

Considering the Future of Rule 5.4
45th ABA National Conference on Professional Responsibility
May 31, 2019, Vancouver, Canada

Laurel S. Terry, Resources Relevant to the CPR Rule 5.4 Panel (May 2019)
(Please send additional suggestions to LTerry@psu.edu)

1. **Rule 5.4** of the ABA Model Rules of Professional Conduct, <https://perma.cc/GB2C-3C65>
2. **Rule 5.4 state variations chart**: ABA CPR Policy Implementation Committee, *Variations of the ABA Model Rules of Professional Conduct, Rule 5.4* (As of Sept. 28, 2018), <https://perma.cc/CK49-PKAD>

Rationale for Rule 5.4

3. Arthur Lachman, *Lawyer Professional Independence & Rule 5.4: An Overview Compiled by Art Lachman* (May 2019) (included in 45th ABA National Conference materials)
4. Laurel S. Terry, *Examples of Regulatory Objectives for the Legal Profession* (Updated March 2, 2019), https://works.bepress.com/laurel_terry/89/ (short document that lists the regulatory objectives adopted by the Supreme Courts of Colorado, Illinois, and Washington, as well as the ABA's Model Regulatory Objectives and those from non-U.S. jurisdiction; it also includes links to a [long](#) article and [short](#) article about regulatory objectives)

State Versions of Rule 5.4 that Differ From/Supplement ABA Model Rule 5.4:

5. **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>
6. **Georgia**: [RPC 5.4\(e\)](#) (allows fee sharing with ABS firms that are legal in their jurisdiction), <https://perma.cc/ZCQ2-296G>
7. **Utah**: [Rule 5.4](#) of the Rules of Professional Conduct for Utah Licensed Paralegal Practitioners (LPP) allow fee sharing with lawyers, but Utah RPC 5.4 has not yet been changed. See generally Utah Court Rules [Ch. 12, Art. 15](#) and <https://perma.cc/KUD3-Y2JZ> (court LPP webpage) and <https://perma.cc/7CCK-7BVZ> (Utah State Bar LPP webpage).
8. **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>

Jurisdictions that Currently Are Considering Rule 5.4 Issues:

Arizona

9. Arizona Judicial Branch, *Legal Services Task Force Webpage*, <https://perma.cc/C4GF-BUQ6>
10. Supreme Court of Arizona, *In the Matter of: Establishment of the Task Force on Delivery of Legal Service and Appointment of Members*, Administrative Order No. 2018 – 111 (Nov 21, 2019),

<https://perma.cc/WRS3-7698> and Jan. 2019 *Electronic Briefing Book*, <https://perma.cc/DR5R-WBH3>

11. AZ Task Force, *Draft Minutes of March 14, 2019 and April 29, 2019 Workgroup Proposals and Discussion* (showing discussion of a “proposal for how Arizona might test a change in ethical rules to allow for alternative business structures where lawyers could partner with non-lawyers” and various models), <https://perma.cc/J3ZQ-MLLU> and <https://perma.cc/39CZ-XFR3>

California

12. William D. Henderson, *Legal Market Landscape Report* (July 2018) (Commissioned by the State Bar of California), <https://perma.cc/X2KM-UTL5>
13. State Bar of California, Webpage of the *Task Force on Access Through Innovation of Legal Services* (AILS) (established July 2018), <https://perma.cc/4KCQ-FNTS>
14. *Memo* to the CA Alternative Business Structures/Multidisciplinary Practice Subcommittee, <https://perma.cc/X5KM-U2WZ> and *Fact Sheet*, <https://perma.cc/KBG5-NWTY>
15. Selected CA Task Force Documents (out of the many on their webpage):
 - ABS Comparative Models Table (March 26, 2019), <https://perma.cc/3QLX-YRHL>
 - April 8, 2019 Agenda Item B.4: Provider regulation vs. “Legal Advice Device” regulation (March 26, 2019), <https://perma.cc/UM2B-QFDY>
 - April 8, 2019 Agenda Item D1: Development of a Survey (March 26, 2019), <https://perma.cc/G6ZE-Q5AD>

Utah

16. Utah Supreme Court, *A Move Toward Equal Access to Justice* (March 2019), <https://perma.cc/5JBC-TLUH> (announcement of a new task force)
17. Agenda, Supreme Court’s Advisory Committee on the Rules of Professional Conduct (April 15, 2019), <https://perma.cc/ZUS6-7PUA> (pages 7-9 summarize some of the ongoing regulatory reform work, including “OWNERSHIP OF LAW FIRMS” issues)
18. Draft Work Group on the Regulatory Structure for Legal Services Statement of Purpose, (Supplement to the Utah Rules of Professional Conduct Committee April 15, 2019 Agenda) <https://perma.cc/G2GT-62YL>

U.S. Groups That Currently (or in the past) Have Worked on Rule 5.4 Issues:

19. **APRL** [Association of Professional Responsibility Lawyers], [The Future of Legal Services Committee \(and its Alternative Business Structures/Multidisciplinary Practice/RPC 5.4 Subcommittee\)](#) co-chaired by Art Lachman and Jayne Reardon)
20. **IAALS** [Institute for the Advancement of the American Legal System], *Making History: Unlocking Legal Regulation* (45th National Conference materials include a description of the April 16-17, 2019 IAALS Workshop, its Agenda, and Attendees bios)

21. **New York State Bar Association’s Committee on Standards of Attorney Conduct (“COSAC”), Public Comment Draft of Proposed Changes to Various RPCs, including Rule 5.4** (would add a new Rule 5.4(a)(4) to address a division of fees between New York lawyers and out-of-state co-counsel or referring lawyers who work in law firms with nonlawyer owners or supervisors)
22. **New York State Bar, Proposed ABA Resolution 10A re ABA Best Practice Guidelines for Online Legal Document Providers** (submitted for consideration at the Aug. 2019 ABA Meeting, see <https://perma.cc/LLT5-UQKM>)
23. **NOBC** [The National Organization of Bar Counsel] had committees that created [Global Resources](#) and FAQ documents for its webpage. For the Alternative Business Structures Committee FAQ document, see <https://perma.cc/6V29-JVMM>
24. **Past ABA Initiatives (many of which have useful resources online):**
 - [Report on the Future of Legal Services in the United States](#) (2016) [by the ABA Commission on the Future of Legal Services], <https://perma.cc/V2KY-N7FH>
 - ABA Commission on Ethics 20/20, [Work Product of the Alternative Law Practice Structures Working Group](#), <https://perma.cc/FH3U-EGW5> (includes 3 lengthy discussion papers)
 - 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 April 2019; for a summary of the Commission’s work, you can see [this book chapter](#) by Laurel Terry]

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

25. **IN GENERAL:** See generally item #23, supra. The NOBC’s ABS FAQ document was prepared with the assistance of regulators from Australia, Canada, and the UK: <https://perma.cc/6V29-JVMM>
26. Laurel S. Terry, *International Developments and their Impact on U.S. Lawyer Regulation*, Miller Becker Lecture Handout (April 2019), https://works.bepress.com/laurel_terry/96/ (This document is an 8-page updated summary of the *who-what-when-when-where-why-and-how* regulation issues documented in the Terry/Mark/Gordon [Trends in Global Lawyer Regulation](#) article; the 2013 Terry follow-up article on [Trends in Global and Canadian Lawyer Regulation](#))

CANADA

27. **[Nova Scotia Regulation Page](#)** (contains links to a wealth information about the regulator’s “from the ground up” initiative to remake lawyer regulation)
 - Infographic from the NSBS webpage (also in the Conference materials), <https://perma.cc/MP45-KC3H>
 - Nova Scotia Barristers’ Society Regulatory Objectives with Commentary (also in the conference materials), <https://perma.cc/BV8S-NLW8>
 - [Darrel Pink article re Nova Scotia Regulation](#)
 - Laurel Terry [article](#) about proactive regulation that discusses Nova Scotia’s developments and a 4-page JOTWELL [blog post](#) that reviews a Susan Fortney PMBR article
28. **British Columbia, [Law Firm Regulation Initiative](#)** webpage, <https://www.lawsociety.bc.ca/our-initiatives/law-firm-regulation-initiatives/>

29. **British Columbia**, Proposed Professional Governance Act, <https://perma.cc/P3BX-LYZU> (“The proposed Act is intended to strengthen government oversight for professional associations (regulatory bodies) by establishing a statutory Office of the Superintendent of Professional Governance (Office) in the Ministry of Attorney General.” – see [here](#)). For background, see Regulatory Oversight Bodies Proliferating in British Columbia, <https://perma.cc/RNW2-HS5C>
30. **Prairie Provinces**: The Law Societies of Alberta, Saskatchewan and Manitoba, *Innovating Regulation – A Discussion Paper of the Prairie Provinces* (Nov. 2015), <https://perma.cc/HF5V-3FJY> and website: <https://www.lawsociety.sk.ca/initiatives/innovating-regulation/> ,
31. 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)

England

32. Stephen Mayson, [Independent Review of Legal Service Regulation](#) initiative, including his March 2019 review of ABS issues, INDEPENDENT REVIEW OF LEGAL SERVICES REGULATION, The Focus of Legal Services Regulation, Working Paper LSR-3 | March 2019, <https://perma.cc/999Y-KX37> (also in the Conference materials); *see also* Darrel Pink, *Canadian Law Societies should pay attention to Stephen Mayson’s work* [on Independent Review of UK Experience], <https://perma.cc/2Y2D-LFNX>
33. UK Solicitors’ Regulation Authority [Webpage](#), and [Legal Services Board](#) webpage
34. [Legal Futures](#) Webpage (useful news re UK ABS developments)
35. Lucy Ricca, *UK Legal Service Reforms Under the Legal Services Act (2007): A Brief Overview*, <https://perma.cc/G2GT-62YL> (circulated by the Utah RPC Committee for its April 15, 2019 meeting)

Australia

36. Australia: [Law Society of NSW, The Future of Law & Innovation in the Profession \(2017\)](#), <https://perma.cc/YA4N-T8DB>
37. 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)
38. 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>

Ireland

39. [Report from](#) [Ireland’s] Legal Services Regulatory Authority [and Alison Hook] re Multi-Disciplinary Practices (2017), <https://perma.cc/C7G7-N2WA>

Singapore

40. Singapore Ministry of Law, Legal Services Regulatory Authority webpage, <https://perma.cc/R79M-4MWC> (regulates entities)

Miscellaneous

41. ABA Formal Opinion 464: *Division of Legal Fees With Other Lawyers Who May Lawfully Share Fees With Nonlawyers* (Aug. 19, 2013), <https://perma.cc/7GUE-2ZAY>
42. New York City Bar Formal Opinion 2014-1: *Ethical Considerations for Lawyers Contemplating Business Arrangements with Non-Legal Organizations*, <https://perma.cc/RJ7F-WQPY>
43. The White House, *Occupational Licensing: A Framework for Policymakers* (July 2015), <https://perma.cc/8F8U-RALQ>
44. Elizabeth Chambliss, *Evidence-Based Lawyer Regulation*, 97 Wash. U. L. Rev. __ (2019) (forthcoming), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3343786
45. Darrel Pink, *Looking Back on the 2020s: What a Decade!*, [ABA Law Practice Management Magazine](#) (forthcoming, July 2019):

Abstract: As I look back over the past decade, on the eve of our 2030 long-range planning meeting, I am astounded and proud of what the legal profession has accomplished. Ten years ago the doomsayers had the legal profession on the verge of extinction. Our professional associations at both the state and national levels resisted change. Lawyers flocked away from membership in bar associations that did not cater directly to their practice areas. Technology in general, and artificial intelligence in particular, were painted as more threatening than they had been in the earlier years of the century. We lived with an access-to-justice crisis that saw millions of citizens left with inadequate legal services or none at all.

Market-Related Issues

Access to Legal Services Issues

46. 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](#)
47. Executive Summary, *Report of the ABA Commission on the Future of Legal Services* (2016), <https://perma.cc/8AE3-8C7D>
48. 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
49. 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>

Technology and Market Developments Reports and Articles

50. Legal Startups list, <https://angel.co/legal>, <https://perma.cc/DW9R-DFDA>
51. Robert Ambrogi, *Law Sites: Legal Tech Startups*, <https://perma.cc/9GUS-LSD7> (includes list and grid views of legal services startup companies)
52. ABA *Center for Innovation*, <https://perma.cc/LVV8-JSN3>

53. Beaumont Legal ABS (LegalZoom): [website \(https://perma.cc/CPN6-WKT4\)](https://perma.cc/CPN6-WKT4); [article](https://perma.cc/P66Q-Y2GE) (“Legal Zoom secures “largest ever investment in law,” <https://perma.cc/P66Q-Y2GE>); and 2016 audit report

Examples of Technology and Legal Services Market Developments

54. William D. Henderson, *Innovation Diffusion in the Legal Industry*, 122 Dickinson L. Rev. 395 (2018), <https://ideas.dickinsonlaw.psu.edu/dlr/vol122/iss2/2/>
55. Laurel Terry 4-page blog JOTWELL post summarizing, with links, an article about the applicability to legal services of Harvard prof. Clayton Christensen’s [creative destruction theory](https://perma.cc/GKB4-5CGK), <https://perma.cc/GKB4-5CGK> and post summarizing Pearce/McGinnis article on 5 ways [machine intelligence](https://perma.cc/M97B-QURF) will affect legal services, <https://perma.cc/M97B-QURF>

Big 4 Developments:

56. 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](#)
57. [Law.com, Big Law's Trojan Horse: Are the Big Four Preparing an Invasion? \(Nov. 2018\)](#)
58. Sam Skolnik and Amanda Iacone, *Big Four May Gain Legal Market Foothold With State Rule Change*, Bloomberg Law (April 11, 2019), <https://perma.cc/D6V4-MLNK>.

Selected Law Review & Other Items Related to Rule 5.4

59. Larry Fox, [*Save Our Ship* \(2015\)](#), <https://perma.cc/A8H5-JXLN> (Comments sent to the ABA Commission on the Future of Legal Services regarding its Issues Paper Concerning New Categories of Legal Services Providers (Oct. 16, 2015), <https://perma.cc/U4BJ-QY67>)
60. Laurel S. Terry, [*An “Issue Checklist” for the ABA Commission on Multidisciplinary Practice*](#) (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/).
61. MDP Symposia cited in n.5, p. 5 of [Mark Tuft’s 2018 AITS Memo](#) for the CA Task Force:
- 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).

See also articles by [Alberto Bernabe](#), [Louise Hill](#), [Judy McMorro](#), [Andy Perlman](#), [Mitt Regan](#), [Nick Robinson](#), [Jakob Weberstaedt](#), and [David Wilkins & Maria J. Esteban](#), (among others).

Note: In order to ensure that these links remain useful after the 2019 45th ABA National Conference on Professional Responsibility, 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.