



The District of Columbia and Non-lawyer Partners under D.C. Rule 5.4(b)

(24 years later and what do we have to
show for it?)

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D.C. Rule 5.4(a)(4)

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, EXCEPT that:

(4) Sharing of fees is permitted in a partnership or other form of organization which meets the requirements of Paragraph (b).



Rule 5.4(b)

(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:



Rule 5.4(b)

(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;



Rule 5.4(b)

(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.



What is it?

- 1) Nonlawyer may be a partner, hold a financial interest or exercise managerial authority in a law firm;
- 2) Individual must perform professional services in the law firm;
- 3) Such services must assist the law firm with the provision of legal services to clients;



Protections/Limitations

- Sole purpose of law firm/organization is the provision of legal services;
- No Passive Investors;
- Vicarious liability of lawyer partners/supervisors for nonlawyers.



What It Is Not

- Not a good way to raise capital (no passive investors);
- Not MDP (sole purpose is provision of legal services);
- Not a way for a non-lawyer or corporation to own a law firm (UPL/Rule 5.4(c)).



Why Bother?

Permits nonlawyer professionals to work with lawyers in delivery of legal services in a law firm without being relegated to the role of an employee;

Improved, more innovative, and more efficient legal services to clients.

Examples: economists, psychologists, social workers, lobbyists, accountants/professional managers may serve as office managers, executive directors, etc...



The Controversy: A Brief History

A revolutionary proposal came out of ABA “Kutak Commission” in 1981 (ABA Code to Rules)

- Traditional prohibitions on fee sharing with non-lawyers are unnecessary and in some instances, artificial;
- Lawyers and nonlawyers work together and regularly deliver valuable services to clients;
- As a profession, we should consider innovative and more efficient ways to deliver services to our clients.



What Happened at ABA?

Q: Will the proposal permit Sears Roebuck to own a law firm?

A: Yes.

What Happened in D.C.?

1982-1986 D.C. Bar Special Committee on Model Rules “Jordan Committee”

Jordan Committee decided ABA had thrown baby out with bathwater. Jordan Committee originally proposed a rule similar to Kutak, but D.C. Bar Board of Governors wanted to undertake a more limited experiment.

What Else Happened in D.C.?

Jordan/D.C. Bar proposal not without controversy - D.C. Court of Appeals received many comments both for and against;

The narrowness of the Rule appears to have carried the day;

D.C. Rule 5.4(b) became effective Jan. 1, 1991;

Then what happened?

- The profession did not end;
- A small number of D.C. law firms have non-lawyer partners/managers;
- How many firms? A few dozen - best guess;
- No public disciplinary problems.

IMpediMents

- The MJP problem: D.C. has over 100,000 lawyers a good majority of whom are licensed in other jurisdictions. D.C. lawyers in firms with non-lawyer partners subject to other states rules when providing legal services in those jurisdictions.
- The MDP problem: Non-lawyer professionals can't maintain own client base and provide independent professional services within law firm. Other alternatives exist/more beneficial.

More Reality

- D.C. Rule probably works bests for law firm professional managers – CFOs, IT, Marketing, and Executive Directors, or for individuals who work primarily as consultants to lawyers (MD in MedMal firm who evaluates cases, but does not have medical practice);
- Increased access to justice? No evidence one way or the other.

Where do we go from here?

- 2003 D.C. Bar MDP Committee/D.C. Bar of Governors unanimously recommended liberalizing D.C. Rule 5.4 (b) to allow MDP;
- District of Columbia Court of Appeals declined.
- World is moving fast; ABS is here and spreading.
- Time may be ripe to reconsider.