable authority would have the same obligations and responsibilities under Rule 5.3 for nonlawyer managers as they do for other nonlawyers that they retain or employ.

The ILPC made non-substantive typographical changes to Rule 5.4(a) which simply change capitalization in some places to conform to the style used in Rules generally.

B. Legal Services (Rule 5.4(b)(1); Renumbered Comment [8] to Rule 5.4(b)) (Rule 5.4 – Professional Independence of a Lawyer); and Law-Related Services (Rule 5.7) (Rule 5.7 – Responsibilities Regarding Law-Related Services)

Through its study, Subgroup 1 concluded that an unintended inconsistency had developed between Rule 5.4(b)(1) – which uses "legal services" – adopted by the Court, effective January 1, 1991; and Rule 5.7 – which uses "law-related services" – adopted 16 years later by the Court in 2007. Research into the origin and evolution of the two rules led the subgroup to conclude that it was not intended that lawyers in a firm with nonlawyer owners as permitted in Rule 5.4(b) would be prohibited from practicing in and forming an organization that offers law-related services as is permitted under Rule 5.7.

Rule 5.4(b) has been part of the D.C. Rules since its adoption by the Court in 1991. Rule 5.4(b)(1) limited those entities that could practice law and have a nonlawyer that held a financial interest in those organizations to those that had "as its *sole* purpose providing legal services to clients." (Emphasis added.) In 1991 when Rule 5.4(b)(1) was adopted, Rule 5.7 - Responsibilities Regarding Law-Related Services, did not exist. Rule 5.7 authorizes lawyers in conjunction with others to provide "law-related services." "Law-related services" are "services that might reasonably be performed in conjunction with and in substance are related to the provision of legal services, and that are not prohibited as the unauthorized practice of law when provided by a nonlawyer." *See* Rule 5.7(b). "Law-related services include "providing title insurance, financial planning, accounting, trust services, real estate counseling, legislative lobbying, economic analysis, social work, psychological counseling, tax preparation, and patent, medical or environmental consulting." *See* Comment [9] to Rule 5.7.

Rule 5.7 was adopted by the Court and became effective in 2007; therefore, the impact of Rule 5.7 was not considered when the current Rule 5.4(b) was drafted in the 1980s by the D.C. Bar Model Rules of Professional Conduct Committee led by Robert Jordan ("Jordan Committee").[21] As a result, the Rules seemingly allow a law firm without nonlawyer partners to provide law-related services but prohibit a law firm with a nonlawyer who has a financial interest from providing such services.

[21] *Proposed Rules of Professional Conduct and Related Comments, Showing the Language Proposed by the American Bar Association, Changes Recommended by the District of Columbia Model Rules of Professional Conduct Committee, and Changes Recommended by the Board of Governors of the District of Columbia Bar*, Submitted in Connection with a Petition by the Board of Governors of the District of Columbia Bar to the District of Columbia Court of Appeals (Nov. 19, 1986).

The subgroup concluded that there was never any articulated reason why law firms with nonlawyer partners could not provide law-related services while law firms without such partners were permitted to provide the full gamut of such services. As a result, the ILPC recommends that the requirement in Rule 5.4(b) that "[t]he partnership or organization has as its **sole** purpose providing legal services to clients" be modified to state that "the partnership or organization has as its **principal** purpose providing legal services to clients and any other services provided are law-related services." Renumbered Comment [8] would be revised to state "to permit nonlawyer professionals to work with lawyers in the delivery of legal services **or law-related services** without being relegated to the role of an employee." The change from "sole purpose" to "principal purpose" would remain the provision of legal services but would clear the way to include the provision of law-related services. This change puts firms with nonlawyers holding a financial interest on equal footing with firms without such individuals and provides greater flexibility within the strictures of Rule 5.4 for all law firms to offer law-related services.

In proposing this change, Subgroup 1 had in mind the Multi-Disciplinary Practice ("MDP") proposal recommended by the Bar in 2001 and addressed by the Court in 2004. The ILPC's recommended change stops well short of allowing MDP firms in the form earlier debated in the 2001 report. Under the ILPC's proposal, the "principal purpose" of the entity must remain the provision of legal services, not law-related services or other services. Yet the change would allow a client to receive law-related services from a nonlawyer partner of the entity, not simply from a nonlawyer employee of the entity. The ILPC's hope is that this change, in addition to eliminating a distinction which was not intended and whose purpose was never articulated, will allow law firms to recruit and retain the most skilled and experienced nonlawyers to provide such services, as they can be promised a partnership share and co-equal status with lawyers. If law-related services are to be permitted, as the Rules currently provide, the goal should be to provide such services to clients with the utmost skill, efficiency, and knowledge. Requiring those that are involved in providing such services to remain forever, no matter their talents and abilities, as employees is inconsistent with the goal of client service.

The ILPC's proposed changes will not turn law firms into MDP firms and will not alter the obligation of nonlawyers holding a financial interest from their currently required undertaking to abide by the D.C. Rules. And it will not alter the obligation of the lawyers who likewise have a financial interest or managerial control to be responsible for the nonlawyer owners as required in the current rule. However, from a practical standpoint, the ILPC recognizes that Rule 5.7 has already opened the doors to MDP-type work in the District. The ILPC also recommends that the D.C. Bar engage in educational outreach to Bar members about these opportunities, assuming the proposals are approved by the Court.

C. Compliance by Nonlawyer Owners with the D.C. Rules of Professional Conduct: Rule 5.4 (b)(2)(i); New (ii), and New Subsection (6) to Rule 5.4 (b)

The ILPC's recommendation takes further steps towards assurance of compliance with the Rules by nonlawyer owners. There was a consensus throughout the subgroup's study that registration of nonlawyer partners or law firms with nonlawyer partners with the D.C. Bar should be required. The proposal for new subsection (6) to Rule 5.4(b) –would require any entity operating under Rule 5.4(b) – a law firm with nonlawyer owners – to register annually with the D.C. Bar, (provide name, contact information, and place of business), and annually update the registration. The D.C. Bar may choose to require additional information; examples could include the number of nonlawyer owners, the degree of nonlawyer ownership and control and the types of law-related services offered. The registration form would allow for data collection from firms with nonlawyer partners consistent with Rule 1.6 and attorney client privilege. Because there is no existing registration requirement, the D.C. Bar is unable to state definitively how many firms have nonlawyer partners as permitted under Rule 5.4(b). The lack of data is a challenge when studying the rules about this topic. The registration form could also serve as additional information for the proposed required disclosure by lawyers to clients. There was some concern among Subgroup 1 members that the registration requirement might deter some firms from having nonlawyer partners. However, Arizona and Utah have more elaborate registration requirements for their organizations and firms with nonlawyer owners and the requirements do not seem to have had a negative impact.

Further, nonlawyer owners of a law firm would be required to take the D.C. Mandatory Course on the Rules of Professional Conduct and District of Columbia Practice required by the D.C. Bar for new admittees to the Bar under a new subsection (ii) to Rule 5.4(b)(2). As nonlawyer owners, they are currently required in new (i) to Rule 5.4(b)(2) to abide by the D.C. Rules of Professional Conduct; nearly half of the mandatory course focuses on the Rules of Professional Conduct. A nonlawyer owner would be required to complete the course within 12 months from the later of: 1) the nonlawyer's acquisition of a financial interest in the firm; or 2) the effective date of this rule. The latter would reach those nonlawyers who already hold financial interests in law firms. This requirement is neither onerous nor burdensome but provides an overview of the Rules and their requirements and was preferred by the ILPC to the existing, "learn-as-you-go" approach embodied in the current Rule.

D. Nonlawyers With "Managerial Authority": New Subsection (3) to Rule 5.4(b); Changes to 5.4(c); New Comment [6] to Rule 5.4(b); and Revised Comment [7] to Rule 5.4(b).

The ILPC recommends that references to nonlawyers with "managerial authority" no longer be included in Rule 5.4(b). The subgroup's work and experience gave rise to the concern that this term was overly broad and included many nonlawyer employees, both in the District of Columbia and elsewhere, who had some degree of managerial authority within a firm but held no financial

interest in the firm. The proposed change is intended to allow these nonlawyer employees to exercise managerial authority in law firms without imposing any of the requirements of Rule 5.4(b) on them.

The term "managerial authority" is not a defined term in the Rules. It is used throughout Rule 5.1 ("Responsibilities of Partners, Managers and Supervisory Attorneys"); 5.3 ("Responsibilities Regarding Nonlawyer Assistants"); and 5.4. Comment [1] to Rule 5.1 states that:

Paragraph (a) applies to lawyers who have managerial authority over the professional work of a firm or government agency. This includes members of a partnership, the shareholders in a law firm organized as a professional corporation and members of other associations authorized to practice law, lawyers having comparable managerial authority in a legal services organization or the law department of an enterprise or government agency, and lawyers who have intermediate managerial responsibilities in a firm.

The subgroup decided against proposing a detailed definition of the term "managerial authority" because doing so would confuse how the term is used in existing Rules. Legislative history from the development of the ABA Model Rules of Professional Conduct and the D.C. Rules revealed that the term does not have a consistent meaning across different rules.

A Chief Operating Officer, IT Director, Marketing Director, or Chief Financial Officer of a firm have at least some managerial authority over firm operations. The ILPC believes this to be true in the District of Columbia and elsewhere, even in jurisdictions where nonlawyer ownership of law firms is prohibited.[22] The ILPC could not craft a definition of "managerial authority" which excluded these professionals and concluded that continuing to include them in Rule 5.4(b) would simply perpetuate a regulatory concept that had become a dead letter. Further, for the District of Columbia to treat these professionals as falling under Rule 5.4(b) while elsewhere in the country they were viewed as mere employees would lead to confusion and disruption for no good purpose.

The effort needed to "correct" the widespread "misapprehension" that law firm managers are not covered by Rule 5.4(b)'s current provisions seemed to the ILPC out of proportion to any benefit. Further, such employee managers remain subject to the management and direction of the lawyers that employ them and the lawyers remain responsible for the conduct of such managers under Rule 5.3. For good measure, the ILPC included nonlawyer managers within the group that are prohibited from "direct[ing] or regulat[ing] the lawyer's professional judgment" through proposed new language added to Rule 5.4(c). This language is also added with respect to nonlawyer owners in new subsection (3) of Rule 5.4(b).

[22] For example, the Association of Legal Administrators ("ALA") was founded in 1971 "to provide[s] support to professionals involved in the management of law firms, corporate legal departments and government legal agencies." It has almost 9,000 U.S. members. *See* https://www.alanet.org/about/news-media-center (accessed on April 8, 12025).

The deletion of "managerial authority" is also outlined in new Comment [6] to Rule 5.4. The new comment would clarify that nonlawyers who hold managerial authority would be subject to the same level of supervision as that of nonlawyer employees and managers in Rule 5.3 – that of actual knowledge of misconduct by the lawyer – which is consistent with practice in other jurisdictions. Nonlawyer managers who also hold a financial interest in a partnership or organization remain subject to the requirements in Rule 5.4(b). Revisions to Comment [7] to Rule 5.4(b) clarify that nonlawyer managers who do not have financial interests in the organization are governed by Rule 5.3.

E. Disclosure of Nonlawyer Owners: New Subsection (7) to Rule 5.4(b) and New Comment [13]

New Rule 5.4(b)(7) requires that upon beginning representation of a new client for legal services, a lawyer must disclose to the new client "the fact and nature of the ownership by nonlawyers" where the nonlawyer is involved in the representation. The ILPC was of the view that this was information that a client should know and was not burdensome. The vast majority of other jurisdictions in the United States still do not permit nonlawyer ownership; for this reason, a client should be informed of the ownership structure of the law firm. Since the ownership structure of a law firm or similar organization typically does not change from day to day, law firms may develop disclosures and other materials sufficient to meet the requirement for use in most situations. For example, if a law firm Chief Operating Officer is, in fact, an owner of the firm, the disclosure as to that ownership should not vary to any significant degree from client to client.

New subsection (7) and new Comment [13] would clarify that notice of nonlawyer owners to existing clients should be provided when the representation involves services to be provided by nonlawyer owners. Notice to existing clients may consist of marketing materials, an announcement on the firm's website, etc., and should include the nature and degree of the nonlawyer ownership and the types of services to be provided by the nonlawyer owners.

F. D.C. Lawyers May Share Fees and Provide Services with Firms in Those Jurisdictions That Have Less Restrictive Rules About Nonlawyer Ownership of Law Firms: Proposed New (d) and (e) and New Comment [14] to Rule 5.4

In new Rule 5.4(d), the ILPC addresses how a District of Columbia lawyer can work with lawyers affiliated with organizations providing legal services under terms or circumstances that this jurisdiction does not permit. The District, for many years, was the subject of such a discussion where the states were deciding the degree to which lawyers practicing and licensed in such states could work with District of Columbia law firms with nonlawyer partners. As part of an evolving liberalization, many jurisdictions have gradually permitted the lawyers of these states to collaborate on matters with District of Columbia firms having nonlawyer partners and the ABA

has issued at least one advisory ethics opinion on the matter.[23] Currently, Arizona and Utah permit passive investments in law firms, subject to authorization and approval by the state regulators. The District does not. New Rule 5.4(d)(1) would allow District of Columbia lawyers to provide legal services to clients while working with, for example, an Arizona or Utah organization that has nonlawyer ownership, management, or fee sharing to an extent that the District does not currently permit. New Rule 5.4(d)(2) would allow lawyers to share legal fees with such entities to the same extent as such is permitted in the District. New Rule 5.4(d)(2) would also allow District of Columbia lawyers to share fees with entities that, for example, have passive investors.[24] The ILPC recommended these provisions subject to the proviso stated in Rule 5.4(e) that the lawyer's professional judgment was not subject to compromise or interference as a result of such collaboration or fee sharing.

Proposed new Rule 5.4(d)(3) would permit a lawyer to cooperate with entities with ownership structures not permitted in the District, subject to the requirements of D.C. Court of Appeals Rule 49 – Unauthorized Practice of Law. It is not intended to permit a law firm to obtain passive investment through a small office in a jurisdiction that permitted such investment and then have a substantial presence in the District. Lawyers working from a District office under circumstances permitted by new Rule 5.4(d)(3) remain subject to new Rule 5.4(e)'s requirement that their professional independence and judgment remain uncompromised.

G. Rule 5.7: Law-Related Services

The ILPC recommends only modest changes to Comment [9] to Rule 5.7, adding new illustrative categories of those fields that are included in law-related services. These include "insurance" (not limited to "title insurance") and actuarial services, estate planning, technology services and consulting: privacy and cybersecurity services and analysis: government relations as well as public relations; e-discovery, and "other intellectual property" (not limited to patent services); and e-discovery. The ILPC was of the view that these additions were not substantive and that all of the additional fields or types of services were within the ambit of the current rule but that it was helpful to update and modernize the illustrative list for clarity and certainty.

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[23] Am. Bar Ass'n Standing Comm. on Ethics & Prof'l Responsibility, Formal Op. 464, Division of Legal Fees with Other Lawyers Who May Lawfully Share Fees with Nonlawyers (Aug. 19, 2013), https://www.americanbar.org/content/dam/aba/publications/YourABA/fo_464.pdf.

[24] *See* also New Comment [14] – "Certain jurisdictions permit nonlawyer ownership or management to a greater extent than is permitted in the District of Columbia. Rule 5.4(d)(1) and (2) clarify that a lawyer licensed in the District of Columbia may act as co-counsel with lawyers in partnerships or organizations in other jurisdictions that permit other forms of nonlawyer ownership or management not permitted in the District of Columbia, and share fees with them, without violating these Rules, provided that the lawyer otherwise complies with these Rules. Rule 5.4(d)(3) permits lawyers licensed in the District of Columbia to fully associate with such partnerships or organizations, but only if the services provided arise out of or reasonably relate to the jurisdiction that permits such nonlawyer ownership or management."

Subgroup 1 studied and considered several additional issues but ultimately decided to either table the issues for later study by the ILPC or decided not to propose a rule change. (*See* Appendix I - Changes not Proposed at this Time.)

VII. Conclusion

The changes proposed by the ILPC would allow law firms to respond to client demand for an integrated array of legal and law-related professional services, thus enhancing law firms' ability to compete with organizations and corporations that provide similar services. By addressing nonlawyer ownership and fee sharing through changes to the D.C. Rules of Professional Conduct, these practices can be brought within the existing regulatory structure of the D.C. Bar and the D.C. Court of Appeals, thereby offering better client protection.

D.C. Rule of Professional Conduct 5.3 - Responsibilities Regarding Nonlawyer Assistants (Redlined)

Innovations in Legal Practice Committee

(Additions are **bold underlined**; deletions are ~~strikethrough~~)

Rule of Professional Conduct 5.3 - Responsibilities Regarding Nonlawyer Assistants

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) A partner or a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm or government agency shall make reasonable efforts to ensure that the firm or agency has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) A lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) A lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) The lawyer requests or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) The lawyer has direct supervisory authority over the person, or is a partner or a lawyer who individually or together with other lawyers possess comparable managerial authority in the law firm or government agency in which the person is employed, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Comment

[1] Lawyers generally employ **nonlawyer** assistants in their practice, including secretaries, investigators, law student interns, ~~and~~ paraprofessionals**, and managers**. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer should give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising should take account of the fact that they do not have legal training and are not subject to professional discipline.

[2] Just as lawyers in private practice may direct the conduct of investigators who may be independent contractors, prosecutors and other government lawyers may effectively direct the conduct of police or other governmental investigative personnel, even though they may not have,

strictly speaking, formal authority to order actions by such personnel, who report to the chief of police or the head of another enforcement agency. Such prosecutors or other government lawyers have a responsibility with respect to police or investigative personnel, whose conduct they effectively direct, equivalent to that of private lawyers with respect to investigators whom they retain. *See also* Comments [4], [5], and [6] to Rule 5.1, in particular, the concept of what constitutes direct supervisory authority, and the significance of holding certain positions in a firm. Comments [4], [5], and [6] of Rule 5.1 apply as well to Rule 5.3.

Nonlawyers Not Associated With the Firm

[3] A lawyer may use nonlawyers not associated with the lawyer's own firm to assist the lawyer in rendering legal services to the client. Examples include the retention of an investigative or paraprofessional service, hiring a document management company to create and maintain a database for complex litigation, sending client documents to a third party for printing and scanning, and using an internet-based service to store client information. Unless directed by the client to use specified nonlawyers not associated with the firm, in using such services a lawyer must make reasonable efforts and communicate appropriate directions to ensure that the services are provided in a manner that is compatible with the lawyer's professional obligations. The extent of this obligation will depend upon the circumstances, including the education, experience and reputation of the nonlawyer; the nature of the service involved; the terms of any arrangements concerning the protection of client information; and the legal and ethical environments of the jurisdictions in which the services will be performed, particularly with regard to confidentiality. See also Rules 1.1, 1.2, 1.4, 1.6, 5.4, and 5.5.

[4] When the client directs the selection of a nonlawyer service provider not associated with the lawyer's firm, the lawyer ordinarily should reach agreement with the client about the scope of the lawyer's representation and the division of responsibility among the lawyer, the client, and the service provider. When making such a division of responsibility in a matter pending before a tribunal, lawyers and parties may have additional obligations that are a matter of law beyond the scope of these Rules. If at any time the lawyer reasonably believes that the client's direction does not contribute to the competent and ethical representation of the client or materially changes an existing agreement between the client and the lawyer or law firm, the lawyer should inform the client and may withdraw from the representation pursuant to Rule 1.16.

D.C. Rule of Professional Conduct 5.3 - Responsibilities Regarding Nonlawyer Assistants (Clean Version)

Innovations in Legal Practice Committee

Rule of Professional Conduct 5.3 - Responsibilities Regarding Nonlawyer Assistants

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) A partner or a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm or government agency shall make reasonable efforts to ensure that the firm or agency has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) A lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) A lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) The lawyer requests or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) The lawyer has direct supervisory authority over the person, or is a partner or a lawyer who individually or together with other lawyers possess comparable managerial authority in the law firm or government agency in which the person is employed, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Comment

[1] Lawyers generally employ nonlawyer assistants in their practice, including secretaries, investigators, law student interns, paraprofessionals, and managers. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer should give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising should take account of the fact that they do not have legal training and are not subject to professional discipline.

[2] Just as lawyers in private practice may direct the conduct of investigators who may be independent contractors, prosecutors and other government lawyers may effectively direct the conduct of police or other governmental investigative personnel, even though they may not have, strictly speaking, formal authority to order actions by such personnel, who report to the chief of police or the head of another enforcement agency. Such prosecutors or other government lawyers

have a responsibility with respect to police or investigative personnel, whose conduct they effectively direct, equivalent to that of private lawyers with respect to investigators whom they retain. *See also* Comments [4], [5], and [6] to Rule 5.1, in particular, the concept of what constitutes direct supervisory authority, and the significance of holding certain positions in a firm. Comments [4], [5], and [6] of Rule 5.1 apply as well to Rule 5.3.

Nonlawyers Not Associated With the Firm

[3] A lawyer may use nonlawyers not associated with the lawyer's own firm to assist the lawyer in rendering legal services to the client. Examples include the retention of an investigative or paraprofessional service, hiring a document management company to create and maintain a database for complex litigation, sending client documents to a third party for printing and scanning, and using an internet-based service to store client information. Unless directed by the client to use specified nonlawyers not associated with the firm, in using such services a lawyer must make reasonable efforts and communicate appropriate directions to ensure that the services are provided in a manner that is compatible with the lawyer's professional obligations. The extent of this obligation will depend upon the circumstances, including the education, experience and reputation of the nonlawyer; the nature of the service involved; the terms of any arrangements concerning the protection of client information; and the legal and ethical environments of the jurisdictions in which the services will be performed, particularly with regard to confidentiality. See also Rules 1.1, 1.2, 1.4, 1.6, 5.4, and 5.5.

[4] When the client directs the selection of a nonlawyer service provider not associated with the lawyer's firm, the lawyer ordinarily should reach agreement with the client about the scope of the lawyer's representation and the division of responsibility among the lawyer, the client, and the service provider. When making such a division of responsibility in a matter pending before a tribunal, lawyers and parties may have additional obligations that are a matter of law beyond the scope of these Rules. If at any time the lawyer reasonably believes that the client's direction does not contribute to the competent and ethical representation of the client or materially changes an existing agreement between the client and the lawyer or law firm, the lawyer should inform the client and may withdraw from the representation pursuant to Rule 1.16.

D.C. Rule of Professional Conduct 5.4 - Professional Independence of a Lawyer (Redlined)

Innovations in Legal Practice Committee

(Additions are **bold underlined**; deletions are ~~strikethrough~~)

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) ~~A~~**a**n 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~~**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 which fairly represents the services rendered by the deceased lawyer. 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~~**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;

(4) ~~S~~**s**haring of fees is permitted in a partnership or other form of organization which meets the requirements of paragraph (b); and

(5) ~~A~~**a** lawyer may share legal fees, whether awarded by a tribunal or received in settlement of a matter, with a nonprofit organization that employed, retained, or recommended employment of the lawyer in the matter and that qualifies under Section 501(c)(3) of the Internal Revenue Code.

(b) A lawyer may practice law in a partnership or other form of organization in which a financial interest is held ~~or managerial authority is exercised~~ by an individual nonlawyer who performs professional services which assist the organization in providing legal ~~services~~ **or law-related services** to clients, but only if:

(1) ~~T~~**t**he partnership or organization has as its ~~sole~~ **principal** purpose providing legal services to clients**, and any other services provided are law-related services**;

(2) ~~All~~ **all** ~~persons having such managerial authority or~~ **nonlawyers** holding a financial interest **(i)** undertake to abide by these Rules of Professional Conduct~~;~~ **and (ii) timely complete the D.C.**

Mandatory Course on the Rules of Professional Conduct and District of Columbia Practice as required by new admittees to the D.C. Bar unless the nonlawyer's principal office is located in another jurisdiction that requires a similar course for newly admitted attorneys. The deadline to take the mandatory course would be 12 months from the later of: 1) the nonlawyer's acquisition of a financial interest in the firm; or 2) the effective date of this rule;

(3) such nonlawyer owners may not interfere with the professional independence of lawyers in the partnership or organization with respect to providing legal services;

(**4**~~3~~) ~~T~~**t**he lawyers who have a financial interest or managerial authority in the partnership or organization undertake to be responsible for the nonlawyer owners to the same extent as if nonlawyer owners were lawyers under Rule 5.1;

(**5**4) ~~T~~**t**he foregoing conditions are set forth in writing**;**

(6) the partnership or organization first registers with the District of Columbia Bar, and updates such registration annually providing name, contact information and place of business. The District of Columbia Bar may require additional information about the degree of nonlawyer ownership and control and the types of law-related services offered, if any; and

(7) at the outset of each legal representation on behalf of a new client for legal services, a lawyer practicing law in such a partnership or organization makes disclosure to the prospective client of the fact and nature of the ownership by nonlawyers who are involved in the representation. Such disclosure shall include providing a copy of the partnership or organization's most recent registration form filed with the District of Columbia Bar. Disclosure to existing clients should be provided and may be satisfied with law firm marketing materials, social media channels, or other materials.

(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another**, or a nonlawyer manager,** to direct or regulate the lawyer's professional judgment in rendering such legal services.

(d) Subject to paragraph (e), a lawyer may:

(1) provide legal services to clients on a matter while working with other lawyers or law firms with whom the lawyer is not otherwise affiliated, who are practicing in, and organized under the rules of, other jurisdictions, whether domestic or foreign, that permit nonlawyer management, ownership or fee sharing to a greater extent than permitted under these Rules;

(2) share legal fees arising from such legal services with such other lawyers or law firms

to the same extent as the sharing of legal fees is permitted under applicable District of Columbia Rules of Professional Conduct; or

(3) provide legal services to clients while working in partnership or association with other lawyers or law firms practicing in, and organized under the rules of, other jurisdictions, whether domestic or foreign, that permit nonlawyer management, ownership or fee sharing to a greater extent than permitted under these Rules, where such services arise out of or are reasonably related to the jurisdiction in which such other lawyers or law firms principally practice.

(e) The arrangements described in paragraph (d) are permitted only if they do not compromise or interfere with the lawyer's independence of professional judgment, the client-lawyer relationship, or the lawyer's obligation to comply with other applicable Rules of Professional Conduct.

Comment

[1] The provisions of this rule express traditional limitations on sharing fees with nonlawyers. (On sharing fees among lawyers not in the same firm, *see* Rule 1.5(e).) 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] Traditionally, the canons of legal ethics and disciplinary rules prohibited lawyers from practicing law in a partnership that includes nonlawyers or in any other organization where a nonlawyer is a shareholder, director, or officer. Notwithstanding these strictures, the profession implicitly recognized exceptions for lawyers who work for corporate law departments, insurance companies, and legal service organizations.

[3] As the demand increased for a broad range of professional services from a single source, lawyers employed professionals from other disciplines to work for them. So long as the nonlawyers remained employees of the lawyers, these relationships did not violate the disciplinary rules. However, when lawyers and nonlawyers considered forming partnerships and professional corporations to provide a combination of legal and other services to the public, they faced serious obstacles under the former rules.

[4] This rule rejects an absolute prohibition against lawyers and nonlawyers joining together to provide collaborative services, but continues to impose traditional ethical requirements with respect to the **partnership or** organization thus created. Thus, a lawyer may practice law in an

organization where nonlawyers hold a financial interest ~~or exercise managerial authority~~, but only if the conditions set forth in subparagraphs (b)(1)~~, (b)(2), and (b)(3)~~ **-(b)(7)** are satisfied, and pursuant to subparagraph (b)(**5**~~4~~), satisfaction of the conditions is **set forth in subparagraphs (b)(1)-(b)(4)** is set forth in a written instrument. The requirement of a writing helps ensure that these important conditions are not overlooked in establishing the organizational structure of entities in which nonlawyers enjoy an ownership ~~or managerial~~ role equivalent to that of a partner in a traditional law firm.

[5] **Nonlawyers holding a financial interest under Rule 5.4(b) are also referred to in the Rule as nonlawyer owners. A lawyer's responsibilities for oversight of n**~~N~~onlawyer **owners**~~participants~~ under Rule 5.4**(b)** ought not be confused with **the lawyer's responsibilities regarding** nonlawyer assistants under Rule 5.3. ~~Nonlawyer participants are persons having managerial authority or financial interests in organizations that provide legal services.~~ Within such organizations **having nonlawyer owners under Rule 5.4(b)**, lawyers with financial interests or managerial authority are held responsible for ethical misconduct by nonlawyer **owners**~~participants~~ about which the lawyers know or reasonably should know. This is the same standard of liability contemplated by Rule 5.1, regarding the responsibilities of lawyers with direct supervisory authority over other lawyers.

[6] Previous versions of Rule 5.4(b) regulated nonlawyers who either held a "financial interest" or exercised "managerial authority" in a partnership or other organization engaged in providing legal services. The current version of Rule 5.4(b) no longer addresses nonlawyers holding "managerial authority," who instead are regulated under Rule 5.3 in the same manner as other nonlawyer employees. Nonlawyer managers who also hold a financial interest in a partnership or organization remain subject to Rule 5.4(b). This is consistent with practice in other jurisdictions, including those that do not permit nonlawyers to have a financial interest in an organization that provides legal services. To avoid any doubt about the scope of authority of nonlawyers with managerial authority, Rule 5.4(c) states that a lawyer shall not permit a nonlawyer manager to regulate the lawyer's professional judgment in providing legal services.

[~~6~~**7**] Nonlawyer assistants **(including nonlawyer managers) who** ~~under Rule 5.3~~ do not have ~~managerial authority or~~ financial interests in the organization **are governed by Rule 5.3**. Lawyers having direct supervisory authority over nonlawyer assistants are held responsible only for ethical misconduct by assistants about which the lawyers actually know.

[~~7~~**8**] As the introductory portion of paragraph (b) makes clear, the purpose of liberalizing the Rules regarding the possession of a financial interest ~~or the exercise of management authority~~ by a nonlawyer is to permit nonlawyer professionals to work with lawyers in the delivery of legal services **or law-related services** without being relegated to the role of an employee. For example,

the rule permits economists to work in a firm with antitrust or public utility practitioners, psychologists or psychiatric social workers to work with family law practitioners to assist in counseling clients, nonlawyer lobbyists to work with lawyers who perform legislative services, certified public accountants to work in conjunction with tax lawyers or others who use accountants' services in performing legal services, **marketing professionals,** and professional managers to serve as office managers, executive directors, or in similar positions. In all of these situations, the professionals may be given financial interests ~~or managerial responsibility~~, so long as all of the requirements of paragraph (**b**~~e~~) are met.

[~~8~~**9**] Paragraph (b) does not permit an individual or entity to acquire all or any part of the ownership of a law partnership or other form of law practice organization for investment or other purposes. It thus does not permit a corporation, an investment banking firm, an investor, or any other person or entity to entitle itself to all or any portion of the income or profits of a law firm or other similar organization. Since such an investor would not be an individual performing professional services within the law firm or other organization, the requirements of paragraph (b) would not be met.

[~~9~~**10**] The term "individual" in subparagraph (b) is not intended to preclude the participation in a law firm or other organization by an individual professional corporation in the same manner as lawyers who have incorporated as a professional corporation currently participate in partnerships that include professional corporations.

[~~10~~**11**] Some sharing of fees is likely to occur in the kinds of organizations permitted by paragraph (b). Subparagraph (a)(4) makes it clear that such fee sharing is not prohibited.

[~~11~~**12**] Subparagraph (a)(5) permits a lawyer to share legal fees with a nonprofit organization that employed, retained, or recommended employment of the lawyer in the matter. A lawyer may decide to contribute all or part of legal fees recovered from the opposing party to a nonprofit organization. Such a contribution may or may not involve fee-splitting, but when it does, the prospect that the organization will obtain all or part of the lawyer's fees does not inherently compromise the lawyer's professional independence, whether the lawyer is employed by the organization or was only retained or recommended by it. A lawyer who has agreed to share legal fees with such an organization remains obligated to exercise professional judgment solely in the client's best interests. Moreover, fee-splitting in these circumstances may promote the financial viability of such nonprofit organizations and facilitate their public interest mission. Unlike the corresponding provision of Model Rule 5.4(a)(5), this provision is not limited to sharing of fees awarded by a court because that restriction would significantly interfere with settlement of cases, without significantly advancing the purpose of the exception. To prevent abuse of this broader exception, it applies only if the nonprofit organization qualifies under Section 501(c)(3) of the Internal Revenue Code.

[~~12~~13] **Rule 5.4(b)(7) requires that a lawyer commencing a new attorney-client relationship disclose to the client the fact and nature of any nonlawyer ownership of the partnership or organization in which the lawyer practices, Disclosures that are required for non-legal engagements are addressed in Rule 5.7, [Comment [6]. In the event that a law firm or organization has existing clients for legal matters at the time it commences having nonlawyer owners notice should be provided. Notice of the commencement of nonlawyer ownership to existing clients for legal matters may consist of a general announcement on the law firm's website, social media channels, a newsletter, or other marketing materials, and need not be personally directed to each client of the law firm. Notice should include the nature and degree of the nonlawyer ownership and the types of services to be provided by the nonlawyer owners.**

[~~13~~14] **Certain jurisdictions permit nonlawyer ownership or management to a greater extent than is permitted in the District of Columbia. Rule 5.4(d)(1) and (2) clarify that a lawyer licensed in the District of Columbia may act as co-counsel with lawyers in partnerships or organizations in other jurisdictions that permit other forms of nonlawyer ownership or management not permitted in the District of Columbia, and share fees with them, without violating these Rules, provided that the lawyer otherwise complies with these Rules. Rule 5.4(d)(3) permits lawyers licensed in the District of Columbia to fully associate with such partnerships or organizations, but only if the services provided arise out of or reasonably relate to the jurisdiction that permits such nonlawyer ownership or management.**

D.C. Rule of Professional Conduct 5.4 - Professional Independence of a Lawyer (Clean Version)

Innovations in Legal Practice Committee

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 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 which fairly represents the services rendered by the deceased lawyer. 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;

(4) sharing of fees is permitted in a partnership or other form of organization which meets the requirements of paragraph (b); and

(5) a lawyer may share legal fees, whether awarded by a tribunal or received in settlement of a matter, with a nonprofit organization that employed, retained, or recommended employment of the lawyer in the matter and that qualifies under Section 501(c)(3) of the Internal Revenue Code.

(b) A lawyer may practice law in a partnership or other form of organization in which a financial interest is held by an individual nonlawyer who performs professional services which assist the organization in providing legal or law-related services to clients, but only if:

(1) the partnership or organization has as its principal purpose providing legal services to clients, and any other services provided are law-related services;

(2) all nonlawyers holding a financial interest (i) undertake to abide by these Rules of Professional Conduct and (ii) timely complete the D.C. Mandatory Course on the Rules of Professional Conduct and District of Columbia Practice as required by new admittees to the D.C. Bar unless the nonlawyer's principal office is located in another jurisdiction that requires a similar course for newly admitted attorneys. The deadline to take the mandatory course would be 12

months from the later of: 1) the nonlawyer's acquisition of a financial interest in the firm; or 2) the effective date of this rule;

(3) such nonlawyer owners may not interfere with the professional independence of lawyers in the partnership or organization with respect to providing legal services;

(4) the lawyers who have a financial interest or managerial authority in the partnership or organization undertake to be responsible for the nonlawyer owners to the same extent as if nonlawyer owners were lawyers under Rule 5.1;

(5) the foregoing conditions are set forth in writing;

(6) the partnership or organization first registers with the District of Columbia Bar, and updates such registration annually providing name, contact information and place of business. The District of Columbia Bar may require additional information about the degree of nonlawyer ownership and control and the types of law-related services offered, if any; and

(7) at the outset of each legal representation on behalf of a new client for legal services, a lawyer practicing law in such a partnership or organization makes disclosure to the prospective client of the fact and nature of the ownership by nonlawyers who are involved in the representation. Such disclosure shall include providing a copy of the partnership or organization's most recent registration form filed with the District of Columbia Bar. Disclosure to existing clients should be provided and may be satisfied with law firm marketing materials, social media channels, or other materials.

(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another, or a nonlawyer manager, to direct or regulate the lawyer's professional judgment in rendering such legal services.

(d) Subject to paragraph (e), a lawyer may:

(1) provide legal services to clients on a matter while working with other lawyers or law firms with whom the lawyer is not otherwise affiliated, who are practicing in, and organized under the rules of, other jurisdictions, whether domestic or foreign, that permit nonlawyer management, ownership or fee sharing to a greater extent than permitted under these Rules;

(2) share legal fees arising from such legal services with such other lawyers or law firms to the same extent as the sharing of legal fees is permitted under applicable District of Columbia Rules of Professional Conduct; or

(3) provide legal services to clients while working in partnership or association with other lawyers or law firms practicing in, and organized under the rules of, other jurisdictions, whether domestic or foreign, that permit nonlawyer management, ownership or fee sharing to a greater extent than permitted under these Rules, where such services arise out of or are reasonably related to the jurisdiction in which such other lawyers or law firms principally practice.

(e) The arrangements described in paragraph (d) are permitted only if they do not compromise or interfere with the lawyer's independence of professional judgment, the client-lawyer relationship, or the lawyer's obligation to comply with other applicable Rules of Professional Conduct.

Comment

[1] The provisions of this rule express traditional limitations on sharing fees with nonlawyers. (On sharing fees among lawyers not in the same firm, *see* Rule 1.5(e).) 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] Traditionally, the canons of legal ethics and disciplinary rules prohibited lawyers from practicing law in a partnership that includes nonlawyers or in any other organization where a nonlawyer is a shareholder, director, or officer. Notwithstanding these strictures, the profession implicitly recognized exceptions for lawyers who work for corporate law departments, insurance companies, and legal service organizations.

[3] As the demand increased for a broad range of professional services from a single source, lawyers employed professionals from other disciplines to work for them. So long as the nonlawyers remained employees of the lawyers, these relationships did not violate the disciplinary rules. However, when lawyers and nonlawyers considered forming partnerships and professional corporations to provide a combination of legal and other services to the public, they faced serious obstacles under the former rules.

[4] This rule rejects an absolute prohibition against lawyers and nonlawyers joining together to provide collaborative services, but continues to impose traditional ethical requirements with respect to the partnership or organization thus created. Thus, a lawyer may practice law in an organization where nonlawyers hold a financial interest, but only if the conditions set forth in subparagraphs (b)(1)-(b)(7) are satisfied, and pursuant to subparagraph (b)(5), satisfaction of the conditions is set forth in subparagraphs (b)(1)-(b)(4) is set forth in a written instrument. The requirement of a writing helps ensure that these important conditions are not overlooked in

establishing the organizational structure of entities in which nonlawyers enjoy an ownership role equivalent to that of a partner in a traditional law firm.

[5] Nonlawyers holding a financial interest under Rule 5.4(b) are also referred to in the Rule as nonlawyer owners. A lawyer's responsibilities for oversight of nonlawyer owners under Rule 5.4(b) ought not be confused with the lawyer's responsibilities regarding nonlawyer assistants under Rule 5.3. Within such organizations having nonlawyer owners under Rule 5.4(b), lawyers with financial interests or managerial authority are held responsible for ethical misconduct by nonlawyer owners about which the lawyers know or reasonably should know. This is the same standard of liability contemplated by Rule 5.1, regarding the responsibilities of lawyers with direct supervisory authority over other lawyers.

[6] Previous versions of Rule 5.4(b) regulated nonlawyers who either held a "financial interest" or exercised "managerial authority" in a partnership or other organization engaged in providing legal services. The current version of Rule 5.4(b) no longer addresses nonlawyers holding "managerial authority", who instead are regulated under Rule 5.3 in the same manner as other nonlawyer employees. Nonlawyer managers who also hold a financial interest in a partnership or organization remain subject to Rule 5.4(b). This is consistent with practice in other jurisdictions, including those that do not permit nonlawyers to have a financial interest in an organization that provides legal services. To avoid any doubt about the scope of authority of nonlawyers with managerial authority, Rule 5.4(c) states that a lawyer shall not permit a nonlawyer manager to regulate the lawyer's professional judgment in providing legal services.

[7] Nonlawyer assistants (including nonlawyer managers) who do not have financial interests in the organization are governed by Rule 5.3. Lawyers having direct supervisory authority over nonlawyer assistants are held responsible only for ethical misconduct by assistants about which the lawyers actually know.

[8] As the introductory portion of paragraph (b) makes clear, the purpose of liberalizing the Rules regarding the possession of a financial interest by a nonlawyer is to permit nonlawyer professionals to work with lawyers in the delivery of legal services or law-related services without being relegated to the role of an employee. For example, the rule permits economists to work in a firm with antitrust or public utility practitioners, psychologists or psychiatric social workers to work with family law practitioners to assist in counseling clients, nonlawyer lobbyists to work with lawyers who perform legislative services, certified public accountants to work in conjunction with tax lawyers or others who use accountants' services in performing legal services, marketing professionals, and professional managers to serve as office managers, executive directors, or in similar positions. In all of these situations, the professionals may be given financial interests, so long as all of the requirements of paragraph (b) are met.

[9] Paragraph (b) does not permit an individual or entity to acquire all or any part of the ownership of a law partnership or other form of law practice organization for investment or other purposes. It thus does not permit a corporation, an investment banking firm, an investor, or any other person or entity to entitle itself to all or any portion of the income or profits of a law firm or other similar organization. Since such an investor would not be an individual performing professional services within the law firm or other organization, the requirements of paragraph (b) would not be met.

[10] The term "individual" in subparagraph (b) is not intended to preclude the participation in a law firm or other organization by an individual professional corporation in the same manner as lawyers who have incorporated as a professional corporation currently participate in partnerships that include professional corporations.

[11] Some sharing of fees is likely to occur in the kinds of organizations permitted by paragraph (b). Subparagraph (a)(4) makes it clear that such fee sharing is not prohibited.

[12] Subparagraph (a)(5) permits a lawyer to share legal fees with a nonprofit organization that employed, retained, or recommended employment of the lawyer in the matter. A lawyer may decide to contribute all or part of legal fees recovered from the opposing party to a nonprofit organization. Such a contribution may or may not involve fee-splitting, but when it does, the prospect that the organization will obtain all or part of the lawyer's fees does not inherently compromise the lawyer's professional independence, whether the lawyer is employed by the organization or was only retained or recommended by it. A lawyer who has agreed to share legal fees with such an organization remains obligated to exercise professional judgment solely in the client's best interests. Moreover, fee-splitting in these circumstances may promote the financial viability of such nonprofit organizations and facilitate their public interest mission. Unlike the corresponding provision of Model Rule 5.4(a)(5), this provision is not limited to sharing of fees awarded by a court because that restriction would significantly interfere with settlement of cases, without significantly advancing the purpose of the exception. To prevent abuse of this broader exception, it applies only if the nonprofit organization qualifies under Section 501(c)(3) of the Internal Revenue Code.

[13] Rule 5.4(b)(7) requires that a lawyer commencing a new attorney-client relationship disclose to the client the fact and nature of any nonlawyer ownership of the partnership or organization in which the lawyer practices. Disclosures that are required for non-legal engagements are addressed in Rule 5.7, Comment [6]. In the event that a law firm or organization has existing clients for legal matters at the time it commences having nonlawyer owners notice should be provided. Notice of the commencement of nonlawyer ownership to existing clients for legal matters may consist of a general announcement on the law firm's website, social media channels, a newsletter, or other marketing materials, and need not be personally directed to each client of the law firm. Notice

should include the nature and degree of the nonlawyer ownership and the types of services to be provided by the nonlawyer owners.

[14] Certain jurisdictions permit nonlawyer ownership or management to a greater extent than is permitted in the District of Columbia. Rule 5.4(d)(1) and (2) clarify that a lawyer licensed in the District of Columbia may act as co-counsel with lawyers in partnerships or organizations in other jurisdictions that permit other forms of nonlawyer ownership or management not permitted in the District of Columbia, and share fees with them, without violating these Rules, provided that the lawyer otherwise complies with these Rules. Rule 5.4(d)(3) permits lawyers licensed in the District of Columbia to fully associate with such partnerships or organizations, but only if the services provided arise out of or reasonably relate to the jurisdiction that permits such nonlawyer ownership or management.

D.C. Rule of Professional Conduct 5.7 - Responsibilities Regarding Law-Related Services (Redlined)

Innovations in Legal Practice Committee

(Additions are **bold underlined**; deletions are ~~strikethrough~~)

Rule of Professional Conduct 5.7 - Responsibilities Regarding Law-Related Services

(a) A lawyer shall be subject to the Rules of Professional Conduct with respect to the provision of law-related services, as defined in paragraph (b), if the law-related services are provided:

(1) by the lawyer in circumstances that are not distinct from the lawyer's provision of legal services to clients; or

(2) in other circumstances by an entity controlled by the lawyer individually or with others if the lawyer fails to take reasonable measures to assure that a person obtaining the law-related services knows that the services are not legal services and that the protections of the client-lawyer relationship do not exist.

(b) The term law-related services denotes services that might reasonably be performed in conjunction with and in substance are related to the provision of legal services, and that are not prohibited as unauthorized practice of law when provided by a nonlawyer.

Comment

[1] When a lawyer performs law-related services or controls an organization that does so, there exists the potential for ethical problems. Principal among these is the possibility that the person for whom the law-related services are performed fails to understand that the services may not carry with them the protections normally afforded as part of the client-lawyer relationship. The recipient of the law-related services may expect, for example, that the protection of client confidences, prohibitions against representation of persons with conflicting interests, and obligations of a lawyer to maintain professional independence apply to the provision of law-related services when that may not be the case.

[2] Rule 5.7 applies to the provision of law-related services by a lawyer even when the lawyer does not provide any legal services to the person for whom the law-related services are performed and whether the law-related services are performed through a law firm or a separate entity. The rule identifies the circumstances in which all the Rules of Professional Conduct apply to the provision of law-related services. Even when those circumstances do not exist, however, the conduct of a lawyer involved in the provision of law-related services is subject to those Rules that apply generally to lawyer conduct, regardless of whether the conduct involves the provision of legal services. *See, e.g.,* Rule 8.4.

[3] When law-related services are provided by a lawyer under circumstances that are not distinct from the lawyer's provision of legal services to clients, the lawyer in providing the law-related services must adhere to the requirements of the Rules of Professional Conduct as provided in paragraph (a)(1). Even when the law-related and legal services are provided in circumstances that are distinct from each other, for example through separate entities or different support staff within the law firm, the Rules of Professional Conduct apply to the lawyer as provided in paragraph (a)(2) unless the lawyer takes reasonable measures to assure that the recipient of the law-related services knows that the services are not legal services and that the protections of the client-lawyer relationship do not apply.

[4] Law-related services also may be provided through an entity that is distinct from that through which the lawyer provides legal services. If the lawyer individually or with others has control of such an entity's operations, the rule requires the lawyer to take reasonable measures to assure that each person using the services of the entity knows that the services provided by the entity are not legal services and that the Rules of Professional Conduct that relate to the client-lawyer relationship do not apply. A lawyer's control of an entity extends to the ability to direct its operation. Whether a lawyer has such control will depend upon the circumstances of the particular case.

[5] When a client-lawyer relationship exists with a person who is referred by a lawyer to a separate law-related service entity controlled by the lawyer, individually or with others, the lawyer must comply with Rule 1.8(a).

[6] In taking the reasonable measures referred to in paragraph (a)(2) to assure that a person using law-related services understands the practical effect or significance of the inapplicability of the Rules of Professional Conduct, the lawyer should communicate to the person receiving the law-related services, in a manner sufficient to assure that the person understands the significance of the fact, that the relationship of the person to the business entity will not be a client-lawyer relationship. The communication should be made before entering into an agreement for provision of or providing law-related services, and preferably should be in writing.

[7] The burden is upon the lawyer to show that the lawyer has taken reasonable measures under the circumstances to communicate the desired understanding. For instance, a sophisticated user of law-related services, such as a publicly held corporation, may require a lesser explanation than someone unaccustomed to making distinctions between legal services and law-related services, such as an individual seeking tax advice from a lawyer-accountant or investigative services in connection with a lawsuit.

[8] Regardless of the sophistication of potential recipients of law-related services, a lawyer should take special care to keep separate the provision of law-related and legal services in order to minimize the risk that the recipient will assume that the law-related services are legal services.

The risk of such confusion is especially acute when the lawyer renders both types of services with respect to the same matter. Under some circumstances the legal and law-related services may be so closely entwined that they cannot be distinguished from each other, and the requirement of disclosure and consultation imposed by paragraph (a)(2) of the rule cannot be met. In such a case a lawyer will be responsible for assuring that both the lawyer's conduct and, to the extent required by Rule 5.3, that of nonlawyer employees in the distinct entity that the lawyer controls complies in all respects with the Rules of Professional Conduct.

[9] A broad range of economic and other interests of clients may be served by lawyers **or others in a law firm** engaging in the delivery of law-related services. Examples of law-related services include providing**: insurance,** title insurance, **and actuarial;** financial **and estate** planning**,;** accounting**,;** trust services**,;** real estate counseling**,; technology services and consulting; privacy and cybersecurity services and analysis; government relations and** legislative lobbying**,; public relations;** economic analysis**;** social work**,;** psychological counseling**,;** tax preparation**,;** ~~and~~ patent **and other intellectual property,;** medical or environmental consulting**; and e-discovery**.

[10] When a lawyer is obliged to accord the recipients of such services the protections of those Rules that apply to the client-lawyer relationship, the lawyer must take special care to heed the proscriptions of the Rules addressing conflict of interest (Rules 1.7 through 1.11, especially Rules 1.7(b)(2)-(4) and 1.8(a) and (e)), and to scrupulously adhere to the requirements of Rule 1.6 relating to disclosure and use of confidential information. *See also* Comment [26] to Rule 1.7. The promotion of the law-related services must also in all respects comply with Rule 7.1, dealing with advertising and solicitation. In that regard, lawyers should take special care to identify the obligations that may be imposed as a result of a jurisdiction decisional law. Rule 1.8 addresses a lawyer's provision of non-law-related services to a client.

[11] When the full protections of all the Rules of Professional Conduct do not apply to the provision of law-related services, principles of law external to the Rules, for example, the law of principal and agent, govern the legal duties owed to those receiving the services. Those other legal principles may establish a different degree of protection for the recipient with respect to confidentiality of information, conflicts of interest and permissible business relationships with clients. Rule 5.7 does not limit the protection provided by any other Rule, including but not limited to Rule 8.4, which prohibits, among other things, conduct involving dishonesty or fraud whether or not the lawyer engages in such conduct in connection with the rendering of law-related services.

D.C. Rule of Professional Conduct 5.7 - Responsibilities Regarding Law-Related Services (Clean Version)

Innovations in Legal Practice Committee

Rule of Professional Conduct 5.7 - Responsibilities Regarding Law-Related Services

(a) A lawyer shall be subject to the Rules of Professional Conduct with respect to the provision of law-related services, as defined in paragraph (b), if the law-related services are provided:

(1) by the lawyer in circumstances that are not distinct from the lawyer's provision of legal services to clients; or

(2) in other circumstances by an entity controlled by the lawyer individually or with others if the lawyer fails to take reasonable measures to assure that a person obtaining the law-related services knows that the services are not legal services and that the protections of the client-lawyer relationship do not exist.

(b) The term law-related services denotes services that might reasonably be performed in conjunction with and in substance are related to the provision of legal services, and that are not prohibited as unauthorized practice of law when provided by a nonlawyer.

Comment

[1] When a lawyer performs law-related services or controls an organization that does so, there exists the potential for ethical problems. Principal among these is the possibility that the person for whom the law-related services are performed fails to understand that the services may not carry with them the protections normally afforded as part of the client-lawyer relationship. The recipient of the law-related services may expect, for example, that the protection of client confidences, prohibitions against representation of persons with conflicting interests, and obligations of a lawyer to maintain professional independence apply to the provision of law-related services when that may not be the case.

[2] Rule 5.7 applies to the provision of law-related services by a lawyer even when the lawyer does not provide any legal services to the person for whom the law-related services are performed and whether the law-related services are performed through a law firm or a separate entity. The rule identifies the circumstances in which all the Rules of Professional Conduct apply to the provision of law-related services. Even when those circumstances do not exist, however, the conduct of a lawyer involved in the provision of law-related services is subject to those Rules that apply generally to lawyer conduct, regardless of whether the conduct involves the provision of legal services. *See, e.g.,* Rule 8.4.

[3] When law-related services are provided by a lawyer under circumstances that are not distinct from the lawyer's provision of legal services to clients, the lawyer in providing the law-related services must adhere to the requirements of the Rules of Professional Conduct as provided in paragraph (a)(1). Even when the law-related and legal services are provided in circumstances that are distinct from each other, for example through separate entities or different support staff within the law firm, the Rules of Professional Conduct apply to the lawyer as provided in paragraph (a)(2) unless the lawyer takes reasonable measures to assure that the recipient of the law-related services knows that the services are not legal services and that the protections of the client-lawyer relationship do not apply.

[4] Law-related services also may be provided through an entity that is distinct from that through which the lawyer provides legal services. If the lawyer individually or with others has control of such an entity's operations, the rule requires the lawyer to take reasonable measures to assure that each person using the services of the entity knows that the services provided by the entity are not legal services and that the Rules of Professional Conduct that relate to the client-lawyer relationship do not apply. A lawyer's control of an entity extends to the ability to direct its operation. Whether a lawyer has such control will depend upon the circumstances of the particular case.

[5] When a client-lawyer relationship exists with a person who is referred by a lawyer to a separate law-related service entity controlled by the lawyer, individually or with others, the lawyer must comply with Rule 1.8(a).

[6] In taking the reasonable measures referred to in paragraph (a)(2) to assure that a person using law-related services understands the practical effect or significance of the inapplicability of the Rules of Professional Conduct, the lawyer should communicate to the person receiving the law-related services, in a manner sufficient to assure that the person understands the significance of the fact, that the relationship of the person to the business entity will not be a client-lawyer relationship. The communication should be made before entering into an agreement for provision of or providing law-related services, and preferably should be in writing.

[7] The burden is upon the lawyer to show that the lawyer has taken reasonable measures under the circumstances to communicate the desired understanding. For instance, a sophisticated user of law-related services, such as a publicly held corporation, may require a lesser explanation than someone unaccustomed to making distinctions between legal services and law-related services, such as an individual seeking tax advice from a lawyer-accountant or investigative services in connection with a lawsuit.

[8] Regardless of the sophistication of potential recipients of law-related services, a lawyer should take special care to keep separate the provision of law-related and legal services in order to minimize the risk that the recipient will assume that the law-related services are legal services.

The risk of such confusion is especially acute when the lawyer renders both types of services with respect to the same matter. Under some circumstances the legal and law-related services may be so closely entwined that they cannot be distinguished from each other, and the requirement of disclosure and consultation imposed by paragraph (a)(2) of the rule cannot be met. In such a case a lawyer will be responsible for assuring that both the lawyer's conduct and, to the extent required by Rule 5.3, that of nonlawyer employees in the distinct entity that the lawyer controls complies in all respects with the Rules of Professional Conduct.

[9] A broad range of economic and other interests of clients may be served by lawyers or others in a law firm engaging in the delivery of law-related services. Examples of law-related services include providing: insurance, title insurance, and actuarial; financial and estate planning; accounting; trust services; real estate counseling; technology services and consulting; privacy and cybersecurity services and analysis; government relations and legislative lobbying; public relations; economic analysis; social work; psychological counseling; tax preparation; patent and other intellectual property; medical or environmental consulting; and e-discovery.

[10] When a lawyer is obliged to accord the recipients of such services the protections of those Rules that apply to the client-lawyer relationship, the lawyer must take special care to heed the proscriptions of the Rules addressing conflict of interest (Rules 1.7 through 1.11, especially Rules 1.7(b)(2)-(4) and 1.8(a) and (e)), and to scrupulously adhere to the requirements of Rule 1.6 relating to disclosure and use of confidential information. *See also* Comment [26] to Rule 1.7. The promotion of the law-related services must also in all respects comply with Rule 7.1, dealing with advertising and solicitation. In that regard, lawyers should take special care to identify the obligations that may be imposed as a result of a jurisdiction decisional law. Rule 1.8 addresses a lawyer's provision of non-law-related services to a client.

[11] When the full protections of all the Rules of Professional Conduct do not apply to the provision of law-related services, principles of law external to the Rules, for example, the law of principal and agent, govern the legal duties owed to those receiving the services. Those other legal principles may establish a different degree of protection for the recipient with respect to confidentiality of information, conflicts of interest and permissible business relationships with clients. Rule 5.7 does not limit the protection provided by any other Rule, including but not limited to Rule 8.4, which prohibits, among other things, conduct involving dishonesty or fraud whether or not the lawyer engages in such conduct in connection with the rendering of law-related services.

LIST OF APPENDICES

Appendix A

Reports and Policy Statements

- ABA Comm. on Ethics and Professional Responsibility, Formal Op. 91-360 (July 11, 1991)
- American Bar Association Commission on the Future of Legal Services, Report on the Future of Legal Services in the United States (2016)
- ABA Commission on the Future of Legal Services, Resolution 105: ABA adopts the ABA Model Regulatory Objectives for the Provision of Legal Services, dated February, 2016.
- American Bar Association Commission on Ethics 20/20, Informational Report To The House Of Delegates on Alternative Litigation Finance (February 2012) available at https://www.americanbar.org/content/dam/aba/administrative/ethics_2020/20111212_ethics_20_20_alf_white_paper_final_hod_informational_report.authcheckdam.pdf
- Charles, A., Cohen, A., Sebok, A. and Pera, L. (2019). *Commercial Litigation Finance: What it is and how it works; ethics and legal issues; confidentiality and privilege; and disclosure.* American Bar Association Center for Professional Responsibility CLE PowerPoint presentation.
- ABA Center for Innovation, Proposed Resolution 115 - Encouraging Regulatory Innovation (November 2019)
- ABA Center for Innovation, Final Resolution and Report 115 – Encouraging Regulatory Innovation (February 2020) available at https://www.americanbar.org/groups/centers_commissions/center-for-innovation/Resolution115/
- Rule 5.4 excerpt from American Bar Association Commission on Evaluation of Professional Standards (Kutak Commission), Report to the House of Delegates, June 30, 1982.
- Conference of Chief Justices, Resolution 9 – Recommending Consideration of ABA Model Regulatory Objectives for the Provision of Legal Services (February 3, 2016).

Appendix B

Alternative Legal Service Providers and the State of the Legal Market

Subgroup 1 reviewed the following reports about Alternative Legal Service Providers (ALSPs) and the state of the legal market:

- *Alternative Legal Services Providers 2023 – Accelerating growth & expanding service categories* (Thomson Reuters Institute, Saïd Business School at Oxford University, and Georgetown Law Center on Ethics and the Legal Profession)

- *Alternative Legal Service Providers 2021- Strong Growth, Mainstream Acceptance, and No Longer an "Alternative"* (Thomson Reuters Institute, Saïd Business School at Oxford University, and Georgetown Law Center on Ethics and the Legal Profession)

- *2022 Report on the State of the Legal Market – A Challenging Road to Recovery* (Thomson Reuters Institute and Georgetown Law Center on Ethics and the Legal Profession)

- *2020 Report on the State of the Legal Market* (Thomson Reuters Legal Executive Institute and Georgetown Law Center on Ethics and the Legal Profession)

- *Alternative Legal Service Providers 2019 – Fast Growth, Expanding Use and Increasing Opportunity* (Thomson Reuters Institute, Saïd Business School at Oxford University, and Georgetown Law Center on Ethics and the Legal Profession)

- *Clio's Legal Trends Report (2019)*

- *Taking the 'Alternative' out of Alternative Legal Service Providers: Remapping the Corporate Legal Ecosystem in the Age of Integrated Solutions* (April 27, 2019)

Despite resistance to loosen legal regulations, the legal market continues to evolve to accommodate the needs of clients.[25] Corporate law firm clients are using cost saving initiatives like outsourcing, temporary staffing, and multidisciplinary services.[26]

[25] Historically, attorneys practiced as solo practitioners or in small firms until the advent of the Cravath system in the 20th century (which was at the time described as "law factories that were destroying the soul of the legal profession").

[26] David B. Wilkins and María José Esteban Ferrer, *Taking the 'Alternative' out of Alternative Legal Service Providers: Remapping the Corporate Legal Ecosystem in the Age of Integrated Solutions* (April 27, 2019). New Suits: Appetite for Disruption in the Legal World (Michele Destefano and Guenther Dobrauz-Saldapenna, eds), Forthcoming, HLS

Most recently, market forces from the Great Recession in 2008 and the pandemic of 2020 to 2022 have shifted the delivery of legal services from a law-firm centered approach, where a law firm was in charge of all the aspects of the delivery of legal services and drove the decisions about how matters were staffed, scheduled, prioritization of issues, pricing, etc., to a client-driven approach where the client is in charge and insisting on greater efficiency, cost effectiveness, and predictability in the delivery of legal services, and sometimes demanding a multidisciplinary approach to providing service.[27] This shift has allowed for the growth of alternative legal service providers ("ALSPs")[28] and "Big Four"[29] expansion into the legal market.[30] For example, on February 27, 2025, the Arizona Supreme Court approved KPMG's application to operate as an alternative business structure ("ABS") with the restriction that it not provide legal services for its audit clients.[31]

The term ALSP encompasses companies that offer a wide breadth of services, including ones that were once offered by traditional law firms in the past, including: electronic discovery services, legal research, litigation and investigation support, document review, and regulatory risk and compliance.[32]

Center on the Legal Profession Research Paper No. 2019-1, Available at SSRN: https://ssrn.com/abstract=3379056 or http://dx.doi.org/10.2139/ssrn.3379056. Final publication in NEW SUITS: APPETITE FOR DISRUPTION IN THE LEGAL WORLD (Michele Destefano & Guenther Dobrauz-Saldapenna eds., 2019).
THOMSON REUTERS INSTITUTE, SAÏD BUSINESS SCHOOL AT OXFORD UNIVERSITY, AND GEORGETOWN LAW CENTER ON ETHICS AND THE LEGAL PROFESSION, *Alternative Legal Service Providers 2021: Strong Growth, Mainstream Acceptance, and No Longer an "Alternative"* (2021) [hereinafter *2021 ALSP report*].

[27] THE THOMSON REUTERS LEGAL EXECUTIVE INSTITUTE & GEORGETOWN LAW CENTER ON ETHICS AND THE LEGAL PROFESSION, *2020 Report on the State of the Legal Market* 15 (2020) [hereinafter *2020 State of the Legal Market report*].
See also THE THOMSON REUTERS LEGAL EXECUTIVE INSTITUTE & GEORGETOWN LAW CENTER ON ETHICS AND THE LEGAL PROFESSION, *2022 Report on the State of the Legal Market: A challenging road to recovery* (2022) [hereinafter *2022 State of the Legal Market report*].

[28] THOMSON REUTERS INSTITUTE, SAÏD BUSINESS SCHOOL AT OXFORD UNIVERSITY, AND GEORGETOWN LAW CENTER ON ETHICS AND THE LEGAL PROFESSION, *Alternative Legal Service Providers 2023: Accelerating growth& expanding service categories* [hereinafter *2023 ALSP report*].

[29] The "Big Four" refers to the four largest professional services networks in the world, consisting of Deloitte, PricewaterhouseCoopers (PwC), Ernst & Young (EY), and KPMG.

[30] 2020 State of the Market report, *supra* note 3.

[31] Debra Cassens Weiss, Big Four accounting company gets Arizona approval to operate firm, plans to use AI to transform legal services, *ABA Journal* (Mar. 4, 2025), https://www.abajournal.com/news/article/accounting-firm-kpmg-allowed-to-offer-legal-services-in-arizona-through-subsidiary.

[32] THE THOMSON REUTERS LEGAL EXECUTIVE INSTITUTE, PROFESSIONAL SERVICE FIRMS GROUP AT SAÏD BUSINESS SCHOOL, UNIVERSITY OF OXFORD, GEORGETOWN LAW CENTER ON ETHICS AND THE LEGAL PROFESSION & ACRITAS, *Alternative Legal Service Providers 2019: Fast Growth, Expanding Use and Increasing Opportunity Center on Ethics and the Legal Profession* 1 (2019) [hereinafter *2019 ALSP report*].

ALSPs provide their clients – corporate counsel and law firms – with specialized expertise and enable them to work more cost-efficiently. ALSPs are organized in several different ways: as a "law firm captive," which is a law-firm-created competitive service/subsidiary to an ALSP, using ALSP models, often within a captive organization; as independent ALSPs; as managed services – providers that contract for all or part of the function of an in-house legal team; as contract and staffing services; and as the "Big Four" legal service providers.[33] Law firms are responding to client demands by outsourcing work to ALSPs or creating their own "law firm-captive" ALSPs as described above. Of the U.S. law firms and corporate legal departments surveyed for the *2021 and 2023 ALSP reports*:

- 79% of law firms and 71% of corporations used ALSPs in 2020.[34]
- 26% of the largest law firms and 21% of corporate legal departments expect to increase spending on ALSPs.[35]
- Law firm usage of ALSPs:
    - 69% of large law firms and 70% of midsize law firms are outsourcing e-discovery work.
    - 51% of large law firms and 65% of midsize law firms are using ALSPs for legal research services.
    - 69% of large law firms and 50% of midsize law firms use ALSPs for litigation and investigation support.[36]
- Although less than a quarter of large law firms report that they feel client pressure to use ALSPs, 31% agree that the traditional law firm model is being challenged by competition from ALSPs.[37]

Access to specialized expertise was the top reason for using ALSPs for both law firms and corporations; controlling client costs was the second highest reason for law firms. (The top reason

[33] 2019 ALSP report, *supra* note 8, at 3.

[34] 2021 ALSP report, *supra* note 2, at 6.

[35] 2023 ALSP report, *supra* note 4, at 4.

[36] *Id*. at 6.

[37] *Id.* at 23.

for not using ALSPs for both law firms and corporations was a preference to handle the work using in-house resources.)[38] E- discovery was the top service used by U.S. law firms; regulatory risk and compliance services was the top service for corporations. Legal research was the second highest outsourced service for both law firms and corporations.[39]

Smaller and midsize firms are increasingly using ALSPs for services such as legal research, e-discovery, and litigation and investigation support.[40] However, they might be at a disadvantage when integrating other nonlegal services within their firms. One expert Subgroup 1 spoke to commented that Rule 5.4 does not make it impossible for U.S law firms to do the same things that ALSPs do; it just makes it a lot harder and more costly.

Growth of ALSPs Compared to Growth of Law Firms

The ALSP market continues to grow at a faster rate than the AmLaw 200. Additionally, 24% of large law firms reported losing business to the Big Four in 2022. Law firms have responded by increasing reliance on other professionals, improving systems, outsourcing services to ALSPs and creating captive subsidiaries—indicating that working with and relying on non-legal professionals provides law firms with a competitive edge to better serve client needs and demands.
The ALSP market has grown and continues to grow:

- From $8.4 billion in 2015, to an estimated $10.7 billion in 2017,[41] to $13.9 billion in 2019[42] and $20.6 billion in 2021[43]; or a compound annual growth of between 12.9% to 20%.[44]

- In comparison, the AmLaw 200[45] grew by 6.4% between 2017 and 2019.[46]

[38] *Id.* at 7.

[39] *Id.* at 10.

[40] 2021 ALSP report, *supra* note 2, at 12.

[41] 2019 ALSP report, *supra* note 8, at 1.

[42] 2021 ALSP report, *supra* note 2, at 4.

[43] 2023 ALSP report, *supra* note 4, at 2.

[44] *Id.*

[45] The AmLaw 200 are the 200 largest law firms ranked by revenue.

[46] 2021 ALSP report, *supra* note 2, at 4.

- "Law firm captives" represent the fastest growing type of ALSP with a growth of about 117% from 2019 to 2021 although their market share is still relatively small compared to other areas.[47]

- Independent ALSPs have a market size of $18 billion and experienced 45% growth from 2019 to 2021.[48]

- The Big Four, whose services "more resemble that of a traditional law firm than it does that of an ALSP"[49] also saw a strong growth in the legal market at 5% over those two years.[50]

- The Big Four's large networks and ability to offer integrated legal services with other services is an advantage compared to the traditional law firm model -- *24% of large firms reported losing business to the Big Four in 2022*.[51]

By comparison, the *2022 State of the Market* report collected data on the performance of midsize to Am Law 100 law firms in 2021 which showed several weaknesses[52]:

- With the exception of a spike of 4% YTD basis in 2021, there was an overall flat performance in demand growth, which had fluctuated year over year between -1% and 1% from 2010 to 2019 and -1.6 in 2020;

- Negative performance in productivity, as evidenced by an average decrease of 10 monthly billable hours since 2007;

- Increasing expenses (in 2021 direct expenses and indirect expenses increased by 8.8% and 5.1% respectively); and

- Reliance on rate increases to drive profits.

[47] 2023 ALSP report, *supra* note 4, at 3.

[48] *Id.*

[49] 2021 ALSP report *supra* note 2, at 20.

[50] Cassens Weiss, *supra* note 7.

[51] 2023 ALSP report, *supra* note 4, at 37.

[52] 2022 State of the Legal Market report, *supra* note 3, 4 to 14.

However, some innovative responses have included an increased reliance on other professionals, improved systems, outsourcing of services to ALSPs, and the creation of captive subsidiaries.[53]

Nonlawyer Professionals

In addition to the benefit of offering integrated services to clients, firms might also benefit by having nonlegal professionals on staff to assist with the business issues faced by law firms. Clio's 2019 Legal Trends Report showed that law firms with higher growth and revenues had higher utilization rates (the number of hours billed), despite practice area and size, and regardless of increases in hourly rates. The same Clio study found that although 92% of managing attorneys were confident in their skills as a lawyer, only 53% were confident in running the business side of the firm. The challenges faced by this lack of confidence is illustrated by the fact that according to the 2023 Clio Legal Trends report, lawyers spend upwards of 48% of their non-billable time on administrative tasks and 33% on business development.[54] Allowing other professionals to handle the business and marketing aspects of running a law firm could free up lawyers to increase their billable hours and increase law firm growth.

[53] 2020 State of the Market report, *supra* note 3, at 17 to 20.
[54] *See* Clio, *Legal Trends Report* (2023), at https://www.clio.com/resources/legal-trends/2023-report/read-online/.

Appendix C

D.C. Bar Special Committee on Multidisciplinary Practice 2001

Subgroup 1 reviewed the 2001 report and recommendation of the District of Columbia Special Committee on Multidisciplinary Practice ("MDP Committee"). The MDP Committee had proposed that existing Rule 5.4 should be further expanded to allow lawyers to practice and share fees with nonlawyer professionals engaged with them in multidisciplinary practice so long as clients and potential clients were fully informed of the arrangement and the potential risks involved, lawyers maintained their professional independence, and were responsible for compliance with the D.C. Rules of Professional Conduct by nonlawyers. At the time, the MDP Committee noted:

[T]hat consistent with existing rules, many lawyers and other professionals are already engaged in some form of multidisciplinary practice, either on an ad hoc basis, or, increasingly, in long-term contractual arrangements that enable practitioners of different professions to practice and promote their services in a coordinated manner, but do not permit them to realize the efficiencies of practicing in a single integrated organization. . . . By generally forbidding nonlawyers to share in legal fees, D.C. Rule 5.4 presents an obstacle to lawyers and nonlawyers who wish to practice their respective professions together in the same firm.[55]

The Board of Governors voted to approve the proposal, which was transmitted to the D.C. Court of Appeals for consideration.

In December 2004, the Court informed the D.C. Bar that it had declined to adopt the proposed Rule revisions. The Court noted that the proposal did not present empirical evidence of the demand and potential consequences of the proposed Rule change to permit MDP in the District. The Court also expressed concerns that the proposals to inform clients of their rights and their lawyers' obligations within an MDP practice could be too complicated for smaller practices and confusing to some clients, and that as long as no other jurisdiction permitted MDP practice, lawyers practicing exclusively in the District (primarily solo and small firm lawyers) would be the only Bar members who could take advantage of the change. However, the Court remained open to considering a future proposal supported by sufficient data that addressed its concerns.

[55] Letter from John Payton, President, D.C. Bar, to the Honorable Annice M. Wagner, Chief Judge, D.C. Court of Appeals (July 8, 2002) transmitting District of Columbia Bar Report of the Special Committee on Multidisciplinary Practice (October 23, 2001).

Appendix D

Call for General Comment

On January 3, 2020, the ILPC published a Call for General Comment[56] seeking written comments from D.C. Bar members, law firms, the public and other interested parties about expanding Rule 5.4(b); fee sharing with nonlawyers; integration of legal services with other non-legal professional services; third-party litigation funding; and disciplinary sanctions if Rule 5.4 were more permissive. The comments received were not in response to the proposals the ILPC is now making in its report for public comment.)[57]

Eighteen comments were received. Seven comments were in favor of expanding Rule 5.4; six comments were opposed; and five were neutral.[58]

Of the 18 comments, seven comments were from organizations; five comments were from individual D.C. Bar members; and two comments were from D.C. law firms. Of the remaining four comments, three comments were from attorneys who are not D.C. Bar members. The fourth comment was from a nonlawyer consultant from England who advises on issues of nonlawyers, the practice of law, and legal innovation.

Questions Posed in the Call for Comment

The January 3, 2020 Call for General Comment asked the following questions:

- For those firms that have nonlawyer partners, how has D.C.'s existing Rule 5.4(b) permitting D.C. law firms to have nonlawyer owners been beneficial in providing services to clients? Has the option to offer partnership to nonlawyer professionals been beneficial in retaining skilled and experienced nonlawyer professionals such as mental health professionals, medical doctors or nurse practitioners, economists, lobbyists, accountants, and law firm managers and executive directors?

[56] https://www.dcbar.org/news-events/news/d-c-bar-global-legal-practice-committee-seeks-publ

[57] In keeping with the policy of maintaining the confidentiality of the identity of the commenters who submit comments on proposals and studies by committees and as noted in the ILPC's Call for Comment, comments are summarized in the aggregate in this and other reports, but the identities of the commenters are not disclosed. This policy is to encourage frank feedback for the benefit of a committee's study.

[58] One comment was received and accepted after the comment period deadline of March 9, 2020.

- Are the circumstances under which a D.C. Bar member may practice with a nonlawyer partner under Rule 5.4(b) too restrictive? Have these restrictions prevented you from establishing a practice with a nonlawyer that you otherwise would have done?

- How could your firm benefit if it were permitted to share fees with nonlawyers? Do you think that allowing for outside investment could increase capital or offer greater financial security for your firm? Would this lead to better or more efficient service to your clients or investment in innovation through technology?

- Is there a demand from your clients for legal services that are integrated with other non-legal professional services? Would your firm collaborate with other professionals to form an MDP if Rule 5.4 were amended to allow it? Have you or your firm lost business or clients because of the inability to offer integrated professional services?

- If your firm currently utilizes third-party litigation funding, or is interested in doing so, what would be the impact of a rule change that permits either fee-sharing with nonlawyers or a less restrictive ownership interest by nonlawyers?

- If the fee-sharing and nonlawyer ownership provisions of Rule 5.4 were more permissive, should lawyer partners continue to be responsible for the actions of nonlawyer partners as set forth in existing Rule 5.4(b)? Should the Rules of Professional Conduct apply to the nonlawyer partners, including disciplinary prosecution and sanctions for violations of the rules? Or, should there be a different regulatory structure specific to nonlawyers?

- If D.C.'s existing Rule 5.4 should not be changed, why not?

Comments in Support of Expanding Rule 5.4

Two organizations, two D.C. Bar members, two District of Columbia law firms and one attorney licensed in Florida were in favor of changes to Rule 5.4 because: expanding Rule 5.4 would align with modern developments in economic and business practices; meet client demands for new ways to provide legal services; lead to potential innovation in response to eliminating some of the restrictions on nonlawyer partnerships or enable the ability to raise funds that could lower the current high cost of legal services; and improve lack of access to the legal system.

One District of Columbia law firm submitted a comment based on "experience as attorneys practicing in a jurisdiction that allows ABS and representing and counseling clients on ethics issues including ABS":

> [I]n our experience, firms employing ABS [alternative business structures] provide enhanced client services focused on all the client's needs. Clients . . . have access to the skills and people they need without expending extra time and money to gather them together. The relevant services providers can share information and strategy often under the attorney client privilege.

The commenter noted that the District is no longer the only jurisdiction that permits nonlawyer partners and noted several examples: Since 2015 Washington State has permitted Limited License Legal Technicians (LLLTs) to own a minority interest in law firms; Utah may soon follow suit; and the United States Patent and Trademark Offices (USPTO) Rules of Professional Conduct allow for nonlawyer partners since 1944. (Since the date of the comment, Utah has implemented a pilot program that permits the provision of legal services from entities with nonlawyer ownership and investment. The pilot program runs until 2027.[59] (*See* Appendix G.) Arizona eliminated its Rule of Professional Conduct 5.4 on January 1, 2021, and introduced a regulatory and licensing structure for ABSs. The Washington Supreme Court voted to sunset its LLLT program on June 4, 2020. The deadline to qualify for admission was July 31, 2022; there are currently 79 LLLTs,[60] and it is likely the number of LLLTs will eventually dwindle as licensed LLLTs retire and exit the profession.)

The commenter also asserted that ABS is not a threat to lawyers' core values because the Rules of Professional Conduct require that lawyer partners be responsible for the compliance with the ethics rules by the nonlawyer partner. Based on their experience, "the overwhelming positive benefits of ABS outweigh any potential risks."

A second law firm in the District commented that if Rule 5.4 were revised to allow for litigation funding options (with nonlawyers), the lawyer (who submitted the comment) would move towards different funding mechanisms to advance and enforce victim rights in cases of victims who are litigating against well-funded and powerful institutional defendants. The firm's founder is an

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[59] As of March 2025, at least 27 participants had left the sandbox or may be leaving under new rules that require that participants show that they will reach Utah consumers underserved by the legal market, and that the impact is substantial compared to an entity's overall reach. Debra Cassens Weiss, Nearly 30 legal entities may leave Utah's regulatory sandbox program after state tightens rules, *ABA Journal* (Mar. 4, 2025), https://www.abajournal.com/news/article/nearly-30-legal-entities-may-leave-utahs-regulatory-sandbox-after-state-tightens-rules. As of January 2025 there were 21 regulated entities in the sandbox. *See* https://utahinnovationoffice.org/innovation-office-metrics/.

[60] *See* WSBA Legal Directory at https://www.mywsba.org/PersonifyEbusiness/LegalDirectory.aspx?ShowSearchResults=TRUE&LicenseType=LLLT&SortExpression=Member_Status+ASC&Page=0 (last accessed on April 21, 2023.)

award-winning entrepreneur who would like to "continue pioneering legal services that ensure access to justice for survivors of gender violence, particularly sexual abuse victims who are often taking on powerful defendants, such as educational and religious institutions."

Two D.C. Bar members were in support of revising Rule 5.4 for the following reasons: modern developments in economic and business practices, demands for new ways to provide legal services, possible innovation in response to looser restrictions on nonlawyer partnerships or the ability to raise funds that could lower the current high cost of legal services and improve lack of access to the legal system. One of the Bar members commented that:

> The rule [5.4] should be eliminated altogether. Its sole purpose is to create high barriers to entry to complex legal work and its primary effect is to make access to the legal system prohibitively expensive for a subset of the population. An ethics rule restricting otherwise legal business activity adds costs and uncertainty, discourages business collaboration, and reduces peoples access to the legal system.

The second D.C. Bar member wrote:

> Modern developments in economic and business practices, technology, and the legal sector have dramatically changed the methods of demand and delivery for legal services. We are at a time when the market is creating demands for new ways to effectively provide legal services and among the greatest stumbling blocks to that can often be restrictions on legal markets meant for different economic times.
>
> I think permitting the use of ABS and MDP is an excellent way to show that the D.C. Bar stands out in terms of leading legal innovation and adaptability to current and future business and societal settings.

Two organizations submitted comments in favor. The first organization, a national, nonprofit, consumer organization based in the District of Columbia that works to make the civil legal system more affordable, accessible, and accountable to the public, focused on the need for passive investment/delivering services to small business and individuals. The comment addressed the perspective of consumers who might benefit from changes to 5.4. The commenter's experience is that alternative business services are not frequently used in the "People Law" sector:

> [C]onsumers are stuck with a business model for bespoke legal help when they could be better served by mass-market services. Those services don't exist because the lawyers who would provide them can't combine with the capital that would support them.

The commenter also described how lawyers could also benefit from a relaxed 5.4 because "Mass-market consumer law firms could provide the training ground for many of the thousands of newly minted lawyers who have no visible path to entering the profession."

The second organization that submitted a comment in support of revising Rule 5.4 is a national non-profit research center that works on improving the American legal system. The organization pointed to data from England and Wales which showed that ABS firms are more innovative than traditional firms.

> "Research from England and Wales on alternative business structures (ABS) operating under the Solicitors Regulation Authority suggests that overall innovation among legal services providers, including innovation that reduces the cost of delivery of legal services, is higher than among traditional providers. ABS are three times as likely to make use of technology compared to other providers." Other evidence "shows that by allowing attorneys to partner with other professionals those attorneys are far more likely to create efficiencies that lead to better client service and a more sustainable practice overall—a change that would be welcome for many attorneys, particularly among the solo and small firm practitioners who make up the bulk of the legal profession."

Comments Opposed to Expanding Rule 5.4

The six commenters who were opposed cited the loss of professional independence of lawyers; the professional ethics of nonlawyer professionals that could conflict with lawyer ethics rules; a decrease in employment prospects for attorneys; the "blurring" of ethical issues; the lack of empirical evidence demonstrating that loosening Rule 5.4 would increase access to justice, provide financial flexibility or increase the quality of legal services; and the increase in the flow of capital would likely move to more profitable practice areas, which would not increase access to justice. Four organizations and two D.C. Bar members were opposed to changes.

Loss of professional independence was a major theme from organizations who were opposed to rule changes. Generally, commenters were concerned that lawyers' professional independence could be threatened by outside investors or nonlawyer partners who would be motivated by profit and exert their influence. One commenter stated that "… allowing nonlawyer law firm ownership or investment by outsiders who have no relationship or contractual obligations to the client would put lawyers in the untenable position of having to answer to competing interests."

Another organization was concerned that "For-Profit Platform Lawyer Referral Services" (PLRSs) could capture market share in the legal market, particularly in the personal injury area, and leverage their influence in a way that would favor attorneys who either handle cases quickly, give a larger percentage of their fees to the PLRS, or settle cases quickly. Other commenters were concerned that third party litigation funders might threaten professional independence because there are

already examples of funders who have exerted considerable control over the litigation through the terms in their funding contracts.

One commenter (an organization) questioned whether an expanded Rule 5.4 was necessary to increase technological advances:

> [L]egal technology services already pepper the legal landscape: computerized legal research, electronic discovery, trial and presentation solutions to name a few. The current rules are sufficiently flexible to permit innovation, including the expansive use of technology. Clients are best protected, though, when lawyers are required to exercise independent professional judgment to evaluate the technologies to be used, and the purposes for which such use is appropriate.

Two D.C. Bar members expressed concern that there would be decreased employment prospects for attorneys and the blurring of ethical issues: "We already have too many lawyers, why decrease their employment opportunities?" and, "It is a very bad idea and will blur many lines of ethical and legal responsibility and will create new problems for lawyers, nonlawyers, and disciplinary bodies in the future."

Neutral Comments

The remaining five commenters were neutral. They did not take a position but provided information and identified or emphasized existing issues to be considered: ethical compliance; discipline; regulation, including credentialing and registration; malpractice insurance rates and lawyers' ethical responsibility over nonlawyers' actions as important issues to consider. One organization, one D.C. Bar member, one nonlawyer, and two attorneys (who are not D.C. Bar members) did not take a position.

One commenter – a professional organization whose members are dually-qualified as attorneys and CPAs -- noted the different and potentially conflicting ethics standards between attorneys and other professionals:

> [F]or lawyers the cardinal role is to serve as a partisan advocate for their individual client's interests; they cannot be neutral. For CPAs the cardinal role is to serve the public interest by creating and enhancing public confidence in the accuracy of financial statement reporting for business entities, thereby safeguarding the current planet-wide stock exchanges underlying the economy. CPAs must be neutral. The different core roles suggest the "public" profession must stay independent. Allowing CPAs to practice law could therefore potentially damage the confidence in our free-market financial reporting independence system and create professional confusion.

However, a law firm that submitted a comment pointed out that there are other examples of nonlawyers participating and even partnering with lawyers, such as Limited License Legal Technicians (LLLTs) in Washington State and registered agents for the United States Patent and Trademark Office[61].F

Another individual commenter noted that an important concern was the regulation and discipline of nonlawyer partners through either maintaining the existing structure, creation of entity regulation through either an agreement directly with the firm or with the court, or creating a new regulatory agency. Each method would have its own challenges.

Comment Analysis

Subgroup 1 reviewed and discussed the comments, focused on whether the comments overall supported revising Rule 5.4, and whether any additional research was needed.

The subgroup generally agreed with the comments in favor of expanding Rule 5.4. The subgroup also thought that some of the arguments in the comments in opposition to expanding Rule 5.4 and the issues raised in the neutral comments -- especially in addressing the professional independence of lawyers and the regulation of nonlawyer partners -- warranted special attention and that the subgroup would proceed in a way that addressed these concerns. A major rule change that expanded the ability of lawyers to partner with nonlawyers could require an expanded regulatory structure.

The subgroup found some of the comments opposed to expanding Rule 5.4 to be founded in economic protectionism, but without evidence to support the assertions that expanding the rule would be economically detrimental to lawyers. The subgroup agreed that the focus of any proposed revisions to Rule 5.4 should remain on providing better service to clients. The subgroup believes that in the absence of a rule change expanding the ability of lawyers to partner with nonlawyers, law firms and other providers of legal services will continue to push the boundaries of existing Rule 5.4. Therefore, addressing nonlawyer ownership and fee sharing through changes to the D.C. Rules of Professional Conduct, would bring these practices within the existing umbrella of attorney regulation of the D.C. Bar and the D.C. Court of Appeals, thereby offering better client protection.

[61] In June 2020, the Washington State Supreme Court voted to sunset its program citing high overall costs and lack of interest. However, since then several other jurisdictions have studied or implemented similar programs, including Arizona, Colorado, Oregon, Minnesota and Utah.

Appendix E

Survey of Selected D.C. Bar Members

On February 3, 2020, the ILPC emailed an online survey to 30,421 active D.C. Bar members who self-identified as private practitioners, and asked Bar members who practiced in a firm with nonlawyer partners to complete the survey. The purpose of the survey was to capture information about how many firms have nonlawyer partners, what kinds of work do they do, and what role do they have at firms. Because law firms with nonlawyer partners in the District are not required to identify themselves or register with the Bar or the D.C. Court of Appeals, there is a lack of information about how many firms have nonlawyer partners as permitted under 5.4(b), and details about those firms.

A total of 222 anonymous responses were received; of that number, 28 respondents indicated that they practiced in a firm with one or more nonlawyer partners. Of the 28 survey respondents:

- Half had offices in the District only, and had fewer than 35 attorneys.
- Most decided to have nonlawyer partners to provide additional services to the firm's clients.
- The top three practice areas of firms with nonlawyer partners were Administrative Law, Agency Practice and Business & Corporate, and Government Affairs.
- Most nonlawyer partners had a financial interest in the firm and were in a management role; provided accounting and financial services; or public relations services.
- Ten firms have had nonlawyer partners for five years or fewer.
- Eleven firms have one nonlawyer partner; five firms have two; and four firms have three.

Survey-takers could add comments. Four individuals left feedback. Three of the four comments were favorable towards allowing lawyers to have nonlawyer partners:

> Very few problems today are strictly legal. It is important for clients that firms be able to provide a well-rounded, holistic view of the issues for which clients require solutions.

> What is the "practice of law?" My firm is a governmental relations, consulting, & lobbying firm. We represent clients before the Congressional and Executive branches. Routinely construe federal statutes, federal agency regs, proposed legislation, etc. However, we do no Judicial branch practice of any kind. Do we "practice law?" I've never been able to get a clear answer, although it hasn't mattered.
>
> We appreciate the authorization to have non-lawyer partners in DC.

The fourth comment from a survey-taker stated that the nonlawyer partner in their firm exercised too much power and potentially violated unauthorized practice of law rules.

Appendix F

Discussions with Stakeholders and Experts

Corporate Counsels' Views on Alternative Business Structures (ABS), Multi-Disciplinary Practice (MDP) and Alternative Legal Service Providers (ALSPs)

From June 3, 2020, to September 30, 2020, discussions were held with stakeholders, experts, representatives, and leaders including: the president of an organization of legal officers; leaders from the Association of Corporate Counsel; the ABA Center for Innovation; the Institute for the Advancement of the American Legal System (IAALS); regulators from jurisdictions in the United States and abroad; corporate counsels and chief legal officers; experts in ethics and professional responsibility; organizations that represent corporate interests; academics; practitioners; the Office of Disciplinary Counsel (ODC); and the Board on Professional Responsibility (BPR). Topics of discussion included alternative business structures (ABS) and the ethical concerns of ABS; multidisciplinary practice; regulatory structures; rule changes versus regulatory sandboxes; and litigation funding.

A total of 23 Zoom calls were held with 31 individuals. Subgroup 1 greatly benefitted from its discussions with stakeholders and experts and found their insights and experience to be invaluable.

Subgroup 1 learned that there are several factors that might impact a corporate client's choice of legal service provider. One factor is that corporate clients may lack resources to develop their own technologies in-house to manage work by legal service providers. However, some large companies have developed their own software to manage and track their legal work and billing by outside counsel. Some clients may have impressions from their prior experience with law firms that legal services should be provided by traditional law firms only.

Subgroup 1 also learned that ALSPs have an advantage over law firms because ALSPs technically fall outside the scope of the "practice of law" and are not constrained by Rule 5.4 in their ability to raise capital from investors.

Some stakeholders expressed that Rule 5.4 is ineffective at preventing nonlawyer partnerships because individuals and firms can be creative with the organizational structure of their law firms and affiliates to effectively have a nonlawyer partner without violating Rule 5.4. The rule simply makes it more onerous for firms to share fees or form nonlawyer partnerships, possibly at a disadvantage to newer or smaller firms with fewer resources. Ignoring the realities of the current marketplace not only disadvantages law firms but also means that there are legal service providers that will remain unregulated.

1. Regulation

Several experts believed that the existing attorney regulatory structure could be sufficient to maintain legal ethics standards and protect the public if alternative business structures were allowed. England and Wales' regulatory system may be too complex for the District of Columbia, but some form of proactive regulation[62] aimed at preventing issues that could lead to attorney discipline could be helpful in improving overall quality and public confidence in the system. Some stakeholders suggested that implementing entity regulation[63] or consequences for malfeasance and ethics violations by nonlawyers could deter any bad behavior.

2. "Regulatory Sandbox" Versus a Rule Change

The stakeholders agreed that one advantage of the "regulatory sandbox" is the potential to collect data and test alternative legal service models for several years prior to full implementation of any rule changes. This would allow any unintended effects of ABS or other models to be easily unwound. However, the largest downside to a sandbox is that companies may be hesitant to invest in development of technologies for a pilot project that may exist for only a few years.

3. Ethical Concerns about ABS

Subgroup 1 spoke with a general counsel who noted that some concerns of in-house counsel with using an ABS or MDP for legal services might include: the possibility of jeopardizing attorney-client privilege, complexity of conflicts issues, higher billing rates, and the control and influence over the firm's decision-making by nonlawyers.

However, others pointed out that data from the United Kingdom indicate that the above concerns have not been an issue. Furthermore, these arguments rely on assumptions that other professions have lower ethical standards than lawyers, and that lawyers do not face the same kinds of financial pressures in their practices that other professionals face in their respective businesses. Additionally,

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[62] Proactive Management-Based Regulation (PMBR) generally refers to regulatory measures or other programs that seek to assist lawyers and law firms develop ethical infrastructures that will help improve the delivery of legal services and help prevent misconduct and malpractice. Some PMBR programs involve entity regulation and others do not. In the U.S., Colorado, Hawaii, Illinois, Iowa, Ohio, Tennessee, Wisconsin and Wyoming have adopted either law practice self-assessment tools or formal PMBR programs. https://www.americanbar.org/groups/professional_responsibility/scpd_cpr_pmbr_web_resource/ Last visited 5/13/25.

[63] Under entity regulation, a law firm or other entity could be disciplined for violation of ethics rules. Several U.S. jurisdictions have entity regulation: New York and New Jersey. However, most jurisdictions, including the District of Columbia, maintain a regulatory system where only an individual attorney is disciplined and sanctioned for ethics violations.

there already are examples where attorneys face pressure from nonlawyers and resist threats to their professional independence from other parties: law firms with singular clients, captive counsel for insurance firms, and law firms taking collateralized bank loans.

Consumer protection is sometimes cited as a reason for not allowing ABS. However, the stakeholders and experts did not express a concern with this. One reason is that consumers, from individuals to larger companies, are able to gauge what kind of legal service provider that they need. Given more choices that ABS and MDP would allow, many consumers would still be able to manage the quality of service that they receive. An expert from the U.K. noted:

> Consumers are wiser than what they are given credit for. For example, individuals know that they benefit more from obtaining a lawyer specializing in criminal law when necessary. Likewise, corporations know when they benefit from hiring a law firm over an alternative legal service provider (ALSP).

One stakeholder commented that regulation is about securing public interest objectives which may change in detail, but overall remain constant over the course of time.

4. Litigation Funding

Litigation funding is often cited as a concern and something that would need to be managed if ABS were allowed. The people that Subgroup 1 interviewed differed on their views of this. Some had concerns about removing the constraints on litigation funding and the expenses that might be incurred by defendants due to an increase in litigation. On the other hand, some pointed out that not too much would change because litigation funders have already figured out a way around the prohibitions in Rule 5.4. Ultimately, it might not be something that needs to be dealt with through ethics reforms because changes are already being made by the marketplace and court opinions (from jurisdictions other than the District).

Appendix G

Status of Fee Sharing and Nonlawyer Ownership in the United States and Abroad

To date, most other jurisdictions that have changed their rules to permit nonlawyer ownership and fee sharing or are experimenting with nontraditional methods of delivery of legal services have done so to address the unmet legal need of individuals – primarily, but not exclusively, lower and middle-income consumers. Increasing competition in the legal services market was also a primary factor driving the changes in England and Wales.

Arizona: The Arizona Supreme Court eliminated its Rule of Professional Conduct 5.4 that had prohibited nonlawyer ownership of law firms. Effective January 1, 2021[64], Arizona has permitted lawyers and nonlawyers to co-own businesses that provide legal services through alternative business structures. Arizona now has the most far-reaching changes to the regulation of the practice of law of any U.S. jurisdiction thus far. As of March 25, 2025, there are 126 licensed active ABS entities licensed by the Arizona Supreme Court.[65]

Utah: In August 2020, the Utah Supreme Court approved the establishment of a pilot "regulatory sandbox" housed in the Office of Legal Services Innovation, to allow entities to use new business structures and service models to provide legal services in Utah after going through a review and approval process. Entities include those with nonlawyer ownership and investment and joint ventures between lawyers and nonlawyers. Several entities have been authorized to use nonlawyer human or software providers of legal advice and assistance. However, the Utah Supreme Court revised its requirements in September 2024 to limit participation in the sandbox to those entities that are aimed at reaching underserved Utah consumers; at least 27 participants exited the sandbox because of these revisions About a dozen entities remain.[66] In May 2021, the Utah Supreme Court

[64] Ariz. Code of Judicial Admin. § 7-209 (2020**)**: Alternative Business Structures, https://www.azcourts.gov/Portals/22/admorder/Orders20/2020-173F.pdf.

[65] Ariz. Sup. Ct., *Alternative Business Structures Program, Directory of Licensed ABSs* (Mar. 29, 2023), available at https://www.azcourts.gov/Portals/26/ABS%20Directory%20-%203-29-2023_1.pdf.

[66] Debra Cassens Weiss, "Nearly 30 Legal Entities May Leave Utah's Regulatory Sandbox Program After State Tightens Rules," *ABA Journal* (Mar. 4, 2025), https://www.abajournal.com/news/article/nearly-30-legal-entities-may-leave-utahs-regulatory-sandbox-after-state-tightens-rules**.**

authorized the sandbox to run through the end of August 2027; originally it was to have concluded at the end of August 2022.[67]

Patent and Trademark Office (PTO): Attorneys are permitted to share fees arising from the practice of patent law with registered patent agents who are not attorneys.[68]

Other U.S. Jurisdictions

California: The State Bar of California ("State Bar") explored reforms through its Access Through Innovation of Legal Services (ATILS) Task Force, and in March 2020 recommended the formation of a working group to develop a regulatory sandbox.[69] In response to that recommendation, the State Bar formed the Closing the Justice Gap Working Group to carry out the exploration of developing a regulatory sandbox.[70] However, the State Bar dissolved the working group after the passage of its annual fee bill was signed into law in September 2022 that prohibited the State Bar from continuing its study.[71] The Working Group's initiatives to date are published on the State Bar's website.[72]

Connecticut: The Connecticut Bar Association formed the State of the Legal Profession Task Force to study ways of making legal services more efficient and less expensive, including alternative business structures.[73] The task force published a final report in the July/August 2022

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[67] Utah Supreme Court, *Utah Supreme Court to Extend Regulatory Sandbox to Seven Years*, Utah Courts Recent Press Notifications (May 3, 2021), https://www.utcourts.gov/utc/news/2021/05/03/utah-supreme-court-to-extend-regulatory-sandbox-to-seven-years/.

[68] *See* Emil Ali, Non-Lawyer Ownership of IP Firms: What Practitioners Need to Know**,** *McCabe Ali LLP Blog* (Feb. 1, 2023), https://ipethicslaw.com/non-lawyer-ownership-of-ip-firms-what-practitioners-need-to-know/#:~:text=As%20noted%20above%2C%20the%20rules%20prohibit%20such%20fee,or%20trademark%20applications%20would%20be%20before%20the%20USPTO.

[69] State Bar of Cal., *Task Force on Access Through Innovation of Legal Services, Final Report and Recommendations* 31 (Mar. 6, 2020), available at https://www.calbar.ca.gov/Portals/0/documents/publicComment/ATILS-Final-Report.pdf.

[70] Cal. State Bar, *Closing the Justice Gap Working Group Fact Sheet*, https://www.calbar.ca.gov/Portals/0/documents/factSheets/Closing-the-Justice-Gap-Working-Group-Fact-Sheet.pdf (last visited May 20, 2025).

[71] Brandon Lowery, How Calif.'s Political Gauntlet Crushed Legal Industry Reforms, *Law360 Pulse*, Sept. 28, 2022, https://www.law360.com/pulse/articles/1534631/how-calif-s-political-gauntlet-crushed-legal-industry-reforms.

[72] Cal. State Bar, *Access to Justice Initiatives*, https://www.calbar.ca.gov/Access-to-Justice/Initiatives#closing (last visited May 20, 2025).

[73] Conn. Bar Ass'n, *State of the Legal Profession Task Force Sub-Committees*, https://www.ctbar.org/members/sections-and-committees/task-forces/state-of-the-legal-profession-task-force/sub-committees (last visited May 20, 2025).

issue of the CT Lawyer making several recommendations, including further study of licensed paraprofessionals.[74]

Florida: In December 2021, the Florida Bar's Board of Governors rejected a recommendation by the Bar's Special Committee to Improve the Delivery of Legal Services for a legal laboratory program which would have been similar to Utah's sandbox but with some limitations on nonlawyers' ownership in firms.[75]

Illinois: A joint task force of the Chicago Bar Association and Chicago Bar Foundation submitted a report to the Illinois Supreme Court in October 2020, including recommendations to amend Rule 5.4 to allow collaboration with certain intermediaries and 'Approved Legal Technology Providers'.[76] It furthermore recommended that the Illinois Supreme Court form a committee to study outside investment in law firms.[77]

Indiana: The Commission on Indiana's Legal Future published interim recommendations in July 2024 which included a recommendation to seek funding for the implementation of a legal regulatory sandbox to encourage and facilitate innovations aimed at easing the attorney shortage..[78] On October 3, 2024, the Indiana Supreme Court approved the recommendation and asked the court's Innovation Committee to develop parameters for the Court's approval by March 1, 2025.[79]

Texas: In December 2023, the Texas Access to Legal Services Working Group published a report recommending implementing a pilot program to allow certain organizations with non-attorney

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[74] Conn. Bar Ass'n, *State of the Legal Profession Task Force Report*, 32 Conn. Law. 6 (July/Aug. 2022), https://www.ctbar.org/docs/default-source/publications/connecticut-lawyer/ctl-vol-32/6-julyaug-2022/ctl_julyaug-2022---state-of-the-legal-profession-task-force-report.pdf?sfvrsn=aa12387b_4 (last visited May 20, 2025).

[75] Gary Blankenship, Board Rejects Special Committee's 'Legal Lab' Recommendation, *The Florida Bar News*, Dec. 7, 2021, https://www.floridabar.org/the-florida-bar-news/board-rejects-special-committees-legal-lab- recommendation/.

[76] CBA/CBF Task Force on The Sustainable Practice of Law & Innovation, *Task Force Report* (September 28, 2020) at 31. *Available at* https://chicagobarfoundation.org/pdf/advocacy/task-force-report.pdf.

[77] *Id* at 99.

[78] Ind. Supreme Court, *Indiana Legal Profession Commission Interim Report*, https://www.in.gov/courts/admin/files/lfc-interim-report.pdf (last visited May 20, 2025).

[79] Ind. Supreme Court, *Order Establishing the Commission on Indiana's Legal Future*, No. 24S-MS-116b (Apr. 18, 2024), https://www.in.gov/courts/files/order-other-2024-24S-MS-116b.pdf (last visited May 20, 2025).

ownership to provide a defined scope of legal services.[80] However, the Texas Access to Justice Commission voted against the proposal in on December 15, 2024.[81]

Washington State: In June 2021, the Washington Courts Practice of Law Board outlined a proposal to create a legal regulatory sandbox in Washington State.[82] On December 5, 2024, the Supreme Court of Washington issued an order directing the Washington Supreme Court's Practice of Law Board and the Washington State Bar Association to implement a pilot program.[83]

Jurisdictions Outside of the United States

Australia: (New South Wales, Victoria, South Australia, Northern Territory, Western Australia, and Tasmania) permit multi-disciplinary practice firms and incorporated legal practices.

Alberta, Canada: On October 1, 2021, the Law Society of Alberta approved a legal innovation sandbox.[84] The Alberta model seeks applications from providers who will advance the Law Society's goals and benefit the public by providing more efficient or cost-effective services. Although nonlawyer owned businesses can apply to the sandbox, the sandbox will not permit nonlawyers to provide legal services. As of March 25, 2025, there were four approved sandbox participants on the Innovation Sandbox website.[85]

British Columbia, Canada: The Law Society of British Columbia launched an "innovation sandbox" in November 2020. The goal is to open the way for nontraditional forms of legal practice to address a large unmet need for legal services. The sandbox will "enable individuals, businesses

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[80] Texas Access to Justice Commission, *Report and Recommendations of the Texas Access to Legal Services Working Group* (December 5, 2023), available at https://www.texasatj.org/sites/default/files/2023.12.05%20Final%20Report.pdf.

[81] Lowell Brown**,** Texas Access to Justice Commission Takes Action on Working Group Report, *TEX. BAR BLOG* (Jan. 2, 2024), https://blog.texasbar.com/2024/01/articles/access-to-justice/texas-access-to-justice-commission-takes-action-on-working-group-report/.

[82] Wash. Courts Practice of Law Bd., *Blueprint for a Legal Regulatory Sandbox in Washington State* (June 2021), available at https://www.wsba.org/docs/default-source/legal-community/committees/practice-of-law-board/2021-06-21-blueprint-(v7)-sent-to-court.pdf#:~:text=This%20proposal%20outlines%20a%20blueprint%20to%20create%20a,follow%20Utah%20Supreme%20Court%E2%80%99s%20Legal%20Regulatory%20Sandbox%20model.

[83] The Supreme Court of Wash., Order No. 25700-B-721 (Dec. 5, 2024), available at https://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20Orders/Order%2025700-B-721.pdf.

[84] Law Society of Alberta, *Law Society of Alberta Introduces Innovation Sandbox*, https://www.lawsociety.ab.ca/law-society-of-alberta-introduces-innovation-sandbox/ (last visited May 21, 2025).

[85] *See* Law Society of Alberta, *Approved Sandbox Participants*, https://www.lawsociety.ab.ca/about-us/key-initiatives/innovationsandbox/approved-participants/ (last visited May 21, 2025).

or organizations that are currently not authorized to practise law to provide services that address the unmet need for legal advice and assistance within a structured environment that maximizes the benefits of the services while minimizing the risks associated with providing those services." As of March 25, 2025, the innovation sandbox had 56 approved participants.[86]

Manitoba, Canada: The Law Society of Manitoba has a regulatory sandbox pilot program that is currently accepting applications.[87]

Nova Scotia, Canada: In October 2023, Nova Scotia announced its plans to launch an innovation sandbox to improve access to justice.[88]

Ontario, Canada: In April 2021, the Law Society of Ontario voted to approve a five-year sandbox which they hope will spur innovation in legal technological services.[89] As of March 25, 2025, there are 13 participating providers.[90]

England and Wales: Since 2007, England and Wales have permitted ABS structures, including partnerships and fee sharing between lawyers and nonlawyers. Nonlawyers may also own stock as passive investors. The rules governing ABS were part of wide-ranging legislative changes made to the profession and lawyer regulation. The Legal Services Board has reported that there are currently more than 1,800 ABSs regulated by the five licensing authorities[91] in England and Wales.[92] The largest of the five licensing authorities is the Solicitors Regulation Authority which

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[86] Law Society of British Columbia, *Approved Sandbox Participants*, https://www.lawsociety.bc.ca/our-initiatives/innovation-sandbox/approved-participants/ (last visited May 21, 2025).

[87] Law Society of Manitoba, *Regulatory Sandbox Pilot Program*, https://lawsociety.mb.ca/about/lsm-initiatives/access-to-justice/regulatory-sandbox-pilot-program/ (last visited May 21, 2025).

[88] Nova Scotia Barristers' Society, *A2J Week: Innovation Sandbox Aims to Improve Access to Justice*, https://nsbs.org/society-news/a2j-week-innovation-sandbox-aims-to-improve-access-to-justice/ (last visited May 21, 2025).

[89] Law Society of Ontario, *Access to Innovation (A2I) Program: About A2I – The Development of the A2I Project*, https://lso.ca/about-lso/access-to-innovation/about-a2i#the-development-of-the-a2i-project-5 (last visited May 21, 2025).

[90] Law Society of Ontario, *Participating Providers – Access to Innovation*, https://lso.ca/about-lso/access-to-innovation/participating-providers#willful-5 (last visited May 21, 2025).

[91] Legal Services Board, *Market Structure Dashboard*, https://legalservicesboard.org.uk/market-structure-dashboard (last visited Jan. 4, 2023).

[92] Firms may apply for an ABS license with the licensing authority for their area of specialty. The Solicitors Regulation Authority (SRA) regulates solicitors, The Institute of Chartered Accountants in England and Wales (ICAEW); the Council for Licensed Conveyancers (CLC) regulates property and probate lawyers; the Intellectual Property

licensed more than 1,377 ABS entities as of the last quarter of 2022. Although the number of law firms has decreased overall in England and Wales since 2016, the number of ABS firms has risen. As of 2023, 1,202 of 9,328 (13%) of firms were organized as ABS entities.[93]

Regulation Board (IPReg) regulates lawyers who are Patent Attorneys, Patent Agents, and Registered Trade Mark Attorneys; the Bar Standards Board (BSB) oversees barristers.

[93] *See* Solicitors Regulation Authority, *Authorising the Profession Annual Report 2022/23*, https://www.sra.org.uk/sra/research-publications/authorising-profession-2022-23/ (last visited May 21, 2025).

Appendix H

Changes Considered but Not Proposed

Subgroup 1 agreed that keeping existing Rule 5.4 unchanged was not a path forward. A second option contemplated no substantive changes to Rule 5.4 but would clarify in an amendment to Rule 5.4 what constitutes "the practice of law" or "legal services." Such a change could eliminate the ambiguity around what constitutes "legal services" versus "law-related services" in Rule 5.4 and Rule 5.7[94]. Ultimately, Subgroup 1 decided that instead of redefining the practice of law, a better approach was to refine "law-related services" in Rule 5.7 and to reconcile "law-related services" with "legal services" in Rule 5.4.

A third option -- expansion of Rule 5.4 to allow for fee sharing for referrals or other services (beyond what is currently permitted in 5.4 (a); (*and see* D.C. Bar Legal Ethics Opinion 369)) -- was examined. The subgroup concluded that this change would not accomplish the objective of leveling the playing field for D.C. Bar members to compete with alternative business structures and legal services providers.

A fourth option would be to expand Rule 5.4 to allow firms to partner or operate an "Approved Legal Technology Provider (ALTP)" to bring broader technology-based legal solutions to consumers.[95] An ALTP would be registered with the D.C. Bar and the D.C. Court of Appeals, and licensed and regulated by the D.C. Court of Appeals. However, the subgroup did not wish to propose the creation of a new regulatory body that would likely need to be housed at the Court; thus creating a need for additional resources for the Court.

Multidisciplinary Practice

Multidisciplinary practice was revisited with options to either expand Rule 5.4 to allow for multidisciplinary practice with a limitation on nonlawyer equity and no passive investment allowed; or to expand Rule 5.4 to allow for "full" multidisciplinary practice with no limitation on nonlawyer ownership. There would be benefits to these options: a law firm could offer non-legal

[94] The practice of law and the exceptions to it are defined in D.C. Court of Appeals Rule 49—specifically 49(b)(2) – the definition – and 49(c) for a list of exceptions.

[95] The Chicago Bar Association and Chicago Bar Foundation Task Force on the Sustainable Practice of Law & Innovation took this approach in their July 2020 proposal. An April 2021 update on the Chicago Bar Foundation's website noted: "The Supreme Court responded favorably to the Task Force report and most of the recommendations, and internal Supreme Court Committees have been tasked with providing further input and developing plans for execution of these proposals by early Fall." *See* https://chicagobarfoundation.org/advocacy/cba-cbf-task-force-on-the-sustainable-practice-of-law-innovation/.

professional services in addition to legal services; the nonlawyer professionals in a law firm could practice their professions separately from matters that were solely legal and this may appeal to nonlawyer partners – thus helping law firms recruit and retain top non-legal expertise and making partnership more attractive. It would also meet client demand for "one-stop shopping." Possible challenges included a higher potential for conflicts in professional standards and ethics rules. Although a limitation on nonlawyer equity could ensure that lawyers maintain control and professional independence, such limitation may make it less appealing to potential nonlawyer partners to join a firm. A limitation or prohibition on passive investment would ensure that each person with a financial interest in the firm is also taking on an active, professional role in the firm.

Passive Investment and Litigation Funding

Several Subgroup 1 meetings were devoted to discussions about the option to expand Rule 5.4 to allow for passive investment and litigation financing. Passive investment could allow capital for new law firms and for investment in new technology that may be necessary for law firms if they want to innovate. It would help sustain and grow the legal profession. Subgroup 1 members felt that if proposed, there should be certain guardrails around the issue of passive investment. The Committee ultimately agreed that it should study the topic of passive investment in more detail in the future. It will consider the outcomes of passive investment in other jurisdictions like Arizona and Utah, and how any changes might benefit the District of Columbia.

Elimination of Rule 5.4

The last option would eliminate Rule 5.4 entirely, thus eliminating prohibitions on lawyers partnering and sharing fees with nonlawyers. Arizona took this approach when it eliminated its Rule 5.4 in 2021. However, the subgroup recognized that Arizona's motivation to eliminate its Rule 5.4 was part of an initiative by the Arizona Supreme Court to encourage investment, innovation and competition in the delivery of legal services, thus improving the delivery and affordability of legal services to individuals and small businesses. As noted in this report, the focus of the subgroup's work and its rationale for its proposals is the changing legal services landscape and the alternative delivery of legal services to corporate clients. The subgroup agreed that a proposal to entirely eliminate Rule 5.4 for the District of Columbia was not realistic at this juncture.

The "Regulatory Sandbox" and the "U.K." Models

Subgroup 1 also reviewed the "Regulatory Sandbox" model and the "U.K. Model." In 2020, Utah implemented a regulatory sandbox effective until 2027. This pilot project allows for new law practice business models that permit more participation by nonlawyers and different methods of delivering legal services than is currently permitted under Utah's existing rules of professional conduct. Entities with nonlawyer investment or ownership are also permitted. The program is

regulated by the Utah Supreme Court's Office of Legal Services Innovation, which reviews applications from prospective participants; as of July 2023, some functions are overseen by the Utah State Bar's Legal Services Innovation Committee. However, the Utah Supreme Court revised its requirements in September 2024 to limit participation in the sandbox to those entities that are aimed at reaching underserved Utah consumers because the focus of the sandbox is to address the access to justice gap experienced by low and middle-income consumers.[96] The companies and firms participating are monitored and evaluated for effectiveness, particularly as they relate to the goal of improving access to justice. The subgroup's work and proposals to change Rule 5.4 are driven by different rationale.

The "practice of law" in the United Kingdom is a very narrow scope of activities that are reserved for lawyers: the exercise of a right of audience, conducting litigation, reserved instrument activities, probate, notary, and the administration of oaths. All other activities can be performed by nonlawyers in the U.K. Such changes in the District of Columbia would require revisions to D.C. Court of Appeals Rule 49 – Unauthorized Practice of Law.

[96] As of March 2025, at least 27 entities had left the Utah sandbox after it enacted a rule change that entities must have a connection to access to legal services, and not simply have entered the sandbox for purposes of nonlawyer ownership. About a dozen entities remain. *See* Debra Cassens Weiss, Nearly 30 legal entities may leave Utah's regulatory sandbox program after state tightens rules, *ABA Journal* (Ma. 4, 2025), https://www.abajournal.com/news/article/nearly-30-legal-entities-may-leave-utahs-regulatory-sandbox-after-state-tightens-rules.

Appendix I

Questions and Issues Presented

After reviewing the research and discussing the issues, the ILPC came to consensus on answers to the questions and issues below.

1. Fee Sharing, Fee Splitting, Multi-Disciplinary Practice, Alternative Business Structures and Outside Investment

Are there reasons why the ILPC cannot or should not propose changes to fee sharing, fee splitting, multidisciplinary practice, alternative business structures and outside investment now.

What is being preserved by continuing to prohibit fee sharing, fee splitting, multi-disciplinary practice, alternative business structures and outside investment. Is it the professional independence of a lawyer? Attorney/client privilege? Compliance with conflicts rules?

Subgroup 1 considered additional changes such as allowing outside investment, eliminating the prohibition on fee sharing entirely, allowing firms to engage in multidisciplinary practice or adopt alternative business structures. The Committee concluded that these potential changes to the Rules would delay the process of incremental but meaningful reforms that the Committee now proposes and believes can be adopted relatively promptly. The Committee did receive some comments during its call for general comment in 2020 about the lack of access to capital, particularly with respect to small or start-up firms and intends to follow up on these issues with further study on passive investment in its continuing work.

Are the above concepts still being preserved uninhibited today, with work-arounds, contractual relationships, etc.? Are there service providers operating outside the scope of regulation because they are on the fringes of the unauthorized practice of law or are using work-arounds to Rule 5.4?

In today's world more organizations are developing ways to create informal relationships that if formalized would potentially violate the intent of the Rules of Professional Conduct. As clients seek comprehensive solutions to the legal and business problems, groups are finding ways to deliver creatively. Litigation finance, for example, is one way to work around the Rules that limit or prohibit fee sharing and prohibit alternative business structures.

The litigation finance industry is expected to generate approximately $20,548.5 million by 2026[97] and it is largely – if not completely – unregulated. It is, of course, simply a way to fund lawyer's

[97] https://www.prnewswire.com/news-releases/litigation-funding-investment-market-to-hit-revenue-of-usd-20-548-5-million-by-2026--latest-research-report-by-zion-market-research-301371456.html

fees while a matter progresses through the courts. However, without careful planning by the parties involved, the arrangements could easily be explicitly prohibited by the Rules. Organizations have begun to launch law firms that are closely affiliated and similarly named to promote comprehensive legal and business solutions for existing and prospective clients. These firms often have management agreements with non-licensee organizations and operate as a single entity in many ways while carefully planned to be separate and distinct. There are examples of existing contractual arrangements and other work-around solutions that could lead to the very circumstances that the Rules are intended to prohibit and from which to protect the public. But, despite the existing Rules, these circumstances are occurring now, without any regulatory oversight or consumer protection. The ILPC seeks to propose solutions that would permit sensible modernization of the Rules and permit members to work toward comprehensive solutions and providing services for clients in new and innovative ways while ensuring the public is protected from unregulated work-arounds that do not serve the public interest.

2. Competition and Economics

Over time, law firms have and are losing clients and business to other entities that provide a range of professional services (e.g., the "Big 4" accounting firms, alternative legal service providers). The United States needs to compete with the legal services business abroad to stay competitive and relevant. Is competitiveness and economics a valid reason to propose a rule change?

The Committee determined that the rule changes proposed here would put law firms on equal footing with law-related providers. The increased competitiveness would therefore increase services to clients.

3. Potential Benefits and Risks to Clients and the Public

Would the changes benefit clients? If so, what kinds of clients and how? Would it be detrimental to clients, and if so, how?

The changes proposed would not be detrimental to clients and would benefit clients by increasing competition. Clients who choose to use a lawyer for these matters would also have the benefit of an attorney's duties and protections as laid out in the Rules of Professional Conduct.

Would the changes considered by the ILPC pose any risk to the larger public, and if so, what would it be?

Four main "buckets" of potential risks to the public were identified in some of the comments received during the call for general comment in early 2020. (*See also* Appendix D – Call for General Comment.)

a) ***A negative impact on access to justice and a potential reduction of pro bono services****:* Many law firms are committed to providing pro bono service. However, if nonlawyers are available to provide legal services, there may be pressure on lawyers within the firm to maximize their billable hours and therefore minimize their pro bono services.

b) ***Potential harm to clients due to loss of professional independence:*** It is possible that clients/consumers' interests may come second as business pressures become the driver in these new models. Lawyer independence could be affected by third party litigation funding because outside entities that are motivated by profit could exert influence over lawyers by interfering in key litigation decisions. This could undermine attorney independence because the funders' interests could take precedence over the clients' interests.

c) ***Conflict of Rules/ Risk to Attorney-Client Privilege:*** The attorney- client privilege could be potentially waived when nonlawyers are involved in the provision of legal services. There is potential harm to consumers because nonlawyers are not bound by attorney ethics rules.

d) ***Risk of entry to the legal services marketplace of for-profit platform lawyer referral service (PLRS):*** One commenter expressed concern that loosening Rule 5.4 too much without restrictions could lead to an online platform akin to the rideshare app, Uber. Without safeguards, a PLRS could gain too much market share, manipulate the pricing of attorney fees, blacklist firms that engage in litigation against certain parties, potentially direct business to firms that pay higher fees, and threaten client confidentiality, especially with extraction and monetization of data.

4. Potential Benefits or Negative Impact on Bar Members

Would the changes benefit Bar members? If so, in what kinds of practice settings and areas? How would Bar members benefit?

The underlying reason for granting partnership to nonlawyers is essentially the same as it is for lawyers: to create a connected group of individuals that collectively can assist with client needs better as a group than they could when disassociated. The decision to bring in nonlawyer partners is rarely a cost-cutting measure, but instead is an attempt to provide additional services and

improve efficiencies. It also would allow firms to retain and attract top talent by offering a financial stake in the firm. The Rule changes proposed by the ILPC moderately relax what is already a progressive position on fee sharing with nonlawyers. Therefore, any benefits to members of the Bar would likely be incremental, but the proposed Rule change would include protections for lawyers and firms through the required registration of firms with nonlawyer partners and ethics training for the nonlawyers.

The prevailing sentiment for those commenters supporting the Rule modernization is the ability to remain competitive, to offer a fulsome range of legal support services, and the ability to obtain the investment necessary to stay current with technology and trends. According to the February 3, 2020, survey conducted by the ILPC, firms rely upon the professional services provided by nonlawyer partners for management within the firm; and accounting and financial services most often. Other firms have technical assistance, lobbying, and public relations services provided by nonlawyer partners. Additionally, there are firms with nonlawyer partners providing medical review of claims and scientific or engineering support to the firm and its clients. These firms see value in the ability to retain expertise and provide the services of the nonlawyer partner, and the ILPC feels that the Rule changes, albeit not drastic, could augment these benefits to members of the D.C. Bar.

The ability to include these members within firm partnership seems responsive to the fact that law firms can be complex businesses requiring professional management skills. Further, clients of law firms often require the expertise of outside consultants, specialized expertise and support. In Washington, D.C., many law firm clients benefit from the expertise of nonlawyer government relations and lobbying professionals.

Would the changes be detrimental to any Bar members? If so, in what kinds of practice settings and areas? How would Bar members be negatively impacted?

Although not as prevalent as supporters, there were commenters who expressed concern about the potential Rule changes. However, the concerns raised did not identify potential detriment to Bar members. Instead, the detractors focused on perceived and theoretical impacts. Nonetheless, the Rule changes could mean changes for members of the Bar, and some commenters identified challenges managing the attorney-client privilege, conflicts of interest, and nonlawyer decision-making within the firm. The ILPC recognizes these changes could impact firms in such a way that the members of the Bar perceive the changes as detrimental, but these potential negative impacts are neither certain nor unmanageable with regulation and firm procedures to address these impacts. The ILPC feels that the proposed Rule change would introduce a modest easing of the current Rule 5.4 with attendant safeguards that would mitigate any potential harm to Bar members or clients.

Indeed, Arizona and Utah, which have introduced similar (and more expansive) changes to Rule 5.4, or have eliminated it altogether (Arizona) report few complaints.[98] Utah reports the number of complaints received on its website's Innovation Office Metrics page;[99] in its January 2025 metrics, Utah reports that there have been 20 complaints to date. The Arizona State Bar handles complaints against ABS entities and compliance attorneys. The annual reports of the Arizona Supreme Court Committee on Alternative Business Structures provide brief summaries of complaints received in any given year. The reports indicate that the Arizona State Bar has had 24 charges[100] against four ABS firms and has initiated disciplinary actions against two ABS firms and two compliance attorneys[101].

5. Should the ILPC Recommend any Rule Changes to Regulate the Practice of Litigation Funding?

The litigation funding industry is nationwide in scope and involves billions of dollars of investments. Litigation funding is controversial. Its advocates assert that litigation funding allows for an even playing field in matters against deep-pocket defendants. Its detractors counter that litigation becomes an investment opportunity for concealed funders at the expense of the client.

The issue of litigation funding – whether it is appropriate and under what circumstances, the disclosure of litigation funders, etc. - is the subject of potential legislation, court rules and court ruling throughout the country. The ILPC noted that the New York City Bar Association issued an opinion in 2018 concluding that litigation funding in some circumstances violated Rule 5.4.102 That decision itself became a subject of intense controversy, and the New York City Bar

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[98] Although it is difficult to draw direct comparisons because of the significant differences between the U.S. and U.K. legal systems, U.K. regulators did not find that the ABS firms were inherently riskier than traditional law firms when they analyzed the number and nature of complaints filed. *See* Competition and Markets Authority, Legal Services Market Study: Final Report 161-162 (2016); *see also see also* MINISTRY OF JUSTICE, LEGAL SERVICES: REMOVING BARRIERS TO COMPETITION 6 (2016), *available at* *https://consult.justice.gov.uk/digital-communications/legal-services-removing-barriers-to-competition/supporting_documents/legalservicesremovingbarrierstocompetition.pdf*.

[99] *See* https://utahinnovationoffice.org/innovation-office-metrics/.

[100] According to the 2023 annual report, "[a] charge is an allegation of wrongdoing. Charges may be dismissed or resolved at intake or may progress to an investigation as a formal complaint." https://www.azcourts.gov/Portals/26/ABS%20Committee%20Annual%20Report%20to%20Supreme%20Court%20for%202023%20-%20FINAL.pdf.

[101] *See* https://www.azcourts.gov/Portals/26/ABS%20Committee%20Annual%20Report%20to%20Supreme%20Court%20for%202024%20%2802_28_2025%29.pdf.

[102] *See* N.Y. CITY BAR ASSOC. COMM. ON PROF'L ETHICS, Formal Op. 2018-5 (2018).

Association commissioned a working group to study the issue in more depth.103 In 2020, the New York City Bar Association Working Group on Litigation Funding issued a report proposing a revised Rule 5.4 and provided guidance for using litigation funding. This was followed by a formal ethics opinion that the NYCBA issued in 2024.[104]

The ILPC did not find that the issue of litigation funding was specific to the District of Columbia and did not receive any information about particular positive contributions or negative features of litigation funding in the District of Columbia. In these circumstances, the ILPC concluded that the District should follow and monitor the national debate about litigation funding but not recommend any changes either to facilitate or regulate the practice at this time.

6. Rule 5.7.

Why did the subgroup consider changes to both Rule 5.4 and Rule 5.7? Should disclosure of nonlawyer partners to new and existing clients be required? Should registration of law firms with nonlawyer partners with the D.C. Bar be required? Why or why not? What kind of disclosure and registration, and to whom?

The ILPC concluded that it was not intended that lawyers in a firm with nonlawyer owners as permitted in Rule 5.4(b) (adopted in 1991), would be prohibited from practicing in and forming an organization that offers law-related services as is permitted in Rule 5.7 (adopted in 2007). Research into the development and adoption of the two Rules 16 years apart has led to unintentional consequences in the practical implementation of the two rules. The ILPC's reasons for proposing changes to Rule 5.4 and Rule 5.7 are described in in Section VI. B. of this report.

The reasons for the proposed requirement for law firms with nonlawyer partners to register with the D.C. Bar and to disclose the existence of nonlawyer partners to new and existing clients is described in detail in Section VI. C. and E. of this report.

7. How should MDP and ABS firms in other states with looser regulations (e.g., Arizona and Utah) be addressed in the context of any proposed changes to the D.C. Rules? Should a rule change be proposed that is similar to Georgia's rule about fee sharing with nonlawyer partners in other jurisdictions, or should the change be by a request to the Legal Ethics Committee for a legal ethics opinion?

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[103] *See* Report to the President by the New York City Bar Association Working Group on Litigation Funding (New York City Bar Association, February 28, 2020), https://www.nycbar.org/wp-content/uploads/2023/05/Report_to_the_President_by_Litigation_Funding_Working_Group.pdf.

[104] See New York City Professional Ethics Committee, *Formal Opinion 2024-2: Ethical Issues Arising from Advice to Clients on Client-Funder Litigation Funding Agreements* (April 11, 2024), https://www.nycbar.org/reports/formal-opinion-2024-2-ethical-issues-arising-from-advice-to-clients-on-client-funder-litigation-funding-agreements/.

The ILPC has proposed new Rule 5.4(d), (e) and new Comment [14] that would address how a D.C. lawyer can work with lawyers affiliated with organizations providing legal services under circumstances that the District of Columbia does not permit. The ILPC decided to propose a rule change to address this issue, instead of seeking an ethics opinion from the D.C. Bar Legal Ethics Committee, which is advisory only. Details about the proposed changes are in Section VI. E. of this report.

As part of its study and analysis, Subgroup 1 examined Arizona, where the Arizona Supreme Court eliminated its Rule of Professional Conduct 5.4 that had prohibited nonlawyer ownership of law firms. Effective January 1, 2021, Arizona has permitted lawyers and nonlawyers to co-own businesses that provide legal services through alternative business structures. Arizona now has the most far-reaching changes to the regulation of the practice of law of any U.S. jurisdiction thus far. As of March 25, 2025, there were 126 licensed active ABS entities in Arizona.

Subgroup 1 also examined Utah. In August 2020, the Utah Supreme Court approved the establishment of a pilot "regulatory sandbox" housed in the Office of Legal Services Innovation, to allow entities to use new business structures and service models to provide legal services in Utah after going through a review and approval process. Entities include those with nonlawyer ownership and investment and joint ventures between lawyers and nonlawyers. The sandbox is authorized to run through the end of August 2027.[105]

Lastly, the subgroup looked to Georgia's rule about fee sharing with firms with nonlawyer partners in other jurisdictions. On February 14, 2016, the Georgia Bar amended its Rule of Professional Conduct 5.4 to include a new section (e) that would allow Georgia attorneys to work with and share fees with lawyers and law firms outside of Georgia that "permit non-lawyers to participate in the management of such firms, have equity ownership in such firms, or share in legal fees generated by such firms." The subgroup determined that with recent changes in Arizona and Utah, it should propose new language like that of Georgia Rule 5.4(e) that would provide guidance on working with lawyers in firms that are formed under more liberal rules about fee sharing with nonlawyers.[106]

[105] As of March 2025, at least 27 participants had left the Utah sandbox or may be leaving under new rules that require that participants show that they will reach Utah consumers underserved by the legal market, and that the impact is substantial compared to an entity's overall reach. About a dozen entities remain. Debra Cassens Weiss, *Nearly 30 legal entities may leave Utah's regulatory sandbox program after state tightens rules*, ABA Journal (March 4, 2025), https://www.abajournal.com/news/article/nearly-30-legal-entities-may-leave-utahs-regulatory-sandbox-after-state-tightens-rules.

[106] *See* Section VI. F. of this report.