

Agenda

Committee on Rules of Professional Conduct

April 21, 2014
5:00 to 7:00 p.m.

Board Room
Law and Justice Center
645 South 200 East
Salt Lake City

Welcome and approval of minutes	Tab 1	Steven Johnson
Subcommittee report	Tab 2	Gary Sackett
Rules 7.1, 7.2 and 7.3	Tab 3	Tim Shea
Rule 1.6. Confidentiality of Information.	Tab 4	Thomas Bruner, Gary Chrystler, Paul Veasy
Next meeting		Steven Johnson

Tab 1

Minutes of the Committee on Rules of Professional Conduct

March 24, 2014

Draft. Subject to approval

Members Present

Diane Abegglen, John H. Bogart, Thomas B. Brunker, J. Simon Cantarero, Gary L. Chrystler, Nayer H. Honarvar, Steven G. Johnson, Chair, Judge Darold J. McDade, Trent D. Nelson, Vanessa M. Ramos, Kent Roche, Gary G. Sackett, Stuart Schultz, Paula K. Smith, Judge Vernice S. Trease, Leslie Van Frank, Paul Veasy, Billy L. Walker

Staff

Philip Lowry, Tim Shea

Meeting convened at 1700.

Discussion whether the comments should be so illuminating; can the rules just state what the rules state? Lively discussion of inclusion of comment 5, concerns regarding the first amendment vis a vis comment five. Does this really target false and misleading advertising, or merely advertising in bad taste? Comment made that Rule 1.2 does not state comply, but is to tell clients what standards apply.

Motion to have comment 5 eliminated, and have a 4a that says everything in red under 5a except for the “and comment 5” language. Motion carries with one dissenting vote.

Motion to adopt committee’s recommendation to adopt 7.1 (as just amended) adopted by the committee be adopted by the Court. Motion carries with one dissent.

Going to 7.2

Staff report: (a)—written differently. Redefined by taking out the word advertising. Look at what the commissioners did—talks about communications to influence the public. No need to define advertising in this way, took out term of advertising.

Johnson—some of the language was not anticipating other advertising forms. Concern by CM Chrystler that a word of mouth could be advertising. But language must originate from lawyer, concern withdrawn.

CM Sackett concerned that a letter to a client could be an advertisement. This is a communication to induce retention.

CM Bogart concerned about all kinds of ways lawyers burnish their image in the community (teaching, blogs, etc.).

CM Walker points out that the definition is not the problem, but rather other standards governing ethicality of advertisement.

7.3 allows solicitation to attorneys without limitation (CLE, e.g.)

CM Honarvar: Discussion about need to consider motivation, seeking pecuniary gain, inducing persons to use the lawyer's services.

Johnson: do we need to define advertising?

7.2(a) discussion of what constitutes advertising.

Motion: Leave it as proposed by the subcommittee. Favor: 10, Opposed: 5. Motion carries.

7.2(b) Staff: adopted first part of commissioners' (b), left out "in the event actors . . ." Not sure how a disclosure could continue for the duration. If you disclose that it is fictional, this seems to imply that actors are being used. Old Robert Vaughan ads. Motion that it be accepted as proposed. Carries unanimously.

7.2(c) Discussion regarding dissemination. Potential redundancy.

Johnson: Court would like to see a joint petition from this committee and the commissioners.

Concern over whether address be included (exceeds a Tweet)

Motion "to include the name of the attorney and the attorney's street address". Motion revised on Line 8 of 7.2(c) insert "and office address" after "name". Motion carries unanimously.

(d)—Staff report. Rule covers contingency fees. Added payment of costs to payment of expenses. Frequent question on the ethics hotline—lawyer wants to state a \$500 fee to do a will. Typical situation may be deranged by unforeseen factors, better not to state the fee up front.

(e) Little discussion

(f) Concern that what is listed is a nonsense list. Staff: it's harmless and provides guidance.

CM Sackett: so put them in the comments. (8) has been omitted in this version. Motion to strike(f)in its entirety. Favor: 12 Oppose: 4

(g) Commission has broken out subsections into b 1 and b 2. 3 and 4 have been stricken because they are already covered by other rules.

Motion on (d), (e) and (g). CM Chrystler concerned about a lawyer giving value for a recommendation—what's the harm? Concerned about the intermediary having undue sway on the client's decision to hire the lawyer.

CM Bogart mentions outlandish rates charged for legal notices. CM Walker concerned about fee splitting if you pay an exorbitant rate to a vendor.

(d), (e), and (g) adopted with one dissent.

Discussion turns to the comments on Rule 7.2

Changes mentioned are ABA changes. Discussion of [5]. Need to make change that reference to (g) now needs to be to (f)

CM Van Frank concerned about communication being equated with advertisement. Point is made that communication need not be made by lawyer, which is the distinguisher.

CM Van Frank talks about being Gephardt approved. Lawyer can pay that fee if he chooses. CM Johnson: example of estate planner who would pay insurance salesman to refer clients to him. Not permitted. CM Van Frank: what about putting a poster in a chiro's office? That would be permitted.

Delete entire line of 7B.

Discussion of whether to retain comment 8, and it has been decided that it would be good attorney guidance.

Suggestion made to change 8a to remove language "and lists certain . . ."

Motion on comments. Accept committee's recommendations as amended and voted on to adopt 7.2 comments, except for the phrase in 8a, delete 7b, and change references (g) to (f).

Unanimously approved.

7.3 All changes are ABA. Updates. Bar did not look at 7.3, even though 7.1 and 7.2 depend on it.

Discussion.

CM Sackett points out that 1a is redundant. Moved to strike 1a. Unanimously approved.

Motion on 7.3: adopt as recommended by the subcommittee, with the elimination of comment 1a.

Motion carries unanimously.

CM Sackett presents on getting rid of 7.2 a and b, replace this with some advisory function.

Proposed: create an advertising advisory committee. Draft dated March 14, 2014.

Key element would be safe harbor effect of advisory opinion from this body. Pretty much tracks the ethics advisory opinion committee rules.

The rules of procedure are also modeled after the EAOC rules. Two channels: one for an advisory opinion for an applicant who is a lawyer. Request is made to OPC or committee. Committee acts within 30 days, ad can go forward until committee deems ad is unacceptable.

Committee can approve, reject or approve with changes.

Reasoned opinion is not required, no need for FF or CL. Denial should be explanatory without detail.

Other channel can be from member of the public. Need not be notarized complaint, as in bar complaint.

Committee can refer the matter to OPC if it determines that the ad is out of bounds. OPC can do what it wants at that point. Analogous to a probable cause hearing.

An attorney submitting under channel 1 who receives a negative response can appeal to EAOC. They cannot be expected to act as quickly as 30 days.

CM Walker prefers that best way to proceed is under 14-504 rather than 14-510, since the threshold to investigate is much easier. 14-504(b)(2), under the general investigative authority.

How do we resolve (g)? (60-day safe harbor). This allows a full cycle. Inaction becomes a temporary reversal.

What about 60 days without a decision is an affirmance? Question of the presumptive state.

How about a letter opinion rather than a full opinion to expedite?

CM Johnson proposes the matter be tabled until the next meeting, with CM Sackett liaising with EAOC on a procedure they feel comfortable with.

Meeting adjourned at 1900.

Next meeting: the advisory committee, confidentiality, then 1.6.

Tab 2

**UTAH STATE BAR RULES GOVERNING
THE ADVERTISING ADVISORY COMMITTEE**

I. ENABLING AUTHORITY AND GENERAL RESPONSIBILITY.

(a) The Advertising Advisory Committee (“the Committee”) shall be a standing committee of the Utah State Bar (“the Bar”).

(b) The Committee is the body designated by the Board of Bar Commissioners of the Utah State Bar (“the Board”) to respond to:

(i) Requests for advisory approval of specific lawyer advertising submitted by Utah lawyers; and

(ii) Inquiries from Utah lawyers and members of public concerning existing specific lawyer advertising that is currently in use.

(c) The Committee’s duties and procedures are specifically set forth in the Rules of Procedure of the Advertising Advisory Committee (“the Rules”), as approved and amended from time to time by the Board.

II. MEMBERSHIP.

(a) *Number of Voting Members.* The Committee shall consist of seven members.

(b) *Qualifications of Voting Members.* Committee members shall be active members of the Bar in good standing. Members shall be willing to perform Committee obligations in a timely way.

(c) *Term of Appointments.* Appointments shall be for three-year terms running concurrently with the Bar’s fiscal year beginning July 1, with approximately one-third of the terms to expire on each June 30.

(d) *Manner of Appointment.* Appointment to the Committee will be by written application to the Utah State Bar. An applicant shall indicate the reasons for and interest in applying for membership in the Committee, including a commitment to be available at reasonable times to consider requests made to the Committee for advisory approvals. The Utah State Bar President shall appoint Committee members from the list of applicants.

(e) *Committee Chair.* The Bar President for the fiscal year of the Bar shall appoint one of the Committee members as Committee Chair for that year.

(f) *Committee Vice-Chair.* The Committee Chair shall appoint a Vice-Chair from among the members of the Committee, who will assume the duties of the Chair when the Chair is not available or otherwise designates the Vice-Chair to act in his stead.

(g) *Committee Secretary.* The Committee Chair shall appoint a Secretary from among the members of the Committee, who shall take and maintain minutes of the meetings of the full Committee.

(h) *Unexpired Terms.* The Bar President shall fill vacancies created by resignation, death, incapacity or removal that occurs prior to scheduled expiration of a member's appointment. Such an appointment will be for the remainder of the unexpired term. The Bar President may suspend the provisions of § II(d) for such an appointment.

(i) *Absences.* If a Committee member fails to attend three meetings of the full Committee during a Bar fiscal year or has repeatedly declined to accept assignments to serve on advisory panels of the Committee, the Chair may notify the Bar President of the circumstances and request that the Bar President replace that member.

III. RELATION TO OFFICE OF PROFESSIONAL CONDUCT.

The Committee shall be independent from the Office of Professional Conduct of the Utah State Bar ("OPC").

IV. EFFECT OF ADVISORY OPINIONS.

(a) Opinions issued by the Committee are advisory only.

(b) Notwithstanding § IV(a), the OPC shall not prosecute a Utah lawyer for advertising for which the Committee has issued an advisory opinion that the advertising is in compliance with applicable provisions of the Utah Rules of Professional Conduct unless it subsequently successfully petitions and obtains from the Ethics Advisory Opinion Committee ("EAOC") or the Utah Supreme Court an opinion finding the advertising to be in violation of the Utah Rules of Professional Conduct.

(c) No court is bound by an advisory approval issued by the Committee.

V. OPINION REVIEW PROCEDURE.

The Committee’s Rules shall provide procedures under which a person who receives a Committee advisory opinion disapproving of a lawyer advertisement may seek review of that opinion by the Ethics Advisory Opinion Committee of the Utah State Bar (“EOAC”). An opinion of the EAOC on review shall be controlling as to the effects set forth in Part IV above.

VI. ANNUAL REPORT.

The Chair of the Committee shall submit a written annual report to the Board by July 1 of each year, summarizing the actions taken by the Committee in the previous calendar year. The report should include information concerning the number of requests for approval or opinion submitted to the Committee and the disposition of those requests.



The foregoing Rules Governing the Advertising Advisory Committee of the Utah State Bar and review of that Committee’s actions by the Ethics Advisory Opinion Committee were adopted by resolution of the Board at its meeting of _____, 2014.

**ADVERTISING ADVISORY COMMITTEE
RULES OF PROCEDURE**

PART I. DUTIES AND AUTHORITY.

(a) *Duties.* The Advertising Advisory Committee of the Utah State Bar (the “Committee”) shall:

(1) Respond to requests by members of the Utah State Bar and Utah law firms for advisory approval of specific legal advertising which the requesting party is using or intends to use is in compliance with Rules 7.1 through 7.5 of the Utah Rules of Professional Conduct (“Advertising Rules”);

(2) Respond to complaints and requests by members of the Utah State Bar, Utah law firms and members of the public who raise issues about whether a specific, current lawyer advertisement is in violation of the Advertising Rules;

(3) Make recommendations to the Office of Professional Conduct (“OPC”) of the Utah State Bar for possible prosecution of lawyers whose advertising is subject to a request under § I(a)(2) and for which the Committee finds probable cause that the advertising is in violation of the Advertising Rules; and

(4) Compile and deliver to the President of the Board of Bar Commissioners an annual report of the Committee’s activities.

(b) *Authority.*

(1) In responding to requests under § I(a), the Committee shall interpret the Advertising Rules and, except as may be necessary to the opinion, shall not interpret other of the Utah Rules of Professional Conduct or other law.

(2) The following requests are outside the Committee’s authority:

(i) Requests that require interpretation of the Utah Rules of Professional Conduct other than the Advertising Rules.

(ii) Requests for opinions on advertising that has been used in the past but is no longer in use and for which there is no evidence it will be in used in the foreseeable future.

PART II. GENERAL COMMITTEE PROCEDURES

(a) *Meetings.*

(1) The Committee shall hold scheduled meetings every month except July and at such other times as the Chair may designate.

(2) The Committee shall meet at the Utah Law and Justice Center or such other places as the Chair may designate.

(3) To conduct official business at a Committee meeting, more than 50% of the members must be present, either in person or by telephone or audio-visual conference connection.

(4) The Secretary or other member of the Committee designated by the Chair shall prepare and the Committee shall approve minutes of Committee meetings.

(b) *Complaints and Requests.*

(1) Requests and complaints shall be in writing and filed with the Committee or OPC. Requests filed with the OPC shall be forwarded to the Committee.

(2) Unless the Chair determines there is good cause that a request or complaint be considered by the Committee *en banc*, the Chair will assign each request or complaint filed with the Committee to a panel of three members of the Committee and will designate a member as panel chair.

(3) Three-member panels will be chosen in a manner that distributes cases among Committee members as uniformly as practicable.

(4) A Committee panel's determination of a request or complaint will be deemed a final disposition by the Committee.

PART III. PROCEDURE—REQUESTS FOR ADVISORY APPROVAL.

(a) Any member of the Utah State Bar in good standing or a representative of a Utah law firm may submit to the Committee a specific advertisement for legal services and seek Committee approval that the advertisement complies with the Advertising Rules.

(b) Requests under this rule shall include:

(1) Exact copies of the advertising for which approval is sought and any variations that are anticipated;

(2) A statement of what advertising media the applicant intends to employ for the advertising;

(3) A brief statement indicating why the Committee should issue an advisory approval; and

(4) Citations to any relevant ethics opinions, judicial decisions and statutes.

(c) For each request or complaint submitted under this Part, the Committee shall:

(1) Determine that the advertising is in compliance with the Advertising Rules;

(2) Determine that, with certain modifications specified by the Committee, the advertising would be in compliance with the Advertising Rules; or

(3) Determine the advertising violates one or more of the Advertising Rules.

(d) Upon the Committee's determination under this Part, the Chair shall inform the requesting party of the Committee's advisory opinion. Except for any suggestions for making the submitted advertising compliant with the Advertising Rules under § IV(d)(2), the advisory opinion will only state whether the advertising does or does not have advisory approval of the Committee. The Committee is not required to issue findings, conclusions or discussion in connection with an advisory opinion.

(e) The Committee shall, to the maximum extent practicable, endeavor to respond to requests under this Part within 30 days of receipt of the request by the Committee.

(f) If the Committee has not responded to a request under this Part within 30 days of the Committee's receipt of the request, the advertising may be used without exposure to prosecution by OPC for violations of the Advertising rules until such time as the Committee issues an advisory opinion finding the advertising not to be in compliance with the Advertising Rules. After the issuance of such an advisory opinion, the requesting party may be subject to prosecution by OPC if the unap-

proved advertising is not removed from advertising media within seven calendar days of the issuance of such an opinion.

PART IV. PROCEDURE—REQUESTS FOR EVALUATION OF ADVERTISING CURRENTLY IN USE

(a) Any person may submit to the Committee a signed statement complaining of, or requesting that the Committee determine whether, an advertisement currently in use through one or more media violates the Advertising Rules.

(b) A statement submitted under this rule need not be notarized or otherwise attested to and shall be substantially similar to:

I believe the advertisement (check one)

- specifically described below,
- a copy of which is attached

is (check all that may apply):

- false,
- misleading,
- offensive to a reasonable member of the public, or
- other: _____,

and should be evaluated or investigated for compliance with applicable rules.

(c) For each request or complaint submitted under this Part, the Committee shall either:

(1) Determine there is no probable violation of the Advertising rules; or

(2) Determine there is a probable violation of the Advertising Rules, and refer the matter to OPC with a recommendation that OPC initiate an informal complaint pursuant to its authority under the Rules of Lawyer Discipline and Disability § 14-504(b)(2).

(e) The Chair shall inform the requesting party of the Committee’s determination.

PART V. OPINION REVIEW.

(a) An advisory opinion issued by the Committee is subject to review by the original requesting party or OPC by filing a petition with the Ethics Advisory Opinion Committee of the Utah State Bar (“EAOC”) within 30 days after the date of the Committee’s final disposition of a request for advisory approval.

(b) A petition for review under this Part shall be in writing and shall state the bases in fact, law or policy in support of the request.

(c) Any person filing a petition for EAOB review under this Part shall serve a copy of the petition on the Committee Chair.

(d) Notwithstanding the filing of a petition for review of Committee action pursuant to these provisions, the action of the Committee shall be effective for the period during which EAOB review is pending.

(f) Upon receipt of a timely petition for review of Committee action, the EAOB, or a subcommittee of the EAOB specifically designated, shall review the action of the Committee. The EAOB or subcommittee may affirm, affirm with modifications or overrule the action of the Committee after conducting such procedures as it deems appropriate.

(g) If the EAOB has not responded to a request under this Part within 60 days of the EAOB's receipt of the request, the advertising may be used without exposure to prosecution by OPC for violations of the Advertising Rules until such time as the EAOB issues an advisory opinion finding the advertising not to be in compliance with the Advertising Rules. After the issuance of such an advisory opinion, the requesting party may be subject to prosecution by OPC if the unapproved advertising is not removed from advertising media within seven calendar days of the issuance of such an opinion.

PART VI. CONFIDENTIALITY.

Committee members may not disclose the particulars of pending issues to persons outside the Committee; provided, however, that: (a) members may be assisted by their partners, colleagues, employees, associates or law student volunteers in researching issues raised by a request for an advisory opinion; and (b) members may discuss general principles of the Advertising Rules as they relate to a pending issue with non-Committee members. Those assisting a Committee member and members of the Office of Professional Conduct must also observe the confidentiality requirements of this section.



The foregoing Advertising Advisory Committee Rules of Procedure were adopted by resolution of the Board of Bar Commissioners at its meeting of _____, 2014.

Rule 14-504(d).

(d) *Effect of ~~ethics~~ advisory opinions.* _

(1) The OPC shall not prosecute a Utah lawyer for conduct that is in compliance with an ~~ethics~~ advisory opinion issued by:

(A) The Ethics Advisory Opinion Committee that has not been withdrawn at the time of the conduct in question~~. No court is bound by an ethics opinion's interpretation of the Utah Rules of Professional Conduct.~~

~~(1); or~~

(B) The Advertising Advisory Committee.

(2) The OPC may at any time request the ~~Bar's~~ Ethics Advisory Opinion Committee to review, modify or withdraw an ethics or advertising advisory opinion and if so, any OPC investigation or prosecution is suspended pending the final outcome of the request. _ The Ethics Advisory Opinion Committee may issue a modified opinion, withdraw the opinion or decline to take any action but shall report its action or recommendation to the Board of Bar Commissioners and the Board will take such final action as it deems appropriate.

~~(2)~~3 The OPC may also request the Supreme Court to review, affirm, reverse or otherwise modify an ~~ethics~~ advisory opinion.

(4) No court is bound by the interpretation of the Utah Rules of Professional Conduct by the Ethics Advisory Opinion Committee or the Advertising Advisory Committee.

Tab 3

1 **Rule 7.1. Communications Concerning a Lawyer's Services.**

2 A lawyer shall not make a false or misleading communication about the
3 lawyer or the lawyer's services. A communication is false or misleading if it:

4 (a) contains a material misrepresentation of fact or law, or omits a fact
5 necessary to make the statement considered as a whole not materially
6 misleading;

7 (b) is likely to create an unjustified or unreasonable expectation about
8 results the lawyer can or has achieved, or states or implies that the lawyer can
9 achieve results by means that violate the Rules of Professional Conduct or other
10 law;

11 (c) compares the lawyer's services with other lawyers' services, unless the
12 comparison can be factually substantiated; or

13 (d) contains a testimonial or endorsement which violates any portion of
14 this Rule.

15 **Comment**

16 [1] This Rule governs all communications about a lawyer's services, including
17 advertising permitted by Rule 7.2. Whatever means are used to make known a
18 lawyer's services, statements about them must be truthful.

19 [2] Truthful statements that are misleading are also prohibited by this Rule. A
20 truthful statement is misleading if it omits a fact necessary to make the lawyer's
21 communication considered as a whole not materially misleading. A truthful
22 statement is also misleading if there is a substantial likelihood that it will lead a
23 reasonable person to formulate a specific conclusion about the lawyer or the
24 lawyer's services for which there is no reasonable factual foundation.

25 [3] An advertisement that truthfully reports a lawyer's achievements on behalf
26 of clients or former clients may be misleading if presented so as to lead a
27 reasonable person to form an unjustified expectation that the same results could
28 be obtained for other clients in similar matters without reference to the specific
29 factual and legal circumstances of each client's case. Similarly, an
30 unsubstantiated comparison of the lawyer's services or fees with the services or
31 fees of other lawyers may be misleading if presented with such specificity as

32 would lead a reasonable person to conclude that the comparison can be
33 substantiated. The inclusion of an appropriate disclaimer or qualifying language
34 may preclude a finding that a statement is likely to create unjustified expectations
35 or otherwise mislead ~~a prospective client~~ the public.

36 [4] See also Rule 8.4(e) for the prohibition against stating or implying an
37 ability to influence improperly a government agency or official or to achieve
38 results by means that violate the Rules of Professional Conduct or other law.

39 ~~[5] All communications concerning a lawyer's legal services should comport~~
40 ~~with the Standards of and Civility.~~ [4a] The Utah Rule is different from the ABA
41 Model Rule. Subsections (b), (c), and (d) are added to the Rule to give further
42 guidance as to which communications are false or misleading.

43

1 **Rule 7.2. Advertising.**

2 (a) Subject to the requirements of Rules 7.1-~~and 7.3~~ and 7.3, a lawyer may advertise
3 services through ~~the public media, such as telephone directory, legal directory,~~
4 ~~newspaper or other periodical, billboards and other signs, radio, television and recorded~~
5 ~~messages the public may access by dialing a telephone number, or through written,~~
6 ~~recorded or electronic communication, not involving solicitation as prohibited by Rule~~
7 ~~7.3 including public media.~~

8 ~~(a)(1) As used in these Rules, "advertisement" shall mean any communication made~~
9 ~~to induce persons to use a lawyer's services. written, recorded or electronic~~
10 ~~communication, including public media.~~

11 ~~(b) A lawyer shall not give anything of value to a person for recommending the~~
12 ~~lawyer's services; except that a lawyer may:~~

13 ~~(b)(1) pay the reasonable costs of advertisements or communications permitted by~~
14 ~~this Rule;~~

15 ~~(b)(2) pay the usual charges of a legal service plan or a lawyer referral service.~~

16 ~~(b)(3) pay for a law practice in accordance with Rule 1.17; or~~

17 ~~(b)(4) divide a fee with another lawyer as permitted by Rule 1.5(e).~~

18 ~~(c) Any communication made pursuant to this Rule shall include the name and office~~
19 ~~address of at least one lawyer of the firm responsible for its content.~~

20 ~~(a)(2) These Rules shall not apply to any advertisement that is broadcast or~~
21 ~~disseminated in another jurisdiction in which the advertising lawyer is admitted if such~~
22 ~~advertisement complies with the rules governing lawyer advertising in that jurisdiction~~
23 ~~and the advertisement is not intended primarily for broadcast or dissemination within the~~
24 ~~state of Utah.~~

25 ~~(b) If the advertisement uses any actors to portray a lawyer, members of the law~~
26 ~~firm, or clients or utilizes depictions of fictionalized events or scenes, the same must be~~
27 ~~disclosed. In the event actors are used, the disclosure must be sufficiently specific to~~
28 ~~identify which persons in the advertisement are actors, and the disclosure must appear~~
29 ~~for the duration in which the actor(s) appear in the advertisement.~~

30 ~~(c) All advertisements and written communications disseminated pursuant to these~~
31 ~~Rules shall include the name and office address of at least one lawyer or law firm~~
32 ~~responsible for their content.~~

33 ~~(d) Every advertisement and written communication that indicates one or more~~
34 ~~areas of law in which the lawyer or law firm practices shall conform to the requirements~~
35 ~~of Rule 7.4.~~

36 ~~(e) (d) Every advertisement and written communication indicating that the charging~~
37 ~~of a fee is contingent on outcome or that the fee will be a percentage of the recovery~~
38 ~~shall set forth clearly the client's responsibility for the payment of costs and other~~
39 ~~expenses.~~

40 ~~(f) (e) A lawyer who advertises a specific fee or range of fees shall include all~~
41 ~~relevant charges and fees, and the duration such fees are in effect.~~

42 ~~(g) The following information in advertisements and written communications shall be~~
43 ~~presumed not to violate the provisions of Rule 7.1:~~

44 ~~(g)(1) subject to the requirements of this Rule and Rule 7.5, the name of the lawyer~~
45 ~~or law firm, a listing of lawyers associated with the firm, office addresses and telephone~~
46 ~~numbers, office and telephone service hours, and a designation such as "attorney" or~~
47 ~~"law firm";~~

48 ~~(g)(2) date of admission to the Utah State Bar and any other bars and a listing of~~
49 ~~federal courts and jurisdictions other than Utah where the lawyer is licensed to practice;~~

50 ~~(g)(3) technical and professional licenses granted by the state or other recognized~~
51 ~~licensing authorities;~~

52 ~~(g)(4) foreign language ability;~~

53 ~~(g)(5) prepaid or group legal service plans in which the lawyer participates;~~

54 ~~(g)(6) acceptance or non-acceptance of credit cards;~~

55 ~~(g)(7) fee for initial consultation and fee schedule, subject to the requirements of~~
56 ~~paragraphs (e) and (f) of this Rule; and~~

57 ~~(g)(8) a listing of the name and geographic location of a lawyer or law firm as a~~
58 ~~sponsor of a public service announcement or charitable, civic or community program or~~
59 ~~event.~~

60 ~~(h) Nothing in this Rule prohibits a lawyer and law firms from advertising their~~
61 ~~inclusion in law lists and law directories intended primarily for the use of the legal~~
62 ~~profession or such information as has traditionally been included in these publications.~~

63 ~~(i) A copy or recording of an advertisement or written or recorded communication as~~
64 ~~set forth in Rule 7.2A shall be submitted to the Utah State Bar, and a copy shall be~~
65 ~~retained by the lawyer or law firm which advertises for 3 years after its last~~
66 ~~dissemination along with a record of when and where it was used.~~

67 ~~(f) A lawyer shall not give anything of value to a person for recommending the~~
68 ~~lawyer's services, except that a lawyer may pay the reasonable cost of advertising or~~
69 ~~written or recorded communication permitted by these Rules and may pay the usual~~
70 ~~charges of a lawyer referral service or other legal service organization plan.~~

71 Comment

72 [1] To assist the public in learning about and obtaining legal services, lawyers should
73 be allowed to make known their services not only through reputation but also through
74 organized information campaigns in the form of advertising. Advertising involves an
75 active quest for clients, contrary to the tradition that a lawyer should not seek clientele.
76 However, the public's need to know about legal services can be fulfilled in part through
77 advertising. This need is particularly acute in the case of persons of moderate means
78 who have not made extensive use of legal services. The interest in expanding public
79 information about legal services ought to prevail over considerations of tradition.
80 Nevertheless, advertising by lawyers entails the risk of practices that are misleading or
81 overreaching.

82 [2] This Rule permits public dissemination of information concerning a lawyer's name
83 or firm name, address, email address, website, and telephone number; the kinds of
84 services the lawyer will undertake; the basis on which the lawyer's fees are determined,
85 including prices for specific services and payment and credit arrangements; a lawyer's
86 foreign language ability; names of references and, with their consent, names of clients
87 regularly represented; and other information that might invite the attention of those
88 seeking legal assistance.

89 [3] Questions of effectiveness and taste in advertising are matters of speculation and
90 subjective judgment. Some jurisdictions have had extensive prohibitions against

91 television and other forms of advertising, against advertising going beyond specified
92 facts about a lawyer or against "undignified" advertising. Television ~~is now one of the~~
93 Internet, and other forms of electronic communication are now among the most powerful
94 media for getting information to the public, particularly persons of low and moderate
95 income; prohibiting television, Internet, and other forms of electronic advertising,
96 therefore, would impede the flow of information about legal services to many sectors of
97 the public. Limiting the information that may be advertised has a similar effect and
98 assumes that the Bar can accurately forecast the kind of information that the public
99 would regard as relevant. ~~Similarly, electronic media, such as the Internet, can be an~~
100 ~~important source of information about legal services, and lawful communication by~~
101 ~~electronic mail is permitted by this Rule.~~ But see Rule 7.3(a) for the prohibition against
102 ~~the a~~ solicitation ~~of a prospective client~~ through a real-time electronic exchange ~~that is~~
103 ~~not initiated by the prospective client~~ initiated by the lawyer.

104 [4] Neither this Rule nor Rule 7.3 prohibits communications authorized by law, such
105 as notice to members of a class in class action litigation.

106 Paying Others to Recommend a Lawyer

107 [5] Except as permitted under paragraph (f), ~~L~~lawyers are not permitted to pay
108 others for recommending the lawyer's services or for channeling professional work in a
109 manner that violates Rule 7.3. A communication contains a recommendation if it
110 endorses or vouches for a lawyer's credentials, abilities, competence, character, or
111 other professional qualities. Paragraph ~~(b)(1)~~ (f), however, allows a lawyer to pay for
112 advertising and communications permitted by this Rule, including the costs of print
113 directory listings, on-line directory listings, newspaper ads, television and radio airtime,
114 domain-name registrations, sponsorship fees, Internet-based advertisements~~banner~~
115 ~~ads~~ and group advertising. A lawyer may compensate employees, agents and vendors
116 who are engaged to provide marketing or client-development services, such as
117 publicists, public-relations personnel, business-development staff and website
118 designers. Moreover, a lawyer may pay others for generating client leads, such as
119 Internet-based client leads, as long as the lead generator does not recommend the
120 lawyer, any payment to the lead generator is consistent with Rules 1.5(e) (division of

121 fees) and 5.4 (professional independence of the lawyer), and the lead generator's
122 communications are consistent with Rule 7.1 (communications concerning lawyer's
123 services). To comply with Rule 7.1, a lawyer must not pay a lead generator that states,
124 implies, or creates a reasonable impression that it is recommending the lawyer, is
125 making the referral without payment from the lawyer, or has analyzed a person's legal
126 problems when determining which lawyer should receive the referral. See Rule 5.3 for
127 the (duties of lawyers and law firms with respect to the conduct of non-lawyers); who
128 prepare marketing materials for them Rule 8.4(a) (duty to avoid violating the Rules
129 through the acts of another).

130 [6] A lawyer may pay the usual charges of a legal service plan or a lawyer referral
131 service. A legal service plan is a prepaid or group legal service plan or a similar delivery
132 system that assists prospective clients to secure legal representation. A lawyer referral
133 service, on the other hand, is an organization that holds itself out to the public to provide
134 referrals to lawyers with appropriate experience in the subject matter of the
135 representation.

136 No fee generating referral may be made to any lawyer or firm that has an ownership
137 interest in, or who operates or is employed by, a legal referral service, or who is
138 associated with a firm that has an ownership interest in, or operates or is employed by,
139 a lawyer referral service.

140 [7] A lawyer who accepts assignments or referral from a legal service plan or
141 referrals from a lawyer referral service must act reasonably to assure that the activities
142 of the plan or service are compatible with the lawyer's professional obligations. See
143 Rule 5.3. Legal service plans and lawyer referral services may communicate with
144 prospective clients the public, but such communication must be in conformity with these
145 Rules. Thus, advertising must not be false or misleading, as would be the case if the
146 communications of a group advertising program or a group legal services plan would
147 mislead prospective clients the public to think that it was a lawyer referral service
148 sponsored by a state agency or bar association. Nor could the lawyer allow in-person,
149 telephonic, or real-time contacts that would violate Rule 7.3.

150 [7a] Utah Rule 7.2(b)(2) differs from the ABA Model Rule by permitting a lawyer to
151 pay the usual charges of any lawyer referral service. This is not limited to not-for-profit
152 services. Comment [6] to the Utah rule is modified accordingly.

153 ~~[7b] Utah Rule 7.2 A and 7.2 B have no corresponding provisions in the ABA Model~~
154 ~~Rule.~~

155 ~~[8] For the disciplinary authority and choice of law provisions applicable to~~
156 ~~advertising, see Rule 8.5.~~

157 ~~[8a] This Rule differs from the ABA Model Rule in that it defines "advertisement"~~
158 ~~and places some limitations on advertisements. Utah Rule 7.2(b)(2) also differs from~~
159 ~~the ABA Model Rule by permitting a lawyer to pay the usual charges of any lawyer~~
160 ~~referral service. This is not limited to not-for-profit services. Comment [6] to the Utah~~
161 ~~rule is modified accordingly.~~

162

1 **Rule 7.3. ~~Direct Contact with Prospective~~ Solicitation of Clients.**

2 (a) A lawyer shall not by in-person, live telephone or real-time electronic contact ~~or~~
3 ~~other real-time communication~~ solicit professional employment ~~from a prospective client~~
4 when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless
5 the person contacted:

6 (a)(1) is a lawyer; or

7 (a)(2) has a family, close personal, or prior professional relationship with the lawyer.

8 (b) A lawyer shall not solicit professional employment ~~from a prospective client~~ by
9 written, recorded or electronic communication or by in-person, live telephone or real-
10 time electronic contact ~~or other real-time communication~~ even when not otherwise
11 prohibited by paragraph (a), if:

12 (b)(1) the ~~prospective client~~ target of the solicitation has made known to the lawyer a
13 desire not to be solicited by the lawyer; or

14 (b)(2) the solicitation involves coercion, duress or harassment.

15 (c) Every written, recorded or electronic communication from a lawyer soliciting
16 professional employment from ~~a prospective client~~ anyone known to be in need of legal
17 services in a particular matter shall include the words "Advertising Material" on the
18 outside envelope, if any, and at the beginning of any recorded or electronic
19 communication, unless the recipient of the communication is a person specified in
20 paragraphs (a)(1) or (a)(2). For the purposes of this subsection, "written
21 communication" does not include advertisement through public media, including but not
22 limited to a telephone directory, legal directory, newspaper or other periodical, outdoor
23 advertising, radio, ~~or~~ television or webpage.

24 (d) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a
25 prepaid or group legal service plan operated by an organization not owned or directed
26 by the lawyer that uses in-person or other real-time communication to solicit
27 memberships or subscriptions for the plan from persons who are not known to need
28 legal services in a particular matter covered by the plan.

29 Comment

30 [1] A solicitation is a targeted communication initiated by the lawyer that is directed to
31 a specific person and that offers to provide, or can reasonably be understood as offering
32 to provide, legal services. In contrast, a lawyer's communication typically does not
33 constitute a solicitation if it is directed to the general public, such as through a billboard,
34 an Internet banner advertisement, a website or a television commercial, or if it is in
35 response to a request for information or is automatically generated in response to
36 Internet searches.

37 ~~[4]~~[2] There is a potential for abuse ~~inherent in~~ when a solicitation involves direct in-
38 person, ~~or other real-time communication~~ live telephone or real-time electronic contact
39 by a lawyer with ~~a prospective client~~ someone known to need legal services. These
40 forms of contact ~~between a lawyer and a prospective client~~ subject ~~the layperson a~~
41 person to the private importuning of the trained advocate in a direct interpersonal
42 encounter. The ~~prospective client~~ person, who may already feel overwhelmed by the
43 circumstances giving rise to the need for legal services, may find it difficult fully to
44 evaluate all available alternatives with reasoned judgment and appropriate self-interest
45 in the face of the lawyer's presence and insistence upon being retained immediately.
46 The situation is fraught with the possibility of undue influence, intimidation, and over-
47 reaching.

48 ~~[1a] "Real-time communication" means telephonic, electronic, radio, wire, wireless or~~
49 ~~other similar communication directed to a specific recipient and characterized by the~~
50 ~~immediacy and interactivity of response between individuals, such as that provided~~
51 ~~through standard telephone connections and Internet "chat rooms." This Comment is~~
52 ~~not included in the ABA Model Rule 7.3, and is added to clarify that the definition of real-~~
53 ~~time communication is broad enough to cover real-time communication of all types.~~

54 ~~The~~ [3] This potential for abuse inherent in direct in-person, ~~and other real-time~~
55 live telephone or real-time electronic solicitation ~~of prospective clients~~ justifies its
56 prohibition, particularly since lawyers ~~advertising and written and recorded~~
57 ~~communication permitted under Rule 7.2 offer~~ have alternative means of conveying
58 necessary information to those who may be in need of legal services. ~~Advertising and~~
59 ~~written and recorded~~ In particular, communications ~~that may can~~ be mailed or

60 ~~autodialed-transmitted by email or other electronic means that do not involve real-time~~
61 ~~contact and do not violate other laws governing solicitations. These forms of~~
62 ~~communications and solicitations~~ make it possible for ~~a prospective client~~ the public to
63 be informed about the need for legal services, and about the qualifications of available
64 lawyers and law firms, without subjecting the ~~prospective client~~ public to direct in-
65 person, ~~or other real-time live telephone or real-time electronic~~ persuasion that may
66 overwhelm ~~the client's~~ a person's judgment.

67 [3]-[4] The use of general advertising and written, recorded or electronic
68 communications to transmit information from lawyer to ~~prospective client~~ the public,
69 rather than direct in-person or other real-time communications, will help to ensure that
70 the information flows cleanly as well as freely. The contents of advertisements and
71 communications permitted under Rule 7.2 can be permanently recorded so that they
72 cannot be disputed and may be shared with others who know the lawyer. This potential
73 for informal review is itself likely to help guard against statements and claims that might
74 constitute false and misleading communications in violation of Rule 7.1. The contents of
75 direct in-person, ~~or other real-time communication between a lawyer and a prospective~~
76 ~~client~~ live telephone or real-time electronic contact can be disputed and may not be
77 subject to third-party scrutiny. Consequently, they are much more likely to approach
78 (and occasionally cross) the dividing line between accurate representations and those
79 that are false and misleading.

80 [4]-[5] There is far less likelihood that a lawyer would engage in abusive practices
81 against ~~an individual who is~~ a former client, or a person with whom the lawyer has a
82 close personal or family relationship, or in situations in which the lawyer is motivated by
83 considerations other than the lawyer's pecuniary gain. Nor is there a serious potential
84 for abuse when the person contacted is a lawyer. Consequently, the general prohibition
85 in Rule 7.3(a) and the requirements of Rule 7.3(c) are not applicable in those situations.
86 Also, paragraph (a) is not intended to prohibit a lawyer from participating in
87 constitutionally protected activities of public or charitable legal-service organizations or
88 bona fide political, social, civic, fraternal, employee or trade organizations whose

89 purposes include providing or recommending legal services to ~~its~~their members or
90 beneficiaries.

91 ~~[5]-[6]~~ But even permitted forms of solicitation can be abused. Thus, any solicitation
92 which contains information that is false or misleading within the meaning of Rule 7.1,
93 that involves coercion, duress or harassment within the meaning of Rule 7.3(b)(2), or
94 that involves contact with ~~a prospective client~~someone who has made known to the
95 lawyer a desire not to be solicited by the lawyer within the meaning of Rule 7.3(b)(1) is
96 prohibited. Moreover, if after sending a letter or other communication ~~to a client~~ as
97 permitted by Rule 7.2 the lawyer receives no response, any further effort to
98 communicate with the ~~prospective client~~recipient of the communication may violate the
99 provisions of Rule 7.3(b).

100 ~~[6]-[7]~~ This Rule is not intended to prohibit a lawyer from contacting representatives
101 of organizations or groups that may be interested in establishing a group or prepaid
102 legal plan for their members, insureds, beneficiaries or other third parties for the
103 purpose of informing such entities of the availability of and the details concerning the
104 plan or arrangement which the lawyer or lawyer's firm is willing to offer. This form of
105 communication is not directed ~~to a prospective client~~people who are seeking legal
106 services for themselves. Rather, it is usually addressed to an individual acting in a
107 fiduciary capacity seeking a supplier of legal services for others who may, if they
108 choose, become prospective clients of the lawyer. Under these circumstances, the
109 activity which the lawyer undertakes in communicating with such representatives and
110 the type of information transmitted to the individual are functionally similar to and serve
111 the same purpose as advertising permitted under Rule 7.2.

112 ~~[7]-[8]~~ The requirement in Rule 7.3(c) that certain communications be marked
113 "Advertising Material" does not apply to communications sent in response to requests of
114 potential clients or their spokespersons or sponsors. General announcements by
115 lawyers, including changes in personnel or office location, do not constitute
116 communications soliciting professional employment from a client known to be in need of
117 legal services within the meaning of this Rule.

118 ~~[7a]~~~~[8a]~~ Utah Rule 7.3(c) requires the words "Advertising Material" to be marked on
119 the outside of an envelope, if any, and at the beginning of any recorded or electronic
120 communication, but not at the end as the ABA Model Rule requires. Lawyer solicitations
121 in public media that regularly contain advertisements do not need the " Advertising
122 Material" notice because persons who view or hear such media usually recognize the
123 nature of the communications.

124 ~~[8]~~~~[9]~~ Paragraph (d) of this Rule permits a lawyer to participate with an organization
125 that uses personal contact to solicit members for its group or prepaid legal service plan,
126 provided that the personal contact is not undertaken by any lawyer who would be a
127 provider of legal services through the plan. The organization must not be owned by or
128 directed (whether as manager or otherwise) by any lawyer or law firm that participates
129 in the plan. For example, paragraph (d) would not permit a lawyer to create an
130 organization controlled directly or indirectly by the lawyer and use the organization for
131 the in-person or telephone, live person-to-person contacts or other real-time electronic
132 solicitation of legal employment of the lawyer through memberships in the plan or
133 otherwise. The communication permitted by these organizations also must not be
134 directed to a person known to need legal services in a particular matter, but is to be
135 designed to inform potential plan members generally of another means of affordable
136 legal services. Lawyers who participate in a legal service plan must reasonably assure
137 that the plan sponsors are in compliance with Rules 7.1, 7.2 and 7.3(b). See Rule
138 8.4(a).

139

Tab 4

WordPerfect Document Compare Summary

Original document: C:\Users\Gary\Documents\Utah Rule 1.6.wpd

Revised document: C:\Users\Gary\Documents\Amended Model Rule 1.6.rtf

Deletions are shown with the following attributes and color:

~~Strikeout~~, Blue RGB(0,0,255).

Deleted text is shown as full text.

Insertions are shown with the following attributes and color:

Double Underline, Redline, Red RGB(255,0,0).

The document was marked with 92 Deletions, 91 Insertions, 0 Moves.

SUBCOMMITTEE RECOMMENDATION

Title – adopt proposed capitalization of “of” and deletion of “.” after heading for consistency between Utah and Model Rules (No period has been placed after title of other Utah Rules)

Retain “(b)” of numbered paragraphs of Utah Rule for consistency with format of other Utah Rules

(b)(2) adopt adding “s” to “interest” and “or is using” addition to last line for consistency between Utah and Model Rules

(b)(3) adopt deletion of “and” for consistency between Utah and Model Rules

(b)(5) adopt deletion of “or” after “;”

(b)(6) adopt adding “;or” at end

(7) and “(b)” before the “(7)” and adopt proposed language

adopt proposed paragraph “(c)”

retain Utah paragraph (c) but renumber it “(d)”

Comment [3] adopt proposed re-spelling of “work product” for consistency between Utah and Model Rules

Comment [5] adopt changing “the” to “a” for consistency between Utah and Model Rules

Comment [7] adopt addition of sentence for consistency between Utah and Model Rules

Adopt proposed heading “Detection of Conflicts of Interest” for consistency between Utah and Model Rules

Comments [13] and [14] adopt proposed new comments for consistency between Utah and Model Rules

Retain Utah Comment [13] but re-number it as “[15]”

Retain Utah Comment [14] but re-number it as “[16]”

Retain Utah comment [15] but re-number it as “[17]” and adopt capitalization of “rules”

Comment [18] adopt proposal replacing Utah Comment [16] for consistency between Utah and Model Rule

Comment [19] adopt proposed additional sentence at end of comment for consistency between Utah and Model Rules (Utah Comment 17 with additional language)

Former Comment [18] is now [20]

Retain former Utah Comment [19] and re-number it “[21]” and change “(c)” to “(d)”

|

Rule 1.6 Confidentiality ~~o~~f Information:

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

~~(b)~~(1) to prevent reasonably certain death or substantial bodily harm;

~~(b)~~(2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests s or property of another and in furtherance of which the client has used or is using the lawyer's services;

~~(b)~~

(3) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud ~~and~~ in furtherance of which the client has used the lawyer's services;

~~(b)~~(4) to secure legal advice about the lawyer's compliance with these Rules;

~~(b)~~(5) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client; ~~or~~

~~(b)~~(6) to comply with other law or a court order; ~~or~~
~~(c) For purposes of this rule, or~~

(7) to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege

or otherwise prejudice the client.

(c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client ~~includes counseling a lawyer about the need for or availability of treatment for substance abuse or psychological or emotional problems by members of the Utah State Bar serving on an Utah State Bar endorsed lawyer assistance program.~~

Comment

[1] This Rule governs the disclosure by a lawyer of information relating to the representation of a client during the lawyer's representation of the client. See Rule 1.18 for the lawyer's duties with respect to information provided to the lawyer by a prospective client, Rule 1.9(c)(2) for the lawyer's duty not to reveal information relating to the lawyer's prior representation of a former client and Rules 1.8(b) and 1.9(c)(1) for the lawyer's duties with respect to the use of such information to the disadvantage of clients and former clients.

[2] A fundamental principle in the client-lawyer relationship is that, in the absence of the client's informed consent, the lawyer must not reveal information relating to the representation. See Rule 1.0(e) for the definition of informed consent. This contributes to the trust that is the hallmark of the client-lawyer relationship. The client is thereby encouraged to seek legal assistance and to communicate fully and frankly with the lawyer even as to embarrassing or legally damaging subject matter. The lawyer needs this information to represent the client effectively and, if necessary, to advise the client to refrain from wrongful conduct. Almost without exception, clients come to lawyers in order to determine their rights and what is, in the complex of laws and regulations, deemed to be legal and correct. Based upon experience, lawyers know that almost all clients follow the advice given, and the law is upheld.

[3] The principle of client-lawyer confidentiality is given effect by related bodies of law: the attorney-client privilege, the ~~work-~~doctrine work product and the rule of confidentiality established in professional ethics. The attorney-client privilege and ~~work-product-~~work product doctrine apply in judicial and other proceedings in which a lawyer may be called as a witness or otherwise required to produce evidence concerning a client. The rule of client-lawyer confidentiality applies in situations other than those where evidence is sought from the lawyer through compulsion of law. The confidentiality rule, for example, applies not only to matters communicated in confidence by the client but also to all

information relating to the representation, whatever its source. A lawyer may not disclose such information except as authorized or required by the Rules of Professional Conduct or other law. See also Scope.

[4] Paragraph (a) prohibits a lawyer from revealing information relating to the representation of a client. This prohibition also applies to disclosures by a lawyer that do not in themselves reveal protected information but could reasonably lead to the discovery of such information by a third person. A lawyer's use of a hypothetical to discuss issues relating to the representation is permissible so long as there is no reasonable likelihood that the listener will be able to ascertain the identity of the client or the situation involved.

Authorized Disclosure

[5] Except to the extent that the client's instructions or special circumstances limit that authority, a lawyer is impliedly authorized to make disclosures about a client when appropriate in carrying out the representation. In some situations, for example, a lawyer may be impliedly authorized to admit a fact that cannot properly be disputed or to make a disclosure that facilitates a satisfactory conclusion to the matter. Lawyers in a firm may, in the course of the firm's practice, disclose to each other information relating to a client of the firm, unless the client has instructed that particular information be confined to specified lawyers.

Disclosure Adverse to Client

[6] Although the public interest is usually best served by a strict rule requiring lawyers to preserve the confidentiality of information relating to the representation of their clients, the confidentiality rule is subject to limited exceptions. Paragraph (b)(1) recognizes the overriding value of life and physical integrity and permits disclosure reasonably necessary to prevent reasonably certain death or substantial bodily harm. Such harm is reasonably certain to occur if it will be suffered imminently or if there is a present and substantial threat that a person will suffer such harm at a later date if the lawyer fails to take action necessary to eliminate the threat. Thus, a lawyer who knows that a client has accidentally discharged toxic waste into a town's water supply may reveal this information to the authorities if there is a present and substantial risk that a person who drinks the water will contract a life-threatening or debilitating disease and the lawyer's disclosure is necessary to eliminate the threat or reduce the number of victims.

[7] Paragraph (b)(2) is a limited exception to the rule of confidentiality that permits the lawyer to reveal information to the extent necessary to enable affected persons or appropriate authorities to prevent the client from committing a crime or fraud, as defined in Rule 1.0(d), that is reasonably certain to result in substantial injury to the financial or property interests of another and in furtherance of which the client has used or is using the lawyer's services. Such a serious abuse of the client-lawyer relationship by the client forfeits the protection of this Rule.

The client can, of course, prevent such disclosure by refraining from the wrongful conduct. Although paragraph (b)(2) does not require the lawyer to reveal the client's misconduct, the lawyer may not counsel or assist the client in conduct the lawyer knows is criminal or fraudulent. See Rule 1.2(d). See also Rule 1.16 with respect to the lawyer's obligation or right to withdraw from the representation of the client in such circumstances, and Rule 1.13(c) which permits the lawyer, where the client is an organization, to reveal information relating to the representation in limited circumstances.

[8] Paragraph (b)(3) addresses the situation in which the lawyer does not learn of the client's crime or fraud until after it has been consummated. Although the client no longer has the option of preventing disclosure by refraining from the wrongful conduct, there will be situations in which the loss suffered by the affected person can be prevented, rectified or mitigated. In such situations, the lawyer may disclose information relating to the representation to the extent necessary to enable the affected persons to prevent or mitigate reasonably certain losses or to attempt to recoup their losses. Paragraph (b)(3) does not apply when a person who has committed a crime or fraud thereafter employs a lawyer for representation concerning that offense.

[9] A lawyer's confidentiality obligations do not preclude a lawyer from securing confidential legal advice about the lawyer's personal responsibility to comply with these Rules. In most situations, disclosing information to secure such advice will be impliedly authorized for the lawyer to carry out the representation. Even when the disclosure is not impliedly authorized, paragraph (b)(4) permits such disclosure because of the importance of a lawyer's compliance with the Rules of Professional Conduct.

[10] Where a legal claim or disciplinary charge alleges complicity of the lawyer in a client's conduct or other misconduct of the lawyer involving representation of the client, the lawyer may respond to the extent the lawyer reasonably believes necessary to establish a defense. The same is true with respect to a claim involving the conduct or representation of a former client. Such a charge can arise in a civil, criminal-, disciplinary or other proceeding and can be based on a wrong allegedly committed by the lawyer against the client or on a wrong alleged by a third person, for

example, a person claiming to have been defrauded by the lawyer and client acting together. The lawyer's right to respond arises when an assertion of such complicity has been made. Paragraph (b)(5) does not require the lawyer to await the commencement of an action or proceeding that charges such complicity, so that the defense may be established by responding directly to a third party who has made such an assertion. The right to defend also applies, of course, where a proceeding has been commenced.

[11] A lawyer entitled to a fee is permitted by paragraph (b)(5) to prove the services rendered in an action to collect it. This aspect of the rule expresses the principle that the beneficiary of a fiduciary relationship may not exploit it to the detriment of the fiduciary.

[12] Other law may require that a lawyer disclose information about a client. Whether such a law supersedes Rule 1.6 is a question of law beyond the scope of these Rules. When disclosure of information relating to the representation appears to be required by other law, the lawyer must discuss the matter with the client to the extent required by Rule 1.4. If, however, the other law supersedes this Rule and requires disclosure, paragraph (b)(6) permits the lawyer to make such disclosures as are necessary to comply with the law.

↕

Detection of Conflicts of Interest

[13] Paragraph (b)(7) recognizes that lawyers in different firms may need to disclose limited information to each other to detect and resolve conflicts of interest, such as when a lawyer is considering an association with another firm, two or more firms are considering a merger, or a lawyer is considering the purchase of a law practice. See Rule 1.17, Comment [7]. Under these circumstances, lawyers and law firms are permitted to disclose limited information, but only once substantive discussions regarding the new relationship have occurred. Any such disclosure should ordinarily include no more than the identity of the persons and entities involved in a matter, a brief summary of the general issues involved, and information about whether the matter has terminated. Even this limited information, however, should be disclosed only to the extent reasonably necessary to detect and resolve conflicts of interest that might arise from the possible new relationship. Moreover, the disclosure of any information is prohibited if it would compromise the attorney-client privilege or otherwise prejudice the client (e.g., the fact that a corporate client is seeking advice on a corporate takeover that has not been

publicly announced; that a person has consulted a lawyer about the possibility of divorce before the person's intentions are known to the person's spouse; or that a person has consulted a lawyer about a criminal investigation that has not led to a public charge). Under those circumstances, paragraph (a) prohibits disclosure unless the client or former client gives informed consent. A lawyer's fiduciary duty to the lawyer's firm may also govern a lawyer's conduct when exploring an association with another firm and is beyond the scope of these Rules.

[14] Any information disclosed pursuant to paragraph (b)(7) may be used or further disclosed only to the extent necessary to detect and resolve conflicts of interest. Paragraph (b)(7) does not restrict the use of information acquired by means independent of any disclosure pursuant to paragraph (b)(7). Paragraph (b)(7) also does not affect the disclosure of information within a law firm when the disclosure is otherwise authorized, see Comment [5], such as when a lawyer in a firm discloses information to another lawyer in the same firm to detect and resolve conflicts of interest that could arise in connection with undertaking a new representation.

[15] A lawyer may be ordered to reveal information relating to the representation of a client by a court or by another tribunal or governmental entity claiming authority pursuant to other law to compel the disclosure. Absent informed consent of the client to do otherwise, the lawyer should assert on behalf of the client all nonfrivolous claims that the order is not authorized by other law or that the information sought is protected against disclosure by the attorney-client privilege or other applicable law. In the event of an adverse ruling, the lawyer must consult with the client about the possibility of appeal to the extent required by Rule 1.4. Unless review is sought, however, paragraph (b)(6) permits the lawyer to comply with the court's order.

[14~~6~~] Paragraph (b) permits disclosure only to the extent the lawyer reasonably believes the disclosure is necessary to accomplish one of the purposes specified. Where practicable, the lawyer should first seek to persuade the client to take suitable action to obviate the need for disclosure. In any case, a disclosure adverse to the client's interest should be no greater than the lawyer reasonably believes necessary to accomplish the purpose. If the disclosure will be made in connection with a judicial proceeding, the disclosure should be made in a manner that limits access to the information to the tribunal or other persons having a need to know it and appropriate protective orders or other arrangements should be sought by the lawyer to the fullest extent practicable.

[15~~7~~] Paragraph (b) permits but does not require the disclosure of information relating to a client's representation to accomplish the purposes specified in paragraphs (b)(1) through (b)(6). In

exercising the discretion conferred by this Rule, the lawyer may consider such factors as the nature of the lawyer's relationship with the client and with those who might be injured by the client, the lawyer's own involvement in the transaction and factors that may extenuate the conduct in question. A lawyer's decision not to disclose as permitted by paragraph (b) does not violate this Rule. Disclosure may be required, however, by other rRules. Some rRules require disclosure only if such disclosure would be permitted by paragraph (b). See Rules 1.2(d), 4.1(b), 8.1 and 8.3. Rule 3.3, on the other hand, requires disclosure in some circumstances regardless of whether such disclosure is permitted by this Rule. See Rule 3.3(c).

Acting Competently to Preserve Confidentiality-

[16~~9~~] A Paragraph (c) requires a lawyer must to act competently to safeguard information relating to the representation of a client against unauthorized access by third parties and against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision. See Rules 1.1, 5.1 and 5.3.

{17 The unauthorized access to, or the inadvertent or unauthorized disclosure of, information relating to the representation of a client does not constitute a violation of paragraph (c) if the lawyer has made reasonable efforts to prevent the access or disclosure. Factors to be considered in determining the reasonableness of the lawyer's efforts include, but are not limited to, the sensitivity of the information, the likelihood of disclosure if additional safeguards are not employed, the cost of employing additional safeguards, the difficulty of implementing the safeguards, and the extent to which the safeguards adversely affect the lawyer's ability to represent clients (e.g., by making a device or important piece of software excessively difficult to use). A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent to forgo security measures that would otherwise be required by this Rule. Whether a lawyer may be required to take additional steps to safeguard a client's information in order to comply with other law, such as state and federal laws that govern data privacy or that impose notification requirements upon the loss of, or unauthorized access to, electronic information, is beyond the scope of these Rules. For a lawyer's duties when sharing information with nonlawyers outside the lawyer's own firm, see Rule 5.3. Comments [3]-[4].

[19] When transmitting a communication that includes information relating to the representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients. This duty, however, does not require that the lawyer use special security measures if the method of communication affords a reasonable expectation of privacy. Special circumstances, however, may warrant special precautions. Factors to be considered in determining the reasonableness of the lawyer's expectation of confidentiality include the sensitivity of the information and the extent to which the privacy of the communication is protected by law or by a confidentiality agreement. A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent to the use of a means of communication that would otherwise be prohibited by this Rule.

Former Client

~~[18]~~
Whether a lawyer may be required to take additional steps in order to comply with other law, such as state and federal laws that govern data privacy, is beyond the scope of these Rules.

[20] The duty of confidentiality continues after the client-lawyer relationship has terminated. See Rule 1.9(c)(2). See Rule 1.9(c)(1) for the prohibition against using such information to the disadvantage of the former client.

~~[19] Paragraph (c) is an addition to ABA Model Rule 1.6 and provides for confidentiality of information between lawyers providing assistance to other lawyers under an Utah State Bar endorsed lawyer assistance program.~~

Rule 1.6. Confidentiality Of Information

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

(b)(1) to prevent reasonably certain death or substantial bodily harm;

(b)(2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;

(b)(3) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;

(b)(4) to secure legal advice about the lawyer's compliance with these Rules;

(b)(5) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;

(b)(6) to comply with other law or a court order; or

(b)(7) to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client.

(c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

(d) For purposes of this rule, representation of a client includes counseling a lawyer about the need for or availability of treatment for substance abuse or psychological or emotional problems by members of the Utah State Bar serving on an Utah State Bar endorsed lawyer assistance program.

Comment

[1] This Rule governs the disclosure by a lawyer of information relating to the representation of a client during the lawyer's representation of the client. See Rule 1.18 for the lawyer's duties with respect to information provided to the lawyer by a prospective client, Rule 1.9(c)(2) for the

lawyer's duty not to reveal information relating to the lawyer's prior representation of a former client and Rules 1.8(b) and 1.9(c)(1) for the lawyer's duties with respect to the use of such information to the disadvantage of clients and former clients.

[2] A fundamental principle in the client-lawyer relationship is that, in the absence of the client's informed consent, the lawyer must not reveal information relating to the representation. See Rule 1.0(e) for the definition of informed consent. This contributes to the trust that is the hallmark of the client-lawyer relationship. The client is thereby encouraged to seek legal assistance and to communicate fully and frankly with the lawyer even as to embarrassing or legally damaging subject matter. The lawyer needs this information to represent the client effectively and, if necessary, to advise the client to refrain from wrongful conduct. Almost without exception, clients come to lawyers in order to determine their rights and what is, in the complex of laws and regulations, deemed to be legal and correct. Based upon experience, lawyers know that almost all clients follow the advice given, and the law is upheld.

[3] The principle of client-lawyer confidentiality is given effect by related bodies of law: the attorney-client privilege, the work product doctrine and the rule of confidentiality established in professional ethics. The attorney-client privilege and work product doctrine apply in judicial and other proceedings in which a lawyer may be called as a witness or otherwise required to produce evidence concerning a client. The rule of client-lawyer confidentiality applies in situations other than those where evidence is sought from the lawyer through compulsion of law. The confidentiality rule, for example, applies not only to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source. A lawyer may not disclose such information except as authorized or required by the Rules of Professional Conduct or other law. See also Scope.

[4] Paragraph (a) prohibits a lawyer from revealing information relating to the representation of a client. This prohibition also applies to disclosures by a lawyer that do not in themselves reveal protected information but could reasonably lead to the discovery of such information by a third person. A lawyer's use of a hypothetical to discuss issues relating to the representation is permissible so long as there is no reasonable likelihood that the listener will be able to ascertain the identity of the client or the situation involved.

Authorized Disclosure

[5] Except to the extent that the client's instructions or special circumstances limit that authority, a lawyer is impliedly authorized to make disclosures about a client when appropriate in carrying out the representation. In some situations, for example, a lawyer may be impliedly authorized to admit a fact that cannot properly be disputed or to make a disclosure that facilitates a satisfactory conclusion to a matter. Lawyers in a firm may, in the course of the firm's practice, disclose to each other information relating to a client of the firm, unless the client has instructed that particular information be confined to specified lawyers.

Disclosure Adverse to Client

[6] Although the public interest is usually best served by a strict rule requiring lawyers to preserve the confidentiality of information relating to the representation of their clients, the confidentiality rule is subject to limited exceptions. Paragraph (b)(1) recognizes the overriding value of life and physical integrity and permits disclosure reasonably necessary to prevent reasonably certain death or substantial bodily harm. Such harm is reasonably certain to occur if it will be suffered imminently or if there is a present and substantial threat that a person will suffer such harm at a later date if the lawyer fails to take action necessary to eliminate the threat. Thus, a lawyer who knows that a client has accidentally discharged toxic waste into a town's water supply may reveal this information to the authorities if there is a present and substantial risk that a person who drinks the water will contract a life-threatening or debilitating disease and the lawyer's disclosure is necessary to eliminate the threat or reduce the number of victims.

[7] Paragraph (b)(2) is a limited exception to the rule of confidentiality that permits the lawyer to reveal information to the extent necessary to enable affected persons or appropriate authorities to prevent the client from committing a crime or fraud, as defined in Rule 1.0(d), that is reasonably certain to result in substantial injury to the financial or property interests of another and in furtherance of which the client has used or is using the lawyer's services. Such a serious abuse of the client-lawyer relationship by the client forfeits the protection of this Rule. The client can, of course, prevent such disclosure by refraining from the wrongful conduct. Although paragraph (b)(2) does not require the lawyer to reveal the client's misconduct, the lawyer may not counsel or assist the client in conduct the lawyer knows is criminal or fraudulent. See Rule 1.2(d). See also Rule 1.16 with respect to the lawyer's obligation or right to withdraw from the representation of the client in such circumstances, and Rule 1.13© which permits the lawyer, where the client is an organization, to reveal information relating to the representation in limited circumstances.

[8] Paragraph (b)(3) addresses the situation in which the lawyer does not learn of the client's crime or fraud until after it has been consummated. Although the client no longer has the option of preventing disclosure by refraining from the wrongful conduct, there will be situations in which the loss suffered by the affected person can be prevented, rectified or mitigated. In such situations, the lawyer may disclose information relating to the representation to the extent necessary to enable the affected persons to prevent or mitigate reasonably certain losses or to attempt to recoup their losses. Paragraph (b)(3) does not apply when a person who has committed a crime or fraud thereafter employs a lawyer for representation concerning that offense.

[9] A lawyer's confidentiality obligations do not preclude a lawyer from securing confidential legal advice about the lawyer's personal responsibility to comply with these Rules. In most situations, disclosing information to secure such advice will be impliedly authorized for the lawyer to carry out the representation. Even when the disclosure is not impliedly authorized, paragraph (b)(4) permits such disclosure because of the importance of a lawyer's compliance with the Rules of Professional Conduct.

[10] Where a legal claim or disciplinary charge alleges complicity of the lawyer in a client's conduct or other misconduct of the lawyer involving representation of the client, the lawyer may respond to the extent the lawyer reasonably believes necessary to establish a defense. The same is

true with respect to a claim involving the conduct or representation of a former client. Such a charge can arise in a civil, criminal, disciplinary or other proceeding and can be based on a wrong allegedly committed by the lawyer against the client or on a wrong alleged by a third person, for example, a person claiming to have been defrauded by the lawyer and client acting together.

The lawyer's right to respond arises when an assertion of such complicity has been made. Paragraph (b)(5) does not require the lawyer to await the commencement of an action or proceeding that charges such complicity, so that the defense may be established by responding directly to a third party who has made such an assertion. The right to defend also applies, of course, where a proceeding has been commenced.

[11] A lawyer entitled to a fee is permitted by paragraph (b)(5) to prove the services rendered in an action to collect it. This aspect of the rule expresses the principle that the beneficiary of a fiduciary relationship may not exploit it to the detriment of the fiduciary.

[12] Other law may require that a lawyer disclose information about a client. Whether such a law supersedes Rule 1.6 is a question of law beyond the scope of these Rules. When disclosure of information relating to the representation appears to be required by other law, the lawyer must discuss the matter with the client to the extent required by Rule 1.4. If, however, the other law supersedes this Rule and requires disclosure, paragraph (b)(6) permits the lawyer to make such disclosures as are necessary to comply with the law.

Detection of Conflicts of Interest

[13] Paragraph (b)(7) recognizes that lawyers in different firms may need to disclose limited information to each other to detect and resolve conflicts of interest, such as when a lawyer is considering an association with another firm, two or more firms are considering a merger, or a lawyer is considering the purchase of a law practice. See Rule 1.17, Comment [7]. Under these circumstances, lawyers and law firms are permitted to disclose limited information, but only once substantive discussions regarding the new relationship have occurred. Any such disclosure should ordinarily include no more than the identity of the persons and entities involved in a matter, a brief summary of the general issues involved, and information about whether the matter has terminated. Even this limited information, however, should be disclosed only to the extent reasonably necessary to detect and resolve conflicts of interest that might arise from the possible new relationship. Moreover, the disclosure of any information is prohibited if it would compromise the attorney-client privilege or otherwise prejudice the client (e.g., the fact that a corporate client is seeking advice on a corporate takeover that has not been publicly announced; that a person has consulted a lawyer about the possibility of divorce before the person's intentions are known to the person's spouse; or that a person has consulted a lawyer about a criminal investigation that has not led to a public charge). Under those circumstances, paragraph (a) prohibits disclosure unless the client or former client gives informed consent. A lawyer's fiduciary duty to the lawyer's firm may also govern a lawyer's conduct when exploring an association with another firm and is beyond the scope of these Rules.

[14] Any information disclosed pursuant to paragraph (b)(7) may be used or further disclosed only to the extent necessary to detect and resolve conflicts of interest. Paragraph (b)(7) does not restrict the use of information acquired by means independent to any disclosure pursuant to paragraph (b)(7). Paragraph (b)(7) also does not affect the disclosure of information within a law firm when the disclosure is otherwise authorized, see Comment [5], such as when a lawyer in a firm discloses information to another lawyer in the same firm to detect and resolve conflicts of interest that could arise in connection with undertaking a new representation.

[15] A lawyer may be ordered to reveal information relating to the representation of a client by a court or by another tribunal or governmental entity claiming authority pursuant to other law to compel the disclosure. Absent informed consent of the client to do otherwise, the lawyer should assert on behalf of the client all nonfrivolous claims that the order is not authorized by other law or that the information sought is protected against disclosure by the attorney-client privilege or other applicable law. In the event of an adverse ruling, the lawyer must consult with the client about the possibility of appeal to the extent required by Rule 1.4. Unless review is sought, however, paragraph (b)(6) permits the lawyer to comply with the court's order.

[16] Paragraph (b) permits disclosure only to the extent the lawyer reasonably believes the disclosure is necessary to accomplish one of the purposes specified. Where practicable, the lawyer should first seek to persuade the client to take suitable action to obviate the need for disclosure. In any case, a disclosure adverse to the client's interest should be no greater than the lawyer reasonably believes necessary to accomplish the purpose. If the disclosure will be made in connection with a judicial proceeding, the disclosure should be made in a manner that limits access to the information to the tribunal or other persons having a need to know it and appropriate protective orders or other arrangements should be sought by the lawyer to the fullest extent practicable.

[17] Paragraph (b) permits but does not require the disclosure of information relating to a client's representation to accomplish the purposes specified in paragraphs (b)(1) through (b)(6). In exercising the discretion conferred by this Rule, the lawyer may consider such factors as the nature of the lawyer's relationship with the client and with those who might be injured by the client, the lawyer's own involvement in the transaction and factors that may extenuate the conduct in question. A lawyer's decision not to disclose as permitted by paragraph (b) does not violate this Rule. Disclosure may be required, however, by other Rules. Some Rules require disclosure only if such disclosure would be permitted by paragraph (b). See Rules 1.2(d), 4.1(b), 8.1 and 8.3. Rule 3.3, on the other hand, requires disclosure in some circumstances regardless of whether such disclosure is permitted by this Rule. See Rule 3.3(c).

Acting Competently to Preserve Confidentiality

[18] Paragraph (c) requires a lawyer to act competently to safeguard information relating to the representation of a client against unauthorized access by third parties and against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision. See Rules 1.1, 5.1 and 5.3. The unauthorized access to, or the inadvertent or unauthorized disclosure of, information relating to

the representation of a client does not constitute a violation of paragraph (c) if the lawyer has made reasonable efforts to prevent the access or disclosure. Factors to be considered in determining the reasonableness of the lawyer's efforts include, but are not limited to, the sensitivity of the information, the likelihood of disclosure if additional safeguards are not employed, the cost of employing additional safeguards, the difficulty of implementing the safeguards, and the extent to which the safeguards adversely affect the lawyer's ability to represent clients (e.g., by making a device or important piece of software excessively difficult to use). A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent to forgo security measures that would otherwise be required by this Rule. Whether a lawyer may be required to take additional steps to safeguard a client's information in order to comply with other law, such as state and federal laws that govern data privacy or that impose notification requirements upon the loss of, or unauthorized access to, electronic information, is beyond the scope of these Rules. For a lawyer's duties when sharing information with nonlawyers outside the lawyer's own firm, see rule 5.3, Comments [3]-[4].

[19] When transmitting a communication that includes information relating to the representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients. This duty, however, does not require that the lawyer use special security measures if the method of communication affords a reasonable expectation of privacy. Special circumstances, however, may warrant special precautions. Factors to be considered in determining the reasonableness of the lawyer's expectation of confidentiality include the sensitivity of the information and the extent to which the privacy of the communication is protected by law or by a confidentiality agreement. A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent to the use of a means of communication that would otherwise be prohibited by this Rule. Whether a lawyer may be required to take additional steps in order to comply with other law, such as state and federal laws that govern data privacy, is beyond the scope of these Rules.

Former Client

[20] The duty of confidentiality continues after the client-lawyer relationship has terminated. See Rule 1.9(c)(2). See Rule 1.9(c)(1) for the prohibition against using such information to the disadvantage of the former client.

[21] Paragraph (d) is an addition to ABA Model Rule 1.6 and provides for confidentiality of information between lawyers providing assistance to other lawyers under an Utah State Bar endorsed lawyer assistance program.