

1 **Rule 1.0. Terminology.**

2 (a) “Belief” or “believes” denotes that the person involved actually supposed the fact
3 in question to be true. A person’s belief may be inferred from circumstances.

4 (b) “Confirmed in writing,” when used in reference to the informed consent of a person,
5 denotes informed consent that is given in writing by the person or a writing that a lawyer
6 promptly transmits to the person confirming an oral informed consent. See paragraph
7 (g) for the definition of “informed consent.” If it is not feasible to obtain or transmit the
8 writing at the time the person gives informed consent, then the lawyer must obtain or
9 transmit it within a reasonable time thereafter.

10 (c) “Consult” or “consultation” denotes communication of information reasonably
11 sufficient to permit the client to appreciate the significance of the matter in question.

12 (d) “Fee sharing” denotes the division of a legal fee between persons who are not in the
13 same firm.

14 (e) “Firm” or “law firm” denotes a lawyer or lawyers in a law partnership,
15 professional corporation, sole proprietorship or other association authorized to practice
16 law; or lawyers employed in a legal services organization or the legal department of a
17 corporation or other organization.

18 (f) “Fraud” or “fraudulent” denotes conduct that is fraudulent under the substantive
19 or procedural law of the applicable jurisdiction and has a purpose to deceive.

20 (g) “Informed consent” denotes the agreement by a person to a proposed course of
21 conduct after the lawyer has communicated adequate information and explanation about
22 the material risks of and reasonably available alternatives to the proposed course of
23 conduct.

24 (h) “Knowingly,” “known” or “knows” denotes actual knowledge of the fact in
25 question. A person’s knowledge may be inferred from circumstances.

26 (ih) "Lawyer" denotes lawyers licensed to practice law in any jurisdiction of the United
27 States, foreign legal consultants, and licensed paralegal practitioners, insofar as the
28 licensed paralegal practitioner is authorized ~~in Utah Special Practice~~ by [Rule 14-802 of the](#)
29 [Supreme Court Rules of Professional Practice](#), unless provided otherwise.

30 (j) "[Legal fees](#)" denotes ~~refer to the charges~~ that a lawyer or law firm assesses for ~~their~~
31 [legal services](#).

32 ~~(i) "Legal Professional" denotes a lawyer and a licensed paralegal practitioner.~~

33 (kj) "Licensed Paralegal Practitioner" denotes a person authorized by the Utah Supreme
34 Court to provide legal representation under [Rule 15-701](#) of the Supreme Court Rules of
35 Professional Practice.

36 (lk) "~~Partner~~" denotes a member of a partnership, a shareholder in a law firm organized
37 as a professional corporation, or a member of an association authorized to practice law.

38 (ml) "Public-facing office" means an office that is open to the public and provides a
39 service that is available to the population in that location.

40 (nm) "~~Reasonable~~" or "~~reasonably~~" when used in relation to conduct by a lawyer
41 denotes the conduct of a reasonably prudent and competent lawyer.

42 (on) "~~Reasonable belief~~" or "~~reasonably believes~~" when used in reference to a lawyer
43 denotes that the lawyer believes the matter in question and that the circumstances are
44 such that the belief is reasonable.

45 (pe) "~~Reasonably should know~~" when used in reference to a lawyer denotes that a
46 lawyer of reasonable prudence and competence would ascertain the matter in question.

47 (qp) "Reckless" or "recklessly" denotes the conscious disregard of a duty that a lawyer is
48 or reasonably should be aware of, or a conscious indifference to the truth.

49 (q) "[Referral fee](#)" denotes ~~refers to~~ [compensation paid to any person who is not in the](#)
50 [same firm for the sole purpose of referring a legal matter](#).

51 (1~~g~~) "Screened" denotes the isolation of a lawyer from any participation in a matter
52 through the timely imposition of procedures within a firm that are reasonably adequate
53 under the circumstances to protect information that the isolated lawyer is obligated to
54 protect under these Rules or other law.

55 (1~~f~~) "Substantial" when used in reference to degree or extent denotes a material matter
56 of clear and weighty importance.

57 (1~~s~~) "Tribunal" denotes a court, an arbitrator in a binding arbitration proceeding or a
58 legislative body, administrative agency or other body acting in an adjudicative capacity.
59 A legislative body, administrative agency or other body acts in an adjudicative capacity
60 when a neutral official, after the presentation of evidence or legal argument by a party or
61 parties, will render a binding legal judgment directly affecting a party's interests in a
62 particular matter.

63 (1~~u~~) "Writing" or "written" denotes a tangible or electronic record of a communication
64 or representation, including handwriting, typewriting, printing, photostating,
65 photography, audio or video recording and electronic communications. A "signed"
66 writing includes an electronic sound, symbol, or process attached to or logically
67 associated with a writing and executed or adopted by a person with the intent to sign the
68 writing.

69 **Comment**

70 **Confirmed in Writing**

71 [1] If it is not feasible to obtain or transmit a written confirmation at the time the client
72 gives informed consent, then the lawyer must obtain or transmit it within a reasonable
73 time thereafter. If a lawyer has obtained a client's informed consent, the lawyer may act
74 in reliance on that consent so long as it is confirmed in writing within a reasonable time
75 thereafter.

76 **Firm**

77 [2] Whether two or more lawyers constitute a firm within paragraph (e~~d~~) can depend on
78 the specific facts. For example, two practitioners who share office space and occasionally
79 consult or assist each other ordinarily would not be regarded as constituting a firm.
80 However, if they present themselves to the public in a way that suggests that they are a
81 firm or conduct themselves as a firm, they should be regarded as a firm for purposes of
82 these Rules. The terms of any formal agreement between associated lawyers are relevant
83 in determining whether they are a firm, as is the fact that they have mutual access to
84 information concerning the clients they serve. Furthermore, it is relevant in doubtful
85 cases to consider the underlying purpose of the rule that is involved. A group of lawyers
86 could be regarded as a firm for purposes of the rule that the same lawyer should not
87 represent opposing parties in litigation, while it might not be so regarded for purposes of
88 the rule that information acquired by one lawyer is attributed to another.

89 [3] With respect to the law department of an organization, including the government,
90 there is ordinarily no question that the members of the department constitute a firm
91 within the meaning of the Rules of Professional Conduct. There can be uncertainty,
92 however, as to the identity of the client. For example, it may not be clear whether the law
93 department of a corporation represents a subsidiary or an affiliated corporation, as well
94 as the corporation by which the members of the department are directly employed. A
95 similar question can arise concerning an unincorporated association and its local
96 affiliates.

97 [4] Similar questions can also arise with respect to lawyers in legal aid and legal services
98 organizations. Depending upon the structure of the organization, the entire organization
99 or different components of it may constitute a firm or firms for purposes of these Rules.

100 **Fraud**

101 [5] When used in these Rules, the terms "fraud" or "fraudulent" refer to conduct that
102 is characterized as such under the substantive or procedural law of the applicable
103 jurisdiction and has a purpose to deceive. This does not include merely negligent
104 misrepresentation or negligent failure to apprise another of relevant information. For

105 purposes of these Rules, it is not necessary that anyone has suffered damages or relied
106 on the misrepresentation or failure to inform.

107 **Informed Consent**

108 [6] Many of the Rules of Professional Conduct require the lawyer to obtain the informed
109 consent of a client or other person (e.g., a former client or, under certain circumstances, a
110 prospective client) before accepting or continuing representation or pursuing a course of
111 conduct. See, e.g, Rules [1.2\(c\)](#), [1.6\(a\)](#), [1.7\(b\)](#), [1.8](#), [1.9\(b\)](#), [1.12\(a\)](#), and [1.18\(d\)](#). The
112 communication necessary to obtain such consent will vary according to the rule involved
113 and the circumstances giving rise to the need to obtain informed consent. Other rules
114 require a lawyer to make reasonable efforts to ensure that the client or other person
115 possesses information reasonably adequate to make an informed decision. See, e.g., Rules
116 [1.4\(b\)](#) and [1.8](#). Ordinarily, this will require communication that includes a disclosure of
117 the facts and circumstances giving rise to the situation, any explanation reasonably
118 necessary to inform the client or other person of the material advantages and
119 disadvantages of the proposed course of conduct and a discussion of the client's or other
120 person's options and alternatives. In some circumstances it may be appropriate for a
121 lawyer to advise a client or other person to seek the advice of other counsel. A lawyer
122 need not inform a client or other person of facts or implications already known to the
123 client or other person; nevertheless, a lawyer who does not personally inform the client
124 or other person assumes the risk that the client or other person is inadequately informed
125 and the consent is invalid. In determining whether the information and explanation
126 provided are reasonably adequate, relevant factors include whether the client or other
127 person is experienced in legal matters generally and in making decisions of the type
128 involved, and whether the client or other person is independently represented by other
129 counsel in giving the consent. Normally, such persons need less information and
130 explanation than others, and generally a client or other person who is independently
131 represented by other counsel in giving the consent should be assumed to have given
132 informed consent.

133 [7] Obtaining informed consent will usually require an affirmative response by the client
134 or other person. In general, a lawyer may not assume consent from a client's or other
135 person's silence. Consent may be inferred, however, from the conduct of a client or other
136 person who has reasonably adequate information about the matter. A number of rules
137 require that a person's consent be confirmed in writing. See Rules [1.7\(b\)](#) and [1.9\(a\)](#). For
138 a definition of "writing" and "confirmed in writing," see paragraphs (u†) and (b). Other
139 rules require that a client's consent be obtained in a writing signed by the client. See, e.g.,
140 [Rules 1.8\(a\)](#) and (g). For a definition of "signed," see paragraph (u†).

141 Legal Fees

142 [\[8\] Legal fees may include charges for time spent on legal research, preparation of legal](#)
143 [documents, court appearances, and advice on legal matters. Fees are typically negotiated](#)
144 [and agreed upon between the lawyer and client in advance of the legal work and may be](#)
145 [based on factors such as ~~the complexity of the legal issue, the lawyer's experience and~~](#)
146 [~~expertise, and the amount of time and resources required to handle the matter.~~those listed](#)
147 [in Rule 1.5.](#)

148 Referral Fees

149 [\[9\] Fees paid for generating consumer interest for legal services with the goal of](#)
150 [converting the interests into clients, including lead generation service providers, online](#)
151 [banner advertising, pay-per-click marketing, and similar marketing or advertising fees](#)
152 [are not referral fees for purposes of these Rules. Small gifts of marginal or minimal value](#)
153 [are not considered compensation under this rule.](#)

154 **Screened**

155 [\[108\]](#) This definition applies to situations where screening of a personally disqualified
156 lawyer is permitted to remove imputation of a conflict of interest under Rules [1.10](#), [1.11](#),
157 [1.12](#) or [1.18](#).

158 [\[119\]](#) The purpose of screening is to assure the affected parties that confidential
159 information known by the personally disqualified lawyer remains protected. The

160 personally disqualified lawyer should acknowledge the obligation not to communicate
161 with any of the other lawyers in the firm with respect to the matter. Similarly, other
162 lawyers in the firm who are working on the matter should be informed that the screening
163 is in place and that they may not communicate with the personally disqualified lawyer
164 with respect to the matter. Additional screening measures that are appropriate for the
165 particular matter will depend on the circumstances. To implement, reinforce, and remind
166 all affected lawyers of the presence of the screening, it may be appropriate for the firm to
167 undertake such procedures as a written undertaking by the screened lawyer to avoid any
168 communication with other firm personnel and any contact with any firm files or other
169 information, including information in electronic form, relating to the matter, written
170 notice and instructions to all other firm personnel forbidding any communication with
171 the screened lawyer relating to the matter, denial of access by the screened lawyer to firm
172 files or other information, including information in electronic form, relating to the matter
173 and periodic reminders of the screen to the screened lawyer and all other firm personnel.

174 [\[1210\]](#) In order to be effective, screening measures must be implemented as soon as
175 practical after a lawyer or law firm knows or reasonably should know that there is a need
176 for screening.

177 ~~[10a] The definitions of “consult” and “consultation,” while deleted from the ABA Model~~
178 ~~Rule 1.0, have been retained in the Utah Rule because “consult” and “consultation” are~~
179 ~~used in the rules. See, e.g., Rules 1.2, 1.4, 1.14, and 1.18.~~ [\[13\] This rule differs from the ABA](#)
180 [Model Rule.](#)

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