

Agenda

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

June 7, 2021

5:00 to 7:00 p.m.

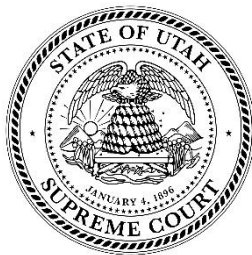
Via Webex

Welcome and approval of minutes	Tab 1	Simón Cantarero, Chair
<i>Rule 5.5:</i> <ul style="list-style-type: none">Remote work in the context of American Bar Association Formal Opinion 495 and Ethics Advisory Opinion 19-03	Tab 2	Judge James Gardner, Joni Jones (subcommittee chair), Phil Lowry, Cory Talbot Katherine Venti, Billy Walker, Alex Natt
<i>Rules 1.5 and 5.4:</i> <ul style="list-style-type: none">Referral fees, fee sharing, and solicitation	Tab 3	Angie Allen, Dan Brough, Simón Cantarero, Alyson McAlister (subcommittee chair), Tim Conde, Jurhee Rice, Gary Sackett Lucy Ricca, Jeffrey Eisenberg, Shelley Miller
<i>Rules 8.4 and 14-301:</i> <ul style="list-style-type: none">Are the rules are written in such a way that they would survive strict scrutiny analysis?Are these rules narrowly tailored to advance a compelling interest?	Tab 4	Adam Bondy (subcommittee chair), Judge Michael Edwards, Steve Johnson, Judge Trent Nelson, Amy Oliver Vanessa Ramos, Austin Riter, Professor Dane Thorley
Projects in the pipeline: <ul style="list-style-type: none">Client fees issue from Bar Foundation (Kim Paulding)Rule 1.0 comments to the Supreme Court (consent calendar)		--

2021 Meeting Schedule: 1st Monday of the month at 5pm.

Next meeting: August 2, 2021.

Tab 1



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

[Draft] Meeting Minutes

May 3, 2021

WEBEX

17:00 Mountain Time

J. Simon Cantarero, Chair

Attendees:

J. Simon Cantarero, Chair
Steven Johnson (Emeritus)
Katherine Venti
Alyson McAllister
Cory Talbot
Hon. James Gardner
Adam Bondy
Joni Jones
Gary Sackett (Emeritus)
Amy Oliver
Hon. Mike Edwards
Jurhee Rice
Dan Brough
Austin Riter
Hon. Trent Nelson
Tim Conde
M. Alex Natt, Recording Secretary

Staff:

Nancy Sylvester

Guests:

Shelley Miller, Christopher Williams, Kim Free,
Billy Walker

1. Welcome and approval of the April 5, 2021 meeting minutes: Mr. Canterero.

Mr. Cantarero recognized the existence of a quorum and welcomed everyone to the meeting including the guests, Shelly Miller, Chris Williams, and Kim Free. Mr.

Cantarero noted some corrections to the minutes including a misspelling of his name and some minor grammatical errors that will be corrected.

Mr. Conde moved for approval and Ms. McAllister seconded with those changes. The Motion passes unanimously.

2. Rule 1.01 (Attorney Competency – Virtual Hearings): Ms. Kim Free

Mr. Cantarero asked Ms. Free to address Rule 1.01 and an issue raised by Judge Linda Jones about attorney competency with virtual hearings. She informed the Committee that attorneys are not coming prepared to “virtual court.” Ms. Free expressed Judge Jones’s concern that preparation for a virtual hearing should be a competency issue. The Committee questioned whether the Rule as currently drafted is broad enough to include virtual hearings. Mr. Cantarero raises an issue regarding litigation by the Bar surrounding competency issues in this instance and whether the expectation should be noted in the comments rather than as an amendment to the Rule. Mr. Walker and Mr. Sackett both said they did not believe this should be in the ethical rules. Ms. Venti supported placing the language addressing this kind of competency into the comments to the Rule. The Chair tabled the matter for now.

3. Rule 5.5 (Remote Work). Joni Jones.

The Chair asked Ms. Jones to present her subcommittee’s recommendations on Rule 5.5 (Remote Work) which are contained in Tab 5 to the agenda. Ms. Jones presented the Committee with background on the issue and highlighted the changes to paragraph (c) and the additional comment. Mr. Walker addressed the Jardine case and noted that physical presence in Utah doesn’t mean one is practicing law in Utah if that attorney is providing counsel in another jurisdiction. Mr. Cantarero asked for clarification on what the subcommittee meant by establishing a “public office.” Ms. Jones indicated that it is anything other than a home office per se. An example is given of a California attorney (not admitted in Utah) who moved to their condo in Park City during the pandemic while providing counsel to their California clients. That fact pattern would not constitute the practice of law in Utah under the revision proposed. Mr. Sackett and Mr. Cantarero asked that the comment be moved to the end for continuity with the ABA model rules. Mr. Cantarero asked the subcommittee to continue to work on where the proposed language would be best placed in the rule and report back to the Committee as a whole.

4. Balance of agenda and adjournment.

The balance of the agenda was tabled until the next meeting. The meeting adjourned at 18:25. The next meeting will be held on June 7, 2021 at 17:00 via Webex.

Tab 2

Included in these materials are the 3 versions the subcommittee proposes for amending Rule 5.5. Version 1 is what was presented at the last meeting. Version 2 is what Gary Sackett recommended. It puts the revised subsection at the end of the rule so that the rule does not have to be renumbered and better matches the model rule. Version 3 puts the new language into paragraph (b). The subcommittee prefers version 3 because paragraph (b) addresses specifics of what is and is not permitted for lawyers practicing in Utah who are not licensed in Utah. The subcommittee believes that this is a natural fit.

1 **Rule 5.5. Unauthorized Practice of Law; Multijurisdictional Practice of Law.**

2 (a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the
3 legal profession in that jurisdiction, or assist another in doing so.

4 (b) A lawyer who is not admitted to practice in this jurisdiction shall not:

5 | (1) except as authorized by these Rules or other law, establish ~~an~~ ~~an~~ ~~public~~ office or
6 other systematic and continuous presence in this jurisdiction for the practice of law;

7 or

8 (2) hold out to the public or otherwise represent that the lawyer is admitted to
9 practice law in this jurisdiction.

10 (c) A lawyer who is not admitted to practice in this jurisdiction but who is physically
11 located in this jurisdiction and provides legal services remotely to clients in a
12 jurisdiction where the lawyer is admitted does not violate this rule so long as the lawyer
13 does not establish a public office in this jurisdiction and complies with subsection (b)(2).

14 (d) A lawyer admitted in another United States jurisdiction, and not disbarred or
15 suspended from practice in any jurisdiction, may provide legal services on a temporary
16 basis in this jurisdiction that:

17 (1) are undertaken in association with a lawyer who is admitted to practice in this
18 jurisdiction and who actively participates in the matter;

19 (2) are in or reasonably related to a pending or potential proceeding before a
20 tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is
21 assisting, is authorized by law or order to appear in such proceeding or reasonably
22 expects to be so authorized;

23 (3) are in or reasonably related to a pending or potential arbitration, mediation or
24 other alternative dispute resolution proceeding in this or another jurisdiction, if the
25 services arise out of or are reasonably related to the lawyer's practice in a

26 jurisdiction in which the lawyer is admitted to practice and are not services for
27 which the forum requires pro hac vice admission; or

28 (4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably
29 related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to
30 practice.

31 | ~~(e)~~ A lawyer admitted in another United States jurisdiction and not disbarred or
32 suspended from practice in any jurisdiction may provide legal services through an
33 office or other systematic and continuous presence in this jurisdiction without
34 admission to the Utah State Bar if:

35 (1) the services are provided to the lawyer's employer or its organizational affiliates
36 while the lawyer has a pending application for admission to the Utah State Bar and
37 are not services for which the forum requires pro hac vice admission; or

38 (2) the services provided are authorized by specific federal or Utah law or by
39 applicable rule.

40 Comment

41 [1] A lawyer may practice law only in a jurisdiction in which the lawyer is authorized to
42 practice. A lawyer may be admitted to practice law in a jurisdiction on a regular basis or
43 may be authorized by court rule or order or by law to practice for a limited purpose or
44 on a restricted basis. Paragraph (a) applies to unauthorized practice of law by a lawyer,
45 whether through the lawyer's direct action or by the lawyer's assisting another person.
46 For example, a lawyer may not assist a person in practicing law in violation of the rules
47 governing professional conduct in that person's jurisdiction.

48 [2] The definition of the practice of law is established by law and varies from one
49 jurisdiction to another. The "practice of law" in Utah is defined in Rule 14-802(b)(1),
50 Authorization to Practice Law, of the Supreme Court Rules of Professional Practice.

51 This Rule does not prohibit a lawyer from employing the services of paraprofessionals

52 and delegating functions to them, so long as the lawyer supervises the delegated work
53 and retains responsibility for their work. See Rule 5.3.

54 [2a] The Utah rule modifies the second sentence of ABA Comment [2] to reflect and be
55 consistent with Rule 14-802(b)(1), Authorization to Practice Law, of the Supreme Court
56 Rules of Professional Practice, which both defines the “practice of law” and expressly
57 authorizes nonlawyers to engage in some aspects of the practice of law as long as their
58 activities are confined to the categories of services specified in that rule.

59 [3] A lawyer may provide professional advice and instruction to nonlawyers whose
60 employment requires knowledge of the law, for example, claims adjusters, employees
61 of financial or commercial institutions, social workers, accountants and persons
62 employed in government agencies. Lawyers also may assist independent nonlawyers,
63 such as paraprofessionals, who are authorized by the law of a jurisdiction to provide
64 particular law-related services. In addition, a lawyer may counsel nonlawyers who wish
65 to proceed pro se.

66 [4] Other than as authorized by law or this Rule, a lawyer who is not admitted to
67 practice generally in this jurisdiction violates paragraph (b)(1) if the lawyer establishes
68 an public office or other systematic and continuous presence in this jurisdiction for the
69 practice of law. Presence may be systematic and continuous even if the lawyer is not
70 physically present here. Paragraph (c) recognizes that systemic and continuous physical
71 presence here while practicing law for another jurisdiction does not in itself violate this
72 Rule. ~~Such~~ such a lawyer must not hold out to the public or otherwise represent that the
73 lawyer is admitted to practice law in this jurisdiction. See also Rules 7.1(a) and 7.5(b).

74 [5] There are occasions in which a lawyer admitted to practice in another United States
75 jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may
76 provide legal services on a temporary basis in this jurisdiction under circumstances that
77 do not create an unreasonable risk to the interests of their clients, the public or the
78 courts. Paragraph ~~(e)~~ (d) identifies four such circumstances. The fact that conduct is not
79 so identified does not imply that the conduct is or is not authorized. With the exception

80 | of paragraphs (~~ed~~)(1) and (~~ed~~)(2), this Rule does not authorize a lawyer to establish an
81 | office or other systematic and continuous presence in this jurisdiction without being
82 | admitted to practice generally here.

83 | [6] There is no single test to determine whether a lawyer's services are provided on a
84 | "temporary basis" in this jurisdiction and may therefore be permissible under paragraph
85 | (c). Services may be "temporary" even though the lawyer provides services in this
86 | jurisdiction on a recurring basis, or for an extended period of time, as when the lawyer
87 | is representing a client in a single lengthy negotiation or litigation.

88 | [7] Paragraphs (~~de~~) and (~~ed~~) apply to lawyers who are admitted to practice law in any
89 | United States jurisdiction, which includes the District of Columbia and any state,
90 | territory or commonwealth of the United States. The word "admitted" in paragraphs
91 | (~~de~~) and (~~ed~~) contemplates that the lawyer is authorized to practice in the jurisdiction in
92 | which the lawyer is admitted and excludes a lawyer who while technically admitted is
93 | not authorized to practice, because, for example, the lawyer is on inactive status.

94 | [8] Paragraph (~~de~~)(1) recognizes that the interests of clients and the public are protected
95 | if a lawyer admitted only in another jurisdiction associates with a lawyer licensed to
96 | practice in this jurisdiction. For this paragraph to apply, however, the lawyer admitted
97 | to practice in this jurisdiction must actively participate in and share responsibility for
98 | the representation of the client.

99 | [9] Lawyers not admitted to practice generally in a jurisdiction may be authorized by
100 | law or order of a tribunal or an administrative agency to appear before the tribunal or
101 | agency. This authority may be granted pursuant to formal rules governing admission
102 | pro hac vice or pursuant to informal practice of the tribunal or agency. Under
103 | paragraph (~~de~~)(2), a lawyer does not violate this Rule when the lawyer appears before a
104 | tribunal or agency pursuant to such authority. To the extent that a court rule or other
105 | law of this jurisdiction requires a lawyer who is not admitted to practice in this
106 | jurisdiction to obtain admission pro hac vice before appearing before a tribunal or
107 | administrative agency, this Rule requires the lawyer to obtain that authority.

108 | [10] Paragraph (ed)(2) also provides that a lawyer rendering services in this jurisdiction
109 | on a temporary basis does not violate this Rule when the lawyer engages in conduct in
110 | anticipation of a proceeding or hearing in a jurisdiction in which the lawyer is
111 | authorized to practice law or in which the lawyer reasonably expects to be admitted pro
112 | hac vice. Examples of such conduct include meetings with the client, interviews of
113 | potential witnesses and the review of documents. Similarly, a lawyer admitted only in
114 | another jurisdiction may engage in conduct temporarily in this jurisdiction in
115 | connection with pending litigation in another jurisdiction in which the lawyer is or
116 | reasonably expects to be authorized to appear, including taking depositions in this
117 | jurisdiction.

118 | [11] When a lawyer has been or reasonably expects to be admitted to appear before a
119 | court or administrative agency, paragraph (c)(2) also permits conduct by lawyers who
120 | are associated with that lawyer in the matter, but who do not expect to appear before
121 | the court or administrative agency. For example, subordinate lawyers may conduct
122 | research, review documents and attend meetings with witnesses in support of the
123 | lawyer responsible for the litigation.

124 | [12] Paragraph (ed)(3) permits a lawyer admitted to practice law in another jurisdiction
125 | to perform services on a temporary basis in this jurisdiction if those services are in or
126 | reasonably related to a pending or potential arbitration, mediation or other alternative
127 | dispute resolution proceeding in this or another jurisdiction, if the services arise out of
128 | or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is
129 | admitted to practice. The lawyer, however, must obtain admission pro hac vice in the
130 | case of a court-annexed arbitration or mediation or otherwise if court rules or law so
131 | require.

132 | [13] Paragraph (de)(4) permits a lawyer admitted in another jurisdiction to provide
133 | certain legal services on a temporary basis in this jurisdiction that arise out of or are
134 | reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is
135 | admitted but are not within paragraphs (c)(2) or (c)(3).

136 [13a] The last sentence in Comment [13] to ABA Model Rule 5.5 has been omitted to
137 comport with Utah's definition of the "practice of law" in Rule 14-802(b)(1).

138 [14] Paragraphs ~~(d)~~(3) and ~~(d)~~(4) require that the services arise out of or be reasonably
139 related to the lawyer's practice in a jurisdiction in which the lawyer is admitted. A
140 variety of factors evidence such a relationship. The lawyer's client may have been
141 previously represented by the lawyer or may be resident in or have substantial contacts
142 with the jurisdiction in which the lawyer is admitted. The matter, although involving
143 other jurisdictions, may have a significant connection with that jurisdiction. In other
144 cases, significant aspects of the lawyer's work might be conducted in that jurisdiction or
145 a significant aspect of the matter may involve the law of that jurisdiction. The necessary
146 relationship might arise when the client's activities or the legal issues involve multiple
147 jurisdictions, such as when the officers of a multinational corporation survey potential
148 business sites and seek the services of their lawyer in assessing the relative merits of
149 each. In addition, the services may draw on the lawyer's recognized expertise
150 developed through the regular practice of law on behalf of clients in matters involving a
151 particular body of federal, nationally-uniform, foreign or international law.

152 [15] Paragraph ~~(e)~~ identifies two circumstances in which a lawyer who is admitted to
153 practice in another United States jurisdiction, and is not disbarred or suspended from
154 practice in any jurisdiction, may establish an office or other systematic and continuous
155 presence in this jurisdiction for the practice of law as well as provide legal services on a
156 temporary basis. Except as provided in paragraphs (d)(1) and (d)(2), a lawyer who is
157 admitted to practice law in another jurisdiction and who establishes an office or other
158 systematic or continuous presence in this jurisdiction must become admitted to practice
159 law generally in this jurisdiction.

160 [15a] Utah's Rule 5.5~~(e)~~ differs from the ABA Model Rule by requiring a person
161 providing services to the lawyer's employer to have submitted an application for
162 admission to the Bar, such as an application for admission of attorney applicants under

163 Supreme Court Rules of Professional Practice, Rule 14-704; admission by motion under
164 Rule 14-705; or admission as House Counsel under Rule 14-719.

165 [15b] Utah Rule 5.5 does not adopt the ABA's provisions dealing with foreign lawyers,
166 as other rules in Article 7 of the Rules Governing the Utah State Bar cover this matter.

167 | [16] Paragraph (~~ea~~)(1) applies to a lawyer who is employed by a client to provide legal
168 services to the client or its organizational affiliates, i.e., entities that control, are
169 controlled by or are under common control with the employer. This paragraph does not
170 authorize the provision of personal legal services to the employer's officers or
171 employees. The paragraph applies to in-house corporate lawyers, government lawyers
172 and others who are employed to render legal services to the employer. The lawyer's
173 ability to represent the employer outside the jurisdiction in which the lawyer is licensed
174 generally serves the interests of the employer and does not create an unreasonable risk
175 to the client and others because the employer is well situated to assess the lawyer's
176 qualifications and the quality of the lawyer's work.

177 [17] If an employed lawyer establishes an office or other systematic presence in this
178 jurisdiction for the purpose of rendering legal services to the employer under
179 | paragraph (~~ea~~)(1), the lawyer is subject to Utah admission and licensing requirements,
180 including assessments for annual licensing fees and client protection funds, and
181 mandatory continuing legal education.

182 | [18] Paragraph (~~ea~~)(2) recognizes that a lawyer may provide legal services in a
183 jurisdiction in which the lawyer is not licensed when authorized federal or other law,
184 which includes statute, court rule, executive regulation or judicial precedent.

185 | [18a] The Utah version of Paragraph (~~ea~~)(2) clarifies that a lawyer not admitted to
186 practice in Utah may provide legal services under that paragraph only if the lawyer can
187 cite specific federal or state law or an applicable rule that authorizes the services. See,
188 e.g., Rule DUCivR 83-1.1, Rules of Practice of the United States District Court of the
189 District of Utah; Rule 14-804 of the Supreme Court Rules of Professional Practice,

190 admission for military-lawyer practice; Rule 14-719(d)(2), which provides a six-month
191 period during which an in-house counsel is authorized to practice before submitting a
192 House Counsel application; practice as a patent attorney before the United States Patent
193 and Trademark Office.

194 | [19] A lawyer who practices law in this jurisdiction pursuant to paragraphs ~~(d)~~ or ~~(e)~~
195 | or otherwise is subject to the disciplinary authority of this jurisdiction. See Rule 8.5(a).

196 [20] In some circumstances, a lawyer who practices law in this jurisdiction pursuant to
197 | paragraphs ~~(d)~~ or ~~(e)~~ may have to inform the client that the lawyer is not licensed to
198 | practice law in this jurisdiction. For example, that may be required when the
199 | representation occurs primarily in this jurisdiction and requires knowledge of the law
200 | of this jurisdiction. See Rule 1.4(b).

201 | [21] Paragraphs ~~(d)~~ and ~~(e)~~ do not authorize communications advertising legal
202 | services in this jurisdiction by lawyers who are admitted to practice in other
203 | jurisdictions. Whether and how lawyers may communicate the availability of their
204 | services in this jurisdiction ~~are~~is governed by Rules 7.1, ~~to~~ 7.5.

205

1 **Rule 5.5. Unauthorized Practice of Law; Multijurisdictional Practice of Law.**

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3 legal profession in that jurisdiction, or assist another in doing so.

4 (b) A lawyer who is not admitted to practice in this jurisdiction shall not:

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6 other systematic and continuous presence in this jurisdiction for the practice of law;

7 or

8 (2) hold out to the public or otherwise represent that the lawyer is admitted to
9 practice law in this jurisdiction.

10 (c) A lawyer admitted in another United States jurisdiction, and not disbarred or
11 suspended from practice in any jurisdiction, may provide legal services on a temporary
12 basis in this jurisdiction that:

13 (1) are undertaken in association with a lawyer who is admitted to practice in this
14 jurisdiction and who actively participates in the matter;

15 (2) are in or reasonably related to a pending or potential proceeding before a
16 tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is
17 assisting, is authorized by law or order to appear in such proceeding or reasonably
18 expects to be so authorized;

19 (3) are in or reasonably related to a pending or potential arbitration, mediation or
20 other alternative dispute resolution proceeding in this or another jurisdiction, if the
21 services arise out of or are reasonably related to the lawyer's practice in a
22 jurisdiction in which the lawyer is admitted to practice and are not services for
23 which the forum requires *pro hac vice* admission; or

24 (4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably
25 related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to
26 practice.

27 (d) A lawyer admitted in another United States jurisdiction and not disbarred or
28 suspended from practice in any jurisdiction may provide legal services through an
29 office or other systematic and continuous presence in this jurisdiction without
30 admission to the Utah State Bar if:

31 (1) the services are provided to the lawyer's employer or its organizational affiliates
32 while the lawyer has a pending application for admission to the Utah State Bar and
33 are not services for which the forum requires pro hac vice admission; or

34 (2) the services provided are authorized by specific federal or Utah law or by
35 applicable rule.

36 (e) A lawyer who is not admitted to practice in this jurisdiction but who is physically
37 located in this jurisdiction and provides legal services remotely to clients in a
38 jurisdiction where the lawyer is admitted does not violate this rule so long as the lawyer
39 does not establish a public office in this jurisdiction and complies with subsection (b)(2).

40 Comment

41 [1] A lawyer may practice law only in a jurisdiction in which the lawyer is authorized to
42 practice. A lawyer may be admitted to practice law in a jurisdiction on a regular basis or
43 may be authorized by court rule or order or by law to practice for a limited purpose or
44 on a restricted basis. Paragraph (a) applies to unauthorized practice of law by a lawyer,
45 whether through the lawyer's direct action or by the lawyer's assisting another person.
46 For example, a lawyer may not assist a person in practicing law in violation of the rules
47 governing professional conduct in that person's jurisdiction.

48 [2] The definition of the practice of law is established by law and varies from one
49 jurisdiction to another. The "practice of law" in Utah is defined in Rule 14-802(b)(1),
50 Authorization to Practice Law, of the Supreme Court Rules of Professional Practice.
51 This Rule does not prohibit a lawyer from employing the services of paraprofessionals
52 and delegating functions to them, so long as the lawyer supervises the delegated work
53 and retains responsibility for their work. See Rule 5.3.

54 [2a] The Utah rule modifies the second sentence of ABA Comment [2] to reflect and be
55 consistent with Rule 14-802(b)(1), Authorization to Practice Law, of the Supreme Court
56 Rules of Professional Practice, which both defines the “practice of law” and expressly
57 authorizes nonlawyers to engage in some aspects of the practice of law as long as their
58 activities are confined to the categories of services specified in that rule.

59 [3] A lawyer may provide professional advice and instruction to nonlawyers whose
60 employment requires knowledge of the law, for example, claims adjusters, employees
61 of financial or commercial institutions, social workers, accountants and persons
62 employed in government agencies. Lawyers also may assist independent nonlawyers,
63 such as paraprofessionals, who are authorized by the law of a jurisdiction to provide
64 particular law-related services. In addition, a lawyer may counsel nonlawyers who wish
65 to proceed pro se.

66 [4] Other than as authorized by law or this Rule, a lawyer who is not admitted to
67 practice generally in this jurisdiction violates paragraph (b)(1) if the lawyer establishes
68 a public office or other systematic and continuous presence in this jurisdiction for the
69 practice of law. Presence may be systematic and continuous even if the lawyer is not
70 physically present here. Paragraph (e) recognizes that systemic and continuous physical
71 presence here while practicing law for another jurisdiction does not in itself violate this
72 Rule. Such a lawyer must not hold out to the public or otherwise represent that the
73 lawyer is admitted to practice law in this jurisdiction. See also Rules 7.1(a) and 7.5(b).

74 [5] There are occasions in which a lawyer admitted to practice in another United States
75 jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may
76 provide legal services on a temporary basis in this jurisdiction under circumstances that
77 do not create an unreasonable risk to the interests of their clients, the public or the
78 courts. Paragraph (c) identifies four such circumstances. The fact that conduct is not so
79 identified does not imply that the conduct is or is not authorized. With the exception of
80 paragraphs (d)(1) and (d)(2), this Rule does not authorize a lawyer to establish an office

81 or other systematic and continuous presence in this jurisdiction without being admitted
82 to practice generally here.

83 [6] There is no single test to determine whether a lawyer's services are provided on a
84 "temporary basis" in this jurisdiction and may therefore be permissible under paragraph
85 (c). Services may be "temporary" even though the lawyer provides services in this
86 jurisdiction on a recurring basis, or for an extended period of time, as when the lawyer
87 is representing a client in a single lengthy negotiation or litigation.

88 [7] Paragraphs (c) and (d) apply to lawyers who are admitted to practice law in any
89 United States jurisdiction, which includes the District of Columbia and any state,
90 territory or commonwealth of the United States. The word "admitted" in paragraphs (c)
91 and (d) contemplates that the lawyer is authorized to practice in the jurisdiction in
92 which the lawyer is admitted and excludes a lawyer who while technically admitted is
93 not authorized to practice, because, for example, the lawyer is on inactive status.

94 [8] Paragraph (c)(1) recognizes that the interests of clients and the public are protected if
95 a lawyer admitted only in another jurisdiction associates with a lawyer licensed to
96 practice in this jurisdiction. For this paragraph to apply, however, the lawyer admitted
97 to practice in this jurisdiction must actively participate in and share responsibility for
98 the representation of the client.

99 [9] Lawyers not admitted to practice generally in a jurisdiction may be authorized by
100 law or order of a tribunal or an administrative agency to appear before the tribunal or
101 agency. This authority may be granted pursuant to formal rules governing admission
102 pro hac vice or pursuant to informal practice of the tribunal or agency. Under
103 paragraph (c)(2), a lawyer does not violate this Rule when the lawyer appears before a
104 tribunal or agency pursuant to such authority. To the extent that a court rule or other
105 law of this jurisdiction requires a lawyer who is not admitted to practice in this
106 jurisdiction to obtain admission pro hac vice before appearing before a tribunal or
107 administrative agency, this Rule requires the lawyer to obtain that authority.

108 [10] Paragraph (c)(2) also provides that a lawyer rendering services in this jurisdiction
109 on a temporary basis does not violate this Rule when the lawyer engages in conduct in
110 anticipation of a proceeding or hearing in a jurisdiction in which the lawyer is
111 authorized to practice law or in which the lawyer reasonably expects to be admitted pro
112 hac vice. Examples of such conduct include meetings with the client, interviews of
113 potential witnesses and the review of documents. Similarly, a lawyer admitted only in
114 another jurisdiction may engage in conduct temporarily in this jurisdiction in
115 connection with pending litigation in another jurisdiction in which the lawyer is or
116 reasonably expects to be authorized to appear, including taking depositions in this
117 jurisdiction.

118 [11] When a lawyer has been or reasonably expects to be admitted to appear before a
119 court or administrative agency, paragraph (c)(2) also permits conduct by lawyers who
120 are associated with that lawyer in the matter, but who do not expect to appear before
121 the court or administrative agency. For example, subordinate lawyers may conduct
122 research, review documents and attend meetings with witnesses in support of the
123 lawyer responsible for the litigation.

124 [12] Paragraph (c)(3) permits a lawyer admitted to practice law in another jurisdiction to
125 perform services on a temporary basis in this jurisdiction if those services are in or
126 reasonably related to a pending or potential arbitration, mediation or other alternative
127 dispute resolution proceeding in this or another jurisdiction, if the services arise out of
128 or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is
129 admitted to practice. The lawyer, however, must obtain admission pro hac vice in the
130 case of a court-annexed arbitration or mediation or otherwise if court rules or law so
131 require.

132 [13] Paragraph (c)(4) permits a lawyer admitted in another jurisdiction to provide
133 certain legal services on a temporary basis in this jurisdiction that arise out of or are
134 reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is
135 admitted but are not within paragraphs (c)(2) or (c)(3).

136 [13a] The last sentence in Comment [13] to ABA Model Rule 5.5 has been omitted to
137 comport with Utah's definition of the "practice of law" in Rule 14-802(b)(1).

138 [14] Paragraphs (c)(3) and (c)(4) require that the services arise out of or be reasonably
139 related to the lawyer's practice in a jurisdiction in which the lawyer is admitted. A
140 variety of factors evidence such a relationship. The lawyer's client may have been
141 previously represented by the lawyer or may be resident in or have substantial contacts
142 with the jurisdiction in which the lawyer is admitted. The matter, although involving
143 other jurisdictions, may have a significant connection with that jurisdiction. In other
144 cases, significant aspects of the lawyer's work might be conducted in that jurisdiction or
145 a significant aspect of the matter may involve the law of that jurisdiction. The necessary
146 relationship might arise when the client's activities or the legal issues involve multiple
147 jurisdictions, such as when the officers of a multinational corporation survey potential
148 business sites and seek the services of their lawyer in assessing the relative merits of
149 each. In addition, the services may draw on the lawyer's recognized expertise
150 developed through the regular practice of law on behalf of clients in matters involving a
151 particular body of federal, nationally-uniform, foreign or international law.

152 [15] Paragraph (d) identifies two circumstances in which a lawyer who is admitted to
153 practice in another United States jurisdiction, and is not disbarred or suspended from
154 practice in any jurisdiction, may establish an office or other systematic and continuous
155 presence in this jurisdiction for the practice of law as well as provide legal services on a
156 temporary basis. Except as provided in paragraphs (d)(1) and (d)(2), a lawyer who is
157 admitted to practice law in another jurisdiction and who establishes an office or other
158 systematic or continuous presence in this jurisdiction must become admitted to practice
159 law generally in this jurisdiction.

160 [15a] Utah's Rule 5.5(d) differs from the ABA Model Rule by requiring a person
161 providing services to the lawyer's employer to have submitted an application for
162 admission to the Bar, such as an application for admission of attorney applicants under

163 Supreme Court Rules of Professional Practice, Rule 14-704; admission by motion under
164 Rule 14-705; or admission as House Counsel under Rule 14-719.

165 [15b] Utah Rule 5.5 does not adopt the ABA's provisions dealing with foreign lawyers,
166 as other rules in Article 7 of the Rules Governing the Utah State Bar cover this matter.

167 [16] Paragraph (d)(1) applies to a lawyer who is employed by a client to provide legal
168 services to the client or its organizational affiliates, i.e., entities that control, are
169 controlled by or are under common control with the employer. This paragraph does not
170 authorize the provision of personal legal services to the employer's officers or
171 employees. The paragraph applies to in-house corporate lawyers, government lawyers
172 and others who are employed to render legal services to the employer. The lawyer's
173 ability to represent the employer outside the jurisdiction in which the lawyer is licensed
174 generally serves the interests of the employer and does not create an unreasonable risk
175 to the client and others because the employer is well situated to assess the lawyer's
176 qualifications and the quality of the lawyer's work.

177 [17] If an employed lawyer establishes an office or other systematic presence in this
178 jurisdiction for the purpose of rendering legal services to the employer under
179 paragraph (d)(1), the lawyer is subject to Utah admission and licensing requirements,
180 including assessments for annual licensing fees and client protection funds, and
181 mandatory continuing legal education.

182 [18] Paragraph (d)(2) recognizes that a lawyer may provide legal services in a
183 jurisdiction in which the lawyer is not licensed when authorized federal or other law,
184 which includes statute, court rule, executive regulation or judicial precedent.

185 [18a] The Utah version of Paragraph (d)(2) clarifies that a lawyer not admitted to
186 practice in Utah may provide legal services under that paragraph only if the lawyer can
187 cite specific federal or state law or an applicable rule that authorizes the services. See,
188 e.g., Rule DUCivR 83-1.1, Rules of Practice of the United States District Court of the
189 District of Utah; Rule 14-804 of the Supreme Court Rules of Professional Practice,

190 admission for military-lawyer practice; Rule 14-719(d)(2), which provides a six-month
191 period during which an in-house counsel is authorized to practice before submitting a
192 House Counsel application; practice as a patent attorney before the United States Patent
193 and Trademark Office.

194 [19] A lawyer who practices law in this jurisdiction pursuant to paragraphs (c) or (d) or
195 otherwise is subject to the disciplinary authority of this jurisdiction. See Rule 8.5(a).

196 [20] In some circumstances, a lawyer who practices law in this jurisdiction pursuant to
197 paragraphs (c) or (d) may have to inform the client that the lawyer is not licensed to
198 practice law in this jurisdiction. For example, that may be required when the
199 representation occurs primarily in this jurisdiction and requires knowledge of the law
200 of this jurisdiction. See Rule 1.4(b).

201 [21] Paragraphs (c) and (d) do not authorize communications advertising legal services
202 in this jurisdiction by lawyers who are admitted to practice in other jurisdictions.

203 Whether and how lawyers may communicate the availability of their services in this
204 jurisdiction ~~is~~ are governed by Rules 7.1 to 7.5.

205 [22] Paragraph (e) does not appear in the Model Rule.

206

1 **Rule 5.5. Unauthorized Practice of Law; Multijurisdictional Practice of Law.**

2 (a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the
3 legal profession in that jurisdiction, or assist another in doing so.

4 (b) A lawyer who is not admitted to practice in this jurisdiction: ~~shall not:~~

5 (1) shall not, except as authorized by these Rules or other law, establish a public
6 office or other systematic and continuous presence in this jurisdiction for the
7 practice of law;~~or~~

8 (2) shall not hold out to the public or otherwise represent that the lawyer is admitted
9 to practice law in this jurisdiction;

10 (3) may, while physically located in this jurisdiction, provide legal services remotely
11 to clients in a jurisdiction where the lawyer is admitted so long as the lawyer does
12 not establish a public office in this jurisdiction and complies with subsection (b)(2).

13 (c) A lawyer admitted in another United States jurisdiction, and not disbarred or
14 suspended from practice in any jurisdiction, may provide legal services on a temporary
15 basis in this jurisdiction that:

16 (1) are undertaken in association with a lawyer who is admitted to practice in this
17 jurisdiction and who actively participates in the matter;

18 (2) are in or reasonably related to a pending or potential proceeding before a
19 tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is
20 assisting, is authorized by law or order to appear in such proceeding or reasonably
21 expects to be so authorized;

22 (3) are in or reasonably related to a pending or potential arbitration, mediation or
23 other alternative dispute resolution proceeding in this or another jurisdiction, if the
24 services arise out of or are reasonably related to the lawyer's practice in a
25 jurisdiction in which the lawyer is admitted to practice and are not services for
26 which the forum requires pro hac vice admission; or

27 (4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably
28 related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to
29 practice.

30 (d) A lawyer admitted in another United States jurisdiction and not disbarred or
31 suspended from practice in any jurisdiction may provide legal services through an
32 office or other systematic and continuous presence in this jurisdiction without
33 admission to the Utah State Bar if:

34 (1) the services are provided to the lawyer's employer or its organizational affiliates
35 while the lawyer has a pending application for admission to the Utah State Bar and
36 are not services for which the forum requires pro hac vice admission; or

37 (2) the services provided are authorized by specific federal or Utah law or by
38 applicable rule.

39 Comment

40 [1] A lawyer may practice law only in a jurisdiction in which the lawyer is authorized to
41 practice. A lawyer may be admitted to practice law in a jurisdiction on a regular basis or
42 may be authorized by court rule or order or by law to practice for a limited purpose or
43 on a restricted basis. Paragraph (a) applies to unauthorized practice of law by a lawyer,
44 whether through the lawyer's direct action or by the lawyer's assisting another person.
45 For example, a lawyer may not assist a person in practicing law in violation of the rules
46 governing professional conduct in that person's jurisdiction.

47 [2] The definition of the practice of law is established by law and varies from one
48 jurisdiction to another. The "practice of law" in Utah is defined in Rule 14-802(b)(1),
49 Authorization to Practice Law, of the Supreme Court Rules of Professional Practice.
50 This Rule does not prohibit a lawyer from employing the services of paraprofessionals
51 and delegating functions to them, so long as the lawyer supervises the delegated work
52 and retains responsibility for their work. See Rule 5.3.

53 [2a] The Utah rule modifies the second sentence of ABA Comment [2] to reflect and be
54 consistent with Rule 14-802(b)(1), Authorization to Practice Law, of the Supreme Court
55 Rules of Professional Practice, which both defines the “practice of law” and expressly
56 authorizes nonlawyers to engage in some aspects of the practice of law as long as their
57 activities are confined to the categories of services specified in that rule.

58 [3] A lawyer may provide professional advice and instruction to nonlawyers whose
59 employment requires knowledge of the law, for example, claims adjusters, employees
60 of financial or commercial institutions, social workers, accountants and persons
61 employed in government agencies. Lawyers also may assist independent nonlawyers,
62 such as paraprofessionals, who are authorized by the law of a jurisdiction to provide
63 particular law-related services. In addition, a lawyer may counsel nonlawyers who wish
64 to proceed pro se.

65 [4] Other than as authorized by law or this Rule, a lawyer who is not admitted to
66 practice generally in this jurisdiction violates paragraph (b)(1) if the lawyer establishes
67 a public office or other systematic and continuous presence in this jurisdiction for the
68 practice of law. Presence may be systematic and continuous even if the lawyer is not
69 physically present here. Paragraph (b)(3) recognizes that systemic and continuous
70 physical presence here while practicing law for another jurisdiction does not in itself
71 violate this Rule. Such a lawyer must not hold out to the public or otherwise represent
72 that the lawyer is admitted to practice law in this jurisdiction. See also Rules 7.1(a) ~~and~~
73 ~~7.5(b).~~

74 [5] There are occasions in which a lawyer admitted to practice in another United States
75 jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may
76 provide legal services on a temporary basis in this jurisdiction under circumstances that
77 do not create an unreasonable risk to the interests of their clients, the public or the
78 courts. Paragraph (c) identifies four such circumstances. The fact that conduct is not so
79 identified does not imply that the conduct is or is not authorized. With the exception of
80 paragraphs (d)(1) and (d)(2), this Rule does not authorize a lawyer to establish an office

81 or other systematic and continuous presence in this jurisdiction without being admitted
82 to practice generally here.

83 [6] There is no single test to determine whether a lawyer's services are provided on a
84 "temporary basis" in this jurisdiction and may therefore be permissible under paragraph
85 (c). Services may be "temporary" even though the lawyer provides services in this
86 jurisdiction on a recurring basis, or for an extended period of time, as when the lawyer
87 is representing a client in a single lengthy negotiation or litigation.

88 [7] Paragraphs (c) and (d) apply to lawyers who are admitted to practice law in any
89 United States jurisdiction, which includes the District of Columbia and any state,
90 territory or commonwealth of the United States. The word "admitted" in paragraphs (c)
91 and (d) contemplates that the lawyer is authorized to practice in the jurisdiction in
92 which the lawyer is admitted and excludes a lawyer who while technically admitted is
93 not authorized to practice, because, for example, the lawyer is on inactive status.

94 [8] Paragraph (c)(1) recognizes that the interests of clients and the public are protected if
95 a lawyer admitted only in another jurisdiction associates with a lawyer licensed to
96 practice in this jurisdiction. For this paragraph to apply, however, the lawyer admitted
97 to practice in this jurisdiction must actively participate in and share responsibility for
98 the representation of the client.

99 [9] Lawyers not admitted to practice generally in a jurisdiction may be authorized by
100 law or order of a tribunal or an administrative agency to appear before the tribunal or
101 agency. This authority may be granted pursuant to formal rules governing admission
102 pro hac vice or pursuant to informal practice of the tribunal or agency. Under
103 paragraph (c)(2), a lawyer does not violate this Rule when the lawyer appears before a
104 tribunal or agency pursuant to such authority. To the extent that a court rule or other
105 law of this jurisdiction requires a lawyer who is not admitted to practice in this
106 jurisdiction to obtain admission pro hac vice before appearing before a tribunal or
107 administrative agency, this Rule requires the lawyer to obtain that authority.

108 [10] Paragraph (c)(2) also provides that a lawyer rendering services in this jurisdiction
109 on a temporary basis does not violate this Rule when the lawyer engages in conduct in
110 anticipation of a proceeding or hearing in a jurisdiction in which the lawyer is
111 authorized to practice law or in which the lawyer reasonably expects to be admitted pro
112 hac vice. Examples of such conduct include meetings with the client, interviews of
113 potential witnesses and the review of documents. Similarly, a lawyer admitted only in
114 another jurisdiction may engage in conduct temporarily in this jurisdiction in
115 connection with pending litigation in another jurisdiction in which the lawyer is or
116 reasonably expects to be authorized to appear, including taking depositions in this
117 jurisdiction.

118 [11] When a lawyer has been or reasonably expects to be admitted to appear before a
119 court or administrative agency, paragraph (c)(2) also permits conduct by lawyers who
120 are associated with that lawyer in the matter, but who do not expect to appear before
121 the court or administrative agency. For example, subordinate lawyers may conduct
122 research, review documents and attend meetings with witnesses in support of the
123 lawyer responsible for the litigation.

124 [12] Paragraph (c)(3) permits a lawyer admitted to practice law in another jurisdiction to
125 perform services on a temporary basis in this jurisdiction if those services are in or
126 reasonably related to a pending or potential arbitration, mediation or other alternative
127 dispute resolution proceeding in this or another jurisdiction, if the services arise out of
128 or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is
129 admitted to practice. The lawyer, however, must obtain admission pro hac vice in the
130 case of a court-annexed arbitration or mediation or otherwise if court rules or law so
131 require.

132 [13] Paragraph (c)(4) permits a lawyer admitted in another jurisdiction to provide
133 certain legal services on a temporary basis in this jurisdiction that arise out of or are
134 reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is
135 admitted but are not within paragraphs (c)(2) or (c)(3).

136 [13a] The last sentence in Comment [13] to ABA Model Rule 5.5 has been omitted to
137 comport with Utah's definition of the "practice of law" in Rule 14-802(b)(1).

138 [14] Paragraphs (c)(3) and (c)(4) require that the services arise out of or be reasonably
139 related to the lawyer's practice in a jurisdiction in which the lawyer is admitted. A
140 variety of factors evidence such a relationship. The lawyer's client may have been
141 previously represented by the lawyer or may be resident in or have substantial contacts
142 with the jurisdiction in which the lawyer is admitted. The matter, although involving
143 other jurisdictions, may have a significant connection with that jurisdiction. In other
144 cases, significant aspects of the lawyer's work might be conducted in that jurisdiction or
145 a significant aspect of the matter may involve the law of that jurisdiction. The necessary
146 relationship might arise when the client's activities or the legal issues involve multiple
147 jurisdictions, such as when the officers of a multinational corporation survey potential
148 business sites and seek the services of their lawyer in assessing the relative merits of
149 each. In addition, the services may draw on the lawyer's recognized expertise
150 developed through the regular practice of law on behalf of clients in matters involving a
151 particular body of federal, nationally-uniform, foreign or international law.

152 [15] Paragraph (d) identifies two circumstances in which a lawyer who is admitted to
153 practice in another United States jurisdiction, and is not disbarred or suspended from
154 practice in any jurisdiction, may establish an office or other systematic and continuous
155 presence in this jurisdiction for the practice of law as well as provide legal services on a
156 temporary basis. Except as provided in paragraphs (d)(1) and (d)(2), a lawyer who is
157 admitted to practice law in another jurisdiction and who establishes an office or other
158 systematic or continuous presence in this jurisdiction must become admitted to practice
159 law generally in this jurisdiction.

160 [15a] Utah's Rule 5.5(d) differs from the ABA Model Rule by requiring a person
161 providing services to the lawyer's employer to have submitted an application for
162 admission to the Bar, such as an application for admission of attorney applicants under

163 Supreme Court Rules of Professional Practice, Rule 14-704; admission by motion under
164 Rule 14-705; or admission as House Counsel under Rule 14-719.

165 [15b] Utah Rule 5.5 does not adopt the ABA's provisions dealing with foreign lawyers,
166 as other rules in Article 7 of the Rules Governing the Utah State Bar cover this matter.

167 [16] Paragraph (d)(1) applies to a lawyer who is employed by a client to provide legal
168 services to the client or its organizational affiliates, i.e., entities that control, are
169 controlled by or are under common control with the employer. This paragraph does not
170 authorize the provision of personal legal services to the employer's officers or
171 employees. The paragraph applies to in-house corporate lawyers, government lawyers
172 and others who are employed to render legal services to the employer. The lawyer's
173 ability to represent the employer outside the jurisdiction in which the lawyer is licensed
174 generally serves the interests of the employer and does not create an unreasonable risk
175 to the client and others because the employer is well situated to assess the lawyer's
176 qualifications and the quality of the lawyer's work.

177 [17] If an employed lawyer establishes an office or other systematic presence in this
178 jurisdiction for the purpose of rendering legal services to the employer under
179 paragraph (d)(1), the lawyer is subject to Utah admission and licensing requirements,
180 including assessments for annual licensing fees and client protection funds, and
181 mandatory continuing legal education.

182 [18] Paragraph (d)(2) recognizes that a lawyer may provide legal services in a
183 jurisdiction in which the lawyer is not licensed when authorized federal or other law,
184 which includes statute, court rule, executive regulation or judicial precedent.

185 [18a] The Utah version of Paragraph (d)(2) clarifies that a lawyer not admitted to
186 practice in Utah may provide legal services under that paragraph only if the lawyer can
187 cite specific federal or state law or an applicable rule that authorizes the services. See,
188 e.g., Rule DUCivR 83-1.1, Rules of Practice of the United States District Court of the
189 District of Utah; Rule 14-804 of the Supreme Court Rules of Professional Practice,

190 admission for military-lawyer practice; Rule 14-719(d)(2), which provides a six-month
191 period during which an in-house counsel is authorized to practice before submitting a
192 House Counsel application; practice as a patent attorney before the United States Patent
193 and Trademark Office.

194 [19] A lawyer who practices law in this jurisdiction pursuant to paragraphs (c) or (d) or
195 otherwise is subject to the disciplinary authority of this jurisdiction. See Rule 8.5(a).

196 [20] In some circumstances, a lawyer who practices law in this jurisdiction pursuant to
197 paragraphs (c) or (d) may have to inform the client that the lawyer is not licensed to
198 practice law in this jurisdiction. For example, that may be required when the
199 representation occurs primarily in this jurisdiction and requires knowledge of the law
200 of this jurisdiction. See Rule 1.4(b).

201 [21] Paragraphs (c) and (d) do not authorize communications advertising legal services
202 in this jurisdiction by lawyers who are admitted to practice in other jurisdictions.

203 Whether and how lawyers may communicate the availability of their services in this
204 jurisdiction ~~is~~ are governed by Rules 7.1 to 7.5.

205

Tab 3

1 **Rule 5.4. Professional Independence of a Lawyer**

2 (a) A lawyer may provide legal services pursuant to this Rule only if there is at all times
3 no interference with the lawyer's:

4 (1) professional independence of judgment,

5 (2) duty of loyalty to a client, and

6 (3) protection of client confidences.

7 (b) A lawyer may permit a person to recommend, retain, or pay the lawyer to render
8 legal services for another.

9 (c) A lawyer or law firm may ~~share legal fees~~ pay a referral fee to with a nonlawyer
10 only if the referral fee complies with the provisions of Rule 1.5.:

11 ~~(1) the fee to be shared is reasonable and the fee sharing arrangement has been~~
12 ~~authorized as required by Utah Supreme Court Standing Order No. 15;~~

13 ~~(2) the lawyer or law firm provides written notice to the affected client and, if~~
14 ~~applicable, to any other person paying the legal fees;~~

15 ~~(3) the written notice describes the relationship with the nonlawyer, including~~
16 ~~the fact of the fee sharing arrangement; and~~

17 ~~(4) the lawyer or law firm provides the written notice before accepting~~
18 ~~representation or before sharing fees from an existing client.~~

19 (d) A lawyer may practice law with nonlawyers, or in an organization, including a
20 partnership, in which a financial interest is held or managerial authority is exercised by
21 one or more persons who are nonlawyers, provided that the nonlawyers or the
22 organization has been authorized as required by Utah Supreme Court Standing Order
23 No. 15 and provided the lawyer shall:

24 (1) before accepting a representation, provide written notice to a prospective
25 client that one or more nonlawyers holds a financial interest in the organization

26 in which the lawyer practices or that one or more nonlawyers exercises
27 managerial authority over the lawyer; and

28 (2) set forth in writing to a client the financial and managerial structure of the
29 organization in which the lawyer practices.

30 **Comments**

31 [1] The provisions of this Rule are to protect the lawyer's professional independence of
32 judgment, to assure that the lawyer is loyal to the needs of the client, and to protect
33 clients from the disclosure of their confidential information. Where someone other than
34 the client pays the lawyer's fee or salary, manages the lawyer's work, or recommends
35 retention of the lawyer, that arrangement does not modify the lawyer's obligation to the
36 client. As stated in paragraph (a), such arrangements must not interfere with the
37 lawyer's professional judgment. See also Rule 1.8(f) (lawyer may accept compensation
38 from a third party as long as there is no interference with the lawyer's independent
39 professional judgment and the client gives informed consent). This Rule does not lessen
40 a lawyer's obligation to adhere to the Rules of Professional Conduct and does not
41 authorize a nonlawyer to practice law by virtue of being in a business relationship with
42 a lawyer. It may be impossible for a lawyer to work in a firm where a nonlawyer owner
43 or manager has a duty to disclose client information to third parties, as the lawyer's
44 duty to maintain client confidences would be compromised.

45 [2] The Rule also expresses traditional limitations on permitting a third party to direct
46 or regulate the lawyer's professional judgment in rendering legal services to another.
47 See also Rule 1.8(f) (lawyer may accept compensation from a third party as long as there
48 is no interference with the lawyer's independent professional judgment and the client
49 gives informed consent).

50 | ~~[3] Paragraph (c) permits individual lawyers or law firms to pay for client referrals,~~
51 | ~~share fees with nonlawyers, or allow third party retention. In each of these instances,~~
52 | ~~only if the financial arrangement must be reasonable, authorized as required under~~

53 ~~Supreme Court Standing Order No. 15, and disclosed in writing to the client before~~
54 ~~engagement and before fees are shared~~complies with the requirements of Rule 1.5.

55 Paragraph (c) permits lawyers or law firms to pay for client referrals in accordance with
56 Rule 1.5. Other fee sharing arrangements are governed by Supreme Court Standing
57 Order No. 15. Whether ~~in~~ accepting or paying for referrals, or fee-sharing, the lawyer
58 must protect the lawyer's professional judgment, ensure the lawyer's loyalty to the
59 client, and protect client confidences.

60 [4] Paragraph (d) permits individual lawyers or law firms to enter into business or
61 employment relationships with nonlawyers, whether through nonlawyer ownership or
62 investment in a law practice, joint venture, or through employment by a nonlawyer
63 owned entity. In each instance, the nonlawyer owned entity must be approved by the
64 Utah Supreme Court for authorization under Standing Order No. 15.

1 **Rule 1.5. Fees.**

2 (a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or
3 an unreasonable amount for expenses. The factors to be considered in determining the
4 reasonableness of a fee include the following:

5 (1) the time and labor required, the novelty and difficulty of the questions
6 involved and the skill requisite to perform the legal service properly;

7 (2) the likelihood, if apparent to the client, that the acceptance of the particular
8 employment will preclude other employment by the lawyer;

9 (3) the fee customarily charged in the locality for similar legal services;

10 (4) the amount involved and the results obtained;

11 (5) the time limitations imposed by the client or by the circumstances;

12 (6) the nature and length of the professional relationship with the client;

13 (7) the experience, reputation and ability of the lawyer or lawyers performing the
14 services; and

15 (8) whether the fee is fixed or contingent.

16 (b) The scope of the representation and the basis or rate of the fee and expenses for
17 which the client will be responsible shall be communicated to the client, preferably in
18 writing, before or within a reasonable time after commencing the representation, except
19 when the lawyer will charge a regularly represented client on the same basis or rate.

20 Any changes in the basis or rate of the fee or expenses shall also be communicated to
21 the client.

22 (c) A fee may be contingent on the outcome of the matter for which the service is
23 rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or
24 other law. A contingent fee agreement shall be in a writing signed by the client and
25 shall state the method by which the fee is to be determined, including the percentage or
26 percentages that shall accrue to the lawyer in the event of settlement, trial or appeal;

27 litigation and other expenses to be deducted from the recovery; and whether such
28 expenses are to be deducted before or after the contingent fee is calculated. The
29 agreement must clearly notify the client of any expenses for which the client will be
30 liable whether or not the client is the prevailing party. Upon conclusion of a contingent
31 fee matter, the lawyer shall provide the client with a written statement stating the
32 outcome of the matter and, if there is a recovery, showing the remittance to the client
33 and the method of its determination.

34 (d) A lawyer shall not enter into an arrangement for, charge, or collect:

35 (1) any fee in a domestic relations matter, the payment or amount of which is
36 contingent upon the securing of a divorce or upon the amount of alimony or
37 support, or property settlement in lieu thereof; or

38 (2) a contingent fee for representing a defendant in a criminal case.

39 (e) Referral fees paid to a non-lawyer or paid to a lawyer who does not represent the
40 client in the referred matter shall:

41 (1) not be paid until an attorney's fee is payable to the lawyer representing the
42 client in the referred matter;

43 (2) not be passed directly or indirectly to the client; and

44 (3) be subject to the client giving informed consent confirmed in writing to the
45 terms of the referral fee arrangement.

46 (f) No referral fee may be paid to anyone who is a potential witness in that client's case.

47 (x) If the lawyer is to be paid by a contingent fee, any referral fee payable in the case
48 must be a percentage reasonable in proportion to of the total fee obtained.

49 [Note: does this fit better with (c) contingency fees or (e) referral fees]

50 **Comment**

51 **Reasonableness of Fee and Expenses**

Comment [NS1]:
➤ (e)(1): "until such time as" is redundant; "until" means "up to the time." Same in Comment [7] (twice).
➤ (e)(3): subject to the client's giving... (gerund possessive)
➤ (f): "A referral fee may not be paid," rather than "No referral fee..."
➤ [7], second page: Third line from top, "a lawyer whom"—"who" is the subject of "is competent to handle."
➤ [8]: witness for witnesses.
➤ [8], line 4: Delete "pervasive." It seems redundant with "serious" and is not a word I have ever seen used in connection with a description of legal impropriety.
➤ [8], three sentences beginning with "Before entering" seem to be an unnecessarily detailed explanation of what the rule states—more detail than is in most comments.

52 [1] Paragraph (a) requires that lawyers charge fees that are reasonable under the
53 circumstances. The factors specified in (a)(1) through (a)(8) are not exclusive. Nor will
54 each factor be relevant in each instance. Paragraph (a) also requires that expenses for
55 which the client will be charged must be reasonable. A lawyer may seek reimbursement
56 for the cost of services performed in-house, such as copying, or for other expenses
57 incurred in-house, such as telephone charges, either by charging a reasonable amount to
58 which the client has agreed in advance or by charging an amount that reasonably
59 reflects the cost incurred by the lawyer.

60 **Basis or Rate of Fee**

61 [2] When the lawyer has regularly represented a client, they ordinarily will have
62 evolved an understanding concerning the basis or rate of the fee and the expenses for
63 which the client will be responsible. In a new client-lawyer relationship, however, an
64 understanding as to fees and expenses must be promptly established. Generally, it is
65 desirable to furnish the client with at least a simple memorandum or copy of the
66 lawyer's customary fee arrangements that states the general nature of the legal services
67 to be provided, the basis, rate or total amount of the fee and whether and to what extent
68 the client will be responsible for any costs, expenses or disbursements in the course of
69 the representation. A written statement concerning the terms of the engagement
70 reduces the possibility of misunderstanding.

71 [3] Contingent fees, like any other fees, are subject to the reasonableness standard of
72 paragraph (a) of this Rule. In determining whether a particular contingent fee is
73 reasonable, or whether it is reasonable to charge any form of contingent fee, a lawyer
74 must consider the factors that are relevant under the circumstances. Applicable law
75 may impose limitations on contingent fees, such as a ceiling on the percentage
76 allowable, or may require a lawyer to offer clients an alternative basis for the fee.
77 Applicable law also may apply to situations other than a contingent fee, for example,
78 government regulations regarding fees in certain tax matters.

79 **Terms of Payment**

80 [4] A lawyer may require advance payment of a fee but is obligated to return any
81 unearned portion. See Rule 1.16(d). A lawyer may accept property in payment for
82 services, such as an ownership interest in an enterprise, providing this does not involve
83 acquisition of a proprietary interest in the cause of action or subject matter of the
84 litigation contrary to Rule 1.8(i). However, a fee paid in property instead of money may
85 be subject to the requirements of Rule 1.8(a) because such fees often have the essential
86 qualities of a business transaction with the client.

87 [5] An agreement may not be made whose terms might induce the lawyer improperly to
88 curtail services for the client or perform them in a way contrary to the client's interest.
89 For example, a lawyer should not enter into an agreement whereby services are to be
90 provided only up to a stated amount when it is foreseeable that more extensive services
91 probably will be required, unless the situation is adequately explained to the client.
92 Otherwise, the client might have to bargain for further assistance in the midst of a
93 proceeding or transaction. However, it is proper to define the extent of services in light
94 of the client's ability to pay. A lawyer should not exploit a fee arrangement based
95 primarily on hourly charges by using wasteful procedures.

96 **Prohibited Contingent Fees**

97 [6] Paragraph (d) prohibits a lawyer from charging a contingent fee in a domestic
98 relations matter when payment is contingent upon the securing of a divorce or upon the
99 amount of alimony or support or property settlement to be obtained. This provision
100 does not preclude a contract for a contingent fee for legal representation in connection
101 with the recovery of post-judgment balances due under support, alimony or other
102 financial orders because such contracts do not implicate the same policy concerns.

103 **Referral Fees**

104 ~~[7] This rule~~ Paragraph (e) prohibits lawyers from paying referral fees to persons
105 making referrals to them until such time as the lawyer who represents the client in the
106 matter is entitled to be paid attorney's fees. In the case of a contingent fee matter, the

107 lawyer may not pay the referral fee to the referring person until such time as the lawyer
108 who actually represents the client in the matter is entitled to receive the contingent fee,
109 which may be at the conclusion of the matter. A lawyer should only refer a matter to a
110 lawyer whom the referring lawyer reasonably believes is competent to handle the
111 matter diligently. See Rules 1.1 and 1.3. Paragraph (e)(2) prohibits passing along the
112 referral fee to the client either as a cost or an increase of the total fee. For the definitions
113 of “informed consent” and “confirmed in writing”, see Rule 1.0(b) and (f).

114 [8] Referral fees to a non-lawyer who is a potential witnesses may create
115 a ~~personal~~ conflict of interest between the client and the potential witness referring
116 party, ~~described in Rule 1.7(a)(2).~~ Additionally, the payment of a referral fee to a
117 witness may create such a pervasive and serious ~~the~~ appearance of impropriety to the
118 trier of fact that a client’s case may be significantly compromised, ~~thereby calling into~~
119 ~~question the lawyer’s compliance with Rule 1.1~~ . Before entering into an agreement to
120 pay a referral fee, the lawyer must evaluate whether the person requesting the referral
121 fee could potentially testify to facts or issues that might be relevant if the anticipated
122 claim should proceed to trial. Even if the lawyer does not intend to call the person as a
123 witness, if it is foreseeable that an opposing party or third party may do so a referral fee
124 violates this rule and is prohibited under paragraph (f). Potential witnesses may include
125 treating providers, eyewitnesses, and family and friends of the client. This rule does not
126 prohibit the referring party from charging reasonable fees directly to the client for
127 services actually provided by ~~that person~~ the referring party, whether related to the
128 claim or not.

129 **Disputes over Fees**

130 [879] If a procedure has been established for resolution of fee disputes, such as an
131 arbitration or mediation procedure established by the Bar, the lawyer must comply with
132 the procedure when it is mandatory, and, even when it is voluntary, the lawyer should
133 conscientiously consider submitting to it. Law may prescribe a procedure for
134 determining a lawyer's fee, for example, in representation of an executor or

135 administrator, a class or a person entitled to a reasonable fee as part of the measure of
136 damages. The lawyer entitled to such a fee and a lawyer representing another party
137 concerned with the fee should comply with the prescribed procedure.

138 | [9810] This rule differs from the ABA model rule.

Tab 4

Nancy:

Here are the latest documents the subcommittee has recommended. In addition, I am forwarding to you some late comments by Judge Nelson that should also be included for discussion on Monday. They are as follows:

As we get ready to digest, debate and vote on this, here are a just a couple of quick points:

1. On the proposed 8.4(2) I really like the idea of limiting the legitimate advocacy defense, but I think it probably should be to paragraphs "d", "g", and "h". Paragraph "d" could also cover a lawyer's actions where there should also be a potential defense (of legitimate advocacy) to make sure we aren't chilling any legitimate advocacy under paragraph "d".
2. On 8.4(2) I also want to make sure the "advocacy" sentence is not intended to modify or limit the prior sentence (or vice versa) relating to the First Amendment just because they are next to each other. Perhaps just add the word "additionally, such as: "Additionally, legitimate advocacy is not ..."
3. On 14-301, paragraph 6, add "of the standards" in the second to last sentence to more clearly explain. "Copies of these standards may be made available to clients to reinforce our obligations ..." (stylistic recommendation).
4. We previously had a proposed paragraph 7 in the preamble to 14-301, that seems to now be missing. (Or, I'm missing something.) For historical context, and to also further explain the interchange between 8.4 (h) and 14-301, I kind of like adding that paragraph 7. If we do decide to add it, it read at one time: "Although originally intended to be aspirational, the Supreme Court, by adopting Rule 8.4(h) of the Rules of Professional Conduct, has made these Standards mandatory to the extent that an egregious violation of the Standards, or a pattern of repeated violations of the Standards, where a client is harmed or if the conduct is prejudicial to the administration of justice, may subject the lawyer to disciplinary action."

Steve

1 **Rule 8.4. Misconduct.**

2 (1) It is professional misconduct for a lawyer to:

3 (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist
4 or induce another 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,
6 trustworthiness or fitness as 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
10 or to achieve results by means that violate the Rules of Professional Conduct or other
11 law; ~~or~~

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

14 (g) notwithstanding the number of employees in the lawyer's firm, engage in any
15 conduct that is listed as a discriminatory or prohibited employment practice under Sec
16 2000e-2 [Section 703] of Title VII of the Civil Rights Act of 1964, as amended, or under
17 Section 34A-5-106 of the Utah Antidiscrimination Act, as amended, or pursuant to
18 applicable court cases; or

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

22 (2) Paragraphs (g) and (h) do not apply to expression or conduct protected by the
23 First Amendment to the United States Constitution or by Article I of the Utah
24 Constitution. Legitimate advocacy does not violate subsections (1)(g) or (1)(h) of this
25 rule.

26

27 **Comment**

28 [1] Lawyers are subject to discipline when they violate or attempt to violate the
29 Rules of Professional Conduct or knowingly assist or induce another to do so through
30 the acts of another, as when they request or instruct an agent to do so on the lawyer's
31 behalf. Paragraph (a), however, does not prohibit a lawyer from advising a client
32 concerning action the client is legally entitled to take.

33 [1a] An act of professional misconduct under Rule 8.4(1)(b), (c), (d), (e), ~~or~~ (f), (g), or
34 (h) cannot be counted as a separate violation of Rule 8.4(1)(a) for the purpose of
35 determining sanctions. Conduct that violates other Rules of Professional Conduct,
36 however, may be a violation of Rule 8.4(1)(a) for the purpose of determining sanctions.

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

49 [3] A lawyer who, in the course of representing a client, knowingly manifests by
50 words or conduct bias or prejudice based upon race; color; sex; pregnancy, childbirth,
51 or pregnancy-related conditions; age, if the individual is 40 years of age or older;
52 religion; national origin; disability; ~~age~~; sexual orientation; gender identity
53 or ~~socioeconomic status~~ genetic information, ~~violates~~ may violate paragraph (d) when
54 such actions are prejudicial to the administration of justice. The protected classes listed

55 in this comment are consistent with those enumerated in the Utah Antidiscrimination
56 Act or 1965, Utah Code Sec. 34A-5-106(1)(a) (2016), and in federal statutes, and is not
57 meant to be an exhaustive list as the statutes may be amended from time to
58 time. Legitimate advocacy respecting the foregoing factors does not violate paragraph
59 (d). A trial judge's finding that peremptory challenges were exercised on a
60 discriminatory basis does not alone establish a violation of this rule.

61 ~~[3a] The Standards of Professionalism and Civility approved by the Utah Supreme~~
62 ~~Court are intended to improve the administration of justice. An egregious violation or a~~
63 ~~pattern of repeated violations of the Standards of Professionalism and Civility may~~
64 ~~support a finding that the lawyer has violated paragraph (d).~~

65 [4] The substantive law of antidiscrimination and anti-harassment statutes and case
66 law governs the application of paragraph (g), except that for the purposes of
67 determining a violation of paragraph (g), the size of the law firm or number of
68 employees is not a defense. Paragraph (g) does not limit the ability of a lawyer to
69 accept, decline, or, in accordance with Rule 1.16, withdraw from representation, nor
70 does paragraph (g) preclude legitimate advice or advocacy consistent with these rules.
71 Discrimination or harassment does not need to be previously proven by a judicial or
72 administrative tribunal or fact finder in order to allege or prove a violation of paragraph
73 (g). Lawyers may discuss the benefits and challenges of diversity and inclusion without
74 violating paragraph (g). Unless otherwise prohibited by law, implementing or
75 declining to implement initiatives aimed at recruiting, hiring, retaining, and advancing
76 employees of diverse backgrounds or from historically underrepresented groups, or
77 sponsoring diverse law student organizations, are not violations of paragraph (g).

78 [5] A lawyer does not violate paragraph (g) by limiting the scope or subject matter of
79 the lawyer's practice or by limiting the lawyer's practice to members of any particular
80 population in accordance with these Rules and other law. A lawyer may charge and
81 collect reasonable fees and expenses for a representation. Rule 1.5(a). Lawyers should
82 also be mindful of their professional obligations under Rule 6.1 to provide legal services

83 to those who are unable to pay and their obligations under Rule 6.2 not to avoid
84 appointments from a tribunal except for good cause. See Rule 6.2(a), (b), and (c). A
85 lawyer's representation of a client does not constitute an endorsement by the lawyer of
86 the client's views or activities. See Rule 1.2(b).

87 ~~[4]~~ [6] A lawyer may refuse to comply with an obligation imposed by law upon a
88 good faith belief that no valid obligation exists. The provisions of Rule 1.2(d) concerning
89 a good faith challenge to the validity, scope, meaning or application of the law apply to
90 challenges of legal regulation of the practice of law.

91 ~~[5]~~ [7] Lawyers holding public office assume legal responsibilities going beyond
92 those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill
93 the professional role of lawyers. The same is true of abuse of positions of private trust
94 such as trustee, executor, administrator, guardian, agent and officer, director or
95 manager of a corporation or other organization.

96 [8] This rule differs from ABA Model Rule 8.4 to the extent that it changes paragraph
97 (g), adds paragraph (h), and modifies the comments accordingly.

98

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
4 professional integrity in the fullest sense of those terms. In fulfilling a duty to represent
5 a client vigorously as lawyers, we must be mindful of our obligations to the
6 administration of justice, which is a truth-seeking process designed to resolve human
7 and societal problems in a rational, peaceful, and efficient manner. We must remain
8 committed to the rule of law as the foundation for a just and peaceful society. For the
9 purposes of these standards, the term "lawyer" includes a licensed legal practitioner.

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

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

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

24 We expect judges and lawyers will make mutual and firm commitments to these
25 standards. Adherence is expected as part of a commitment by all participants to
26 improve the administration of justice throughout this State. We further expect lawyers
27 to educate their clients regarding these standards and judges to reinforce this whenever

28 clients are present in the courtroom by making it clear that such tactics may hurt the
29 client's case.

30 Although for ease of usage the term "court" is used throughout, these standards
31 should be followed by all judges and lawyers in all interactions with each other and in
32 any ~~proceedings~~ law-related activities in this State. Law-related activities include, but
33 are not limited to, settlement negotiations; depositions; mediations; representation in
34 legal matters; court appearances; continuing legal education activities; events sponsored
35 by the Bar, Bar sections, Bar associations; and firm parties. Copies may be made
36 available to clients to reinforce our obligation to maintain and foster these standards.
37 Nothing in these standards supersedes or detracts from existing disciplinary codes or
38 standards of conduct.

39 Cross-References: R. Prof. Cond. Preamble [1], [13]; R. Civ. P. 1; R. Civ. P. 65B(b)(5);
40 R. Crim. P. 1(b); R. Juv. P. 1(b); R. Third District Court 10-1-306; Fed. R. Civ. P.
41 1; DUCivR 83-1.1(g).

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

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

53 The need for dignity and professionalism extends beyond the courtroom. Lawyers
54 are expected to refrain from inappropriate language, maliciousness, or insulting

55 behavior in depositions, meetings with opposing counsel and clients, telephone calls,
56 email, and other exchanges. They should use their best efforts to instruct their clients
57 and witnesses to do the same.

58 Cross-References: R. Prof. Cond. 1.4; R. Prof. Cond. 1.16(a)(1); R. Prof. Cond. 2.1; R.
59 Prof. Cond. 3.1; R. Prof. Cond. 3.2; R. Prof. Cond. 3.3(a)(1); R. Prof. Cond. 3.4; R. Prof.
60 Cond. 3.5(d); R. Prof. Cond. 3.8; R. Prof. Cond. 3.9; R. Prof. Cond. 4.1(a); R. Prof. Cond.
61 4.4(a); R. Prof. Cond. 8.4(d); R. Civ. P. 10(h); R. Civ. P. 12(f); R. App. P. 24(k); R. Crim. P.
62 33(a); Fed. R. Civ. P. 12(f).

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

67 Cross-References: R. Prof. Cond. Preamble [5]; R. Prof. Cond. 1.2(a); R. Prof. Cond.
68 1.2(d); R. Prof. Cond. 1.4(a)(5).

69 3. Lawyers shall not, without an adequate factual basis, attribute to other counsel or
70 the court improper motives, purpose, or conduct. Neither written submissions nor oral
71 presentations may disparage the integrity, intelligence, morals, ethics, or personal
72 behavior of any adversary or other participant in the legal process unless such matters
73 are directly relevant under controlling substantive law or are necessary for legitimate
74 advocacy.

75 [Three options for paragraph 2 of this standard; the order of these options does not
76 indicate any particular preference of the subcommittee.]

77 Option 1: Lawyers shall avoid discriminatory conduct in law-related activities.
78 Discriminatory conduct includes all unlawful discrimination against persons of
79 protected classes as those classes are enumerated in the Utah Antidiscrimination Act of
80 1965, Utah Code section 34A-5-106(1)(a) and applicable federal statutes, as amended
81 from time to time.

82 Option 2: Lawyers shall avoid unlawful discrimination against protected classes as
83 those classes are enumerated in the Utah Antidiscrimination Act of 1965, Utah Code
84 section 34A-5-106(1)(a) and applicable federal statutes, as amended from time to time.

85 Option 3: [Eliminate this paragraph completely.]

86 Comment: ~~Hostile, demeaning, and humiliating communications include all~~
87 ~~expressions of discrimination on the basis of race, religion, gender, sexual orientation,~~
88 ~~age, handicap, veteran status, or national origin, or casting aspersions on physical traits~~
89 ~~or appearance. Lawyers should refrain from acting upon or manifesting bigotry,~~
90 ~~discrimination, or prejudice toward any participant in the legal process, even if a client~~
91 ~~requests it.~~

92 Lawyers should refrain from expressing scorn, superiority, or disrespect. Legal
93 process should not be issued merely to annoy, humiliate, intimidate, or harass. Special
94 care should be taken to protect witnesses, especially those who are disabled or under
95 the age of 18, from harassment or undue contention.

96 Cross-References: R. Prof. Cond. Preamble [5]; R. Prof. Cond. 3.1; R. Prof. Cond. 3.5;
97 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);
98 Fed. R. Civ. P. 12(f).

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

102 Cross-References: R. Prof. Cond. 3.1; R. Prof. Cond. 3.3(a)(1); R. Prof. Cond. 3.5(a); R.
103 Prof. Cond. 8.4(c); R. Prof. Cond. 8.4(d).

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

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

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

110 Cross-References: R. Prof. Cond. 1.1; R. Prof. Cond. 1.3; R. Prof. Cond. 1.4(a), (b); R.
111 Prof. Cond. 1.6(a); R. Prof. Cond. 1.9; R. Prof. Cond. 1.13(a), (b); R. Prof. Cond. 1.14; R.
112 Prof. Cond. 1.15; R. Prof. Cond. 1.16(d); R. Prof. Cond. 1.18(b), (c); R. Prof. Cond. 2.1; R.
113 Prof. Cond. 3.2; R. Prof. Cond. 3.3; R. Prof. Cond. 3.4(c); R. Prof. Cond. 3.8; R. Prof.
114 Cond. 5.1; R. Prof. Cond. 5.3; R. Prof. Cond. 8.3(a), (b); R. Prof. Cond. 8.4(c); R. Prof.
115 Cond. 8.4(d).

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

121 Comment: When providing other counsel with a copy of any negotiated document
122 for review, a lawyer should not make changes to the written document in a manner
123 calculated to cause the opposing party or counsel to overlook or fail to appreciate the
124 changes. Changes should be clearly and accurately identified in the draft or otherwise
125 explicitly brought to the attention of other counsel. Lawyers should be sensitive to, and
126 accommodating of, other lawyers' inability to make full use of technology and should
127 provide hard copy drafts when requested and a redline copy, if available.

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

130 8. When permitted or required by court rule or otherwise, lawyers shall draft orders
131 that accurately and completely reflect the court's ruling. Lawyers shall promptly
132 prepare and submit proposed orders to other counsel and attempt to reconcile any
133 differences before the proposed orders and any objections are presented to the court.

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

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

140 Cross-References: R. Prof. Cond. 3.2; R. Prof. Cond. 3.4(a); R. Prof. Cond. 4.1(a); R.
141 Prof. Cond. 8.4(c); R. Prof. Cond. 8.4(d).

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

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

147 11. Lawyers shall avoid impermissible ex parte communications.

148 Cross-References: R. Prof. Cond. 1.2; R. Prof. Cond. 2.2; R. Prof. Cond. 2.9; R. Prof.
149 Cond. 3.5; R. Prof. Cond. 5.1; R. Prof. Cond. 5.3; R. Prof. Cond. 8.4(a); R. Prof. Cond.
150 8.4(d); R. Civ. P. 77(b); R. Juv. P. 2.9(A); Fed. R. Civ. P. 77(b).

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

155 Cross-References: R. Prof. Cond. 3.5(a); R. Prof. Cond. 3.5(b); R. Prof. Cond. 5.1; R.
156 Prof. Cond. 5.3; R. Prof. Cond. 8.4(a); R. Prof. Cond. 8.4(d).

157 13. Lawyers shall not knowingly file or serve motions, pleadings or other papers at a
158 time calculated to unfairly limit other counsel's opportunity to respond or to take other

159 unfair advantage of an opponent, or in a manner intended to take advantage of another
160 lawyer's unavailability.

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

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

169 Comment: Lawyers should not evade communication with other counsel, should
170 promptly acknowledge receipt of any communication, and should respond as soon as
171 reasonably possible. Lawyers should only use data-transmission technologies as an
172 efficient means of communication and not to obtain an unfair tactical advantage.
173 Lawyers should be willing to grant accommodations where the use of technology is
174 concerned, including honoring reasonable requests to retransmit materials or to provide
175 hard copies.

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

178 Cross-References: R. Prof. Cond. 1.2(a); R. Prof. Cond. 2.1; R. Prof. Cond. 3.2; R. Prof.
179 Cond. 8.4; R. Juv. P. 54.

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

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

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

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

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

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

205 Cross-References: R. Prof. Cond. 3.1; R. Prof. Cond. 3.2; R. Prof. Cond. 3.4; R. Prof.
206 Cond. 4.1; R. Prof. Cond. 4.4(a); R. Prof. Cond. 8.4; R. Civ. P. 26(b)(1); R. Civ. P.
207 26(b)(8)(A); R. Civ. P. 37(a)(1)(A), (D); R. Civ. P. 37(c); R. Crim. P. 16(b); R. Crim. P.
208 16(c); R. Crim. P. 16(d); R. Crim. P. 16(e); R. Juv. P. 20; R. Juv. P. 20A; R. Juv. P. 27(b);
209 Fed. R. Civ. P. 26(b)(1); Fed. R. Civ. P. 26(g)(1)(B)(ii), (iii).

210 18. During depositions lawyers shall not attempt to obstruct the interrogator or
211 object to questions unless reasonably intended to preserve an objection or protect a
212 privilege for resolution by the court. "Speaking objections" designed to coach a witness

213 are impermissible. During depositions or conferences, lawyers shall engage only in
214 conduct that would be appropriate in the presence of a judge.

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

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

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

226 20. Lawyers shall not authorize or encourage their clients or anyone under their
227 direction or supervision to engage in conduct proscribed by these Standards.

228 Adopted by Supreme Court order October 16, 2003.

229

230