

**Rules 5.4 Financial and Similar Arrangements with Nonlawyers
(Proposed Rule Adopted by the Board on November 17, 2016)**

- (a) A lawyer or law firm* shall not share legal fees directly or indirectly with a nonlawyer or with an organization that is not authorized to practice law, except that:
 - (1) an agreement by a lawyer with the lawyer's firm,* partner,* or associate may provide for the payment of money or other consideration 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 purchasing the practice of a deceased, disabled or disappeared lawyer may pay the agreed-upon purchase price, pursuant to rule 1.17, to the lawyer's estate or other representative;
 - (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, provided the plan does not otherwise violate these rules or the State Bar Act;
 - (4) a lawyer or law firm* may pay a prescribed registration, referral, or other fee to a lawyer referral service established, sponsored and operated in accordance with the State Bar of California's Minimum Standards for Lawyer Referral Services; or
 - (5) a lawyer or law firm* may share with or pay a court-awarded legal fee to a nonprofit organization that employed, retained or recommended employment of the lawyer or law firm in the matter.
- (b) A lawyer shall not form a partnership or other organization with a nonlawyer if any of the activities of the partnership or other organization 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 independent professional judgment or interfere with the lawyer-client relationship in rendering legal services.
- (d) A lawyer shall not practice with or in the form of a professional corporation or other organization authorized to practice law for a profit if:
 - (1) a nonlawyer owns any interest in it, except that a fiduciary representative of a lawyer's estate may hold the lawyer's stock or other interest for a reasonable* time during administration;
 - (2) a nonlawyer is a director or officer of the corporation or occupies a position of similar responsibility in any other form of organization; or

- (3) a nonlawyer has the right or authority to direct or control the lawyer's independent professional judgment.
- (e) The Board of Trustees of the State Bar shall formulate and adopt Minimum Standards for Lawyer Referral Services, which, as from time to time amended, shall be binding on lawyers. A lawyer shall not accept a referral from, or otherwise participate in, a lawyer referral service unless it complies with such Minimum Standards for Lawyer Referral Services.
- (f) A lawyer shall not practice with or in the form of a nonprofit legal aid, mutual benefit or advocacy group if the nonprofit organization allows any third person* or organization to interfere with the lawyer's independent professional judgment, or with the lawyer-client relationship, or allows or aids any person,* organization or group to practice law in violation of these rules or the State Bar Act.

Comment

[1] Paragraph (a) does not prohibit a lawyer or law firm* from paying a bonus to or otherwise compensating a nonlawyer employee from general revenues received for legal services, provided the arrangement does not interfere with the independent professional judgment of the lawyer or lawyers in the firm* and does not violate these rules or the State Bar Act. However, a nonlawyer employee's bonus or other form of compensation may not be based on a percentage or share of fees in specific cases or legal matters.

[2] Paragraph (a) also does not prohibit payment to a nonlawyer third-party for goods and services provided to a lawyer or law firm;* however, the compensation to a nonlawyer third-party may not be determined as a percentage or share of the lawyer's or law firm's overall revenues or tied to fees in particular cases or legal matters. A lawyer may pay to a nonlawyer third-party, such as a collection agency, a percentage of past due or delinquent fees in concluded matters that the third-party collects on the lawyer's behalf.

[3] Paragraph (a)(5) permits a lawyer to share with or pay court-awarded legal fees to nonprofit legal aid, mutual benefit, and advocacy groups that are not engaged in the unauthorized practice of law. See *Frye v. Tenderloin Housing Clinic, Inc.* (2006) 38 Cal.4th 23 [40 Cal.Rptr.3d 221]. See also rule 6.3. Regarding a lawyer's contribution of legal fees to a legal services organization, see rule 1.0, Comment [5] on financial support for programs providing pro bono legal services.

[4] This rule is not intended to affect case law regarding the relationship between insurers and lawyers providing legal services to insureds. See, e.g., *Gafcon, Inc. v. Ponsor Associates* (2002) 98 Cal.App.4th 1388 [120 Cal.Rptr.2d 392].

PROPOSED RULE OF PROFESSIONAL CONDUCT 5.4
(Current Rules 1-310; 1-320; 1-600)
Financial and Similar Arrangements with Nonlawyers

EXECUTIVE SUMMARY

The Commission for the Revision of the Rules of Professional Conduct (“Commission”) reviewed and evaluated current rules 1-310 (Forming a Partnership With a Non-lawyer), 1-320 (Financial Arrangements With Non-Lawyers), and 1-600 (Legal Service Programs) in accordance with the Commission Charter. In addition, the Commission considered the national standard of the ABA counterpart which contains many of the concepts included in these three California rules in a single rule, Model Rule 5.4 (Professional Independence Of A Lawyer). The Commission also reviewed relevant California statutes, rules, and case law relating to issues addressed by the proposed rule. The result of the Commission’s evaluation is proposed rule 5.4 (Financial and Similar Arrangements with Nonlawyers).

Rule As Issued For 90-day Public Comment

The main issue considered when evaluating these rules was whether to retain the existing rules separately, or to recommend adoption of a rule derived from ABA Model Rule 5.4. The recommendation is for a rule derived from ABA Model Rule 5.4 because the proposed rule gathers together in a single rule concepts that are intended to promote the independence of a lawyer’s professional judgment, as opposed to retaining these concepts in three separate rules. The proposed rule will improve public protection by providing broader prohibitions on a lawyer’s conduct and on relationships into which a lawyer might enter that could pose a threat to the lawyer’s exercise of independent professional judgment. In addition, the proposed rule provides greater public protection by expanding upon current rule 1-310¹ through not only prohibiting a lawyer from forming a partnership with a nonlawyer, but also any other organization with a nonlawyer if any of the activities of the organization consist of the practice of law. Finally, the proposed rule ensures California’s existing laws permitting lawyers to participate with governmental entities, legal services programs and certain other organizations continue to be honored.

Paragraph (a) prohibits a lawyer or law firm from sharing legal fees with a nonlawyer or with an organization that is not authorized to practice law. Paragraph (a) contains five subparagraphs providing guidance on the exceptions to the prohibition permitted under the rule. Paragraph (a) contains the substance of current rule 1-320(A).

Paragraph (b) prohibits a lawyer from forming a partnership or other organization with a nonlawyer if any of the activities of the partnership or organization consist of the practice of law. Paragraph (b) contains the substance of current rule 1-310 but, as stated above, expands upon the current rule by prohibiting a lawyer from forming any other organization, in addition to a partnership, with a nonlawyer to conduct the practice of law.

¹ Current rule 1-310 (Forming a Partnership With a Non-Lawyer) provides:

A member shall not form a partnership with a person who is not a lawyer if any of the activities of that partnership consist of the practice of law.

Paragraph (c) prohibits a lawyer from allowing a person who recommends, employs, or pays the lawyer to provide legal services for another to interfere with either the lawyer's independent professional judgment or with the lawyer-client relationship in rendering legal services.

Paragraph (d) prohibits a lawyer from practicing law with or in the form of a professional corporation or other organization authorized to practice law for a profit if: (1) a nonlawyer owns any interest in it;² (2) a nonlawyer is a director or officer of the corporation or holds a similar position of responsibility in any other form of organization; or (3) a nonlawyer has the right or authority to direct or control the lawyer's independent professional judgment.

Paragraph (e) requires the Board of Trustees of the State Bar of California to formulate and adopt Minimum Standards for Lawyer Referral Services which are binding on lawyers in California. This paragraph also prohibits a lawyer from accepting a referral from, or otherwise participating in, a lawyer referral service unless it complies with the Minimum Standards for Lawyer Referral Services as adopted by the Board. Paragraph (e) contains the substance of current rule 1-600(B).

Paragraph (f) prohibits a lawyer from practicing law with or in the form of a nonprofit legal aid, mutual benefit, or advocacy group if such organization allows any third person or organization to interfere with the lawyer's independent professional judgment, or with the lawyer-client relationship, or helps any person or organization to practice law in violation of the Rules of Professional Conduct or the State Bar Act. Paragraph (f) contains the substance of current rule 1-600(A).

There are four comments to the rule. Comment [1] states that paragraph (a) does not prohibit a lawyer or law firm from paying a bonus to a nonlawyer employee so long as the arrangement does not interfere with the lawyer's independent professional judgment; however, the nonlawyer's compensation may not be based on a percentage or share of fees in specific cases or legal matters. Comment [2] states that paragraph (a) also does not prohibit payment to a nonlawyer third party for goods and services provided to the lawyer so long as the compensation is not determined as a percentage or share of the lawyer's overall revenues, or tied to fees in specific cases or legal matters. Comment [3] clarifies that paragraph (a)(5) permits sharing with or paying court-awarded legal fees to nonprofit legal aid, mutual benefit, and advocacy groups that are not engaged in the unauthorized practice of law. Comment [4]

² Proposed paragraph (d)(1) contains a limited exception which states: "except for allowing a fiduciary representative of a lawyer's estate to hold the lawyer's stock or interest for a reasonable time during administration." This is consistent with State Bar Rule 3.157(C) and Business and Professions Code section 6171(a).

State Bar Rule 3.157(C): "The shares of a deceased shareholder must be sold or transferred to the law corporation or its shareholders within six months and one day following the date of death."

Bus. & Prof. Code § 6171(a):

With the approval of the Supreme Court, the State Bar may formulate and enforce rules and regulations to carry out the purposes and objectives of this article, including rules and regulations requiring all of the following:

- (a) That the articles of incorporation or bylaws of a law corporation shall include a provision whereby the capital stock of the corporation owned by a disqualified person (as defined in the Professional Corporation Act) or a deceased person shall be sold to the corporation or to the remaining shareholders of the corporation within such time as the rules and regulations may provide.

states that the rule is not intended to affect case law regarding the relationship between insurers and lawyer providing legal services to insureds.

Post-Public Comment Revisions

After consideration of comments received in response to the initial 90-day public comment period, the Commission made no changes to the proposed rule and voted to recommend that the Board adopt the proposed rule.

**COMMISSION REPORT AND RECOMMENDATION:
RULE 5.4 [1-320, 1-310, 1-600]**

Commission Drafting Team Information

Lead Drafter: Lee Harris

Co-Drafters: Danny Chou, Robert Kehr, Toby Rothschild, Mark Tuft

I. CURRENT CALIFORNIA RULE

Rule 1-320 Financial Arrangements With Non-Lawyers

- (A) Neither a member nor a law firm shall directly or indirectly share legal fees with a person who is not a lawyer, except that:
- (1) An agreement between a member and a law firm, partner, or associate may provide for the payment of money after the member's death to the member's estate or to one or more specified persons over a reasonable period of time; or
 - (2) A member or law firm undertaking to complete unfinished legal business of a deceased member may pay to the estate of the deceased member or other person legally entitled thereto that proportion of the total compensation which fairly represents the services rendered by the deceased member; or
 - (3) A member or law firm may include non-member employees in a compensation, profit-sharing, or retirement plan even though the plan is based in whole or in part on a profit-sharing arrangement, if such plan does not circumvent these rules or Business and Professions Code section 6000 et seq.; or
 - (4) A member may pay a prescribed registration, referral, or participation fee to a lawyer referral service established, sponsored, and operated in accordance with the State Bar of California's Minimum Standards for a Lawyer Referral Service in California.
- (B) A member shall not compensate, give, or promise anything of value to any person or entity for the purpose of recommending or securing employment of the member or the member's law firm by a client, or as a reward for having made a recommendation resulting in employment of the member or the member's law firm by a client. A member's offering of or giving a gift or gratuity to any person or entity having made a recommendation resulting in the employment of the member or the member's law firm shall not of itself violate this rule, provided that the gift or gratuity was not offered or given in consideration of any promise, agreement, or understanding that such a gift or gratuity would be forthcoming or that referrals would be made or encouraged in the future.

- (C) A member shall not compensate, give, or promise anything of value to any representative of the press, radio, television, or other communication medium in anticipation of or in return for publicity of the member, the law firm, or any other member as such in a news item, but the incidental provision of food or beverage shall not of itself violate this rule.

Discussion:

Rule 1-320(C) is not intended to preclude compensation to the communications media in exchange for advertising the member's or law firm's availability for professional employment.

Rule 1-310 Forming a Partnership With a Non-Lawyer

A member shall not form a partnership with a person who is not a lawyer if any of the activities of that partnership consist of the practice of law.

Discussion:

Rule 1-310 is not intended to govern members' activities which cannot be considered to constitute the practice of law. It is intended solely to preclude a member from being involved in the practice of law with a person who is not a lawyer.

Rule 1-600 Legal Service Programs

- (A) A member shall not participate in a nongovernmental program, activity, or organization furnishing, recommending, or paying for legal services, which allows any third person or organization to interfere with the member's independence of professional judgment, or with the client-lawyer relationship, or allows unlicensed persons to practice law, or allows any third person or organization to receive directly or indirectly any part of the consideration paid to the member except as permitted by these rules, or otherwise violates the State Bar Act or these rules.
- (B) The Board of Governors of the State Bar shall formulate and adopt Minimum Standards for Lawyer Referral Services, which, as from time to time amended, shall be binding on members.

Discussion:

The participation of a member in a lawyer referral service established, sponsored, supervised, and operated in conformity with the Minimum Standards for a Lawyer Referral Service in California is encouraged and is not, of itself, a violation of these rules.

Rule 1-600 is not intended to override any contractual agreement or relationship between insurers and insureds regarding the provision of legal services.

Rule 1-600 is not intended to apply to the activities of a public agency responsible for providing legal services to a government or to the public.

For purposes of paragraph (A), “a nongovernmental program, activity, or organization” includes, but is not limited to group, prepaid, and voluntary legal service programs, activities, or organizations.

II. FINAL VOTES BY THE COMMISSION AND THE BOARD

Commission:

Date of Vote: October 21 & 22, 2016

Action: Recommend Board Adoption of Proposed rule 5.4 [1-320, 1-310, 1-600]

Vote: 15 (yes) – 0 (no) – 0 (abstain)

Board:

Date of Vote: November 17, 2016

Action: Board Adoption of Proposed rule 5.4 [1-320, 1-310, 1-600]

Vote: 14 (yes) – 0 (no) – 0 (abstain)

III. COMMISSION’S PROPOSED RULE (CLEAN)

Rule 5.4 Financial and Similar Arrangements with Nonlawyers

- (a) A lawyer or law firm* shall not share legal fees directly or indirectly with a nonlawyer or with an organization that is not authorized to practice law, except that:
- (1) an agreement by a lawyer with the lawyer's firm,* partner,* or associate may provide for the payment of money or other consideration 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 purchasing the practice of a deceased, disabled or disappeared lawyer may pay the agreed-upon purchase price, pursuant to rule 1.17, to the lawyer's estate or other representative;
 - (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, provided the plan does not otherwise violate these rules or the State Bar Act;
 - (4) a lawyer or law firm* may pay a prescribed registration, referral, or other fee to a lawyer referral service established, sponsored and operated in accordance with the State Bar of California's Minimum Standards for Lawyer Referral Services; or

- (5) a lawyer or law firm* may share with or pay a court-awarded legal fee to a nonprofit organization that employed, retained or recommended employment of the lawyer or law firm in the matter.
- (b) A lawyer shall not form a partnership or other organization with a nonlawyer if any of the activities of the partnership or other organization 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 independent professional judgment or interfere with the lawyer-client relationship in rendering legal services.
- (d) A lawyer shall not practice with or in the form of a professional corporation or other organization authorized to practice law for a profit if:
 - (1) a nonlawyer owns any interest in it, except that a fiduciary representative of a lawyer's estate may hold the lawyer's stock or other interest for a reasonable* time during administration;
 - (2) a nonlawyer is a director or officer of the corporation or occupies a position of similar responsibility in any other form of organization; or
 - (3) a nonlawyer has the right or authority to direct or control the lawyer's independent professional judgment.
- (e) The Board of Trustees of the State Bar shall formulate and adopt Minimum Standards for Lawyer Referral Services, which, as from time to time amended, shall be binding on lawyers. A lawyer shall not accept a referral from, or otherwise participate in, a lawyer referral service unless it complies with such Minimum Standards for Lawyer Referral Services.
- (f) A lawyer shall not practice with or in the form of a nonprofit legal aid, mutual benefit or advocacy group if the nonprofit organization allows any third person* or organization to interfere with the lawyer's independent professional judgment, or with the lawyer-client relationship, or allows or aids any person,* organization or group to practice law in violation of these rules or the State Bar Act.

Comment

[1] Paragraph (a) does not prohibit a lawyer or law firm* from paying a bonus to or otherwise compensating a nonlawyer employee from general revenues received for legal services, provided the arrangement does not interfere with the independent professional judgment of the lawyer or lawyers in the firm* and does not violate these rules or the State Bar Act. However, a nonlawyer employee's bonus or other form of compensation may not be based on a percentage or share of fees in specific cases or legal matters.

[2] Paragraph (a) also does not prohibit payment to a nonlawyer third-party for goods and services provided to a lawyer or law firm;* however, the compensation to a nonlawyer third-party may not be determined as a percentage or share of the lawyer's or law firm's overall revenues or tied to fees in particular cases or legal matters. A lawyer may pay to a nonlawyer third-party, such as a collection agency, a percentage of past due or delinquent fees in concluded matters that the third-party collects on the lawyer's behalf.

[3] Paragraph (a)(5) permits a lawyer to share with or pay court-awarded legal fees to nonprofit legal aid, mutual benefit, and advocacy groups that are not engaged in the unauthorized practice of law. See *Frye v. Tenderloin Housing Clinic, Inc.* (2006) 38 Cal.4th 23 [40 Cal.Rptr.3d 221]. See also rule 6.3. Regarding a lawyer's contribution of legal fees to a legal services organization, see rule 1.0, Comment [5] on financial support for programs providing pro bono legal services.

[4] This rule is not intended to affect case law regarding the relationship between insurers and lawyers providing legal services to insureds. See, e.g., *Gafcon, Inc. v. Ponsor Associates* (2002) 98 Cal.App.4th 1388 [120 Cal.Rptr.2d 392].

IV. COMMISSION'S PROPOSED RULE (REDLINE TO CURRENT CALIFORNIA RULES 1-320, 1-310, 1-600)

Rule 5.4 [1-320] Financial and Similar Arrangements ~~With Non-Lawyers~~with Nonlawyers

~~(a)(A) Neither a member nor a~~A lawyer or law firm* shall ~~directly or indirectly~~not share legal fees ~~with a person who is not a lawyer~~directly or indirectly with a nonlawyer or with an organization that is not authorized to practice law, except that:

- (1) ~~An~~an agreement ~~between a member and a law~~by a lawyer with the lawyer's firm,* partner,* or associate may provide for the payment of money ~~or other consideration~~over a reasonable* period of time after the ~~member's~~lawyer's death, to the ~~member's~~lawyer's estate or to one or more specified persons ~~over a reasonable period of time~~; ~~or~~
- (2) ~~a lawyer purchasing the practice of a deceased, disabled or disappeared lawyer may pay the agreed-upon purchase price, pursuant to rule 1.17, to the lawyer's estate or other representative;~~
- ~~(2) A member or law firm undertaking to complete unfinished legal business of a deceased member may pay to the estate of the deceased member or other person legally entitled thereto that proportion of the total compensation which fairly represents the services rendered by the deceased member; or~~
- (3) ~~A member~~a lawyer or law firm* may include ~~non-member~~nonlawyer employees in a compensation, ~~profit-sharing~~, or retirement plan, even though the plan is based in whole or in part on a profit-sharing

arrangement, ~~if such~~provided the plan does not ~~circumvent these rules or Business and Professions Code section 6000 et seq.; or otherwise violate these rules or the State Bar Act;~~

~~(4) — A member~~a lawyer or law firm* may pay a prescribed registration, referral, or ~~participation~~other fee to a lawyer referral service established, sponsored, and operated in accordance with the State Bar of California's Minimum Standards for ~~a Lawyer Referral Service in California.~~Services; or

(5) a lawyer or law firm* may share with or pay a court-awarded legal fee to a nonprofit organization that employed, retained or recommended employment of the lawyer or law firm* in the matter.

~~(B) — A member shall not compensate, give, or promise anything of value to any person or entity for the purpose of recommending or securing employment of the member or the member's law firm by a client, or as a reward for having made a recommendation resulting in employment of the member or the member's law firm by a client. A member's offering of or giving a gift or gratuity to any person or entity having made a recommendation resulting in the employment of the member or the member's law firm shall not of itself violate this rule, provided that the gift or gratuity was not offered or given in consideration of any promise, agreement, or understanding that such a gift or gratuity would be forthcoming or that referrals would be made or encouraged in the future.~~

~~(C) — A member shall not compensate, give, or promise anything of value to any representative of the press, radio, television, or other communication medium in anticipation of or in return for publicity of the member, the law firm, or any other member as such in a news item, but the incidental provision of food or beverage shall not of itself violate this rule.~~

Rule 1-310 Forming a Partnership With a Non-Lawyer

(b) A ~~member~~lawyer shall not form a partnership or other organization with a ~~person who is not a lawyer~~nonlawyer if any of the activities of ~~that~~the partnership or other organization 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 independent professional judgment or interfere with the lawyer-client relationship in rendering legal services.

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

(1) a nonlawyer owns any interest in it, except that a fiduciary representative of a lawyer's estate may hold the lawyer's stock or other interest for a reasonable* time during administration;

- (2) a nonlawyer is a director or officer of the corporation or occupies a position of similar responsibility in any other form of organization; or
 - (3) a nonlawyer has the right or authority to direct or control the lawyer's independent professional judgment.
- (e) The Board of Trustees of the State Bar shall formulate and adopt Minimum Standards for Lawyer Referral Services, which, as from time to time amended, shall be binding on lawyers. A lawyer shall not accept a referral from, or otherwise participate in, a lawyer referral service unless it complies with such Minimum Standards for Lawyer Referral Services.

Rule 1-600 Legal Service Programs

- ~~(A) A member shall not participate in a nongovernmental program, activity, or organization furnishing, recommending, or paying for legal services, which allows any third person or organization to interfere with the member's independence of professional judgment, or with the client-lawyer relationship, or allows unlicensed persons to practice law, or allows any third person or organization to receive directly or indirectly any part of the consideration paid to the member except as permitted by these rules, or otherwise violates the State Bar Act or these rules.\~~
- (e) The Board of Trustees of the State Bar shall formulate and adopt Minimum Standards for Lawyer Referral Services, which, as from time to time amended, shall be binding on lawyers. A lawyer shall not accept a referral from, or otherwise participate in, a lawyer referral service unless it complies with such Minimum Standards for Lawyer Referral Services.
- ~~(B) The Board of Governors of the State Bar shall formulate and adopt Minimum Standards for Lawyer Referral Services, which, as from time to time amended, shall be binding on members.~~
- (f) A lawyer shall not practice with or in the form of a nonprofit legal aid, mutual benefit or advocacy group if the nonprofit organization allows any third person* or organization to interfere with the lawyer's independent professional judgment, or with the lawyer-client relationship, or allows or aids any person,* organization or group to practice law in violation of these rules or the State Bar Act.

Discussion: COMMENT

[Discussion paragraph for rule 1-320]

~~Rule 1-320(C) is not intended to preclude compensation to the communications media in exchange for advertising the member's or law firm's availability for professional employment.~~

[1] Paragraph (a) does not prohibit a lawyer or law firm* from paying a bonus to or otherwise compensating a nonlawyer employee from general revenues received for

legal services, provided the arrangement does not interfere with the independent professional judgment of the lawyer or lawyers in the firm* and does not violate these rules or the State Bar Act. However, a nonlawyer employee's bonus or other form of compensation may not be based on a percentage or share of fees in specific cases or legal matters.

[2] Paragraph (a) also does not prohibit payment to a nonlawyer third-party for goods and services provided to a lawyer or law firm;* however, the compensation to a nonlawyer third-party may not be determined as a percentage or share of the lawyer's or law firm's overall revenues or tied to fees in particular cases or legal matters. A lawyer may pay to a nonlawyer third-party, such as a collection agency, a percentage of past due or delinquent fees in concluded matters that the third-party collects on the lawyer's behalf.

[3] Paragraph (a)(5) permits a lawyer to share with or pay court-awarded legal fees to nonprofit legal aid, mutual benefit, and advocacy groups that are not engaged in the unauthorized practice of law. See *Frye v. Tenderloin Housing Clinic, Inc.* (2006) 38 Cal.4th 23 [40 Cal.Rptr.3d 221]. See also rule 6.3. Regarding a lawyer's contribution of legal fees to a legal services organization, see rule 1.0, Comment [5] on financial support for programs providing pro bono legal services.

~~*[Discussion paragraph for rule 1-310]*~~

~~Rule 1-310 is not intended to govern members' activities which cannot be considered to constitute the practice of law. It is intended solely to preclude a member from being involved in the practice of law with a person who is not a lawyer.~~

~~*[Discussion paragraph for rule 1-600]*~~

~~The participation of a member in a lawyer referral service established, sponsored, supervised, and operated in conformity with the Minimum Standards for a Lawyer Referral Service in California is encouraged and is not, of itself, a violation of these rules.~~

~~Rule 1-600 is not intended to override any contractual agreement or relationship between insurers and insureds regarding the provision of legal services.~~

~~Rule 1-600 is not intended to apply to the activities of a public agency responsible for providing legal services to a government or to the public.~~

~~For purposes of paragraph (A), "a nongovernmental program, activity, or organization" includes, but is not limited to group, prepaid, and voluntary legal service programs, activities, or organizations.~~

[4] This rule is not intended to affect case law regarding the relationship between insurers and lawyers providing legal services to insureds. See, e.g., *Gafcon, Inc. v. Ponsor Associates* (2002) 98 Cal.App.4th 1388 [120 Cal.Rptr.2d 392].

V. RULE HISTORY

A. Introduction

The three rules being considered together under the rubric of a new proposed Rule 5.4 that would be patterned after Model Rule 5.4 all deal to some extent with a lawyer's duty of exercising independent professional judgment in representing a client. Specifically, each rule incorporates prohibitions on lawyer conduct that are intended to *avoid interference* by nonlawyers with a lawyer's exercise of independent judgment in providing legal services to a client.

B. History of Current Rule 1-310

The predecessor to current Rule 1-310, former Rule 3-103, became operative on January 1, 1975, under the current title, "Forming a Partnership With a Non-Lawyer." That rule contained the substance of Disciplinary Rule (DR) 3-103 of the ABA Model Code of Professional Responsibility.¹

Former rule 3-103 was amended in 1989 as part of a comprehensive revision of the Rules of Professional Conduct. The rule was renumbered rule 1-310, a new Discussion section was added, and non-substantive were made to streamline the black letter text of the rule. As revised, rule 1-310 provided:

Rule 1-310. ~~3-103.~~ Forming a Partnership With a Non-Lawyer

A member of the State Bar shall not form a partnership with a person not licensed to practice law if any of the activities of the that partnership consist of the practice of law.

Discussion:

Rule 1-310 is not intended to govern members' activities which cannot be considered to constitute the practice of law. It is intended solely to preclude a member from being involved in the practice of law with a person not licensed to practice law.

In 1992, rule 1-310 was revised to conform to the use of "member" and "lawyer" under a then new definition of those terms. The proposed amendments to rule 1-310 and the Discussion section, in conjunction with the proposed amendment to rule 1-100(B)(3), intended to correct an ambiguity in the then-operative rules. At that time, rule 1-100(B)(3) defined "lawyer" as a person licensed to practice law in a United States

¹ DR 3-103 provided:

DR 3-103 Forming a Partnership with a Non-Lawyer.

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

jurisdiction. Then-operative rule 1-310 was titled “Forming a Partnership With a Non-Lawyer” and prohibited the formation of a partnership “with a person not licensed to practice law” if any of the activities of that partnership consisted of the practice of law. However, lawyers from other countries may be licensed to practice law, but did not fit within the then-operative definition of “lawyer.” Thus, an ambiguity existed between the title and the text of rule 1-310 (and the Discussion section) regarding foreign-licensed attorneys.

The amendments to rule 1-310 and to the Discussion section conformed the title of the rule to the text and the Discussion section and conformed the rule to the definition of “lawyer” proposed in rule 1-100(B)(3). These amendments clarified that formation of partnerships (to engage in the practice of law) with foreign-licensed attorneys were not prohibited under rule 1-310. As revised, rule 1-310 provided:

Rule 1-310. Forming a Partnership With a Non-Lawyer

A member shall not form a partnership with a person ~~not licensed to practice law~~ who is not a lawyer if any of the activities of that partnership consist of the practice of law.

Discussion:

Rule 1-310 is not intended to govern members' activities which cannot be considered to constitute the practice of law. It is intended solely to preclude a member from being involved in the practice of law with a person ~~not licensed to practice law~~ who is not a lawyer.

Rule 1-310 has not been amended since 1992.

C. History of Current Rule 1-320

The concept of current rule 1-320 was included in the original 1928 Rules as a part of former rule 3, operative on July 24, 1928. Rule 3, in relevant part, provided:

Rule 3

A member of The State Bar shall not employ another to solicit . . . ; nor shall he directly or indirectly share with an unlicensed person compensation arising out of or incidental to professional employment;

In 1972, the Special Committee to Study the ABA Code of Professional Responsibility recommended the adoption of proposed rule 3-102, which was derived from ABA Code, DR 3-102 (Dividing Legal Fees with a Nonlawyer). The DR was modified to carry forward the Rule 3 prohibition against *direct or indirect* fee sharing except with a person licensed to practice law.

The rule that was adopted, effective 1975, was identical to the rule with one slight revision.²

The rule was again amended effective April 1979. These amendments rendered the rule gender neutral, and also added new paragraphs (B) and (C), concerning payments for referrals or recommendations of the lawyer's services.³ Further amendments were made effective October 1979 to add a sentence to paragraph (B).⁴

In 1989, several amendments were made. The rule number was changed to 1-320 as part of the comprehensive revision of the Rules. Paragraph (A) continued the prohibition and exceptions found in current rule 3-102(A) regarding sharing legal fees with persons not licensed to practice law. Subparagraph (A)(4) was added to clarify that payments to a State Bar Certified Lawyer Referral Service does not violate the rule. Finally, paragraph (B) was amended to make it consistent with proposed rule 2-200(B).

No amendments have been made to rule 1-320 since 1989.

D. History of Current Rule 1-600

Rule 1-600 was originally adopted and approved as rule 2-102, effective April 1, 1979. The State Bar explained the rationale for the rule:

² The change was as follows:

(2) A member of the State Bar who undertakes to complete unfinished legal business of a deceased member of the State Bar may pay to the estate of the deceased member of the State Bar or other person legally entitled thereto that proportion of the total compensation which fairly represents the services rendered by the deceased member of the State Bar.

³ New paragraphs (B) and (C) provided:

(B) A member of the State Bar shall not compensate or give or promise anything of value to any person or entity for the purpose of recommending or securing employment of the member or the member's firm by a client, or as a reward for having made a recommendation resulting in employment of the member or the member's firm by a client.

(C) A member of the State Bar shall not compensate or give or promise anything of value to any representative of the press, radio, television or other communication medium in anticipation of or in return for publicity of the member, the member's firm, or any other attorney as such in a news item, but the incidental provision of food or beverages shall not of itself violate this subdivision.

⁴ The sentence provided:

A member's offering of or giving a gift or gratuity to any person or entity, which has made a recommendation resulting in the employment of the member or the member's firms, shall not of itself violate this rule, provided that the gift or gratuity was not offered in consideration of any promise, agreement or understanding that such a gift or gratuity would be forthcoming or that referrals would be made or encouraged in the future.

It has long been recognized that “[t]here are situations . . . when an attorney’s association with a lay organization fulfills a legitimate interest of the organization or its members, and presents no risk of conflicting interests or other abuses.”

In a series of four landmark decisions, the United States Supreme Court clearly established that “collective activity undertaken to obtain meaningful access to the courts is a fundamental right within the protection of the First Amendment.” (*United Transportation Union v. State Bar of Michigan* (1971) 401 U.S. 576, 585, 91 S.Ct. 1076, 1082; *United Mine Workers of America v. Illinois State Bar Association* (1967) 389 U.S. 217, 88 S.Ct. 353 [hereinafter “*United Mine Workers*”]; *Brotherhood of Railroad Trainmen v. Virginia* (1964) 377 U.S. 1, 84 S.Ct. 1113 [hereinafter “*Railroad Trainmen*”]; *National Association of the Advancement of Colored People v. Button* (1963) 371 U.S. 415, 83 S.Ct. 328 [hereinafter “*NAACP*”].) The Court recently reaffirmed this position in *In re Primus* (1978) 436 U.S. 412, 98 S.Ct. 1893.

In doing so, however, the Court did not invalidate the fundamental prohibition against attorneys soliciting professional employment for their own purposes. Instead, the Court recognized a distinction between solicitation and the activities involved in the cases, and held that the prohibition against solicitation could not be applied so as to prohibit legitimate collective activity undertaken to obtain meaningful access to the courts. (See, e.g., *United Mine Workers*, 389 U.S. at pp. 222-223, 88 S.Ct., at pp. 356-357; *Railroad Trainmen*, 377 U.S., at pp. 6-7, 84 S.Ct., at pp. 1116-1117; *NAACP*, 371 U.S., at pp. 439-444, 83 S.Ct., at pp. 341-343; *In re Primus*, 436 U.S. 412, 98 S.Ct., at p. 1893, 1906.)

Thus, constitutionally protected activity constitutes an exception to the prohibition against solicitation; the exception coexists with the prohibition.

Subdivision (A) is intended to continue and to expand the current exception for attorney participation in legal aid and similar programs for the furnishing of services to indigents (present rule 2-101 (F)), in plans or programs of nonprofit organizations furnishing legal services to persons in respect of their civic, political or constitutional rights (present rule 2-104(F)), and in group and prepaid legal service arrangements (present rule 2-104(D) and (E)).

Proposed rule 2-102(A) also changes the previous rule approach to group and prepaid legal service arrangements by focusing on attorney’s conduct rather than on the structure of the arrangement itself.

Given the relatively recent history of group and prepaid legal service programs, we believe that the public interest is best served by permitting flexibility and experimentation, coupled with an on-going study by the Legal Services Section of the need for regulation.

The proposed rule thus eliminates all current distinctions between “group” and “prepaid” programs, open and closed panel programs, and all requirements for reporting to the State Bar the fact of an attorney’s participation in a plan contained in present rule 2-104(D) and (E).

In this respect it should be noted that this proposal contemplates the repeal of sections (D) and (E) of existing rule 2-104, relating to open and closed panel programs.

Present rule 2-104(E) sets out certain requirements for open panel programs. Your Committee believes that this provision has not served to foster the growth of legal services programs, and, in light of the change in the advertising rules, it no longer seems viable. Existing requirements in present rule 2-104 for registration with the State Bar by an attorney participating in a group legal service program are also repealed.

Subdivision (B) of proposed rule 2-102 continues the exception for attorneys who participate in lawyer referral services contained in present rule 2-104(C). The extent to which lawyer referral services are constitutionally permitted to solicit cases in-person is unclear. (See appendix F.) Your Committee recommends that you refer this issue to the appropriate committee for further research and study.

It provides for filing of minimum standards for such services with the Court and approval thereof by the Court. This is the same procedure proposed with respect to advertising standards promulgated under proposed rule 2-101(D).

There is no intent, by these changes, to lessen the responsibility of the attorney who participates in such programs to adhere to the requirements of the State Bar Act or of the Rules of Professional Conduct, including, for example, the prohibitions on aiding the unauthorized practice of law (*Bluestein v. State Bar* (1974) 13 Cal.3d 162; *People v. California Protection Corp.* (1926) 76 Cal.App. 354; rule 3-101); allowing a third party to receive part of the consideration paid to a member of the State Bar, (including kickbacks or other fees paid in consideration for a union or group representative’s having referred legal business to an attorney) (rules 4-101, 5-101, 5-102 and 5-103); and false, deceptive or misleading advertising placed by or on behalf of the member (proposed rule 2-101). In other words, the attorney must not permit a group or its agents to interfere with or control his or her performance of duties owed a client, the courts or the administration of justice.

[1978 Final Report, Pages 37-41].

In 1989 non-substantive amendments were made to the rule for brevity and clarity. Language making clear that a member may participate in a lawyer referral service established, sponsored, supervised, and operated in conformity with the Minimum Standards for a Lawyer Referral Service in California was deleted from the black letter text and moved to the rule Discussion section.

This Discussion section also clarified that the rule was not intended to override any contractual agreement or relationship between insurers and insureds regarding the provision of legal services. This recognized that the insurer-insured relationship was subject to a developing body of case law. (See e.g., *San Diego Navy Federal Credit Union v. Cumis Insurance Society* (1984) 162 Cal.App.3d 358.)

The word “non governmental” was added in paragraph (A) to make clear that the rule was not intended to apply to activities of a public agency charged with the obligation of providing legal services to the government or to the public. Examples of such agencies include the offices of public defenders and district attorneys.

Lastly, amendments were incorporated that conformed the rule to the definition of “member” established by then proposed rule 1-100 and to delete gender references.

Since 1989, no further amendments have been made to the rule.

VI. OFFICE OF CHIEF TRIAL COUNSEL / STATE BAR COURT COMMENTS

- **Gregory Dresser, Office of Chief Trial Counsel, 9/27/2016**
(In response to 90-day public comment circulation):

1. OCTC supports this rule and its Comments.

Commission Response: No response required.

- **State Bar Court**: No comments were received from State Bar Court.

VII. SUMMARY OF PUBLIC COMMENTS (INCLUDING COMMENTS SUBMITTED BY THE OFFICE OF CHIEF TRIAL COUNSEL AND STATE BAR COURT) & PUBLIC HEARING TESTIMONY

During the 90-day public comment period, four public comments were received. One comment agreed with the proposed Rule, one comment disagreed, and two comments agreed only if modified. A public comment synopsis table, with the Commission’s responses to each public comment, is provided at the end of this report.

One speaker appeared at the public hearing whose testimony was not in support of the proposed rule. That testimony and the Commission’s response is also in the public comment synopsis table.

VIII. RELATED CALIFORNIA LAW AND ABA MODEL RULE ADOPTIONS

A. Related California Law

1. Protection of Independent Judgment in the Context of Lawyer Referrals.

Rule 1-600 includes the policy that regulation is needed to assure public protection in lawyer referral activities. This policy is implemented both in statute and in State Bar

rules (see: Bus. & Prof. §§ 6155 et. seq. regarding State Bar registration; and the Board adopted Minimum Standards for Lawyer Referral Services that are “binding on members”). These regulations prohibit an attorney from participating in a lawyer referral service that is not operated in conformity with applicable rules, codes and standards, and also render unlawful the operation of an unregistered lawyer referral service. According to State Bar lawyer referral service staff, the total number of lawyer referral service clients reported from 2013 to 2014 is 156,997.

Over 100 years ago, the Supreme Court articulated the public harm that is triggered by a lawyer's contract with a lay person to secure clients in exchange for a share of the lawyer's fees. In *Alpers v. Hunt* (1890) 86 Cal. 78 [24 Pac. 846], the Court held such a contract to be invalid because it would tend to increase the cost of delivery of legal services. The Court said, "Such a practice would tend to increase the amounts demanded for professional services. In such a case an attorney would be induced to demand a larger sum for his services, as he would have to divide such sum with a third person." About 80 years later, the California Court of Appeal considered the issue of a lawyer's participation in bar association lawyer referral program in *Emmons, Williams, Mires & Leech v. State Bar* (1970) 6 Cal.3d 565. The bar association program operated under Minimum Standards adopted by the Board in 1956 (note that the Board's adoption was 30 years before the legislature enacted Bus. & Prof. Code § 6155 in 1987). Citing to *Alpers*, the court held that only certain types of lawyer referral service activities are not rendered illegal due to the ethical duties of lawyers to avoid fee splits with nonlawyers, lay interference with professional independent judgment, and aiding in the unauthorized practice of law. The Court said:

Whether the Minimum Standards actually work a modification of rules 2 and 3 is a question not affecting entitlement to the money in suit. It is enough that the basic features of the San Joaquin County arrangement do not offend the public policy underlying these canons. There are wide differences - in motivation, technique and social impact - between the lawyer reference service of the bar association and the discreditable fee-splitting featured in the disciplinary decision. Prohibited fee-splitting between lawyer and layman carries with it the danger of competitive solicitation (*Crawford v. State Bar*, 54 Cal.2d 659, 666 [7 Cal.Rptr. 746, 355 P.2d 490]); poses the possibility of control by the lay person, interested in his own profit rather than the client's fate (*Utz v. State Bar*, 21 Cal.2d 100, 108 [130 P.2d 377]); facilitates the lay intermediary's tendency to select the most generous, not the most competent, attorney (*Linnick v. State Bar*, 62 Cal.2d 17, 21 [41 Cal.Rptr. 1, 396 P.2d 33]; *Hildebrand v. State Bar*, 36 Cal.2d 504, 523 [225 P.2d 508], separate opinion of Traynor, J.). Rule 3's prohibition against lay intermediaries seeks to bar both solicitation and the presence of a party demanding allegiance the lawyer owes his client. (*People v. Merchants Protective Corp.* (1922) 189 Cal. 531, 539 [209 P. 363].) None of these dangers or disadvantages characterizes the San Joaquin County Bar Association's lawyer reference activity. The bar association seeks not individual profit but the fulfillment of public and professional objectives. It has a legitimate, nonprofit interest in making legal services more readily available to the public. When conducted within the framework conceived for such facilities, its reference

service presents no risks of collision with the objectives of the canons on fee-splitting and lay interposition.

(*Emmons* at pp. 573 -574.)

Recent enhancements to the regulation of lawyer referral activities affirm the longstanding tradition of assuring public protection in this area. Enacted in 2013, Evidence Code §§ 965 et. seq. established the “lawyer referral service-client privilege.” This privilege facilitates the confidentiality of information that might ultimately be shared with a lawyer in due recognition of the fact that access to legal services can begin with a client seeking assistance from a lawyer referral service and sharing information with the service’s nonlawyer staff.

State Bar Act regulation of lawyer referral services includes express exceptions. Business and Professions Code § 6155(h) provides that: "This section shall not be construed to prohibit attorneys from jointly advertising their services." Paragraph (h) further states that permissible joint advertising, among other things, “identifies by name the advertising attorneys or law firms whom the consumer of legal services may select and initiate contact with.” Whether innovative online matching services constitute regulated lawyer referral activity or permissible joint advertising likely depends on the specific facts and circumstances of the service.

2. Aiding in the Unauthorized Practice of Law; Fee Splits with Nonlawyers

Rule 1-600 requires a lawyer to refrain from participating in an activity or program that recommends, pays for, or furnishes legal services, if that participation involves improper fee splits with nonlawyers or allows acts constituting the unauthorized practice of law. These issues of concern are the subject of other general rules not limited to the legal services context of rule 1-600. Rule 1-310 prohibits forming a partnership with a nonlawyer. Rule 1-320 prohibits, with certain exceptions, a lawyer from directly or indirectly sharing fees for legal services with a nonlawyer. Rule 1-300(A) prohibits a lawyer from aiding any person or entity in the unauthorized practice of law. Other California laws prohibit the unauthorized practice of law in California. Among these other laws are Business and Professions Code §§ 6125 et. seq. stating that perpetrators are guilty of a misdemeanor punishable by a fine, imprisonment, or both. Unauthorized practice of law may also be enforced under laws prohibiting unfair competition. (See *People v. Landlords Professional Services* (1989) 215 Cal.App.3d 1599, applying the Unfair Competition Act, Business and Professions Code §§ 17200 – 17208. See also Opinion of the California Attorney General No. 93-303 (August 30, 1993).)

3. Corporations Practicing Law.

Rule 1-300(A) includes a prohibition against aiding an entity in the unauthorized practice of law. Certain entities are authorized to practice law in California. The State Bar registers Professional Law Corporations and Limited Liability Partnerships pursuant to code sections and State Bar rules. (See Business and Professions Code §§ 6160 et. seq. (re law corporations) and §§ 6174 and 6174.5 (re limited liability partnerships).)

Some nonprofit entities may also be authorized to practice law. (See *Frye v. Tenderloin Housing Clinic, Inc.* (2006) 38 Cal.4th 23 [40 Cal.Rptr.3d 221].)

4. Multi-Disciplinary Practice.

In 2001, a State Bar of California Task Force on Multidisciplinary Practice issued a Report and Findings overview of regulatory issues concerning concepts of possible reforms that could permit lawyers and other professionals to offer consumers “one-stop shopping” for professional services.⁵ The Office of Professional Competence staff observes that although this concept did not gain traction in California or with the ABA, it is possible that it might be revisited at some time in the future. The ABA also studied MDP. (See Section **Error! Reference source not found.**, below.)

5. Passive Investment in Law Firms.

The State Bar MDP Task Force concluded that passive investment in law firms should not be permitted. (See Report and Findings by the Task Force, at page 34.) There has been no further study of this issue in California.

B. ABA Model Rule Adoptions

The ABA State Adoption Chart for Model Rule 5.4, whose paragraph (b) is the counterpart to rule 1-310, revised December 8, 2016, is posted at:

- http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/mrpc_5_4.pdf [Last visited 2/6/17]
- Nine jurisdictions have adopted 5.4 verbatim.⁶ Thirty-eight jurisdictions have adopted something substantially similar to Model Rule 5.4⁷ and four jurisdictions have adopted something substantially different to Model Rule 5.4.⁸ The District of Columbia authorizes certain business combinations between lawyers and non-lawyers. Some legal commentators have critically examined the issue of lawyer / non-lawyer combinations with regard to expanding access to legal services for middle and lower income individuals.⁹

⁵ Posted online at: http://www.calbar.ca.gov/portals/0/documents/reports/2001_MDP-Report.pdf.

⁶ The nine jurisdictions are: Arizona, Arkansas, Delaware, Illinois, Montana, Nebraska, New Hampshire, Vermont, and Wisconsin.

⁷ The thirty-eight jurisdictions are: Alabama, Alaska, Colorado, Florida, Hawaii, Iowa, Idaho, Indiana, Kansas, Kentucky, Louisiana, Massachusetts, Maryland, Maine, Michigan, Minnesota, Montana, Mississippi, North Carolina, North Dakota, New Jersey, New Mexico, Nevada, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, and Wyoming.

⁸ The four jurisdictions are: California, Connecticut, District of Columbia, and Georgia.

⁹ See *Protecting the Profession or the Public? Rethinking Unauthorized-Practice Enforcement* (2014) 82 Fordham L. Rev. 2587.

**IX. CONCEPTS ACCEPTED/REJECTED; CHANGES IN DUTIES;
NON-SUBSTANTIVE CHANGES; ALTERNATIVES CONSIDERED**

A. Concepts Accepted (Pros and Cons):

1. Recommend adoption of a single rule, derived from ABA Model Rule 5.4, that contains concepts intended to promote the independence of a lawyer's professional judgment.

- Pros: Proposed Rule 5.4 gathers together, in a single rule, concepts that are intended to promote the independence of a lawyer's professional judgment, but which are currently found in three separate California Rules of Professional Conduct: rules 1-310, 1-320, and 1-600.

Improves public protection by providing broader prohibitions on a lawyer's conduct and on relationships into which the lawyer might enter that could pose a threat to the lawyer's exercise of independent professional judgment.

A lawyer in a partnership or other organization that engages in law practice with a nonlawyer commits UPL whether the form of the business is a partnership, as stated in the current rule, or any other form of business association. Compromised legal judgment and impairment of the protections against revelation of confidential information could result.

Provides guidance on the exceptions to the prohibitions permitted under the Rule (many of which may be found in current rule 1-320) in an effort to articulate a clear and enforceable articulation of disciplinary standards.

Ensures California's existing laws permitting lawyers to participate with governmental entities, legal services programs and certain other organizations continues to be honored.

Responds to the Supreme Court's concern about possible conflicts between rules and comments.

- Cons: None identified.

2. Adopt paragraph (a), derived from current rule 1-320(A), which prohibits a lawyer or law firm from directly or indirectly sharing legal fees with a non-lawyer or organization not authorized to practice law. Paragraph (a) also contains five exceptions to the prohibition permitted under rule, derived from current rule 1-320(A).

- Pros: Maintains important public policy of prohibiting lawyers from sharing legal fees with non-lawyers in California. See discussion of *Emmons, Williams, Mires & Leech v. State Bar* in Section VIII.A.1, above.

- Cons: None identified.

3. Adopt paragraph (b), which prohibits a lawyer from forming a partnership or other organization with a nonlawyer if any of the activities consist of the practice of law.
 - Pros: The paragraph maintains the substance of current rule 1-310 but expands upon the current rule in order to provide greater public protection by not only prohibiting a lawyer from forming a partnership with a nonlawyer, but also any other organization comprised of nonlawyers if the activities of the organization consist of the practice of law.
 - Cons: None identified.
4. Adopt paragraph (c), which prohibits a lawyer from allowing a person who recommends, employs, or pays the lawyer to provide legal services for another to interfere with the lawyer's professional independent judgment or with the lawyer-client relationship in rendering legal services.
 - Pros: The paragraph maintains the substance of current rule 3-310(F)(1) which provides important client protection regarding the lawyer's duty of loyalty to his or her client.
 - Cons: None identified.
5. Adopt paragraph (d), which prohibits a lawyer from practicing law with or in the form of a professional corporation or other organization authorized to practice law for a profit if: (1) a nonlawyer owns any interest in it; (2) a nonlawyer is a director or officer of the corporation or holds a similar position of responsibility in any other form of organization; or (3) a nonlawyer has the right or authority to direct or control the lawyer's independent professional judgment.
 - Pros: The paragraph maintains the longstanding principle of prohibiting nonlawyers from having a financial interest in a law firm in order to, among other things, protect the lawyer's independent professional judgment, avoid the unauthorized practice of law, and protect client confidences.

Paragraph (d)(1) contains a limited exception which provides: "except for allowing a fiduciary representative of a lawyer's estate to hold the lawyer's stock or interest for a reasonable time during administration." This is consistent with State Bar Rule 3.157(C) and Bus. & Prof. Code § 6171(a).
 - Cons: None identified.
6. Adopt paragraph (e), derived from current rule 1-600(B), which requires the State Bar Board of Trustees to formulate and adopt Minimum Standards for Lawyer Referral Services which are binding on lawyer in California. This paragraph also prohibits a lawyer from accepting a referral from, or otherwise participating in, a lawyer referral service unless it complies with the Minimum Standards adopted by the Board.
 - Pros: See Section VIII.A.1, above.

- Cons: None identified.
7. Adopt paragraph (f), derived from current rule 1-600(A), which prohibits a lawyer from practicing law with or in the form of a nonprofit legal aid, mutual benefit, or advocacy group if such organization allows any third person or organization to interfere with the lawyer's independent professional judgment, or with the lawyer-client relationship, or helps any person or organization to practice law in violation of the Rules of Professional Conduct or the State Bar Act.
- Pros: The paragraph maintains important policy of: (1) prohibiting third party interference with a lawyer's judgment or the attorney-client relationship; (2) aiding unlicensed persons to practice law; and (3) ensuring the legal services program does not otherwise violate the State Bar Act or the Rules of Professional Conduct.
 - Cons: None identified.

B. Concepts Rejected (Pros and Cons):

8. Retain the existing separate rules 1-310, 1-320, 1-600 language with no changes.

- Pros: Comports with and simply states CA's longstanding policy of preventing non-lawyers from practicing law with lawyers.

Extensive body of California law interpreting the existing Rules.

- Cons: Rule 1-320 does not expressly state the rationale that underlies the rule's prohibition on sharing legal fees with a non-lawyer, i.e., avoid interference with the lawyer's exercise of independent professional judgment.

Rule 1-320 does not expressly except from its prohibition the payment by a lawyer of court-awarded legal fees to a non-profit organization that employed, retained or recommended the lawyer. These fees are an important source of income for such non-profit organizations.

Rules 1-320 and 1-600 do not address the concerns the Supreme Court expressed in *Frye v. Tenderloin Housing Clinic, Inc.* (2006) 38 Cal.4th 23, about lawyers practicing with nonprofit organizations that might permit third parties to interfere with a lawyer's independence of judgment.

Arguably does not list all types of other organizations contained in the prohibition against lawyers practicing law with non-lawyers.

C. Changes in Duties/Substantive Changes to the Current Rule:

None.

D. Non-Substantive Changes to the Current Rule:

1. The proposed rule language is conformed to § 4.3A of the Guidelines for Drafting and Editing Court Rules.

E. Alternatives Considered:

1. Keep current rule without any changes.
2. Incorporate language allowing some form of organization in which a financial interest is held or managerial authority is exercised by an individual non-lawyer who performs professional services or provides a multidisciplinary practice combination.
3. The question of third-party case or matter funding was discussed but it was determined that the issue should be deferred. Lawyers routinely work with vendors and others. Participation with vendors and outsourcing has been the subject of much discussion.¹⁰ There would need to be significantly more study with specific data before determining if there is a need for modifications of the rule with regard to this topic, and whether any such change would be consistent with the statutory prohibition on the unauthorized practice of law.

X. RECOMMENDATION AND PROPOSED BOARD RESOLUTION

Recommendation:

The Commission recommends adoption of proposed Rule 5.4 [1-320, 1-310, 1-600] in the form attached to this report and recommendation.

Proposed Resolution:

RESOLVED: That the Board of Trustees adopts proposed Rule 5.4 [1-320, 1-310, 1-600] in the form attached to this Report and Recommendation.

¹⁰ See ABA Formal Opinion. No. 08-451; California State Bar Formal Opinion No. 2010-179; California State Bar Formal Opinion No. 1971-25; Los Angeles County Bar Assn. Formal Opinion No. 374 (1978)).