CHAPTER V - MATTERS RELATED TO THE PRACTICE OF LAW AND LAW FIRMS

Rule 5.4. Professional independence of the lawyer

The Rule approved by this Court sets forth the following:

(a) A person who practices law or a law firm shall not share legal fees with a person not authorized to practice law, except that:

1. They may enter into an agreement with their law firm, partners, or associates to provide for the payment of money to their estate or to specific individuals for a reasonable period of time after their death;
2. They may purchase the law practice of a deceased, incapacitated, or judicially declared absent lawyer pursuant to Rule 1.17, through payment of the agreed purchase price to the estate or legal representative of that lawyer;
3. They may include non-lawyer employees in a compensation or retirement plan, even if the plan is partially or entirely based on a profit-sharing arrangement;
4. They may share court-awarded fees with a nonprofit organization that hires, employs, or recommends them to handle a matter; and
5. They may share profits with a non-lawyer owner of a law firm, provided they comply with subsection (b) of this rule.

(b) A person who practices law may do so in a law firm in which an ownership interest is held by a person who is not a lawyer only if:

1. The law firm provides for the collective responsibility of offering free legal services to indigent persons;
2. Any non-lawyer who holds an ownership interest in the law firm must ensure that the firm is operated solely by an attorney admitted to practice law in Puerto Rico. The lawyer must represent the non-lawyer owner in exercising any voting rights and in all matters related to the firm. The lawyer must ensure compliance with professional responsibility rules and notify the Supreme Court once the agreement begins. By January 15 of each year, they must file a sworn statement with the Clerk of the Supreme Court of Puerto Rico detailing the number of lawyers in the firm, the dates and amounts of all investments made by the non-lawyer owner, and the earnings received by that person in the previous calendar year;
3. The non-lawyer owner or their agent shall not engage in the unauthorized practice of law. Moreover, the only contribution from the non-lawyer owner to the firm must be monetary; they or their agents may not provide any services to the firm, including but not limited to marketing services;
4. There shall be no interference by the non-lawyer owner with the professional judgment of the lawyer or with the attorney-client relationship;
5. Client-related information shall be protected as required by Rule 1.6;
6. The agreement in subsection (2) does not violate Rule 1.5;
7. The lawyer must inform the client that a share of the law firm is owned by a non-lawyer;
8. Non-lawyer owners may not hold more than 49% of the firm's equity.

(c) A lawyer shall not allow a person who recommends, employs, or pays them to provide legal services for another to direct or control their professional judgment in rendering such services.

(d) The Supreme Court shall evaluate the effectiveness of subsection (b) of this rule no later than three years after it goes into effect.

As can be seen, this provision allows attorneys to share equity in a law firm with individuals who are not authorized to practice law in Puerto Rico. In other words, this rule allows non-lawyers to financially invest in law firms in the country. Given the above, I am not in agreement with the implementation of this rule due to the potentially harmful consequences it may bring.

First, allowing this source of funding in Puerto Rico law firms could represent a significant risk to the autonomy and independence of the professional judgment of the attorneys within them. In fact, this was one of the main concerns of both the Special Committee and the Secretariat, which did not recommend the approval of this regulatory provision after its draft departed from the ABA Model Rule 5.4.

In the past, we have rejected third-party interference in the decisions, strategies, or advice provided by the attorney responsible for representing someone who comes to a law office. For example, investors not subject to professional ethical standards might be inclined to pressure for a settlement that favors their interest in fee-sharing, rather than continuing litigation to achieve the best outcome for the client. Therefore, this could be interpreted as interference in the legal decisions, strategies, or advice related to a particular case or client.

Additionally, according to findings from the Secretariat, in practice, investors are typically driven by purely economic interests, which does not guarantee an improvement in the availability or quality of legal services for the people of Puerto Rico. In fact, arguments favoring a more flexible Model Rule 5.4 may distract from more effective strategies to improve access to justice. In our jurisdiction, the Regulation for the Assignment of Court-Appointed Attorneys in Puerto Rico, as well as organizations that provide free legal services and the Access to Justice Fund (created by law), promote and ensure access to justice without economic motivations. These mechanisms do indeed facilitate and guarantee access to justice free from financial interests.

Another concern reinforcing my position is the even more troubling fact that we lack disciplinary authority over investors who are not attorneys in Puerto Rico. In my view, this situation creates a gap in oversight and accountability because, although Rule 5.4 establishes criteria for allowing third-party investment in law firms, there is no built-in mechanism to regulate their disciplinary conduct or ethical boundaries. As a result, such investors could influence legal decisions without being subject to the same ethical and professional responsibilities as attorneys. This could create conflicts of interest and put the quality of legal services provided to the public at risk.

Moreover, adopting this rule distances us from the model established by the ABA, and therefore from the Special Committee's mandate to harmonize our ethical rules with the ABA Model Rules. See *In re Proy. Conducta Prof. y Regl. Disc.*, 189 DPR 1032 (2013). The ABA currently maintains its stance that lawyers and law firms should neither share fees with non-lawyers nor allow non-lawyers to invest in law firms. In fact, the vast

majority of U.S. jurisdictions continue to apply ethical provisions similar to ABA Model Rule 5.4, which addresses the same subject as our Rule 5.4.

That said, I acknowledge that the jurisdictions of Arizona and the District of Columbia modified their Rule 5.4 to lift the absolute ban on lawyers sharing equity in a law firm with non-lawyers. North Carolina presents a particular situation by allowing a non-lawyer to hold a leadership or officer position in a legal services corporation, as long as they do not have the authority to direct or control the conduct of the attorneys in the firm. Meanwhile, Utah implemented a pilot program in August 2020, valid through 2027, to assess the feasibility of easing the restriction imposed by Rule 5.4. However, the preliminary results of this experience in Arizona, D.C., and Utah's pilot program have not shown evidence of improved access to justice; instead, they confirm that investors are in fact driven by purely economic interests, as previously indicated.

For these reasons, I agreed with the initial draft proposed by the Special Committee and the Secretariat, which was not approved by a majority of this Court. Specifically, the rule read as follows:

> **(a)** A person practicing law or a law firm shall not share legal fees with a non-lawyer, except that:
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> 1. They may enter into an agreement with their law firm, partners, or associates to provide for the payment of money to their estate or to specified individuals over a reasonable period of time after their death;
> 2. They may purchase the law practice of a deceased, incapacitated, or judicially declared absent lawyer in accordance with Rule 1.17, by

paying the agreed purchase price to the estate or another representative of the lawyer;

3. They may include non-lawyer employees in a compensation or retirement plan, even if the plan is based in whole or in part on a profit-sharing agreement;
4. They may share court-awarded fees with a nonprofit organization that retained, employed, or recommended them to handle the matter.

(b) 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.

(c) A lawyer shall not allow a person who recommends, employs, or pays them to provide legal services for another to direct or control their professional judgment in rendering such services.

(d) A lawyer shall not provide legal services through a professional corporation or association authorized to practice law for profit if:

1. A non-lawyer owns any interest in the organization, except that a representative of the estate of a lawyer may hold the shares or assets of the law firm for a reasonable time during estate administration;
2. A non-lawyer is a director, officer, or holds a similar position of responsibility in the organization;
3. A non-lawyer has the right to direct or control the professional judgment of the lawyer.

In summary, the prior version, which was not approved by a majority of this Court but closely mirrored the ABA Model Rule 5.4, reaffirmed the known limitations on fee-sharing and the prohibition against third-party investment in law firms. These restrictions are primarily intended to preserve the independence and professional judgment of lawyers, preventing any external influence that could compromise their ethical duties and client representation. They also ensure that the provision of legal services is governed solely by professional standards, not by economic interests foreign to legal practice.
For that reason, ABA Model Rule 5.4 has long served as an effective safeguard against ethical concerns regarding the professional independence of lawyers, and its validity was recently reaffirmed by the ABA House of Delegates. In my opinion, relaxing or eliminating Rule 5.4 will not solve the problems its advocates claim to address; instead, it may create significant risks for the legal profession.

Consistent with the above, judges must adopt a critical and pragmatic view toward the true motivations of certain economic sectors interested in co-owning law firms. Nonetheless, starting from a place of good faith, there are alternative solutions that better respect the ethical principles governing our profession, which must be preserved in our jurisdiction.

The jurisdictions of Arizona, D.C., and Utah have chosen to explore this model; let us observe their experiences and cautiously analyze the effects of possible over-commercialization of the law, the influence of powerful economic sectors, and the challenges this could pose to access to justice. So far, we have not seen these sectors partner with law firms to litigate on behalf of the environment or vulnerable populations.

We must not allow the principle of access to justice to be used as a pretext to perpetuate inequality or to excessively commercialize the practice of law. For these reasons, I respectfully dissent from this rule.