

Alabama Rules of Professional Conduct

Law Firms and Associations

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; and

(3) A lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement.

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

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

(d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:

(1) A nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;

(2) A nonlawyer is a corporate director or officer thereof; or

(3) A nonlawyer has the right to direct or control the professional judgment of a lawyer.

Comment

The provisions of this Rule express traditional limitations on sharing fees. These limitations are to protect the lawyer's professional independence of judgment.

Where someone other than the client pays the lawyer's fee or salary, or recommends employment of the lawyer, that arrangement does not modify the lawyer's obligation to the client. As stated in paragraph (c), such arrangements should not interfere with the lawyer's professional judgment. A lawyer's payment or absorption of discount charges on fees paid by credit or under a prepaid legal services plan does not interfere with the lawyer's professional judgment or independence and is permitted.

Alabama Code 1975, § 10-4-380, et seq. (Supp. 1986), allows the formation of professional corporations(P.C.) in Alabama. Alabama Code 1975, § 10-4-390(a) (Supp. 1986), provides that “[e]very individual who renders professional services as an employee of a ... professional corporation shall be liable for any negligent or wrongful act or omission in which he personally participates to the same extent as if he rendered such services as a sole practitioner.”

Comparison with Former Alabama Code of Professional Responsibility

Paragraph (a) is substantially identical to DR 3-102(A). DR 3-102(B) provided that “a lawyer... may pay the discount charge incident to the use of an approved credit card plan for financing legal fees, cost and expenses...”; there is no counterpart to this in these Rules, but such payments should be permitted the same as other overhead costs of operating a law practice.

Paragraph (b) is substantially identical to DR 3-103(A).

Paragraph (c) is substantially identical to DR 5-107(B).

Paragraph (d) is similar to DR 3-103(C).