

September 29, 2026

Via Email (Rule5.4comments@sccourts.org)

Supreme Court of South Carolina
1231 Gervais Street
Columbia, SC 29201

Re: Request for Written Comments Regarding Rule 5.4, Rule 407, SCACR

To the Honorable Chief Justice and Associate Justices:

The undersigned are organizations representing lawyers who primarily represent defendants in civil litigation. Our organizations also include significant stakeholders across the business and civil justice communities as well as numerous South Carolina employers.

We support the Court's proposed clarification of Rule 5.4 to prohibit private equity firms from entering arrangements that attempt to evade ethical requirements and invest in the practice of law. As the Court recognized in its request for comments, these investment "arrangements threaten a lawyer's professional responsibility, including but not limited to exercising independent professional judgment and maintaining client confidentiality." A clarifying amendment would reinforce the independence of the legal profession and help ensure that lawyers remain accountable to their clients and the administration of justice, not the financial interests of nonlawyer investors.

I. Private Equity Investment Undermines the Core Purpose of Rule 5.4

As the Court is aware, the South Carolina Rules of Professional Conduct are patterned on the American Bar Association (ABA) Model Rules of Professional Conduct,¹ including Rule 5.4's restrictions on nonlawyer ownership of law firms and fee-sharing with nonlawyers. The "limitations are to protect the lawyer's professional independence of judgment."²

Private equity investment in the practice of law poses a direct threat to lawyers' professional independence. It represents the latest effort to circumvent Rule 5.4 by allowing nonlawyer involvement in law firms. These efforts began with proposals to authorize alternative business structures (ABS), which would permit nonlawyers to acquire ownership interests in law firms or share in legal fees.³ More recently, private equity firms and other nonlawyer investors have promoted management services organizations (MSOs), in which nonlawyer-owned business entities partner with law firms to provide marketing, billing, or other administrative services in exchange for management fees tied to a law firm's revenue. These MSO arrangements are designed specifically to satisfy Rule 5.4 "on paper" by maintaining lawyer ownership of a law firm but allowing private equity investment at a scale in which the nonlawyer investor may exert significant influence over a law firm and possibly receive most of the law firm's revenue.⁴

¹ See Introductory Note, Annotated S.C. Rules of Prof'l Conduct (2021 ed.) (recognizing that "most states, including South Carolina, revised their disciplinary rules to base them on the 1983 [ABA] Model Rules").

² S.C. Rule of Prof'l Conduct 5.4 cmt. 1; ABA Model Rule of Prof'l Conduct 5.4 cmt. 1.

³ See generally Stephen P. Younger, *The Pitfalls and False Promises of Nonlawyer Ownership of Law Firms*, 132 Yale L.J. Forum 259 (2022).

⁴ Ben Thomson, *The Great BigLaw Heist. How Private Equity Is Buying Law Firms Through the Back Door*, LawFuel, July 25, 2026.

Regardless of their form, these arrangements undermine the professional independence that Rule 5.4 safeguards by creating powerful economic incentives for lawyers to serve the interests of outside investors rather than exercise independent judgment exclusively in the service of clients. The ABA has recognized that arrangements ceding influence to nonlawyers “are inconsistent with the core values of the legal profession.”⁵ In 2022, the ABA’s House of Delegates adopted Resolution 402 to “leave no doubt” that, as state high courts and bar associations consider ways to improve the administration of justice, Rule 5.4’s protections for lawyers’ professional independence should not be weakened or compromised.⁶

The report accompanying Resolution 402 discussed reasons why “non-lawyer involvement in the practice of law is such a threat to clients and our system of justice.”⁷ The report raised ethical and accountability concerns where “non-lawyers are not subject to a lawyer’s management authority but share in the fee,” including the inability to “assure that the twin pillars of confidentiality and conflicts of interest are observed by the non-lawyer.”⁸ The report also explained that “[t]he practice of law is a profession and not a business,” and has “an entirely different set of values,” including “core values such as undivided loyalty to the client, competence, and confidentiality” that are not the focus of nonlawyers.⁹ The report also cautioned that “[n]on-lawyer involvement may invite, or at least open the door to, regulation of the practice of law and the legal profession by others besides the courts.”¹⁰

The Court’s proposed amendment appropriately reinforces these longstanding principles. By clarifying that Rule 5.4 prohibits private equity firms from investing in the delivery of legal services, the Court would ensure that the Rule continues to serve its intended purpose and cannot be bypassed through private equity-backed MSOs or other business arrangements.

II. The Experience of Other Jurisdictions Demonstrates Why South Carolina Should Clarify Rule 5.4’s Application to Private Equity Investment

The Court’s proposed rule clarification is consistent with a growing recognition that *any* nonlawyer investment in the practice of law threatens lawyers’ professional independence and the core values of the legal profession. Since 2024, a clear national trend has emerged in which states—including South Carolina—have taken affirmative steps to curtail nonlawyer ownership or investment models and/or reaffirm Rule 5.4’s longstanding restrictions on nonlawyer involvement in the delivery of legal services.

Arizona and Utah, the two jurisdictions that initially embraced ABS experimentation to foster innovation and improve access to justice, have both significantly narrowed their experiments over concerns about profit-driven nonlawyer investors. In Arizona, a 2026 investigation by *The Arizona Republic* found that outside investors had helped transform the state’s ABS program into “an epicenter for consumer complaints,” where “[l]oopholes, a lack of oversight and financial conflicts of interest” resulted in many ABS licensees being accused of misleading, defrauding, or

⁵ ABA House of Delegates, [Resolution 402](#) (adopted Aug. 8-9, 2022) (reaffirming Resolution 00A10F (2000)).

⁶ ABA House of Delegates, [Report for Resolution 402](#), at 3-4 (Aug. 2022).

⁷ *Id.* at 4.

⁸ *Id.* at 5.

⁹ *Id.*

¹⁰ *Id.* at 4.

repeatedly exploiting consumers.¹¹ The investigation also found that Wall Street investors and other nonlawyers “use the program to operate in all 50 states” and that “[i]nvestors—not lawyers—have transformed law firms into call centers, raking in cases that they farm back out to ‘partners’ across the country.”¹² In March 2026, the Arizona Supreme Court responded by adopting more stringent requirements to ensure that entities provide meaningful legal services to Arizona residents rather than exploit the state’s permissive regulatory framework.¹³

Similarly, the Utah Supreme Court narrowed the scope of its ABS “regulatory sandbox” experiment midway through a seven-year pilot program because profit-driven nonlawyers co-opted the program.¹⁴ The court found that “low-innovation entities ... consumed a disproportionate amount” of the program’s resources, that “[s]ome ABS entities appear to have misused their Sandbox authorization to bolster their credibility or gain access to restricted advertising markets,” and that “many ABS entities appear to have misconstrued their authorizations as permitting them to offer legal services provided by non-Utah-licensed attorneys.”¹⁵ In response, the court set a “fairly high bar for participation in the Sandbox” designed to “vastly reduce the number of entities in the Sandbox.”¹⁶ The change had its intended effect: after approving nearly 70 entities during the program’s first four years, only a handful remain in 2026, the program’s final year.¹⁷

Other courts and state bar ethics committees have directly addressed nonlawyer involvement by reaffirming Rule 5.4 or clarifying its application to proposed business arrangements.¹⁸ In December 2025, the Florida Supreme Court amended the rules regulating the state bar to reaffirm that “only a person legally qualified to render legal services in Florida may direct the legal services or professional judgement of a lawyer engaged in the practice of law in Florida.”¹⁹ The amendment also intends to “clarify that ... nonlawyers may not serve in certain positions, have certain titles, or perform policy-making functions” that may imply control or management of business entities authorized for lawyers practicing in the state.²⁰ Previously, the Florida Bar’s Board of Governors voted *unanimously* to reject any amendment authorizing nonlawyer law firm ownership or fee-sharing.²¹

¹¹ Laura Gersony, *Bad Actors: An Arizona Program Lets Wall Street Investors and Other Nonlawyers Own Law Firms, and Consumers Are Paying the Price*, Ariz. Republic, Feb. 22, 2026, at A8, available at 2026 WLNR 5343941.

¹² *Id.*

¹³ In the Matter of Amending Arizona Code of Judicial Administration Section 7-209: Alternative Business Structures, [Admin. Order 2026-31](#) (Ariz. Mar. 18, 2026).

¹⁴ Utah Supreme Court, [Letter to the Utah Legal Services Innovation Committee Regarding Regulatory Sandbox](#), at 5 (Sept. 5, 2024).

¹⁵ *Id.* at 3.

¹⁶ *Id.* at 3, 5.

¹⁷ See [Authorized Entities](#), Utah Office of Legal Services Innovation, Utah Supreme Court.

¹⁸ See, e.g., New York State Bar Ass’n, Comm. on Prof’l Ethics, [Opinion 1291](#) (Jan. 30, 2026) (reaffirming that “ABSs that provide legal services and have non-lawyer ownership and management are not permitted to practice law in New York,” while allowing New York lawyers to hold a financial interest in an ABS in a state, such as Arizona, where the ABS is permitted to practice law).

¹⁹ [In re Amendments to Rules Regulating the Florida Bar – Rule 4-8.6](#), No. SC2025-1173, at 2 (Fla. Dec. 18, 2025).

²⁰ *Id.*

²¹ Gary Blankenship, [Board of Governors Unanimously Opposes Non-Lawyer Firm Ownership, Fee Splitting Ideas](#), Fla. Bar News, Nov. 10, 2021.

Texas’s Professional Ethics Committee issued three opinions in 2025 rejecting nonlawyer involvement in the delivery of legal services. Of particular relevance here, the committee stated that a Texas lawyer may not agree to pay a nonlawyer-owned vendor of law-related support services (e.g., MSO), including “case management, back-office, and legal support services and technology,” based on a percentage of the lawyer or law firm’s revenues.²² The committee also determined that a lawyer may not own an equity interest in a company owned in part by nonlawyers if that company engages in the practice of law,²³ or join a law firm that includes a nonlawyer owner or partner, even if that law firm is based in a jurisdiction that expressly allows nonlawyer ownership.²⁴ The committee further ruled that for-profit companies owned by nonlawyers cannot provide legal services through in-house counsel because it would constitute assisting the unauthorized practice of law and potentially involve impermissible fee-sharing.²⁵

South Carolina and Maryland have likewise issued recent ethics opinions to prohibit nonlawyer business arrangements that circumvent Rule 5.4. In March 2026, South Carolina’s Ethics Advisory Committee stated that South Carolina lawyers may not serve as local counsel with, or invest in, entities that have nonlawyer owners or partners, and emphasized “South Carolina’s strong policy of preserving professional independence.”²⁶ Maryland’s State Bar Ethics Committee reached a similar conclusion, clarifying that lawyers may not provide legal services through accounting firms with nonlawyer ownership, even if such arrangements are permitted in other jurisdictions.²⁷

In recent months, several states have gone beyond judicial and ethics guidance by enacting legislation to prevent nonlawyer involvement in the practice of law from private equity-backed MSOs and other nonlawyer investors. In June 2026, Colorado enacted the Colorado Legal Practice Integrity and Fee-sharing Prohibition Act²⁸ to prohibit a lawyer or law firm from engaging an MSO in any manner in which compensation is contingent upon, or calculated based upon, case outcomes or a percentage of legal fees, revenues, or profits. The law, which sunsets in 2029, also establishes a private right of action allowing clients to recover legal fees paid in violation of the Act. The statute also authorizes competing law firms doing substantial business in Colorado to seek injunctive and other equitable relief, including recovery of attorneys’ fees, and mandates disgorgement of funds received or paid in violation of the Act.

In August 2026, Illinois enacted legislation prohibiting entities with nonlawyer owners, including MSOs, from interfering with attorneys’ professional judgment, exercising control over law firm operations that relate to client records, attorney-client communications and hiring decisions, or charging fees tied directly or indirectly to the fees, revenues, or profits of an attorney or law firm.²⁹ The statute authorizes a \$10,000 fine per violation or treble actual damages, permits injunctive relief and the recovery of attorneys’ fees, and subjects violating attorneys to potential Illinois State Bar discipline.

²² Tex. Bar Prof’l Ethics Comm. [Opinion 706](#) (Feb. 2025).

²³ *See id.*

²⁴ Tex. Bar Prof’l Ethics Comm. [Opinion 704](#) (Feb. 2025).

²⁵ Tex. Bar Prof’l Ethics Comm. [Opinion 707](#) (May 2025).

²⁶ S.C. Ethics Advisory Comm. [Opinion 25-02](#), at 2 (Mar. 13, 2026).

²⁷ Md. State Bar Ass’n Comm. on Ethics, [Opinion 2025-01](#).

²⁸ [H.B. 1421](#) (Colo. 2026).

²⁹ [H.B. 5487](#) (Ill. 2026).

Finally, earlier this month, California enacted legislation “to safeguard the integrity of the judicial process” by declaring that “licensed attorneys and litigants must retain full autonomy over litigation decisions and strategies, free from improper control or interference from corporate legal funders, private equity firms, hedge funds, or other nonlawyer entities whose primary interest is financial return rather than the interest of the injured individual.”³⁰ The legislation, which builds on a 2025 law addressing ABS,³¹ provides that any nonlawyer investor’s interference or attempt to influence the professional judgment of a licensed attorney or litigant constitutes the unauthorized practice of law. Both the 2026 and 2025 laws authorize a \$10,000 fine per violation or treble actual damages, permit injunctive relief and the recovery of attorneys’ fees, and subject violators to discipline by the California State Bar.

As these developments demonstrate, the Court’s consideration of a rule clarification that specifically addresses private equity investment in the practice of law is timely and necessary. Across the country, courts, ethics committees, and legislatures have increasingly recognized the risks posed by private equity-backed MSOs and other arrangements that allow profit-driven nonlawyer investment in law firms. Indeed, private equity firms are racing to enter MSO deals to exert influence over law firm operations and transform litigation into investment opportunities.³² A clarifying amendment will help ensure that Rule 5.4’s longstanding protections cannot be evaded and that the legal profession maintains its independence.

For these reasons, the Court should adopt a clarifying amendment to Rule 5.4.

Sincerely,

DRI – Association of Lawyers
Defending Business

International Association of Defense Counsel

Federation of Defense & Corporate Counsel

Association of Defense Trial Attorneys

American Tort Reform Association

Coalition for Litigation Justice, Inc.

Washington Legal Foundation

American Trucking Associations

South Carolina Manufacturers and Commerce

South Carolina Coalition for Lawsuit Reform

South Carolina Trucking Association

U.S. Chamber of Commerce

Institute for Legal Reform

NFIB Small Business Legal Center, Inc.

National Association of Mutual
Insurance Companies

American Property Casualty
Insurance Association

³⁰ [A.B. 2305](#) (Cal. 2026).

³¹ [A.B. 931](#) (Cal. 2025) (codified at Cal. Bus. & Prof. Code § 6156).

³² See, e.g., Stephen Foley, et al., [Biggest US Law Firms Explore Selling Stakes to Private Equity](#), Fin. Times, Aug. 6, 2026; see also Lev. E. Breydo, [Private Equity Is Coming for Law Firms—and the Rules Aren’t Ready](#), Columbia Law School Blue Sky Blog on Corporations and Capital Markets, Apr. 30, 2026.