

Agenda

Supreme Court's Advisory Committee on the Rules of Professional Conduct

May 18, 2020

5:00 to 7:00 p.m.

Via Zoom Conferencing

Welcome and approval of minutes	Tab 1	Simón Cantarero, Chair
Chairman's report <ul style="list-style-type: none">Supreme Court ConferenceOther business		Simón Cantarero
Rule 14-301: <ul style="list-style-type: none">"expressions of discrimination"toward "others""law-related activities"Keeping "standards"	Tab 2	Simón Cantarero, Nancy Sylvester
Rule 6.5: Review of subcommittee proposal <ul style="list-style-type: none">Brief discussion and assignment to subcommittee (Hon. Michael Edwards (Chair), Phillip Lowry, Vanessa Ramos, Joni Jones, and Katherine Venti)Defining "short-term limited legal services"Bringing exemplary comments up into rule?	Tab 3	Simón Cantarero, Nancy Sylvester
Regulatory Reform: <ul style="list-style-type: none">Overview of comments thus far (comment period closes July 23)Assignment to Rule 5.4 subcommittee (Cory Talbot (Chair), Judge Gardner, Simón Cantarero, Gary Sackett, Tim Conde, and Steve Johnson)		Cory Talbot, Simón Cantarero

2020 Meeting Schedule:

June 15

August 17

September 21

October 19

November 16

Committee Webpage: <http://www.utcourts.gov/committees/RulesPC/>

Tab 1

**MINUTES OF THE SUPREME COURT'S
ADVISORY COMMITTEE ON THE RULES OF PROFESSIONAL CONDUCT**

April 20, 2020

The meeting commenced at 5:05 p.m. via Zoom meeting

Committee Members Attending:

Simón Cantarero, Chair
Adam Bondy
Daniel Brough
Tim Conde
Hon. Michael Edwards
Hon. James Gardner
Steven G. Johnson (Emeritus)
Joni Jones
Philip Lowry
Alyson Carter McAllister
Vanessa Ramos
Austin Riter
Cristie Roach
Gary Sackett (Emeritus)
Cory Talbot
Billy Walker

Not Present

Hon. Trent Nelson (Emeritus)
Amy Oliver
Padma Veeru-Collings
Katherine Venti

Staff:

Nancy Sylvester

Recording Secretary:

Jurhee Rice

Committee Webpage: <http://www.utcourts.gov/committees/RulesPC/>

I. Welcome and Approval of Minutes

Simón Cantarero determined quorum and welcomed the committee.

Motion:

Vanessa Ramos moved to approve the minutes from the February 03, 2020 meeting with minor changes. Alyson McAllister seconded the motion. The motion passed unanimously.

II. Rules 1.5, 5.4A, 5.4B, 7.1-7.5, and Standing Order 15: Report from Simón Cantarero & Steven Johnson

Simón Cantarero reported on his meeting with the Court in March 2020.

The Court changed language in Rule 5.4(A)(c), from “employ” to “retain” based on an employment case. The Court has adopted the Rules and will make them public for a 90-day comment period. Standing Order 15 has also been approved and will be made available to the public along with Rules 5.4 and 1.5.

Simón Cantarero recommended the Rules of Professional Conduct Committee acquaint themselves with incoming website comments so such observations may be fully addressed. Simón Cantarero also recommended Committee members provide pertinent formal and informal feedback obtained outside of the formal website comment avenue to Nancy Sylvester and/or Simón Cantarero for compilation and data analysis.

III. Rule 8.4 and 14-301: Report from Subcommittee: “person” vs. “participant” in 14-301(3): discuss the use of “Rules” versus “Standards.”

Adam Bondy reported on proposals of the Rule 8.4 subcommittee. The subcommittee recommended the following proposed changes to Rule 8.4:

- a. The subcommittee proposes changing Standard 14-301 into a Rule under Rule 8.4(h), making it an extension of the Rules of Professional Conduct prohibiting discriminatory conduct.
- b. In order to reconcile the comment and rule, the subcommittee agreed and recommends to change the word “participant” to “person” under Standard 14-301(3).

Motion:

Alyson McAllister moved to approve Rule 8.4(h) based on the agenda changing the word standard to rule and moved to approve 14-301(3) under 8.4(h). Joni Jones seconded the motion. The motion to change the word standard to rules passed in the majority.

IV. Rule 6.5: Review of subcommittee proposal

Hon. Michael Edwards reported on the proposals of the Rule 6.5 subcommittee. The subcommittee recommended removal of language limiting expansion of legal services. The subcommittee’s recommendation would allow the expansion of short-

term legal services to both low-bono and pro-bono services. The subcommittee recommended the following changes to Rule 6.5:

- a. Rule 6.5 will cover one-time interactions like limited representation not covered under attorney-client
- b. Removal of the first sentence of Rule 6.5, Comment 2, as providing informed consent is presumed.
- c. Addition of Comment 6 to Rule 6.5 to clarify this rule differs from ABA Model Rule 6.5 to the extent that it changes the title, changes paragraph (a), adds new paragraph (c), modifies comments [1] and [2], and contains comment [6].

Motion:

Cristie Roach moved to approve the motion on Rule 6.5 regarding short term legal services. Hon. James Gardner seconded the motion. The motion passed unanimously.

V. LPP rule changes accompanying regulatory reform rules: 5.4, 1.5, 7.1-7.5: Report from Steve Johnson

Steven Johnson reported on the application of regulatory reform rules to LPPs
Steven Johnson recommended the following:

- a. At least one LPP be a member of the RPC committee:
- b. RPC should suggest LPP rules be changed when attorney rules are changed
- c. Court needs to decide on exact procedure for LPP rule approval.

With the adoption of Rules 8.4(h) and 5.4(b), LPPs may be able to provide more legal services through the regulatory sandbox, expanding to areas of practice above Rule 14-802.

VI. Other business

None.

VII. Scheduling of Future Meetings

May 18, 2020 at 5:00 p.m.
June 15, 2020 at 5:00 p.m.
July 20-canceled
August 17, 2020 at 5:00 p.m.

VIII. Adjournment

The meeting adjourned at 6:14 p.m.

Tab 2

14-301(3) Proposal Presented to the Court:

3. Lawyers shall not, without an adequate factual basis, attribute to other counsel or the court improper motives, purpose, or conduct. Neither written submissions nor oral presentations should disparage the integrity, intelligence, morals, ethics, or personal behavior of any person unless such matters are directly relevant under controlling substantive law.

Lawyers shall avoid hostile, demeaning, humiliating, or discriminatory conduct when interacting with any other counsel, parties, judges, court personnel, witnesses, and ~~others~~. Discriminatory conduct includes ~~all expressions of discrimination~~ against protected classes as enumerated in the Utah Antidiscrimination Act of 1965, Utah Code section 34A-5-106(1)(a), and federal statutes, as amended from time to time.

Comment: Lawyers should refrain from expressing scorn, superiority, or disrespect. Legal process should not be issued merely to annoy, humiliate, intimidate, or harass. Special care should be taken to protect witnesses, especially those who are disabled or under the age of 18, from harassment or undue contention. Lawyers should refrain from acting upon or manifesting bigotry, discrimination, or prejudice toward any person in the legal process, even if a client requests it.

Cross-References: R. Prof. Cond. Preamble [5]; R. Prof. Cond. 3.1; R. Prof. Cond. 3.5; R. Prof. Cond. 8.4; R. Civ. P. 10(h); R. Civ. P. 12(f); R. App. P. 24(k); R. Crim. P. 33(a); Fed. R. Civ. P. 12(f).

Comment [NS1]: Who are the others?
Comment [NS2]: free speech, due process concerns. Issues of notice re the term "expressions of discrimination"
Discriminatory conduct means discrimination against the protected classes enumerated.....

14-301(3) Proposal Based on Court Discussions:

3. Lawyers shall not, without an adequate factual basis, attribute to other counsel or the court improper motives, purpose, or conduct. Neither written submissions nor oral presentations ~~should~~ shall disparage the integrity, intelligence, morals, ethics, or personal behavior of any person unless such matters are directly relevant under controlling substantive law.

Lawyers shall avoid hostile, demeaning, humiliating, or discriminatory conduct ~~when interacting with~~ in law-related activities toward any other counsel legal practitioners, parties, judges, court personnel, witnesses, and others. Discriminatory conduct includes ~~all expressions of discrimination~~ against protected classes as those classes are enumerated in the Utah Antidiscrimination Act of 1965, Utah Code section 34A-5-106(1)(a), and federal statutes, as amended from time to time.

Comment: Lawyers should refrain from expressing scorn, superiority, or disrespect. Legal process should not be issued merely to annoy, humiliate, intimidate, or harass. Special care should be taken to protect witnesses, especially those who are disabled or under the age of 18, from harassment or undue contention. Lawyers should refrain from acting upon or manifesting bigotry, discrimination, or prejudice toward any person in the legal process, even if a client requests it.

Cross-References: R. Prof. Cond. Preamble [5]; R. Prof. Cond. 3.1; R. Prof. Cond. 3.5; R. Prof. Cond. 8.4; R. Civ. P. 10(h); R. Civ. P. 12(f); R. App. P. 24(k); R. Crim. P. 33(a); Fed. R. Civ. P. 12(f).

Comment [NS3]: What does this term, "law-related activities," encompass?
Comment [NS4]: Our intention is to say, "Don't discriminate against protected classes, whether in an employment setting or not." Does this do that?

1 | **Rule 14-301. ~~Standards~~Rules of Professionalism and Civility.**

2 | **Preamble**

3 | A lawyer's conduct should be characterized at all times by personal courtesy and professional
4 | integrity in the fullest sense of those terms. In fulfilling a duty to represent a client vigorously as lawyers,
5 | we must be mindful of our obligations to the administration of justice, which is a truth-seeking process
6 | designed to resolve human and societal problems in a rational, peaceful, and efficient manner. We must
7 | remain committed to the rule of law as the foundation for a just and peaceful society.

8 | Conduct that may be characterized as uncivil, abrasive, abusive, hostile, or obstructive impedes the
9 | fundamental goal of resolving disputes rationally, peacefully, and efficiently. Such conduct tends to delay
10 | and often to deny justice.

11 | Lawyers should exhibit courtesy, candor and cooperation in dealing with the public and participating
12 | in the legal system. The following ~~standards~~rules are designed to encourage lawyers to meet their
13 | obligations to each other, to litigants and to the system of justice, and thereby achieve the twin goals of
14 | civility and professionalism, both of which are hallmarks of a learned profession dedicated to public
15 | service.

16 | Lawyers should educate themselves on the potential impact of using digital communications and
17 | social media, including the possibility that communications intended to be private may be republished or
18 | misused. Lawyers should understand that digital communications in some circumstances may have a
19 | widespread and lasting impact on their clients, themselves, other lawyers, and the judicial system.

20 | We expect judges and lawyers will make mutual and firm commitments to these ~~standards~~rules.
21 | Adherence is expected as part of a commitment by all participants to improve the administration of justice
22 | throughout this State. We further expect lawyers to educate their clients regarding these ~~standards~~rules
23 | and judges to reinforce this whenever clients are present in the courtroom by making it clear that such
24 | tactics may hurt the client's case.

25 | Although for ease of usage the term "court" is used throughout, these ~~standards~~rules should be
26 | followed by all judges and lawyers in all interactions with each other and in any proceedings in this State.
27 | Copies may be made available to clients to reinforce our obligation to maintain and foster these
28 | ~~standards~~rules. Nothing in these ~~standards~~rules supersedes or detracts from existing disciplinary codes
29 | or ~~standards~~rules of conduct.

30 | *Cross-References: R. Prof. Cond. Preamble [1], [13]; R. Civ. P. 1; R. Civ. P. 65B(b)(5); R. Crim. P.*
31 | *1(b); R. Juv. P. 1(b); R. Third District Court 10-1-306; Fed. R. Civ. P. 1; DUCivR 83-1.1(g).*

32 | 1. Lawyers shall advance the legitimate interests of their clients, without reflecting any ill-will that
33 | clients may have for their adversaries, even if called upon to do so by another. Instead, lawyers shall treat
34 | all other counsel, parties, judges, witnesses, and other participants in all proceedings in a courteous and
35 | dignified manner.

36 | **Comment:** Lawyers should maintain the dignity and decorum of judicial and administrative
37 | proceedings, as well as the esteem of the legal profession. Respect for the court includes lawyers' dress

38 and conduct. When appearing in court, lawyers should dress professionally, use appropriate language,
39 and maintain a professional demeanor. In addition, lawyers should advise clients and witnesses about
40 proper courtroom decorum, including proper dress and language, and should, to the best of their ability,
41 prevent clients and witnesses from creating distractions or disruption in the courtroom.

42 The need for dignity and professionalism extends beyond the courtroom. Lawyers are expected to
43 refrain from inappropriate language, maliciousness, or insulting behavior in depositions, meetings with
44 opposing counsel and clients, telephone calls, email, and other exchanges. They should use their best
45 efforts to instruct their clients and witnesses to do the same.

46 *Cross-References: R. Prof. Cond. 1.4; R. Prof. Cond. 1.16(a)(1); R. Prof. Cond. 2.1; R. Prof. Cond.*
47 *3.1; R. Prof. Cond. 3.2; R. Prof. Cond. 3.3(a)(1); R. Prof. Cond. 3.4; R. Prof. Cond. 3.5(d); R. Prof. Cond.*
48 *3.8; R. Prof. Cond. 3.9; R. Prof. Cond. 4.1(a); R. Prof. Cond. 4.4(a); R. Prof. Cond. 8.4(d); R. Civ. P.*
49 *10(h); R. Civ. P. 12(f); R. App. P. 24(k); R. Crim. P. 33(a); Fed. R. Civ. P. 12(f).*

50 2. Lawyers shall advise their clients that civility, courtesy, and fair dealing are expected. They are
51 tools for effective advocacy and not signs of weakness. Clients have no right to demand that lawyers
52 abuse anyone or engage in any offensive or improper conduct.

53 *Cross-References: R. Prof. Cond. Preamble [5]; R. Prof. Cond. 1.2(a); R. Prof. Cond. 1.2(d); R. Prof.*
54 *Cond. 1.4(a)(5).*

55 3. Lawyers shall not, without an adequate factual basis, attribute to other counsel or the court
56 improper motives, purpose, or conduct. Neither written submissions nor oral presentations shall
57 disparage the integrity, intelligence, morals, ethics, or personal behavior of any person unless such
58 matters are directly relevant under controlling substantive law.

59 ~~Lawyers should shall avoid hostile, demeaning, or humiliating, or discriminatory conduct in law related~~
60 ~~activities words in written and oral communications with toward other legal practitioners, parties, judges,~~
61 ~~court personnel, witnesses, and others. adversaries~~ Neither written submissions nor oral presentations
62 should disparage the integrity, intelligence, morals, ethics, or personal behavior of an adversary unless
63 such matters are directly relevant under controlling substantive law. Discriminatory conduct includes all
64 discrimination against protected classes as those classes are enumerated in the Utah Antidiscrimination
65 Act of 1965, Utah Code section 34A-5-106(1)(a), and federal statutes, as amended from time to time.

66 **Comment:** Lawyers should refrain from expressing scorn, superiority, or disrespect. Legal process
67 should not be issued merely to annoy, humiliate, intimidate, or harass. Special care should be taken to
68 protect witnesses, especially those who are disabled or under the age of 18, from harassment or undue
69 contention. Lawyers should refrain from acting upon or manifesting bigotry, discrimination, or prejudice
70 toward any person in the legal process, even if a client requests it.

71 ~~Hostile, demeaning, and humiliating communications include all expressions of discrimination on the~~
72 ~~basis of race, religion, gender, sexual orientation, age, handicap, veteran status, or national origin, or~~
73 ~~casting aspersions on physical traits or appearance. Lawyers should refrain from acting upon or~~
74 ~~manifesting bigotry, discrimination, or prejudice toward any participant in the legal process, even if a client~~

75 | ~~requests it. Lawyers should refrain from expressing scorn, superiority, or disrespect. Legal process should~~
76 | ~~not be issued merely to annoy, humiliate, intimidate, or harass. Special care should be taken to protect~~
77 | ~~witnesses, especially those who are disabled or under the age of 18, from harassment or undue~~
78 | ~~contention.~~

79 | *Cross-References: R. Prof. Cond. Preamble [5]; R. Prof. Cond. 3.1; R. Prof. Cond. 3.5; R. Prof. Cond.*
80 | *8.4; R. Civ. P. 10(h); R. Civ. P. 12(f); R. App. P. 24(k); R. Crim. P. 33(a); Fed. R. Civ. P. 12(f).*

81 | 4. Lawyers shall never knowingly attribute to other counsel a position or claim that counsel has not
82 | taken or seek to create such an unjustified inference or otherwise seek to create a “record” that has not
83 | occurred.

84 | *Cross-References: R. Prof. Cond. 3.1; R. Prof. Cond. 3.3(a)(1); R. Prof. Cond. 3.5(a); R. Prof. Cond.*
85 | *8.4(c); R. Prof. Cond. 8.4(d).*

86 | 5. Lawyers shall not lightly seek sanctions and will never seek sanctions against or disqualification of
87 | another lawyer for any improper purpose.

88 | *Cross-References: R. Prof. Cond. 3.1; R. Prof. Cond. 3.2; R. Prof. Cond. 8.4(c); R. Prof. Cond. 8.4(d);*
89 | *R. Civ. P. 11(c); R. Civ. P. 16(d); R. Civ. P. 37(a); Fed. R. Civ. P. 11(c)(2).*

90 | 6. Lawyers shall adhere to their express promises and agreements, oral or written, and to all
91 | commitments reasonably implied by the circumstances or by local custom.

92 | *Cross-References: R. Prof. Cond. 1.1; R. Prof. Cond. 1.3; R. Prof. Cond. 1.4(a), (b); R. Prof. Cond.*
93 | *1.6(a); R. Prof. Cond. 1.9; R. Prof. Cond. 1.13(a), (b); R. Prof. Cond. 1.14; R. Prof. Cond. 1.15; R. Prof.*
94 | *Cond. 1.16(d); R. Prof. Cond. 1.18(b), (c); R. Prof. Cond. 2.1; R. Prof. Cond. 3.2; R. Prof. Cond. 3.3; R.*
95 | *Prof. Cond. 3.4(c); R. Prof. Cond. 3.8; R. Prof. Cond. 5.1; R. Prof. Cond. 5.3; R. Prof. Cond. 8.3(a), (b); R.*
96 | *Prof. Cond. 8.4(c); R. Prof. Cond. 8.4(d).*

97 | 7. When committing oral understandings to writing, lawyers shall do so accurately and completely.
98 | They shall provide other counsel a copy for review, and never include substantive matters upon which
99 | there has been no agreement, without explicitly advising other counsel. As drafts are exchanged, lawyers
100 | shall bring to the attention of other counsel changes from prior drafts.

101 | **Comment:** When providing other counsel with a copy of any negotiated document for review, a
102 | lawyer should not make changes to the written document in a manner calculated to cause the opposing
103 | party or counsel to overlook or fail to appreciate the changes. Changes should be clearly and accurately
104 | identified in the draft or otherwise explicitly brought to the attention of other counsel. Lawyers should be
105 | sensitive to, and accommodating of, other lawyers’ inability to make full use of technology and should
106 | provide hard copy drafts when requested and a redline copy, if available.

107 | *Cross-References: R. Prof. Cond. 3.4(a); R. Prof. Cond. 4.1(a); R. Prof. Cond. 8.4(c); R. Prof. Cond.*
108 | *8.4(d); R. App. P. 11(f).*

109 | 8. When permitted or required by court rule or otherwise, lawyers shall draft orders that accurately
110 | and completely reflect the court’s ruling. Lawyers shall promptly prepare and submit proposed orders to

111 other counsel and attempt to reconcile any differences before the proposed orders and any objections are
112 presented to the court.

113 *Cross-References: R. Prof. Cond. 3.2; R. Prof. Cond. 8.4; R. Civ. P. 7(f); R. Third District Court 10-1-*
114 *306(6).*

115 9. Lawyers shall not hold out the potential of settlement for the purpose of foreclosing discovery,
116 delaying trial, or obtaining other unfair advantage, and lawyers shall timely respond to any offer of
117 settlement or inform opposing counsel that a response has not been authorized by the client.

118 *Cross-References: R. Prof. Cond. 3.2; R. Prof. Cond. 3.4(a); R. Prof. Cond. 4.1(a); R. Prof. Cond.*
119 *8.4(c); R. Prof. Cond. 8.4(d).*

120 10. Lawyers shall make good faith efforts to resolve by stipulation undisputed relevant matters,
121 particularly when it is obvious such matters can be proven, unless there is a sound advocacy basis for not
122 doing so.

123 *Cross-References: R. Prof. Cond. 3.1; R. Prof. Cond. 3.2; R. Prof. Cond. 3.4(d); R. Prof. Cond.*
124 *8.4(d); R. Third District Court 10-1-306 (1)(A); Fed. R. Civ. P. 16(2)(C).*

125 11. Lawyers shall avoid impermissible ex parte communications.

126 *Cross-References: R. Prof. Cond. 1.2; R. Prof. Cond. 2.2; R. Prof. Cond. 2.9; R. Prof. Cond. 3.5; R.*
127 *Prof. Cond. 5.1; R. Prof. Cond. 5.3; R. Prof. Cond. 8.4(a); R. Prof. Cond. 8.4(d); R. Civ. P. 77(b); R. Juv.*
128 *P. 2.9(A); Fed. R. Civ. P. 77(b).*

129 12. Lawyers shall not send the court or its staff correspondence between counsel, unless such
130 correspondence is relevant to an issue currently pending before the court and the proper evidentiary
131 foundations are met or as such correspondence is specifically invited by the court.

132 *Cross-References: R. Prof. Cond. 3.5(a); R. Prof. Cond. 3.5(b); R. Prof. Cond. 5.1; R. Prof. Cond.*
133 *5.3; R. Prof. Cond. 8.4(a); R. Prof. Cond. 8.4(d).*

134 13. Lawyers shall not knowingly file or serve motions, pleadings or other papers at a time calculated
135 to unfairly limit other counsel's opportunity to respond or to take other unfair advantage of an opponent, or
136 in a manner intended to take advantage of another lawyer's unavailability.

137 *Cross-References: R. Prof. Cond. 8.4(c); R. Juv. P. 19.*

138 14. Lawyers shall advise their clients that they reserve the right to determine whether to grant
139 accommodations to other counsel in all matters not directly affecting the merits of the cause or prejudicing
140 the client's rights, such as extensions of time, continuances, adjournments, and admissions of facts.
141 Lawyers shall agree to reasonable requests for extension of time and waiver of procedural formalities
142 when doing so will not adversely affect their clients' legitimate rights. Lawyers shall never request an
143 extension of time solely for the purpose of delay or to obtain a tactical advantage.

144 **Comment:** Lawyers should not evade communication with other counsel, should promptly
145 acknowledge receipt of any communication, and should respond as soon as reasonably possible.
146 Lawyers should only use data-transmission technologies as an efficient means of communication and not
147 to obtain an unfair tactical advantage. Lawyers should be willing to grant accommodations where the use

148 of technology is concerned, including honoring reasonable requests to retransmit materials or to provide
149 hard copies.

150 Lawyers should not request inappropriate extensions of time or serve papers at times or places
151 calculated to embarrass or take advantage of an adversary.

152 *Cross-References: R. Prof. Cond. 1.2(a); R. Prof. Cond. 2.1; R. Prof. Cond. 3.2; R. Prof. Cond. 8.4;*
153 *R. Juv. P. 54.*

154 15. Lawyers shall endeavor to consult with other counsel so that depositions, hearings, and
155 conferences are scheduled at mutually convenient times. Lawyers shall never request a scheduling
156 change for tactical or unfair purpose. If a scheduling change becomes necessary, lawyers shall notify
157 other counsel and the court immediately. If other counsel requires a scheduling change, lawyers shall
158 cooperate in making any reasonable adjustments.

159 **Comment:** When scheduling and attending depositions, hearings, or conferences, lawyers should be
160 respectful and considerate of clients' and adversaries' time, schedules, and commitments to others. This
161 includes arriving punctually for scheduled appointments. Lawyers should arrive sufficiently in advance of
162 trials, hearings, meetings, depositions, and other scheduled events to be prepared to commence on time.
163 Lawyers should also advise clients and witnesses concerning the need to be punctual and prepared.
164 Lawyers who will be late for a scheduled appointment or are aware that another participant will be late,
165 should notify the court, if applicable, and all other participants as soon as possible.

166 *Cross-References: R. Prof. Cond. 3.2; R. Prof. Cond. 3.4; R. Prof. Cond. 5.1; R. Prof. Cond. 8.4(a);*
167 *R. Juv. P. 20; R. Juv. P. 20A.*

168 16. Lawyers shall not cause the entry of a default without first notifying other counsel whose identity is
169 known, unless their clients' legitimate rights could be adversely affected.

170 *Cross-References: R. Prof. Cond. 8.4; R. Civ. P. 55(a); Fed. R. Civ. P. 55(b)(2).*

171 17. Lawyers shall not use or oppose discovery for the purpose of harassment or to burden an
172 opponent with increased litigation expense. Lawyers shall not object to discovery or inappropriately assert
173 a privilege for the purpose of withholding or delaying the disclosure of relevant and non-protected
174 information.

175 *Cross-References: R. Prof. Cond. 3.1; R. Prof. Cond. 3.2; R. Prof. Cond. 3.4; R. Prof. Cond. 4.1; R.*
176 *Prof. Cond. 4.4(a); R. Prof. Cond. 8.4; R. Civ. P. 26(b)(1); R. Civ. P. 26(b)(8)(A); R. Civ. P. 37(a)(1)(A),*
177 *(D); R. Civ. P. 37(c); R. Crim. P. 16(b); R. Crim. P. 16(c); R. Crim. P. 16(d); R. Crim. P. 16(e); R. Juv. P.*
178 *20; R. Juv. P. 20A; R. Juv. P. 27(b); Fed. R. Civ. P. 26(b)(1); Fed. R. Civ. P. 26(g)(1)(B)(ii), (iii).*

179 18. During depositions lawyers shall not attempt to obstruct the interrogator or object to questions
180 unless reasonably intended to preserve an objection or protect a privilege for resolution by the court.
181 "Speaking objections" designed to coach a witness are impermissible. During depositions or conferences,
182 lawyers shall engage only in conduct that would be appropriate in the presence of a judge.

183 *Cross-References: R. Prof. Cond. 3.2; R. Prof. Cond. 3.3(a)(1); R. Prof. Cond. 3.4; R. Prof. Cond.*
184 *3.5; R. Prof. Cond. 8.4; R. Civ. P. 30(c)(2); R. Juv. P. 20; R. Juv. P. 20A; Fed. R. Civ. P. 30(c)(2); Fed. R.*
185 *Civ. P. 30(d)(2); Fed. R. Civ. P. 30(d)(3)(A).*

186 19. In responding to document requests and interrogatories, lawyers shall not interpret them in an
187 artificially restrictive manner so as to avoid disclosure of relevant and non-protected documents or
188 information, nor shall they produce documents in a manner designed to obscure their source, create
189 confusion, or hide the existence of particular documents.

190 *Cross-References: R. Prof. Cond. 3.2; R. Prof. Cond. 3.4; R. Prof. Cond. 8.4; R. Prof. Cond. 3.4; R.*
191 *Civ. P. 26(b)(1); R. Civ. P. 37; R. Crim. P. 16(a); R. Juv. P. 20; R. Juv. P. 20A; Fed. R. Civ. P. 37(a)(4).*

192 20. Lawyers shall not authorize or encourage their clients or anyone under their direction or
193 supervision to engage in conduct proscribed by these ~~Standards~~Rules.

194

195 Adopted by Supreme Court order October 16, 2003.

196

197

1 **Rule 14-301. Standards of Professionalism and Civility.**

2 **Preamble**

3 A lawyer's conduct should be characterized at all times by personal courtesy and professional
4 integrity in the fullest sense of those terms. In fulfilling a duty to represent a client vigorously as lawyers,
5 we must be mindful of our obligations to the administration of justice, which is a truth-seeking process
6 designed to resolve human and societal problems in a rational, peaceful, and efficient manner. We must
7 remain committed to the rule of law as the foundation for a just and peaceful society.

8 Conduct that may be characterized as uncivil, abrasive, abusive, hostile, or obstructive impedes the
9 fundamental goal of resolving disputes rationally, peacefully, and efficiently. Such conduct tends to delay
10 and often to deny justice.

11 Lawyers should exhibit courtesy, candor and cooperation in dealing with the public and participating
12 in the legal system. The following standards are designed to encourage lawyers to meet their obligations
13 to each other, to litigants and to the system of justice, and thereby achieve the twin goals of civility and
14 professionalism, both of which are hallmarks of a learned profession dedicated to public service.

15 Lawyers should educate themselves on the potential impact of using digital communications and
16 social media, including the possibility that communications intended to be private may be republished or
17 misused. Lawyers should understand that digital communications in some circumstances may have a
18 widespread and lasting impact on their clients, themselves, other lawyers, and the judicial system.

19 We expect judges and lawyers will make mutual and firm commitments to these standards.
20 Adherence is expected as part of a commitment by all participants to improve the administration of justice
21 throughout this State. We further expect lawyers to educate their clients regarding these standards and
22 judges to reinforce this whenever clients are present in the courtroom by making it clear that such tactics
23 may hurt the client's case.

24 Although for ease of usage the term "court" is used throughout, these standards should be followed
25 by all judges and lawyers in all interactions with each other and in any proceedings in this State. Copies
26 may be made available to clients to reinforce our obligation to maintain and foster these standards.
27 Nothing in these standards supersedes or detracts from existing disciplinary codes or standards of
28 conduct.

29 Finally, the term "standard" has historically pointed to the aspirational nature of this rule. But Rule
30 8.4(h) now makes the provisions of this rule mandatory for all lawyers.

31 *Cross-References: R. Prof. Cond. Preamble [1], [13]; R. Civ. P. 1; R. Civ. P. 65B(b)(5); R. Crim. P.*
32 *1(b); R. Juv. P. 1(b); R. Third District Court 10-1-306; Fed. R. Civ. P. 1; DUCivR 83-1.1(g).*

33 1. Lawyers shall advance the legitimate interests of their clients, without reflecting any ill-will that
34 clients may have for their adversaries, even if called upon to do so by another. Instead, lawyers shall treat
35 all other counsel, parties, judges, witnesses, and other participants in all proceedings in a courteous and
36 dignified manner.

37 **Comment:** Lawyers should maintain the dignity and decorum of judicial and administrative
38 proceedings, as well as the esteem of the legal profession. Respect for the court includes lawyers' dress
39 and conduct. When appearing in court, lawyers should dress professionally, use appropriate language,
40 and maintain a professional demeanor. In addition, lawyers should advise clients and witnesses about
41 proper courtroom decorum, including proper dress and language, and should, to the best of their ability,
42 prevent clients and witnesses from creating distractions or disruption in the courtroom.

43 The need for dignity and professionalism extends beyond the courtroom. Lawyers are expected to
44 refrain from inappropriate language, maliciousness, or insulting behavior in depositions, meetings with
45 opposing counsel and clients, telephone calls, email, and other exchanges. They should use their best
46 efforts to instruct their clients and witnesses to do the same.

47 *Cross-References: R. Prof. Cond. 1.4; R. Prof. Cond. 1.16(a)(1); R. Prof. Cond. 2.1; R. Prof. Cond.*
48 *3.1; R. Prof. Cond. 3.2; R. Prof. Cond. 3.3(a)(1); R. Prof. Cond. 3.4; R. Prof. Cond. 3.5(d); R. Prof. Cond.*
49 *3.8; R. Prof. Cond. 3.9; R. Prof. Cond. 4.1(a); R. Prof. Cond. 4.4(a); R. Prof. Cond. 8.4(d); R. Civ. P.*
50 *10(h); R. Civ. P. 12(f); R. App. P. 24(k); R. Crim. P. 33(a); Fed. R. Civ. P. 12(f).*

51 2. Lawyers shall advise their clients that civility, courtesy, and fair dealing are expected. They are
52 tools for effective advocacy and not signs of weakness. Clients have no right to demand that lawyers
53 abuse anyone or engage in any offensive or improper conduct.

54 *Cross-References: R. Prof. Cond. Preamble [5]; R. Prof. Cond. 1.2(a); R. Prof. Cond. 1.2(d); R. Prof.*
55 *Cond. 1.4(a)(5).*

56 3. Lawyers shall not, without an adequate factual basis, attribute to other counsel or the court
57 improper motives, purpose, or conduct. Neither written submissions nor oral presentations shall
58 disparage the integrity, intelligence, morals, ethics, or personal behavior of any person unless such
59 matters are directly relevant under controlling substantive law.

60 Lawyers ~~should~~ shall avoid hostile, demeaning, ~~or humiliating, or discriminatory conduct in law related~~
61 activities words in written and oral communications with toward other legal practitioners, parties, judges,
62 court personnel, witnesses, and others. adversaries ~~Neither written submissions nor oral presentations~~
63 ~~should disparage the integrity, intelligence, morals, ethics, or personal behavior of an adversary unless~~
64 ~~such matters are directly relevant under controlling substantive law~~ Discriminatory conduct includes all
65 discrimination against protected classes as those classes are enumerated in the Utah Antidiscrimination
66 Act of 1965, Utah Code section 34A-5-106(1)(a), and federal statutes, as amended from time to time.

67 **Comment:** Lawyers should refrain from expressing scorn, superiority, or disrespect. Legal process
68 should not be issued merely to annoy, humiliate, intimidate, or harass. Special care should be taken to
69 protect witnesses, especially those who are disabled or under the age of 18, from harassment or undue
70 contention. Lawyers should refrain from acting upon or manifesting bigotry, discrimination, or prejudice
71 toward any person in the legal process, even if a client requests it.

72 ~~Hostile, demeaning, and humiliating communications include all expressions of discrimination on the~~
73 ~~basis of race, religion, gender, sexual orientation, age, handicap, veteran status, or national origin, or~~

74 ~~casting aspersions on physical traits or appearance. Lawyers should refrain from acting upon or~~
75 ~~manifesting bigotry, discrimination, or prejudice toward any participant in the legal process, even if a client~~
76 ~~requests it. Lawyers should refrain from expressing scorn, superiority, or disrespect. Legal process should~~
77 ~~not be issued merely to annoy, humiliate, intimidate, or harass. Special care should be taken to protect~~
78 ~~witnesses, especially those who are disabled or under the age of 18, from harassment or undue~~
79 ~~contention.~~

80 *Cross-References: R. Prof. Cond. Preamble [5]; R. Prof. Cond. 3.1; R. Prof. Cond. 3.5; R. Prof. Cond.*
81 *8.4; R. Civ. P. 10(h); R. Civ. P. 12(f); R. App. P. 24(k); R. Crim. P. 33(a); Fed. R. Civ. P. 12(f).*

82 4. Lawyers shall never knowingly attribute to other counsel a position or claim that counsel has not
83 taken or seek to create such an unjustified inference or otherwise seek to create a “record” that has not
84 occurred.

85 *Cross-References: R. Prof. Cond. 3.1; R. Prof. Cond. 3.3(a)(1); R. Prof. Cond. 3.5(a); R. Prof. Cond.*
86 *8.4(c); R. Prof. Cond. 8.4(d).*

87 5. Lawyers shall not lightly seek sanctions and will never seek sanctions against or disqualification of
88 another lawyer for any improper purpose.

89 *Cross-References: R. Prof. Cond. 3.1; R. Prof. Cond. 3.2; R. Prof. Cond. 8.4(c); R. Prof. Cond. 8.4(d);*
90 *R. Civ. P. 11(c); R. Civ. P. 16(d); R. Civ. P. 37(a); Fed. R. Civ. P. 11(c)(2).*

91 6. Lawyers shall adhere to their express promises and agreements, oral or written, and to all
92 commitments reasonably implied by the circumstances or by local custom.

93 *Cross-References: R. Prof. Cond. 1.1; R. Prof. Cond. 1.3; R. Prof. Cond. 1.4(a), (b); R. Prof. Cond.*
94 *1.6(a); R. Prof. Cond. 1.9; R. Prof. Cond. 1.13(a), (b); R. Prof. Cond. 1.14; R. Prof. Cond. 1.15; R. Prof.*
95 *Cond. 1.16(d); R. Prof. Cond. 1.18(b), (c); R. Prof. Cond. 2.1; R. Prof. Cond. 3.2; R. Prof. Cond. 3.3; R.*
96 *Prof. Cond. 3.4(c); R. Prof. Cond. 3.8; R. Prof. Cond. 5.1; R. Prof. Cond. 5.3; R. Prof. Cond. 8.3(a), (b); R.*
97 *Prof. Cond. 8.4(c); R. Prof. Cond. 8.4(d).*

98 7. When committing oral understandings to writing, lawyers shall do so accurately and completely.
99 They shall provide other counsel a copy for review, and never include substantive matters upon which
100 there has been no agreement, without explicitly advising other counsel. As drafts are exchanged, lawyers
101 shall bring to the attention of other counsel changes from prior drafts.

102 **Comment:** When providing other counsel with a copy of any negotiated document for review, a
103 lawyer should not make changes to the written document in a manner calculated to cause the opposing
104 party or counsel to overlook or fail to appreciate the changes. Changes should be clearly and accurately
105 identified in the draft or otherwise explicitly brought to the attention of other counsel. Lawyers should be
106 sensitive to, and accommodating of, other lawyers’ inability to make full use of technology and should
107 provide hard copy drafts when requested and a redline copy, if available.

108 *Cross-References: R. Prof. Cond. 3.4(a); R. Prof. Cond. 4.1(a); R. Prof. Cond. 8.4(c); R. Prof. Cond.*
109 *8.4(d); R. App. P. 11(f).*

110 8. When permitted or required by court rule or otherwise, lawyers shall draft orders that accurately
111 and completely reflect the court’s ruling. Lawyers shall promptly prepare and submit proposed orders to
112 other counsel and attempt to reconcile any differences before the proposed orders and any objections are
113 presented to the court.

114 *Cross-References: R. Prof. Cond. 3.2; R. Prof. Cond. 8.4; R. Civ. P. 7(f); R. Third District Court 10-1-*
115 *306(6).*

116 9. Lawyers shall not hold out the potential of settlement for the purpose of foreclosing discovery,
117 delaying trial, or obtaining other unfair advantage, and lawyers shall timely respond to any offer of
118 settlement or inform opposing counsel that a response has not been authorized by the client.

119 *Cross-References: R. Prof. Cond. 3.2; R. Prof. Cond. 3.4(a); R. Prof. Cond. 4.1(a); R. Prof. Cond.*
120 *8.4(c); R. Prof. Cond. 8.4(d).*

121 10. Lawyers shall make good faith efforts to resolve by stipulation undisputed relevant matters,
122 particularly when it is obvious such matters can be proven, unless there is a sound advocacy basis for not
123 doing so.

124 *Cross-References: R. Prof. Cond. 3.1; R. Prof. Cond. 3.2; R. Prof. Cond. 3.4(d); R. Prof. Cond.*
125 *8.4(d); R. Third District Court 10-1-306 (1)(A); Fed. R. Civ. P. 16(2)(C).*

126 11. Lawyers shall avoid impermissible ex parte communications.

127 *Cross-References: R. Prof. Cond. 1.2; R. Prof. Cond. 2.2; R. Prof. Cond. 2.9; R. Prof. Cond. 3.5; R.*
128 *Prof. Cond. 5.1; R. Prof. Cond. 5.3; R. Prof. Cond. 8.4(a); R. Prof. Cond. 8.4(d); R. Civ. P. 77(b); R. Juv.*
129 *P. 2.9(A); Fed. R. Civ. P. 77(b).*

130 12. Lawyers shall not send the court or its staff correspondence between counsel, unless such
131 correspondence is relevant to an issue currently pending before the court and the proper evidentiary
132 foundations are met or as such correspondence is specifically invited by the court.

133 *Cross-References: R. Prof. Cond. 3.5(a); R. Prof. Cond. 3.5(b); R. Prof. Cond. 5.1; R. Prof. Cond.*
134 *5.3; R. Prof. Cond. 8.4(a); R. Prof. Cond. 8.4(d).*

135 13. Lawyers shall not knowingly file or serve motions, pleadings or other papers at a time calculated
136 to unfairly limit other counsel’s opportunity to respond or to take other unfair advantage of an opponent, or
137 in a manner intended to take advantage of another lawyer’s unavailability.

138 *Cross-References: R. Prof. Cond. 8.4(c); R. Juv. P. 19.*

139 14. Lawyers shall advise their clients that they reserve the right to determine whether to grant
140 accommodations to other counsel in all matters not directly affecting the merits of the cause or prejudicing
141 the client’s rights, such as extensions of time, continuances, adjournments, and admissions of facts.
142 Lawyers shall agree to reasonable requests for extension of time and waiver of procedural formalities
143 when doing so will not adversely affect their clients’ legitimate rights. Lawyers shall never request an
144 extension of time solely for the purpose of delay or to obtain a tactical advantage.

145 **Comment:** Lawyers should not evade communication with other counsel, should promptly
146 acknowledge receipt of any communication, and should respond as soon as reasonably possible.

147 Lawyers should only use data-transmission technologies as an efficient means of communication and not
148 to obtain an unfair tactical advantage. Lawyers should be willing to grant accommodations where the use
149 of technology is concerned, including honoring reasonable requests to retransmit materials or to provide
150 hard copies.

151 Lawyers should not request inappropriate extensions of time or serve papers at times or places
152 calculated to embarrass or take advantage of an adversary.

153 *Cross-References: R. Prof. Cond. 1.2(a); R. Prof. Cond. 2.1; R. Prof. Cond. 3.2; R. Prof. Cond. 8.4;*
154 *R. Juv. P. 54.*

155 15. Lawyers shall endeavor to consult with other counsel so that depositions, hearings, and
156 conferences are scheduled at mutually convenient times. Lawyers shall never request a scheduling
157 change for tactical or unfair purpose. If a scheduling change becomes necessary, lawyers shall notify
158 other counsel and the court immediately. If other counsel requires a scheduling change, lawyers shall
159 cooperate in making any reasonable adjustments.

160 **Comment:** When scheduling and attending depositions, hearings, or conferences, lawyers should be
161 respectful and considerate of clients' and adversaries' time, schedules, and commitments to others. This
162 includes arriving punctually for scheduled appointments. Lawyers should arrive sufficiently in advance of
163 trials, hearings, meetings, depositions, and other scheduled events to be prepared to commence on time.
164 Lawyers should also advise clients and witnesses concerning the need to be punctual and prepared.
165 Lawyers who will be late for a scheduled appointment or are aware that another participant will be late,
166 should notify the court, if applicable, and all other participants as soon as possible.

167 *Cross-References: R. Prof. Cond. 3.2; R. Prof. Cond. 3.4; R. Prof. Cond. 5.1; R. Prof. Cond. 8.4(a);*
168 *R. Juv. P. 20; R. Juv. P. 20A.*

169 16. Lawyers shall not cause the entry of a default without first notifying other counsel whose identity is
170 known, unless their clients' legitimate rights could be adversely affected.

171 *Cross-References: R. Prof. Cond. 8.4; R. Civ. P. 55(a); Fed. R. Civ. P. 55(b)(2).*

172 17. Lawyers shall not use or oppose discovery for the purpose of harassment or to burden an
173 opponent with increased litigation expense. Lawyers shall not object to discovery or inappropriately assert
174 a privilege for the purpose of withholding or delaying the disclosure of relevant and non-protected
175 information.

176 *Cross-References: R. Prof. Cond. 3.1; R. Prof. Cond. 3.2; R. Prof. Cond. 3.4; R. Prof. Cond. 4.1; R.*
177 *Prof. Cond. 4.4(a); R. Prof. Cond. 8.4; R. Civ. P. 26(b)(1); R. Civ. P. 26(b)(8)(A); R. Civ. P. 37(a)(1)(A),*
178 *(D); R. Civ. P. 37(c); R. Crim. P. 16(b); R. Crim. P. 16(c); R. Crim. P. 16(d); R. Crim. P. 16(e); R. Juv. P.*
179 *20; R. Juv. P. 20A; R. Juv. P. 27(b); Fed. R. Civ. P. 26(b)(1); Fed. R. Civ. P. 26(g)(1)(B)(ii), (iii).*

180 18. During depositions lawyers shall not attempt to obstruct the interrogator or object to questions
181 unless reasonably intended to preserve an objection or protect a privilege for resolution by the court.
182 "Speaking objections" designed to coach a witness are impermissible. During depositions or conferences,
183 lawyers shall engage only in conduct that would be appropriate in the presence of a judge.

184 *Cross-References: R. Prof. Cond. 3.2; R. Prof. Cond. 3.3(a)(1); R. Prof. Cond. 3.4; R. Prof. Cond.*
185 *3.5; R. Prof. Cond. 8.4; R. Civ. P. 30(c)(2); R. Juv. P. 20; R. Juv. P. 20A; Fed. R. Civ. P. 30(c)(2); Fed. R.*
186 *Civ. P. 30(d)(2); Fed. R. Civ. P. 30(d)(3)(A).*

187 19. In responding to document requests and interrogatories, lawyers shall not interpret them in an
188 artificially restrictive manner so as to avoid disclosure of relevant and non-protected documents or
189 information, nor shall they produce documents in a manner designed to obscure their source, create
190 confusion, or hide the existence of particular documents.

191 *Cross-References: R. Prof. Cond. 3.2; R. Prof. Cond. 3.4; R. Prof. Cond. 8.4; R. Prof. Cond. 3.4; R.*
192 *Civ. P. 26(b)(1); R. Civ. P. 37; R. Crim. P. 16(a); R. Juv. P. 20; R. Juv. P. 20A; Fed. R. Civ. P. 37(a)(4).*

193 20. Lawyers shall not authorize or encourage their clients or anyone under their direction or
194 supervision to engage in conduct proscribed by these ~~Standards~~Rules.

195

196 Adopted by Supreme Court order October 16, 2003.

197

198

1 **Rule 8.4. Misconduct.**

2 It is professional misconduct for a lawyer to:

3 (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another
4 to do so, or do so through the acts of another;

5 (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as
6 a lawyer in other respects;

7 (c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;

8 (d) engage in conduct that is prejudicial to the administration of justice;

9 (e) state or imply an ability to influence improperly a government agency or official or to achieve
10 results by means that violate the Rules of Professional Conduct or other law; or

11 (f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial
12 conduct or other law;

13 (g) engage in conduct that is an unlawful, discriminatory, or retaliatory employment practice under
14 Title VII of the Civil Rights Act of 1964 or the Utah Antidiscrimination Act, except that for the purposes of
15 this paragraph and in applying those statutes, "employer" shall mean any person or entity that employs
16 one or more persons; or

17 (h) egregiously violate, or engage in a pattern of repeated violations of Rule 14-301 if such violations
18 harm the lawyer's client or another lawyer's client or are prejudicial to the administration of justice.

19 Comment

20 [1] Lawyers are subject to discipline when they violate or attempt to violate the Rules of Professional
21 Conduct or knowingly assist or induce another to do so through the acts of another, as when they request
22 or instruct an agent to do so on the lawyer's behalf. Paragraph (a), however, does not prohibit a lawyer
23 from advising a client concerning action the client is legally entitled to take.

24 [1a] An act of professional misconduct under Rule 8.4(b), (c), (d), (e), (f), (g), or (h) cannot be counted
25 as a separate violation of Rule 8.4(a) for the purpose of determining sanctions. Conduct that violates
26 other Rules of Professional Conduct, however, may be a violation of Rule 8.4(a) for the purpose of
27 determining sanctions.

28 [2] Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses
29 involving fraud and the offense of willful failure to file an income tax return. However, some kinds of
30 offenses carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving
31 "moral turpitude." That concept can be construed to include offenses concerning some matters of
32 personal morality, such as adultery and comparable offenses, that have no specific connection to fitness
33 for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer
34 should be professionally answerable only for offenses that indicate lack of those characteristics relevant
35 to law practice. Offenses involving violence, dishonesty, breach of trust or serious interference with the
36 administration of justice are in that category. A pattern of repeated offenses, even ones of minor
37 significance when considered separately, can indicate indifference to legal obligation.

38 [3] A lawyer who, in the course of representing a client, knowingly manifests by words or conduct bias
39 or prejudice based upon race;; color;; sex;; pregnancy, childbirth, or pregnancy-related conditions; age, if
40 the individual is 40 years of age or older; religion;; national origin;; disability;; age, sexual orientation;
41 gender identity;; or genetic information socioeconomic status,may violate violates paragraph (d) when
42 such actions are prejudicial to the administration of justice. The protected classes listed in this comment
43 are consistent with those enumerated in the Utah Antidiscrimination Act of 1965, Utah Code Sec. 34A-5-
44 106(1)(a) (2016), and in federal statutes and is not meant to be an exhaustive list as the statutes may be
45 amended from time to time. Legitimate advocacy respecting the foregoing factors does not violate
46 paragraph (d). A trial judge's finding that peremptory challenges were exercised on a discriminatory basis
47 does not alone establish a violation of this rule.

48 ~~[3a] The Standards of Professionalism and Civility approved by the Utah Supreme Court are intended~~
49 ~~to improve the administration of justice. An egregious violation or a pattern of repeated violations of the~~
50 ~~Standards of Professionalism and Civility may support a finding that the lawyer has violated paragraph~~
51 ~~(d).~~

52 [4] The substantive law of antidiscrimination and anti-harassment statutes and case law governs the
53 application of paragraph (g), except that for purposes of determining a violation of paragraph (g), the size
54 of a law firm or number of employees is not a defense. Paragraph (g) does not limit the ability of a lawyer
55 to accept, decline, or, in accordance with Rule 1.16, withdraw from a representation, nor does paragraph
56 (g) preclude legitimate advice or advocacy consistent with these rules. Discrimination or harassment
57 does not need to be previously proven by a judicial or administrative tribunal or fact-finder in order to
58 allege or prove a violation of paragraph (g). Lawyers may discuss the benefits and challenges of diversity
59 and inclusion without violating paragraph (g). Unless otherwise prohibited by law, implementing or
60 declining to implement initiatives aimed at recruiting, hiring, retaining, and advancing employees of
61 diverse backgrounds or from historically underrepresented groups, or sponsoring diverse law student
62 organizations, are not violations of paragraph (g).

63 [5] Paragraphs (g) and (h) do not apply to expression or conduct protected by the First Amendment to
64 the United States Constitution or by Article I of the Utah Constitution.

65 [6] A lawyer does not violate paragraph (g) by limiting the scope or subject matter of the lawyer's
66 practice or by limiting the lawyer's practice to members of underserved populations in accordance with
67 these Rules and other law. A lawyer may charge and collect reasonable fees and expenses for a
68 representation. Rule 1.5(a). Lawyers also should be mindful of their professional obligations under Rule
69 6.1 to provide legal services to those who are unable to pay and their obligation under Rule 6.2 not to
70 avoid appointments from a tribunal except for good cause. See Rule 6.2(a), (b), and (c). A lawyer's
71 representation of a client does not constitute an endorsement by the lawyer of the client's views or
72 activities. See Rule 1.2(b).

73 | ~~[7]~~[4] A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that
74 | no valid obligation exists. The provisions of Rule 1.2(d) concerning a good faith challenge to the validity,
75 | scope, meaning or application of the law apply to challenges of legal regulation of the practice of law.

76 | ~~[8]~~ ~~[5]~~ Lawyers holding public office assume legal responsibilities going beyond those of other
77 | citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of lawyers.
78 | The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian,
79 | agent and officer, director or manager of a corporation or other organization.

80 | [9] This rule differs from ABA Model Rule 8.4 to the extent that it changes paragraph (g), adds new
81 | paragraph (h), and modifies the comments accordingly.

82

Tab 3

**1 Rule 6.5: Short-term Limited Legal Services Nonprofit & Court-Annexed Limited Legal
2 Services Programs**

3 (a) A lawyer who provides short-term limited legal services to a client, normally through a one-time
4 consultation or representation provided through a program sponsored by a nonprofit organization, a
5 government agency, a law school, or a court, without expectation by either the lawyer or the client that the
6 lawyer will provide continuing representation in the matter, under the auspices of a program sponsored by
7 a nonprofit organization or court, provides short-term limited legal services to a client without expectation
8 by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

Comment [NS1]: Is this meant to be exemplary?
Short-term limited legal services should be defined.

9 (1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client
10 involves a conflict of interest; and

11 (2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer
12 in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.

13 (b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by
14 this Rule.

15 (c) Notwithstanding the above, other lawyers in a firm are not disqualified from representing clients
16 whose interests are adverse to a client who received short-term limited legal services from a lawyer in the
17 firm if

18 (c)(1) the lawyer who provided the services is timely screened from the adverse clients' matters and

19 (c)(2) receives no fees from those matters.

20 Comments

21 [1] Legal services organizations, courts and various nonprofit organizations have established
22 programs through which lawyers provide short-term limited legal services — such as advice, a court
23 appearance, or the completion of legal forms – that will assist persons to address their legal problems
24 without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only
25 clinics or pro se counseling programs, a client-lawyer relationship is established, but there is no
26 expectation that the lawyer's representation of the client will continue beyond the limited consultation.
27 Such programs are normally operated under circumstances in which it is not feasible for a lawyer to
28 systematically screen for conflicts of interest as is generally required before undertaking a representation.
29 See, e.g., Rules 1.7, 1.9 and 1.10.

30 [2] ~~A lawyer who provides short-term limited legal services pursuant to this Rule must secure the~~
31 ~~client's informed consent to the limited scope of the representation. See Rule 1.2(e).~~ If a short-term limited
32 representation would not be reasonable under the circumstances, the lawyer may offer advice to the
33 client but must also advise the client of the need for further assistance of counsel. Except as provided in
34 this Rule, the Rules of Professional Conduct, including Rules 1.6 and 1.9(c), are applicable to the limited
35 representation.

Comment [NS2]: Bring some of this language up
into the rule as a definition of short-term legal
services.

36 [3] Because a lawyer who is representing a client in the circumstances addressed by this Rule
37 ordinarily is not able to check systematically for conflicts of interest, paragraph (a) requires compliance
38 with Rules 1.7 or 1.9(a) only if the lawyer knows that the representation presents a conflict of interest for
39 the lawyer, and with Rule 1.10 only if the lawyer knows that another lawyer in the lawyer's firm is
40 disqualified by Rules 1.7 or 1.9(a) in the matter.

41 [4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with
42 other matters being handled by the lawyer's firm, paragraph (b) provides that Rule 1.10 is inapplicable to
43 a representation governed by this Rule except as provided by paragraph (a)(2). Paragraph (a)(2) requires
44 the participating lawyer to comply with Rule 1.10 when the lawyer knows that the lawyer's firm is
45 disqualified by Rules 1.7 or 1.9(a). By virtue of paragraph (b), however, a lawyer's participation in a short-
46 term limited legal services program will not preclude the lawyer's firm from undertaking or continuing the
47 representation of a client with interests adverse to a client being represented under the program's
48 auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to
49 other lawyers participating in the program.

50 [5] If, after commencing a short-term limited representation in accordance with this Rule, a lawyer
51 undertakes to represent the client in the matter on an ongoing basis, Rules 1.7, 1.9(a) and 1.10 become
52 applicable.

53 [6] This Rule differs from ABA Model Rule 6.5 to the extent that it changes the title, changes
54 paragraph (a), adds new paragraph (c), modifies comments [1] and [2], and contains comment [6].

55

56

57

58