

5-86

Del Ciampo, Joseph

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**From:** Stovall, Marcy <MStovall@PULLCOM.COM>  
**Sent:** Thursday, November 29, 2018 4:58 PM  
**To:** Del Ciampo, Joseph  
**Cc:** Chapman, Bill (bchapman@ctbar.org); dbarrett@acluct.org  
**Subject:** Comments of the CBA Ethics Committee re Proposed Amendment of Rule 5.4 of the Rules of Professional Conduct  
**Attachments:** Corr Justice McDonald re Rule 5.4 11.29.18.PDF

**Follow Up Flag:** Follow up  
**Due By:** Tuesday, December 4, 2018 7:30 AM  
**Flag Status:** Flagged

Dear Attorney DelCiampo,

I understand from Bill Chapman that the Rules Committee has invited comment from the CBA Standing Committee on Professional Ethics (Ethics Committee) on the proposal of the ACLU Foundation of Connecticut to amend Rule 5.4 of the Rules of Professional Conduct.

As set forth in the attached letter, at its November 14, 2018 meeting, the Ethics Committee voted to recommend to the CBA Legislative Policy Review Committee (LPRC) that the CBA support the amendment of Rule 5.4 to add to Connecticut's Rule 5.4 the Model Rules version of Rule 5.4(a)(4), with the addition of "legal fees for a court award or settlement."

Please let me know if I can be of further assistance.

Very truly yours,

Marcy Stovall

Marcy Tench Stovall  
Chair, CBA Standing Committee on Professional Ethics

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**Marcy Tench Stovall**  
Attorney

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& COMLEY** LLC  
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*Standing Committee on Professional Ethics*

Sent Via Email (Joseph.DelCiampo@jud.ct.gov)

November 29, 2018

Honorable Andrew J. McDonald  
Connecticut Supreme Court  
Chair, Superior Court Rules Committee  
231 Capital Avenue  
Hartford, CT 06106

Re: Proposed Amendment of Rule 5.4 of the Connecticut Rules of Professional Conduct

Dear Justice McDonald,

On behalf of the CBA Standing Committee on Professional Ethics (Ethics Committee), I write in response to the request of the Rules Committee for comment on the proposal of the ACLU Foundation of Connecticut (the ACLU) to amend Rule 5.4 of the Rules of Professional Conduct (RPC).

I address the ACLU's proposal as set forth in the November 15, 2018 letter of Dan Barrett to the Rules Committee. In that letter Mr. Barrett, on behalf of the ACLU, withdrew the ACLU's initial proposal and asked that Rules Committee to recommend amendment of Rule 5.4 to add subsection(a)(4) of ABA Model Rule 5.4, with additional language concerning fees recouped via settlements. Under the current proposal, the following new subsection would be added to Connecticut's Rule 5.4(a):

(4) A lawyer may share legal fees from a court award or settlement with a nonprofit organization that employed, retained, or recommended employment of the lawyer in the matter.

The ACLU's revised Rule 5.4 proposal adopts the recommendation of Greater Hartford Legal Aid, Connecticut Legal Services, and the New Haven Legal Assistance Association (collectively, the legal services groups) as set forth in their letter to the Rules Committee dated November 7, 2018.

At its November 14, 2018 meeting, the Ethics Committee voted to recommend to the CBA Legislative Policy Review Committee (LPRC) that the CBA support the amendment of

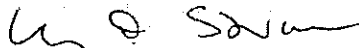
Rule 5.4 to add to Connecticut's Rule 5.4 the Model Rule version of Rule 5.4(a)(4), with the addition of "legal fees for a court award or settlement."

By way of background: the ABA added subsection (a)(4) to Model Rule 5.4 as part of its Ethics 2000 revisions of the Model Rules. Attorney Wes Horton was then the Chair of the Ethics Committee, and also chaired the Ethics Committee subcommittee tasked with making recommendations to conform the Connecticut RPC with the revised Model Rules. I also served on the subcommittee.

At the Ethics Committee's November 14 meeting, we discussed that neither Attorney Horton nor I have any recollection of any discussion of the amendment of Rule 5.4(a) at the time we considered the Ethics 2000 revisions of the Rules. As best as we could determine, that was an oversight, not a purposeful decision. The sentiment expressed at the Ethics Committee's meeting was that the oversight was an unfortunate one, and that it would be appropriate to correct it now by amending Connecticut's Rule to add subsection (a)(4) to Rule 5.4, as proposed by the ACLU and the legal services groups.

Please do not hesitate to let me know if the Ethics Committee can be of any further assistance to the Rules Committee in its consideration of the proposed amendment of Rule 5.4.

Respectfully submitted,



Marcy Tench Stovall  
Chair, Standing Committee on Professional Ethics

cc: Bill Chapman (via email)  
Dan Barrett (via email)

5-86

Del Ciampo, Joseph

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**From:** Stovall, Marcy <MStovall@PULLCOM.COM>  
**Sent:** Monday, December 10, 2018 2:05 PM  
**To:** Del Ciampo, Joseph  
**Cc:** Chapman, Bill (bchapman@ctbar.org); dbarrett@acluct.org  
**Subject:** CBA Authorization of Ethics Committee Position re Proposed Amendment of Rule 5.4 of the Rules of Professional Conduct  
**Attachments:** Corr Justice McDonald re Rule 5.4 12 10 18.PDF

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Dear Attorney DelCiampo,

The attached is a follow-up to my November 29, 2018 letter to the Rules Committee concerning the support of the CBA Standing Committee on Professional Ethics (Ethics Committee) for the proposal of the ACLU Foundation of Connecticut to amend Rule 5.4 of the Rules of Professional Conduct to add to Connecticut's Rule 5.4 the Model Rules version of Rule 5.4(a)(4), with the addition of "legal fees from a court award or settlement."

The Ethics Committee's position has now been formally authorized by the Executive Committee of the Connecticut Bar Association.

I understand that the proposed amendment will be on the Rules Committee's December 18, 2018 Agenda. I plan to attend the December 18 meeting and support the proposed amendment.

Please let me know if I can be of further assistance.

Very truly yours,

Marcy Stovall

Marcy Tench Stovall  
Chair, CBA Standing Committee on Professional Ethics

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**Marcy Tench Stovall**  
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*Standing Committee on Professional Ethics*

Sent Via Email (Joseph.DelCiampo@jud.ct.gov)

December 10, 2018

Honorable Andrew J. McDonald  
Connecticut Supreme Court  
Chair, Superior Court Rules Committee  
231 Capital Avenue  
Hartford, CT 06106

Re: Proposal of the ACLU Foundation of Connecticut to Amend Rule 5.4 of  
the Connecticut Rules of Professional Conduct

Dear Justice McDonald,

This letter supplements my letter of November 29, 2018, sent on behalf of the Connecticut Bar Association's Standing Committee on Professional Ethics (Ethics Committee). In my earlier letter, I reported that the Ethics Committee had voted to support the proposal of the ACLU Foundation of Connecticut (the ACLU) to amend Rule 5.4 of the Rules of Professional Conduct (RPC).

That position has now been adopted by the Connecticut Bar Association (CBA), as authorized by the Executive Committee of the CBA at its December 7, 2018 meeting.

Under the proposal as currently submitted to the Rules Committee, the following new subsection would be added to Connecticut's Rule 5.4(a)<sup>1</sup>:

(4) A lawyer may share legal fees from a court award or settlement with a nonprofit organization that employed, retained, or recommended employment of the lawyer in the matter.

I enclose a copy of Rule 5.4 with the proposed amendment.

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<sup>1</sup> In a November 15, 2018 letter to the Rules Committee, Dan Barrett, on behalf of the ACLU, withdrew the ACLU's initial proposal and asked that the Rules Committee recommend amendment of Rule 5.4 to add subsection (a)(4) of ABA Model Rule 5.4, with additional language concerning fees recouped via settlements.

The ACLU's revised Rule 5.4 proposal adopts the recommendation of Greater Hartford Legal Aid, Connecticut Legal Services, and the New Haven Legal Assistance Association (collectively, the legal services groups) as set forth in their letter to the Rules Committee dated November 7, 2018

In 2001, the ABA's Commission on Evaluation of the Rules of Professional Conduct ("ABA Evaluation Commission") recommended that Rule 5.4 of the ABA Model Rules of Professional Conduct be amended to expressly permit a lawyer to share a recouped fee with the non-profit organization with which the lawyer had affiliated in prosecuting a client's claim. The ABA did exactly that as part of its Ethics 2000 package of revisions to the Model Rules. In it, Model Rule 5.4 was amended to provide that:

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

(4) A lawyer may share court-awarded legal fees with a nonprofit organization that employed, retained or recommended employment of the lawyer in the matter.

ABA Model Rules of Professional Conduct 5.4 (2004) (Ethics 2000 addition underlined).

After the ABA adopted the Ethics 2000 recommendations so as to substantially amend many of the Model Rules, the CBA Ethics Committee created a subcommittee tasked with making recommendations to conform the Connecticut RPC with the revised ABA Model Rules. Attorney Wes Horton, then the Chair of the Ethics Committee, also chaired the subcommittee.

At the Ethics Committee's November 14, 2018 meeting, members who had participated in the Ethics 2000 subcommittee discussed that there appeared to be no record of any discussion of the amendment of Rule 5.4(a) at the time the Ethics Committee considered the Ethics 2000 revisions of the Rules. As best as could be determined, that was an oversight, not a purposeful decision. The sentiment expressed at the Ethics Committee's meeting was that the oversight was an unfortunate one, and that it would be appropriate to correct it now by amending Connecticut's Rule 5.4 to add subsection (a)(4) to the Rule, as proposed by the ACLU and the legal services groups.

Please do not hesitate to let me know if the Ethics Committee can be of any further assistance to the Rules Committee in its consideration of the proposed amendment of Rule 5.4.

Respectfully submitted,



Marcy Tench Stovall  
Chair, Standing Committee on Professional Ethics

Enclosure

cc: Bill Chapman (via email)  
Dan Barrett (via email)



Proposed Amendment of Rule 5.4 (additions underlined; deletions in brackets)

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 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; [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[.]; and

(4) A lawyer may share legal fees from a court award or settlement with a nonprofit organization that employed, retained, or recommended employment of the lawyer in the matter.

(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 occupies the position of similar responsibility in any form of association other than a corporation; or

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

## Official Commentary

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 subsection (c), such arrangements should not interfere with the lawyer's professional judgment.

This Rule also expresses traditional limitations on permitting a third party to direct or regulate the lawyer's professional judgment in rendering legal services to another. See also Rule 1.8 (f) (lawyer may accept compensation from a third party as long as there is no interference with the lawyer's independent professional judgment and the client gives informed consent).