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

Agenda

October 4, 2021
5:00 to 7:00 p.m.

Via Webex

Welcome and approval of minutes	Tab 1	Simón Cantarero, Chair
Referral fee Sub-Committee update • Rules 5.8, 5.4, 1.5 and 1.0	Tab 2	Alyson McAlister (subcommittee chair), Angie Allen, Dan Brough, Jurhee Rice, Gary Sackett
Anti-Discrimination Sub-Committee update • Rules 8.4 and 14-301	Tab 3	Adam Bondy (subcommittee chair), Judge Michael Edwards, Judge Trent Nelson, Judge Amy Oliver, Steve Johnson, Austin Riter, Professor Dane Thorley, Katherine Venti, Julie Nelson

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

Next meetings: November 1, 2021
December 6, 2021
January 3, 2022

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

Tab 1

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

[Draft] Meeting Minutes
September 13, 2021

WEBEX
17:00 Mountain Time

J. Simon Cantarero, Chair

Attendees:
J. Simon Cantarero, Chair
Hon. James Gardner
Katherine Venti
Alyson McAllister
Cory Talbot
Adam Bondy
Joni Jones
Gary Sackett (Emeritus)
Steve Johnson (Emeritus)
Jurhee Rice
Dan Brough
Amy Oliver
Dane Thorley
Julie J. Nelson
Hon. Mike Edwards
Robert Gibbons
Austin Riter
Hon. Trent Nelson
M. Alex Natt, Recording Secretary

Absent – Angie Allen, Phil Lowry,
Billy Walker.

Staff:
Gage Hansen

Guests:
Scottie Hill, Bridget Lavender, Jacqueline Carlton

1. **Welcome and approval of the August 3, 2021 meeting minutes:** Mr. Canterero

   Chair Cantarero recognized the existence of a quorum, welcomed everyone to the meeting and it commenced at 17:05.

   The Chair asks for a Motion to approve the August 3, 2021 meeting minutes.

   The Chair indicates a needed change that removes Vanessa from the absence list as she was no longer on the committee and Robert Gibbons will be added to the meeting minutes as present.

   Julie Nelson moves and Robert Gibbons seconds the Motion. The minutes are adopted unanimously without the noted corrections.

   The Chair asks Bridget Lavender (new clerk for Justice Himonas) to introduce herself. Next, Scottie Hill introduces herself as Associate General Counsel for the Utah State Bar. Jacqueline Carlton is also recognized and welcomed to the meeting.

2. **Rules 1.0 and 1.5:** (Chair Cantarero)

   Alyson McAllister is asked to discuss the work of her subcommittee and proposed revisions. She starts with modifications to Rule 1.0 regarding referral fees and proposes an addition clarifying that lawyers that remain involved in a case (i.e. actively representing the client) are not considered as being "referring" under the rule. The Committee discussed the impact of Licensed Legal Practitioners on this rule and whether they were included in the definition of "lawyer." In the end, the term "legal professional" will be used to solve the issue discussed in 1.0(p). There still seems to be an inconsistency and the Chair will examine this inconsistency (lawyers and LPP's sharing fees) with the Supreme Court. For now the Committee will focus on bare referral fees pending the fee sharing clarification.

   The Committee also discussed "shall" vs. "must" in the Rules and expresses some dissatisfaction with a wholesale change to the language in the Rules driving by a good faith attempt to modernize the Rules as some usages of "shall" do not mean "must."

   The Committee reviews additions by the Court to 1.5(e) and to 1.5(f) and 1.5(g). There were no concerns expressed by these additions.

   Mr. Sackett raises an issue regarding 1.5(f) regarding potential witnesses and whether verbiage placed in the Rule by the Court are appropriately in the Rule or should be left as comments to the Rule. The Chair will discuss with the Court.

Mr. Sackett also believes that the fee referral rules should probably reside in another Rule rather than in Rule 1.5 as these rules regard fee splits paid amongst lawyers rather than fees paid by clients to lawyers. Some in the Committee propose moving this rule to create a new Rule 5.8 but there is not unanimity of opinion in adopting this approach.

Ms. McAllister moves the following be adopted by the Committee:

Adopt the changes:

to 5.4(c) and comment 3 to reference referral fee rule 5.8 and other fee sharing arrangements with non-lawyers besides referral fees as defined in 1.0 are governed by supreme court standing order 15.

in the terminology in Rule 1.0 we add the sentence at the end of paragraph P that the prohibition does not apply to lawyers who remain representing a client in the referred matter.

in 1.5, that referral fee sections E, F, G and the comments 7 and 8 to a new Rule 5.8 entitled "Referral Fees," creating:

5.8(a) Referral fee restrictions, and adopting the changes recommended by the Court and adding a change in paragraph (a)(2) that "not be passed directly ***or indirectly*** to the client"

5.8 (b) No referral fees to witnesses, and adding a change in paragraph (b) that "no referral fee may be paid, directly ***or indirectly***"

5.8 (c) Any referral fee payable in the case must be reasonable relative to the total attorney fees that may ultimately be earned, considering any applicable factors in Rule 1.5(a).

Comment 5.8[1] from 5.4[7] and move the commas inside the quotation marks, the phrase "referral fees," and a reference to rule 1.0.

Comment 5.8[2] from Comment 5.4[8] and changing "must" to "should" in the third sentence.

Ask the Court whether the 2nd and 3rd sentence should be a comment or a Rule.

Comment 5.8[3] will state that this Rule is not part of the ABA model Rules.

In 1.5c on lines 27 and 28 that should be modified to read "will be owed to the lawyer."

And readjust the paragraph numbering and references to numbering appropriate after the language is amended.

Ms. Venti seconds the Motion. The Motion passes unanimously.

3. **Rules 8.4 and 14-301**. (Adam Bondy)

Mr. Bondy updated the Committee on the sub-committee's recommendation and will circulate the sub-committee's draft for the next meeting.

The meeting adjourned at 19:00.

The next meeting will be held on October 4, 2021.

Tab 2

Rule 5.8. Referral Fees.

(a) **Referral fee restrictions.** Referral fees paid to a non-lawyer or paid to a lawyer who does not represent the client in the referred matter must:

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

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

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

A referring party is not prohibited from charging reasonable fees directly to the client for services actually provided by the referring party, whether related to the claim or not.

(b) **No referral fees to potential witnesses.** No referral fee may be paid, directly or indirectly, to a potential witness in the referred case. Even if the lawyer does not intend to call the person as a witness, if it is foreseeable that an opposing party or third party may do so, a referral fee violates this rule. Potential witnesses may include treating providers, eyewitnesses, and family and friends of the client.

Commented [AM1]: Should these two sentences be a comment instead of in the rule language?

(c) **Reasonableness of referral fee.** Any referral fee payable in the case must be reasonable relative to the total attorney fees that may ultimately be earned, considering any applicable factors in Rule 1.5(a).

Comment

[1] Paragraph (a) prohibits lawyers from paying referral fees to persons making referrals to them until the lawyer who represents the client in the matter is entitled to be paid attorney fees. In the case of a contingent fee matter, the lawyer may not pay the referral fee to the referring person until the lawyer who actually represents the client in the matter is entitled to receive the contingent fee, which may be at the conclusion of the matter. A lawyer should only refer a matter to a lawyer whom the referring lawyer reasonably believes is competent to handle the matter diligently. See Rules 1.1 and 1.3. Paragraph

(a)(2) prohibits passing along the referral fee to the client either as a cost or an increase of the total fee. For the definitions of "informed consent," "confirmed in writing," and "referral fees," see Rule 1.0.

[2] Referral fees to a non-lawyer who is a potential witness may create a conflict of interest between the client and the potential witness referring party. Additionally, the payment of a referral fee to a witness may create such a pervasive and serious appearance of impropriety to the trier of fact that a client's case may be significantly compromised. Before entering into an agreement to pay a referral fee, the lawyer should evaluate whether the person requesting the referral fee could potentially testify to facts or issues that might be relevant if the anticipated claim should proceed to trial.

[3] This rule is not part of the ABA model rules.

Rule 5.4. Professional Independence of a Lawyer

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

(1) professional independence of judgment,

(2) duty of loyalty to a client, and

(3) protection of client confidences.

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

(c) A lawyer or law firm may pay a referral fee to a nonlawyer only if the referral fee complies with Rule 5.8.

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

(1) before accepting a representation, provide written notice to a prospective client that one or more nonlawyers holds a financial interest in the organization in which the lawyer practices or that one or more nonlawyers exercises managerial authority over the lawyer; and

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

Comments

[1] The provisions of this Rule are to protect the lawyer's professional independence of judgment, to assure that the lawyer is loyal to the needs of the client, and to protect clients from the disclosure of their confidential information. Where someone other than the client pays the lawyer's fee or salary, manages the lawyer's work, or recommends

retention of the lawyer, that arrangement does not modify the lawyer's obligation to the client. As stated in paragraph (a), such arrangements must not interfere with the lawyer's professional judgment. See also Rule 1.8(f) (lawyer may accept compensation from a third party as long as there is no interference with the lawyer's independent professional judgment and the client gives informed consent). This Rule does not lessen a lawyer's obligation to adhere to the Rules of Professional Conduct and does not authorize a nonlawyer to practice law by virtue of being in a business relationship with a lawyer. It may be impossible for a lawyer to work in a firm where a nonlawyer owner or manager has a duty to disclose client information to third parties, as the lawyer's duty to maintain client confidences would be compromised.

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

[3] Paragraph (c) permits individual lawyers or law firms to pay nonlawyers for client referrals in accordance with Rule 5.8. Other fee sharing arrangements with non-lawyers, besides referral fees as defined in Rule 1.0, are governed by Supreme Court Standing Order No. 15. Whether accepting or paying for referrals, or fee-sharing, the lawyer must protect the lawyer's professional judgment, ensure the lawyer's loyalty to the client, and protect client confidences.

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

[5] This rule differs from the ABA model rule.

Rule 1.5. Fees.

(a) **Reasonableness of attorney fees and expenses**. A lawyer must not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

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

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

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

(4) the amount involved and the results obtained;

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

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

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

(8) whether the fee is fixed or contingent.

(b) **Communication to the client.** The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible must be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses must also be communicated to the client.

(c) **Permitted contingency fees.** A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement must be in a writing signed by the client and must state the method by which the fee is to be

determined, including the percentage or percentages that will be owed to the lawyer in the event of settlement, trial or appeal; litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer must provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(d) **Prohibited contingency fees.** A lawyer must not enter into an arrangement for, charge, or collect:

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

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

(e) A licensed paralegal practitioner may not enter into a contingent fee agreement with a client.

(f) Before providing any services, a licensed paralegal practitioner must provide the client with a written agreement that:

(1) states the purpose for which the licensed paralegal practitioner has been retained;

(2) identifies the services to be performed;

(3) identifies the rate or fee for the services to be performed and whether and to what extent the client will be responsible for any costs, expenses or disbursements in the course of the representation;

(4) includes a statement printed in 12-point boldface type that the licensed paralegal practitioner is not an attorney and is limited to practice in only those areas in which the licensed paralegal practitioner is licensed;

(5) includes a provision stating that the client may report complaints relating to a licensed paralegal practitioner or the unauthorized practice of law to the Office of Professional Conduct, including a toll-free number and Internet website;

(6) describes the document to be prepared;

(7) describes the purpose of the document;

(8) describes the process to be followed in preparing the document;

(9) states whether the licensed paralegal practitioner will be filing the document on the client's behalf; and

(10) states the approximate time necessary to complete the task.

(g) A licensed paralegal practitioner may not make an oral or written statement guaranteeing or promising an outcome, unless the licensed paralegal practitioner has some basis in fact for making the guarantee or promise.

Comment

Reasonableness of Fee and Expenses

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

Basis or Rate of Fee

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

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

Terms of Payment

[4] A lawyer may require advance payment of a fee but is obligated to return any unearned portion. See Rule1.16(d). A lawyer may accept property in payment for services, such as an ownership interest in an enterprise, providing this does not involve acquisition of a proprietary interest in the cause of action or subject matter of the litigation contrary to Rule 1.8(i). However, a fee paid in property instead of money may be subject to the requirements of Rule 1.8(a) because such fees often have the essential qualities of a business transaction with the client.

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

Prohibited Contingent Fees

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

Disputes over Fees

[7] If a procedure has been established for resolution of fee disputes, such as an arbitration or mediation procedure established by the Bar, the lawyer must comply with the procedure when it is mandatory, and, even when it is voluntary, the lawyer should conscientiously consider submitting to it. Law may prescribe a procedure for determining a lawyer's fee, for example, in representation of an executor or administrator, a class or a person entitled to a reasonable fee as part of the measure of damages. The lawyer entitled to such a fee and a lawyer representing another party concerned with the fee should comply with the prescribed procedure.

[8] This rule differs from the ABA model rule.

Rule 1.0. Terminology.

(a) "Belief" or "believes" denotes that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from circumstances.

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

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

(d) "Firm" or "law firm" denotes a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a legal services organization or the legal department of a corporation or other organization.

(e) "Fraud" or "fraudulent" denotes conduct that is fraudulent under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive.

(f) "Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.

(g) "Knowingly," "known" or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

(h) “Legal Professional” includes a lawyer and a licensed paralegal practitioner.

(i) “Licensed Paralegal Practitioner” denotes a person authorized b y the Utah Supreme Court to provide legal representation under Rule 15-701 of the Supreme Court Rules of Professional Practice.

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

(k) “Public-facing office” means an office that is open to the public and provides a service that is available to the population in that location.

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

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

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

(o) “Reckless” or “recklessly” denotes the conscious disregard of a duty that a lawyer is or reasonably should be aware of, or a conscious indifference to the truth.

(p) “Referral fee” or “referral fees” is any exchange of value, whether in cash or in kind, bestowing an economic benefit to the referring party beyond what would be considered marginal or of minimal value for accounting and tax purposes under applicable law. A referring party does not include a lawyer who continues to represent the client in the referred matter.

(q) "Screened" denotes the isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under these Rules or other law.
(r) "Substantial" when used in reference to degree or extent denotes a material matter of clear and weighty importance.
(s) "Tribunal" denotes a court, an arbitrator in a binding 50 arbitration proceeding or a legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party's interests in a particular matter.
(t) "Writing" or "written" denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or video recording and electronic communications. A "signed" writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

Comment

Confirmed in Writing

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

Firm

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

[3] With respect to the law department of an organization, including the government, there is ordinarily no question that the members of the department constitute a firm within the meaning of the Rules of Professional Conduct. There can be uncertainty, however, as to the identity of the client. For example, it may not be clear whether the law department of a corporation represents a subsidiary or an affiliated corporation, as well as the corporation by which the members of the department are directly employed.

A similar question can arise concerning an unincorporated association and its local affiliates.

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

Fraud

[5] When used in these Rules, the terms "fraud" or "fraudulent" refer to conduct that is characterized as such under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive. This does not include merely negligent misrepresentation or negligent failure to apprise another of relevant information. For purposes of these Rules, it is not necessary that anyone has suffered damages or relied on the misrepresentation or failure to inform.

Informed Consent

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

[7] Obtaining informed consent will usually require an affirmative response by the client or other person. In general, a lawyer may not assume consent from a client's or other person's silence. Consent may be inferred, however, from the conduct of a client or other person who has reasonably adequate information about the matter. A number of rules require that a person's consent be confirmed in writing. See Rules 1.7(b) and 1.9(a). For a definition of "writing" and "confirmed in writing," see paragraphs (r) and

(b). Other rules require that a client's consent be obtained in a writing signed by the client. See, e.g., Rules 1.8(a) and (g). For a definition of "signed," see paragraph (r).

Screened

[8] This definition applies to situations where screening of a personally disqualified lawyer is permitted to remove imputation of a conflict of interest under Rules 1.10, 1.11, 1.12 or 1.18.

[9] The purpose of screening is to assure the affected parties that confidential information known by the personally disqualified lawyer remains protected. The personally disqualified lawyer should acknowledge the obligation not to communicate with any of the other lawyers in the firm with respect to the matter. Similarly, other lawyers in the firm who are working on the matter should be informed that the screening is in place and that they may not communicate with the personally disqualified lawyer with respect to the matter. Additional screening measures that are appropriate for the particular matter will depend on the circumstances. To implement, reinforce and remind all affected lawyers of the presence of the screening, it may be appropriate for the firm to undertake such procedures as a written undertaking by the screened lawyer to avoid any communication with other firm personnel and any contact with any firm files or other information, including information in electronic form, relating to the matter, written notice and instructions to all other firm personnel forbidding any communication with the screened lawyer relating to the matter, denial of access by the screened lawyer to firm files or other information, including information in electronic form, relating to the matter and periodic reminders of the screen to the screened lawyer and all other firm personnel.

[10] In order to be effective, screening measures must be implemented as soon as practical after a lawyer or law firm knows or reasonably should know that there is a need for screening.

[10a] The definitions of “consult” and “consultation,” while deleted from the ABA Model Rule 1.0, have been retained in the Utah Rule because “consult” and “consultation” are used in the rules. See, e.g., Rules 1.2, 1.4, 1.14, and 1.18.

Tab 3

Rule 8.4. Misconduct.

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

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

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

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

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

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

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

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

(h) egregiously violate, or engage in a pattern of repeated violations of, Rule 14-301 if such violations harm a participant in the legal process and are prejudicial to the administration of justice.

(2) Paragraphs (1)(d), (1)(g) and (1)(h) do not apply to expression or conduct protected by the First Amendment to the United States Constitution or by Article I of the Utah Constitution.

(3) Legitimate advocacy does not violate ~~subsections (1)(g) or (1)(h) of~~ this rule.

Comment

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

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

[2] Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return.

However, some kinds of offenses carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving "moral turpitude." That concept can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, that have no specific connection to fitness for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, breach of trust or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

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

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

[4] The substantive law of antidiscrimination and anti-harassment statutes and case law governs the application of paragraph (1)(g), except that for the purposes of determining a violation of paragraph (1)(g), the size of the law firm or number of employees is not a defense. Paragraph (1)(g) does not limit the ability of a lawyer to accept, decline, or, in accordance with Rule 1.16, withdraw from representation, nor does paragraph (1)(g) preclude legitimate advice or advocacy consistent with these rules. Discrimination or harassment does not need to be previously proven by a judicial or administrative tribunal or fact finder in order to allege or prove a violation of paragraph (1)(g). Lawyers may discuss the benefits and challenges of diversity and inclusion without violating paragraph (1)(g). Unless otherwise prohibited by law, implementing or declining to implement initiatives aimed at recruiting, hiring, retaining, and advancing employees of diverse backgrounds or from historically underrepresented

groups, or sponsoring diverse law student organizations, are not per se violations of paragraph (1)(g).

[5] A lawyer does not violate paragraph (1)(g) by limiting the scope or subject matter of the lawyer's practice or by limiting the lawyer's practice to members of any particular population in accordance with these Rules and other law. A lawyer may charge and collect reasonable fees and expenses for a representation. See Rule 1.5(a). Lawyers should also be mindful of their professional obligations under Rule 6.1 to provide legal services to those who are unable to pay and their obligations under Rule 6.2 not to avoid appointments from a tribunal except for good cause. See Rule 6.2(a), (b), and (c). A lawyer's representation of a client does not constitute an endorsement by the lawyer of the client's views or activities. See Rule 1.2(b).

[6] Participants in the legal process include lawyers, clients, witnesses, judges, clerks, court reporters, translators, bailiffs, arbitrators, and mediators.

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

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

[9] This rule differs from ABA Model Rule 8.4 to the extent that it renumbers the rule and adds two "safe harbor" paragraphs, changes paragraph (1)(g), adds paragraph (1)(h), and modifies the comments accordingly.

Rule 14-301. Standards of Professionalism and Civility.

Preamble

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

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

The fair and equal administration of justice is an important function of a civil society. The Court has compelling interests to ensure and promote the fair administration of justice, to ensure all participants in the judicial system or legal process are treated fairly and respectfully, and to provide remedial measures when lawyers and legal professionals face discrimination in their employment. Unlawful discrimination or harassment in legal proceedings or in the operation of a law practice is inappropriate and damages the perception that the administration of justice is based on fairness.

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

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

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

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

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

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

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

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

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

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

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

3. Lawyers shall not, without an adequate factual basis, attribute to other counsel or the court improper motives, purpose, or conduct. Lawyers should avoid hostile, demeaning, or humiliating words in written and oral communications with adversaries. Neither written submissions nor oral presentations should disparage the integrity, intelligence, morals, ethics, or personal behavior of an adversary unless such matters are directly relevant under controlling substantive law or are necessary for legitimate advocacy.

Lawyers, acting in the practice of law or in the administration of a firm or other entity providing legal services, shall avoid unlawful discrimination against protected classes as those classes are enumerated in the Utah Antidiscrimination Act of 1965, Utah Code section 34A-5-106(a) and applicable federal statutes, as amended from time to time.

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

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

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

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

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

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

Cross-References: R. Prof. Cond. 3.1; R. Prof. Cond. 3.2; R. Prof. Cond. 8.4(1)(c); R. Prof. Cond. 8.4(1)(d); R. Civ. P. 11(c); R. Civ. P. 16(d); R. Civ. P. 37(a); Fed. R. Civ. P. 11(c)(2).

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

Cross-References: R. Prof. Cond. 1.1; R. Prof. Cond. 1.3; R. Prof. Cond. 1.4(a), (b); R. Prof. Cond. 1.6(a); R. Prof. Cond. 1.9; R. Prof. Cond. 1.13(a), (b); R. Prof. Cond. 1.14; R. Prof. Cond. 1.15; R. Prof. Cond. 1.16(d); R. Prof. Cond. 1.18(b), (c); R. Prof. Cond. 2.1; R. Prof. Cond. 3.2; R. Prof. Cond. 3.3; R. Prof. Cond. 3.4(c); R. Prof. Cond. 3.8; R. Prof. Cond. 5.1; R. Prof. Cond. 5.3; R. Prof. Cond. 8.3(a), (b); R. Prof. Cond. 8.4(1)(c); R. Prof. Cond. 8.4(1)(d).

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

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

Cross-References: R. Prof. Cond. 3.4(a); R. Prof. Cond. 4.1(a); R. Prof. Cond. 8.4(1)(c); R. Prof. Cond. 8.4(1)(d); R. App. P. 11(f).

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

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

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

Cross-References: R. Prof. Cond. 3.2; R. Prof. Cond. 3.4(a); R. Prof. Cond. 4.1(a); R. Prof. Cond. 8.4(1)(c); R. Prof. Cond. 8.4(1)(d).

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

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

11. Lawyers shall avoid impermissible ex parte communications.

Cross-References: R. Prof. Cond. 1.2; R. Prof. Cond. 2.2; R. Prof. Cond. 2.9; R. Prof. Cond. 3.5; R. Prof. Cond. 5.1; R. Prof. Cond. 5.3; R. Prof. Cond. 8.4(1)(a); R. Prof. Cond. 8.4(1)(d); R. Civ. P. 77(b); R. Juv. P. 2.9(A); Fed. R. Civ. P. 77(b).

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

Cross-References: R. Prof. Cond. 3.5(a); R. Prof. Cond. 3.5(b); R. Prof. Cond. 5.1; R. Prof. Cond. 5.3; R. Prof. Cond. 8.4(1)(a); R. Prof. Cond. 8.4(1)(d).

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

Cross-References: R. Prof. Cond. 8.4(1)(c); R. Juv. P. 19.

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

request an extension of time solely for the purpose of delay or to obtain a tactical advantage.

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

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

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

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

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

Cross-References: R. Prof. Cond. 3.2; R. Prof. Cond. 3.4; R. Prof. Cond. 5.1; R. Prof. Cond. 8.4(1)(a); R. Juv. P. 20; R. Juv. P. 20A.

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

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

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

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

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

Cross-References: R. Prof. Cond. 3.2; R. Prof. Cond. 3.3(a)(1); R. Prof. Cond. 3.4; R. 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. Civ. P. 30(c)(2); Fed. R. Civ. P. 30(d)(2); Fed. R. Civ. P. 30(d)(3)(A.

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

Cross-References: R. Prof. Cond. 3.2; R. Prof. Cond. 3.4; R. Prof. Cond. 8.4; R. Prof. 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; Fed. R. Civ. P. 37(a)(4).

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

Adopted by Supreme Court order October 16, 2003.