

Imagining U.S. Legal Practice Without Rule 5.4 – A Thought Experiment

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Context for the Current Rule 5.4 Discussions

1. [APRL Alternative Business Structures/Multidisciplinary Practice/RPC 5.4 Subcommittee](#) (established 2018)
2. State Bar of California, [Task Force on Access Through Innovation of Legal Services](#) (AILS) (established July 2018), <https://perma.cc/4KCCQ-FNTS>
3. [Memo](#) to the CA Alternative Business Structures/Multidisciplinary Practice Subcommittee, <https://perma.cc/X5KM-U2WZ> and [Fact Sheet](#), <https://perma.cc/KBG5-NWTY>
4. NOBC's [Global Resources](#) reports, including its Alternative Business Structures Committee FAQ document, <https://perma.cc/6V29-JVMM>

Examples of Technology and Legal Services Market Developments

5. Beaumont Legal ABS (LegalZoom): [website](#) (<https://perma.cc/CPN6-WKT4>); [article](#) ("Legal Zoom secures "largest ever investment in law," <https://perma.cc/P66Q-Y2GE>); and 2016 audit report
6. Legal Startups list, <https://angel.co/legal>, <https://perma.cc/DW9R-DFDA>
7. Robert Ambrogi, [Law Sites: Legal Tech Startups](#), <https://perma.cc/9GUS-LSD7> (includes list and grid views of legal services startup companies)
8. ABA [Center for Innovation](#), <https://perma.cc/LVV8-JSN3>

Technology and Market Developments Reports and Articles

9. **Frank Maher**, *Fee-sharing and referral fees: The experience in England & Wales: A paper for APRL*, Las Vegas, January 2019 (in conference materials)
10. William D. Henderson, [Legal Market Landscape Report](#) (July 2018) (Commissioned by the State Bar of California), <https://perma.cc/X2KM-UTL5>
11. William D. Henderson, *Innovation Diffusion in the Legal Industry*, 122 Dickinson L. Rev. 395 (2018), <https://ideas.dickinsonlaw.psu.edu/dlr/vol122/iss2/2/>
12. Laurel Terry 4-page blog post summarizing, with additional links, Campbell article on the applicability to legal services of Harvard prof. Clayton Christensen's [creative destruction theory](#), <https://perma.cc/GKB4-5CGK>
13. Terry [4-page blog post](#) summarizing, with additional links, Pearce/McGinnis article on 5 ways [machine intelligence](#) will affect legal services, <https://perma.cc/M97B-QURF>

Access to Legal Services Issues

14. Legal Services Corp., [The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-income Americans](#) (June 2017), <https://perma.cc/UZB7-3ZX8> and [this summary](#)
15. Executive Summary, [Report of the ABA Commission on the Future of Legal Services](#) (2016), <https://perma.cc/8AE3-8C7D>
16. Rebecca L. Sandefur, *What We Know and Need to Know about the Legal Needs of the Public*, 67 S. Car. L. Rev. 443 (2016) (summarizes several studies including her Am. Bar Foundation study), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2949010

17. Gillian Hadfield & Deborah Rhode, *How to Regulate Legal Services to Promote Access, Innovation, & the Quality of Lawyering*, 67 Hastings L.J. 1191 (2016), <https://perma.cc/99PA-RZJJ>

Big 4 Developments:

18. [ALM Intelligence, “Elephants in the Room” \(Big 4\) Report, 9/2017](#)
19. [Law.com, Big Law's Trojan Horse: Are the Big Four Preparing an Invasion? \(Nov. 2018\)](#)
20. David B. Wilkins & María J. Esteban Ferrer, *The Integration of Law into Global Business Solutions: The Rise, Transformation, and Potential Future of the Big Four Accountancy Networks in the Global Legal Services Market*, 43(3) Law & Social Inquiry 981 (2017) and summary [here](#)

U.S. Rules that Relax Rule 5.4:

21. [D.C. RPC 5.4](#), (allows partnerships and fee sharing among lawyers and nonlawyers in the delivery of legal services), <https://perma.cc/GBJ4-5EWM>
22. [Georgia RPC 5.4\(e\)](#) (allows fee sharing with ABS firms that are legal in their jurisdiction), <https://perma.cc/ZCQ2-296G>
23. [Washington RPC 5.9](#) Business Structures Involving LLLT and Lawyer Ownership, (allows partnerships and fee sharing among Washington’s lawyers and Limited License Legal Technicians or LLTs), <https://perma.cc/4A54-JJT3>
24. See Terry, *Why Your Jurisdiction Should Consider Jumping On The Regulatory Objectives Bandwagon*, 22(1) Prof. L. 28 (Dec. 2013), <https://perma.cc/TS4R-58US> and [SLIDES](#)
25. See also Laurel S. Terry, *Something’s Afoot and it’s Time to Pay Attention: Thinking About Lawyer Regulation in a New Way* (June 2015)[3 page JOTWELL review of Andrew Perlman article about the move towards regulation of legal services providers, not just lawyers], <https://perma.cc/36PK-SAMH>

Experience outside the U.S. with Rule 5.4-Type Issues

26. See item #4, *supra* (NOBC’s ABS FAQ document), <https://perma.cc/6V29-JVMM>
27. [UK Independent Review of Legal Service Regulation](#) (Stephen Mayson’s 2018 review)
28. UK Solicitors’ Regulation Authority [Webpage](#), [Legal Services Board](#) webpage
29. [Legal Futures](#) Webpage (useful news re UK ABS developments)
30. [Report from](#) [Ireland’s] Legal Services Regulatory Authority [and Alison Hook] re Multi-Disciplinary Practices (2017), <https://perma.cc/C7G7-N2WA>
31. [Nova Scotia Regulation Page](#) (contains links to a wealth information about the regulator’s “from the ground up” initiative to remake lawyer regulation)
 - [Darrel Pink Article re Nova Scotia Regulation](#)
 - Darrel Pink, [Canadian Law Societies should pay attention to Stephen Mayson’s work](#) [on Independent Review of UK Experience], <https://perma.cc/2Y2D-LFNX>
 - Laurel Terry [article](#) the history of Nova Scotia’s proactive regulation developments and a 4-page JOTWELL [blog post](#) with many links that reviews Susan Fortney’s article
32. Law Society of Ontario, [Compliance-Based Entity Regulation](#) webpage, <https://perma.cc/NF2V-WCVE> (includes many links, including to the Prairie Provinces report and British Columbia webpage)
33. British Columbia, [Law Firm Regulation Initiative](#), <https://perma.cc/T74C-AMUP> <https://www.lawsociety.bc.ca/our-initiatives/law-firm-regulation-initiatives/>
34. Law Societies of Alberta, Saskatchewan and Manitoba, [Innovating Regulation – A Discussion Paper of the Prairie Provinces](#) (Nov. 2015), <https://perma.cc/HF5V-3FJY>

35. Steve Mark and Tahlia Gordon, *Chapter 14: The Australian Experiment: Out with the Old, in with the Bold* in Paul Haskins ed., *THE RELEVANT LAWYER* (ABA 2015)
36. Australia: [Law Society of NSW, The Future of Law & Innovation in the Profession \(2017\)](https://perma.cc/YA4N-T8DB), <https://perma.cc/YA4N-T8DB>
37. Australia: Steve Mark & Tahlia Gordon, Creative Consequences Website (where you can download “[The Stories \(the full version\)](#)” from Laura Snyder’s two books about ABS firms, <https://perma.cc/298X-T9GR>)
38. See also Milton Regan Jr., et al., [Law Firms, Ethics, and Equity Capital: A Conversation \(2007\)](https://perma.cc/39SG-KWLS), <https://perma.cc/39SG-KWLS>
39. See also Laurel Terry, [The Global “Landscape” of Lawyer Regulation](https://perma.cc/49MX-93GS) (prepared for the 2015 International Conference of Legal Regulators), <https://perma.cc/49MX-93GS> (This document is a 5-page summary of the ***who-what-when-when-where-why-and-how*** regulation issues documented in this Terry/Mark/Gordon [Trends in Global Lawyer Regulation](#) article; this 2013 Terry [follow-up article](#); and [these slides](#))

Rule 5.4’s History and Prior U.S. Initiatives and Discussions

Selected ABA Reports related to Rule 5.4

40. [Report on the Future of Legal Services in the United States](https://perma.cc/V2KY-N7FH) (2016) [by the ABA Commission on the Future of Legal Services], <https://perma.cc/V2KY-N7FH>
41. ABA Commission on Ethics 20/20, [Work Product of the Alternative Law Practice Structures Working Group](https://perma.cc/FH3U-EGW5), <https://perma.cc/FH3U-EGW5> (includes 3 lengthy discussionpapers)
42. ABA Commission on Multidisciplinary Practice (1998-2001)[Note: you can find individual pages through Google, but the ABA MDP Commission’s master webpage was not available in Jan. 2019; for a summary of the Commission’s work, you can see [this book chapter](#) by Laurel Terry]

Selected Law Review & Other Items Related to Rule 5.4

43. Laurel S. Terry, [An “Issue Checklist” for the ABA Commission on Multidisciplinary Practice](https://perma.cc/NH77-R4GL) (1999) reprinted in Gary Munneke and Ann McNaughton, *Multidisciplinary Practice: Staying Competitive and Adapting to Change* (2001), <https://perma.cc/NH77-R4GL>. (To see other Terry MDP items, select “Multidisciplinary Practice” from the “Jump to Category” dropdown menu at https://works.bepress.com/laurel_terry/).
44. Larry Fox, [ABA COMMISSION ON THE FUTURE OF LEGAL SERVICES, Issues Paper Concerning New Categories of Legal Services Providers](https://perma.cc/U4BJ-QY67) (Oct. 16, 2015), <https://perma.cc/U4BJ-QY67>
45. MDP Symposia cited in n.5, p. 5 of [Mark Tuft’s 2018 AITS Memo](#), supra Item #3 :
 - Multidisciplinary Practice Symposium, 32 Loyola U.-Chi. L.J. 543–691 (2001); Business Law Symposium: Multidisciplinary Practice, 36 Wake Forest L. Rev. 1-215 (2001); The Future of the Profession: A Symposium on Multidisciplinary Practice, 84 Minn. L. Rev. 1083–1654 (2000); Symposium: Multidisciplinary Practice, 20 N.Y.L. Sch. J. Int’l & Comp. L. 153–96 (2000) (transcript of symposium proceedings); see also Symposium: New Roles, No Rules - Redefining Lawyers' Work, 72(4) Temple L. Rev. 773-1036 (1999).

Note: In order to ensure that these links remain useful after the 2019 APRL Midyear Conference, many of the links in this document are permalinks. To get to the actual website (and activate internal links), click on the “View the Live Page” tab in the upper right-hand corner of the permalink website.