

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

Agenda

October 3, 2023

4:00 to 6:00 p.m.

Utah Law and Justice Center with [Zoom](#) available

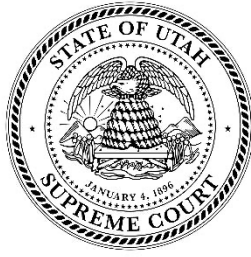
Welcome; approval of minutes.	Tab 1	Cory Talbot (chair)
Update on discussions with Supreme Court re recommendations on rules governing referral fees: Rules 1.0 (terminology), 5.4 (professional independence of a lawyer), 5.8 (referral fees) and 1.15 (safekeeping property)		Cory Talbot (chair)
Discussion/Action: Review comments to Rule 1.2 (scope of representation and allocation of authority between client and lawyer). Relevant comments are highlighted in the attached document.	Tab 2	
Discussion/Action: Review comments to Rule 7.1 (communications concerning a lawyer's services). Relevant comments highlighted.	Tab 3	
Discussion/Action: Review comments to Rule 8.4 (misconduct).	Tab 4	
Discussion/Action: Rule 1.0 : Consider and discuss possible revisions to definitions.	Tab 5	Gary Sackett
Projects in the pipeline: <ul style="list-style-type: none">Rules 8.4 and 14-301: Assigned to Judicial Council's Fairness and Accountability Committee (historical memo attached to August 2022 materials).		--

Meetings are held at the Utah Law and Justice Center, usually on the first Tuesday of the month from 4 to 6 p.m.

2023 Meeting Schedule: Jan 3 • Feb 7 • Mar 7 • April 11 • May 9 • June 6 • Aug 1 • Sep 5 • Oct 3 • Nov 7 • Dec 5

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

Tab 1



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

[Draft] Meeting Minutes

September 5, 2023

Utah Law and Justice Center & Zoom

4:00 pm Mountain Time

Cory Talbot, Chair

Attendees:

Cory Talbot, Chair
Jurhee Rice
Ian Quiel
Eric Weeks
Alyson McAllister
Robert Gibbons
Mark Hales
Hon. Trent Nelson
Hon. Amy Oliver
Adam Bondy
Christine Greenwood
Ashley Gregson
Mark Nickel
Sharadee Fleming (ex officio)
Hon. James Gardner
Hon. M. Alex Natt, Recording
Secretary

Excused: Julie J. Nelson

Staff:

Beth Kennedy

Guests:

Nick Stiles

1. Welcome, Approval of the August 8, 2023 meeting minutes (Chair Talbot)

Chair Talbot recognized the existence of a quorum and called the meeting to order at 4:03. The Chair asked for a Motion to approve the August 8 meeting minutes. It is recognized that Joni Jones and Phillip Lowry have completed their terms on the Committee and should be removed from the list of excused

committee members. Judge Oliver moved for approval with that change. Ms. Rice seconded. The Motion passed unanimously.

2. Rule 1.0, 1.5, 5.4(b) 5.8 Referral Fees and Fee Sharing (Ms. McAllister)

The Chair asked Ms. McAllister to update the Committee on the work of her subcommittee. Ms. McAllister walked through proposed amendments regarding the differing definitions of fee types and how that effects the concept of a fee share. The definition of referral fees in Rule 1.0 is clarified to ensure that a lawyer may continue to represent a client in different matters without running afoul of the prohibitions in the Rule. The fee sharing rule only applies to one particular representation of that client when the legal professional has withdrawn from actively representing the client in that matter only.

5.8 was discussed and definitions therein were harmonized with those that appear in Rule 1.0. The Committee debated the difference between when fees are “earned” vs. when fees are “payable,” or “paid.”

Judges Oliver and Gardner expresses their thanks and the thanks of the Committee for the subcommittee’s hard work on this project.

The Chair asked for a motion to approve the changes to 1.0, 1.5, 5.4, 5.8 as discussed and agreed upon at this meeting and send the proposal to the Supreme Court for its consideration. Judge Oliver made the Motion. Mark Hales seconded the motion. The motion passed unanimously, and Chair Talbot thanked Ms. McAllister and the subcommittee for their efforts.

3. Rule 1.16 (Ms. Gregson)

Ms. Gregson updated the committee on a proposed ABA which would impose a due diligence responsibility on a lawyer taking on a representation to investigate whether the representation could involve possible money-laundering and terrorism matters. The Subcommittee recommended no action at the moment and the Committee agreed as the proposal is quite new. The subcommittee recommends that the Bar consider presenting or promoting a CLE on this topic. It was recognized that CLE resources on this topic already exist.

4. Rule 1.15 (Mr. Talbot)

Chair Talbot updated the Committee about his subcommittee’s analysis of an Illinois rule which expressly forbids lawyers from using client funds held in their trust accounts in particular ways. The Subcommittee added clarifying language to 1.15 regarding how and when an attorney may or may not use client property. The Committee suggested that the agreement to permit a lawyer to use client property must be in written form.

Chair Talbot asked Ms. Fleming whether the OPC would have any concerns on the Committee’s proposed rule amendments and answered that it did not. Mr. Quiel made a motion to approve the text of the proposed rule and send it to the

Supreme Court for its consideration. Mr. Hales seconded the Motion. The Motion passed unanimously.

The Chair discussed projects in the pipeline as well as a new reported decision on Rule 8.4. That issue will be discussed next month.

The next meeting of the Committee is October 3, 2023.

The meeting adjourned at 5:45 pm.

Tab 2

UTAH COURT RULES – PUBLISHED FOR COMMENT

The Supreme Court and Judicial Council invite comments about amending these rules. To view the proposed amendment, click on the rule number.

To submit a comment or view the comments of others, click on “Continue Reading.” To submit a comment, scroll down to the “Leave a Reply” section, and type your comment in the “Comment” field. Type your name and email address in the designated fields and click “Post Comment.”

Comments cannot be acknowledged, but all will be considered. Comments are saved to a buffer for review before publication.

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Posted: July 27, 2023

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Rules of Professional Conduct – Comment Period Closed September 10, 2023

RPC01.02. Scope of representation and allocation of authority between client and lawyer. Licensed paralegal practitioner notice to be displayed. AMEND. Clarifies the circumstances under which a lawyer may advise or assist a client with respect to Utah’s cannabis laws.

This entry was posted in [-Rules of Professional Conduct, RPC01.02.](#)

« [Rules of Civil Procedure – Comment Period Closes October 7, 2023](#)

[Rules of Professional Conduct – Comment Period Closed September 2, 2023](#) »

To view all comments submitted during a particular comment period, click on the comment deadline date. To view all comments to an amendment, click on the rule number.

CATEGORIES

- [-Alternate Dispute Resolution](#)
- [-Code of Judicial Administration](#)
- [-Code of Judicial Conduct](#)
- [-Fourth District Court Local Rules](#)
- [-Licensed Paralegal Practitioners Rules of Professional Conduct](#)
- [-Rules Governing Licensed Paralegal Practitioner](#)
- [-Rules Governing the State Bar](#)

UTAH COURTS

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3 thoughts on “Rules of Professional Conduct – Comment Period Closed September 10, 2023”

Matt Robar
July 27, 2023 at 10:23 am

Adding a specific requirement on how we must advise our clients on a specific legal topic is absurd. No one, including the Utah Bar, OPC, or Utah Supreme Court should be micro-managing what or how lawyers advise their clients. If this change occurs, more “guidance” and restrictions on minor discrete issues will be added next.

Stop trying to control every minuscule aspect of our lives and practice. Even if you actually think this one change is somehow good or necessary, ask yourself what additional controls will be implemented next and how will those controls be enforced if these kinds of conditions are imposed on lawyers. This is a dangerous slippery slope.

Dustin Parmley
July 27, 2023 at 11:08 am

I think this is a bad idea.

The rule, as it stands without amendment, already permits an attorney to counsel a client regarding the legal consequences of a course of action and assisting them to make a good faith effort to determine the validity, scope, meaning or application of the law.

We deal with potential conflicts between two different laws all the time. None of those potential conflicts of law are specifically written into the rules of professional conduct. The Rule of Professional Conduct should be generally applicable statements that govern attorney conduct in all cases without singling out any particular subject matter.

Shahiedah Shabazz
September 5, 2023 at 7:04 am

- -Rules of Appellate Procedure
- -Rules of Civil Procedure
- -Rules of Criminal Procedure
- -Rules of Evidence
- -Rules of Juvenile Procedure
- -Rules of Professional Conduct
- -Rules of Professional Practice
- -Rules of Small Claims Procedure
- ADR101
- ADR103
- Appendix B
- Appendix F
- CJA Appendix F
- CJA01-0201
- CJA01-0204
- CJA01-0205
- CJA01-0205
- CJA01-0302
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- CJA010-1-020
- CJA02-0101
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- CJA03-0111.01

The International Cannabis Bar Association (“INCBA”) is pleased to submit this comment in support of the Utah Judicial Counsel’s proposed amendment to Rule 1.02(d) of its Rules of Professional Conduct. INCBA thanks Marialle A. Bell for her leadership in researching this issue and preparing this comment letter.

INCBA is a global cannabis bar association comprised of over 700 member attorneys representing cannabis industry participants nationwide and across the globe. See <http://www.incba.org>. Our breadth and depth of knowledge and experience makes INCBA uniquely situated to provide insight into the regulatory hurdles and legal issues faced by industry stakeholders. Our members represent cannabis industry participants from all facets of the industry, including cultivators, processors, manufacturers, distributors, research facilities, testing laboratories, retailers, and more, both plant-touching and ancillary. Specifically, our members provide necessary advice and counsel for industry stakeholders to understand applicable laws and regulations to ensure the greatest possible success while operating within the confines of local, state, federal, and international legal frameworks.

Through the work of its Professional Responsibility and Ethics Committee, INCBA is committed to the fair treatment of attorneys who advise or assist clients in regulated cannabis industries. With the existing friction between state and federal cannabis laws, state supreme courts and other ethical rule making authorities in states that allow legal cannabis have been encouraged to amend their Rules of Professional Conduct to recognize the lawful practice of cannabis law. Doing so helps to promote the success of the regulated cannabis industry, protect the rights of individuals consuming cannabis for adult-use or medicinal purposes, and ensure attorney-client privilege and confidentiality.

Amended rules typically address conflicting cannabis laws and eliminate disciplinary concerns attorneys commonly have when: (1) advising or assisting cannabis industry clients; (2) consuming cannabis in their personal time; and (3) investing in cannabis-related businesses. Typically, we have seen statutory approaches that prohibit discipline of attorneys for counseling clients on cannabis statutes. We have also seen state constitutional amendments that prohibit discipline of attorneys and formal ethics advisory opinions that indicate attorneys who advise and assist cannabis industry clients will not be disciplined. Most commonly, however, we have seen state Supreme Court amendments to a state’s version of ABA Model Rule 1.2 that expressly permit attorneys to advise and assist clients with cannabis-related legal issues.

INCBA is pleased that the Council is receiving additional comments and we appreciate your careful consideration of how to balance professional integrity with enforcement goals. INCBA would like to acknowledge and express our support for Utah’s Proposed Amendment to the Rules of Professional Conduct, Rule 1.2(d), which, if adopted, would explicitly permit a Utah lawyer to counsel a client regarding the validity, scope and

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meaning of Utah's cannabis statutes. As written, the proposed amendment would provide fair and reasonable guidelines for Utah attorneys while allowing stakeholders to maintain ethical oversight.

INCBA and its Ethics Committee would like to serve as a resource for Utah attorneys, this Council, and the Utah State Bar. We are eager to observe Utah's progress and the benefits any newly enacted or amended rules will provide Utah attorneys. Our Ethics Committee has been diligently working with state bar associations across the nation to create safe harbors for lawyers to advise clients, without reservation, in a manner that fully complies with the applicable Rules of Professional Conduct. Our Ethics Committee would be honored to help you create safe harbor frameworks that maximize attorney-client relationship protections and promote access to quality legal counsel. INCBA maintains a database to demonstrate how states have approached safe harbors. We invite you to explore this free resource at: <https://www.canbar.org/ethics-overview>.

In addition to the database, we have attached INCBA's model amendments to Rule 1.2 and Rule 1.6 for your review.

INCBA has offered extensive continuing legal education on ethical and other legal issues surrounding the legal cannabis industry. For example, INCBA hosts an annual Cannabis Law Institute (CLI) and provides other programs to educate attorneys on the ethical challenges posed by cannabis legalization. These challenges include issues of competence; attorney-client privilege and the crime-fraud exception; conflicts of interest that can arise when attorneys invest in cannabis industry clients or during accelerated licensing applications; and advising on cannabis business banking and cash handling. INCBA continues to offer educational programming as new and relevant legal issues arise.

If this council or any members of this council wish to join INCBA, we welcome your membership. We look forward to providing you with resources and support as you evaluate and potentially implement this amended ethical rule.

Sincerely,

Ms. Shahiedah Shabazz
Executive Director, INCBA

cc:
Elizabeth Wright, Utah State Bar Executive Director
Beth Kennedy, Ethics Counsel
Christine Greenwood, Ethics & Discipline Committee Chair
Billy L. Walker, Office of Professional Conduct Chief
Disciplinary Counsel

INCBA proposes the following amendment to Model Rule 1.2(d) and comment to Model Rule 1.6:

Proposed Rule 1.2(d)
A lawyer shall not counsel a client to engage or assist a client in

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- CJA04-0904
- CJA04-0905
- CJA04-0906
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- CJA06-0102

conduct that the lawyer knows is illegal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

Notwithstanding above, a lawyer may counsel and assist a client regarding a law in one jurisdiction which might conflict with a law in another relevant jurisdiction. In the event of such a conflict, a lawyer shall also advise the client regarding consequences of conflicting law and policy.

Proposed Comment to Rule 1.6

When a lawyer renders legal services in compliance with a jurisdiction's law which might conflict with a law in another relevant jurisdiction, communications provided for the purpose of rendering those services are confidential between client and lawyer.

The fact that the laws of one jurisdiction may conflict with another does not, by itself, diminish confidentiality under these rules, or constitute grounds for an exception to attorney-client privilege.

Please note that INCBA continues also to rely on the competency and diligence requirements of Rules 1.1 (Comment 5 states that "Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners") and 1.3 (Comment 1 states that "A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor") as bases for acquiring sufficient client information for the illegality assessment that Rule 1.2(d) mandates.

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Rule 1.2. Scope of representation and allocation of authority between client and lawyer. Licensed paralegal practitioner notice to be displayed.

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(d) Except as provided in subparagraphs (d)(1) and (d)(2), a lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent.

(d)(1) A lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning, or application of the law.

(d)(2) A lawyer may counsel a client regarding the validity, scope, and meaning of Utah's cannabis statutes and may assist a client in conduct that the lawyer reasonably believes is permitted by those statutes and related rules, regulations, orders, and ordinances. In these circumstances, the lawyer must also advise the client regarding the potential consequences of the client's conduct under related federal law and policy.

(e) A licensed paralegal practitioner shall conspicuously display in the licensed paralegal practitioner's office a notice that shall be at least 12 by 20 inches with boldface type or print with each character at least one inch in height and width that contains a statement that the licensed paralegal practitioner is not a lawyer licensed to provide legal services without limitation.

Comment

Allocation of Authority between Client and Lawyer

[1] Paragraph (a) confers upon the client the ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. The decisions specified in paragraph (a), such as whether to settle a civil matter, must also be made by the client. See Rule 1.4(a)(1) for the lawyer's duty to communicate with the client about such decisions. With respect to the means by which the client's objectives are to be pursued, the lawyer shall consult with the client as required by Rule 1.4(a)(2) and may take such action as is impliedly authorized to carry out the representation.

[2] On occasion, however, a lawyer and a client may disagree about the means to be used to accomplish the client's objectives. Clients normally defer to the special knowledge and skill of their lawyer with respect to the means to be used to accomplish their objectives, particularly with respect to technical, legal and tactical matters. Conversely, lawyers usually defer to the client regarding such questions as the expense to be incurred and concern for third persons who might be adversely affected. Because of the varied nature of the matters about which a lawyer and client might disagree and because the actions in question may implicate the interests of a tribunal or other persons, this Rule does not prescribe how such disagreements are to be resolved. Other law, however, may be applicable and should be consulted by the lawyer. The lawyer should also consult with the client and seek a mutually acceptable resolution of the disagreement. If such efforts are unavailing and the lawyer has a fundamental

disagreement with the client, the lawyer may withdraw from the representation.

See Rule 1.16(b)(4). Conversely, the client may resolve the disagreement by discharging the lawyer. See Rule 1.16(a)(3).

[3] At the outset of a representation, the client may authorize the lawyer to take specific action on the client's behalf without further consultation. Absent a material change in circumstances and subject to Rule 1.4, a lawyer may rely on such an advance authorization. The client may, however, revoke such authority at any time.

[4] In a case in which the client appears to be suffering diminished capacity, the lawyer's duty to abide by the client's decisions is to be guided by reference to Rule 1.14.

Independence from Client's Views or Activities

[5] Legal representation should not be denied to people who are unable to afford legal services or whose cause is controversial or the subject of popular disapproval. By the same token, representing a client does not constitute approval of the client's views or activities.

Agreements Limiting Scope of Representation

[6] The scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. When a lawyer has been retained by an insurer to represent an insured, for example, the representation may be limited to matters related to the insurance coverage. A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent.

[7] Although this Rule affords the lawyer and client substantial latitude to limit the representation, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem,

the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted were not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. See Rule 1.1.

[8] All agreements concerning a lawyer's representation of a client must accord with the Rules of Professional Conduct and other law. See, e.g., Rules 1.1, 1.8 and 5.6.

Criminal, Fraudulent and Prohibited Transactions

[9] Paragraph (d) prohibits a lawyer from knowingly counseling or assisting a client to commit a crime or fraud. This prohibition, however, does not preclude the lawyer from giving an honest opinion about the actual consequences that appear likely to result from a client's conduct. Nor does the fact that a client uses advice in a course of action that is criminal or fraudulent of itself make a lawyer a party to the course of action. There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed with impunity.

[10] When the client's course of action has already begun and is continuing, the lawyer's responsibility is especially delicate. The lawyer is required to avoid assisting the client, for example, by drafting or delivering documents that the lawyer knows are fraudulent or by suggesting how the wrongdoing might be concealed. A lawyer may not continue assisting a client in conduct that the lawyer originally supposed was legally proper but then discovers is criminal or fraudulent. The lawyer must, therefore, withdraw from the representation of the client in the matter. See Rule 1.16(a). In some cases, withdrawal alone might be insufficient. It may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm any opinion, document, affirmation or the like. See Rule 4.1.

[11] Where the client is a fiduciary, the lawyer may be charged with special obligations in dealings with a beneficiary.

[12] Paragraph (d) applies whether or not the defrauded party is a party to the transaction. Hence, a lawyer must not participate in a transaction to effectuate criminal or fraudulent avoidance of tax liability. Paragraph (d) does not preclude undertaking a criminal defense incident to a general retainer for legal services to a lawful enterprise. The last clause of paragraph (d) recognizes that determining the validity or interpretation of a statute or regulation may require a course of action involving disobedience of the statute or regulation or of the interpretation placed upon it by governmental authorities.

[12a] Subparagraph (d)(2) addresses the dilemma facing a lawyer whose client wishes to engage in conduct that is permitted by Utah's cannabis statutes and related rules, regulations, orders, and ordinances but is prohibited by federal cannabis laws. At the time of this comment's drafting, the federal government's policy is not to enforce federal cannabis laws in states with conflicting state laws. If that policy changes, the Supreme Court may revisit this rule.

[13] If a lawyer comes to know or reasonably should know that a client expects assistance not permitted by the Rules of Professional Conduct or other law or if the lawyer intends to act contrary to the client's instructions, the lawyer must consult with the client regarding the limitations on the lawyer's conduct. See Rule 1.4(a)(5).

[14] Lawyers are encouraged to advise their clients that their representations are guided by the Utah Standards of Professionalism and Civility and to provide a copy to their clients.

[14a] This rule differs from the ABA Model Rule.

Tab 3

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Rules of Professional Conduct – Comment Period Closed September 2, 2023

RPC07.01. Communications Concerning a Lawyer's

Services. AMEND. Rule 7.1 was recently **circulated for**

comment in response to a **petition** to the Supreme Court. That petition expressed concern about the direct solicitation of potential clients soon after traumatic events. The petition proposed returning to the Rules of Professional Conduct a ban on direct solicitation. Such a ban previously appeared in Rule 7.3 and still appears in the ABA Model Rule. The Utah Supreme Court **eliminated the ban** on direct solicitation in 2020. The proposed amendments that were drafted in response to the petition generated a large number of comments in opposition. Using *Fla. Bar v. Went For It, Inc.*, 515 U.S. 618, 620–21 (1995) as a guide, the rule was redrafted to more narrowly address the petition’s concerns. That rule proposal is now the subject of this comment period.

RPC08.04. Misconduct. AMEND. Rule 8.4 circulated for **comment** last year. The proposal attempted to codify in a new paragraph (2) **Ethics Advisory Opinion 02-05**, which concluded that 8.4(1)(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) does not apply to government

To view all comments submitted during a particular comment period, click on the comment deadline date. To view all comments to an amendment, click on the rule number.

CATEGORIES

- [-Alternate Dispute Resolution](#)
- [-Code of Judicial Administration](#)
- [-Code of Judicial Conduct](#)
- [-Fourth District Court Local Rules](#)
- [-Licensed Paralegal Practitioners Rules of Professional Conduct](#)
- [-Rules Governing Licensed Paralegal Practitioner](#)
- [-Rules Governing the State Bar](#)

attorneys overseeing an otherwise legal undercover criminal investigation. The proposal as written received a number of comments in opposition. A new proposal, which is now the subject of this comment period, provides that while it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation, a lawyer may participate in lawful investigatory activities employing deception for the purpose of detecting ongoing violations of law. Those lawful investigatory activities include governmental “sting” operations; use of testers in fair-housing cases to determine whether landlords or real estate agents discriminate against protected classes of applicants; and gathering evidence of copyright violations.

This entry was posted in [-Rules of Professional Conduct, RPC07.01, RPC08.04.](#)

« Rules of Professional Conduct – Comment Period Closed September 10, 2023

Rules Governing the Utah State Bar – Comment Period Closed August 13, 2023 »

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13 thoughts on “Rules of Professional Conduct – Comment Period Closed September 2, 2023”

John P Mertens
July 19, 2023 at 9:01 am

There does not appear to be a redrafted proposed rule available for review.

- [-Rules of Appellate Procedure](#)
- [-Rules of Civil Procedure](#)
- [-Rules of Criminal Procedure](#)
- [-Rules of Evidence](#)
- [-Rules of Juvenile Procedure](#)
- [-Rules of Professional Conduct](#)
- [-Rules of Professional Practice](#)
- [-Rules of Small Claims Procedure](#)
- [ADR101](#)
- [ADR103](#)
- [Appendix B](#)
- [Appendix F](#)
- [CJA Appendix F](#)
- [CJA01-0201](#)
- [CJA01-0204](#)
- [CJA01-0205](#)
- [CJA01-0205](#)
- [CJA01-0302](#)
- [CJA01-0303](#)
- [CJA01-0304](#)
- [CJA01-0305](#)
- [CJA010-01-0404](#)
- [CJA010-1-020](#)
- [CJA02-0101](#)
- [CJA02-0103](#)
- [CJA02-0104](#)
- [CJA02-0106.01](#)
- [CJA02-0106.02](#)
- [CJA02-0106.03](#)
- [CJA02-0106.04](#)
- [CJA02-0106.05](#)
- [CJA02-0204](#)
- [CJA02-0206](#)
- [CJA02-0208](#)
- [CJA02-0208](#)
- [CJA02-0211](#)
- [CJA02-0212](#)
- [CJA03-0101](#)
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- [CJA03-0107](#)
- [CJA03-0108](#)
- [CJA03-0109](#)
- [CJA03-0111](#)
- [CJA03-0111.01](#)

Clancey
July 19, 2023 at 10:07 am

John,

The new proposed rule is linked in the post directly above your comment, also available here:

<http://legacy.utcourts.gov/utc/rules-comment/wp-content/uploads/sites/31/2023/07/RPC07.01.2nd-Comment.pdf>.

To your point, the link in the Notice e-mail is to the prior Feb. 2023 version.

George A Hunt
July 19, 2023 at 9:33 am

In my view any solicitation or advertisement by lawyers should be prohibited. During my early years as a lawyer, clients found the best representation by speaking with lawyers and former clients and receiving a recommendation based on experience. Now, clients find lawyers based on the amount the lawyers spend on advertising and the cleverness of their ad agency. In the end, the clients lose and the profession no longer looks like a profession. Instead, it has been reduced to a crass business!

Scott Lythgoe
July 19, 2023 at 9:45 am

A 90 day waiting period for direct contact seems like a more appropriate waiting time for grieving family members.

Russell Weekes
July 19, 2023 at 10:00 am

There is no justifiable reason to restrict attorneys' first amendment rights to advertise their services. The rule changed in 2020 and few, if any, problems have arisen since. Many other states permit in-person solicitation and they don't have dramatic issues with lawyers overstepping common decency either.

- CJA03-0111.02
- CJA03-0111.03
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- CJA04-0202.05
- CJA04-0202.06

Rule 7.1 already covers coercive, false and misleading statements, duress, and harassment. There is no need to restrict attorneys in this manner.

Douglas Thompson
July 19, 2023 at 10:00 am

RE: 8.04

It appears this latest proposal is an attempt to narrow the scope of dishonesty and deception allowed by government lawyers in their investigative capacities that would have been authorized by the previous proposal. I am not convinced it actually does narrow it much at all, at least not in practice. The prior version stated that government lawyers could employ dishonesty, fraud, misrepresentation and deceit in their covert government operations. The new proposal says they can employ deception for the purpose of detecting ongoing violations. The only real difference I see is the timing, the current version only allows for deception in detection of "ongoing violations of law" where the last version had no such limit.

My greater concern is with the exception generally and would urge the committee to leave rule alone. Authorizing, and even encouraging, government lawyers to be deceptive is antithetical to the rules of professional conduct entirely. Though it can hardly be doubted that if government lawyers are authorized to lie, cheat, deceive and defraud in their investigative activities, they will have more, and probably more efficient, tools at their disposal in detecting and punishing crime. But the ethical rules are not designed to give any specific set of lawyers the tools they want in order to be more effective in their individual areas of practice. This rule especially is designed to set a high bar, requiring those who want to practice law to do so "with honesty, fidelity, professionalism, and civility". Working for the government should not be a license to lie.

The committee suggests, in its comment, that these kinds of behaviors (lying, defrauding, etc., during investigative stings) are "legitimate activities that benefit the common good". Setting aside my doubts that many or most sting-type activities are legitimate or that they actually promote the common good, I still have grave concern about exempting any lawyer from the most basic of ethical obligations, honesty.

The proposed exception gives only government lawyers the authorization to lie. Perhaps it is because the committee believes that government lawyers are special, or their legal responsibilities are more important than other lawyers; Or perhaps this exception is proposed because the committee believes government lawyers can be trusted not to abuse this special exemption. I don't think any of these justifications are valid. In my experience government lawyers are not better or worse than other lawyers, they are just about as ethical and as

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- CJA05-201
- CJA06-0101
- CJA06-0102

trustworthy as other lawyers in pursuing their professional ends. And in my experience the professional ends of government lawyers are about as noble and legitimate as the professional ends of most other lawyers. For example, when a civil liberties lawyer seeks to establish that his client's rights are being violated as a prison inmate, I believe that these are "legitimate activities that benefit the common good" similar to a government lawyer engaging in a covert criminal investigation. Does that legitimacy justify the civil liberties lawyer in employing deception in the form of dishonesty, fraud, deceit or misrepresentation to show prisoner abuse? No. Despite the legitimacy of his ends, the ethical practice of law holds all lawyers to a high standard that, at a minimum, eliminates fraud and deception as an available tools. Why should a government lawyer be treated differently?

The Rules of Professional Conduct are supposed to make lawyers different, to hold lawyers to a high standard. Exempting government lawyers from the most basic of these rules debases the practice as a whole and tends to de-legitimize the government generally. It is short-sighted, misguided, and promotes an ends-justify-the-means As Mr. Turner noted in his comment to the previous proposal,

Clancey Henderson
July 19, 2023 at 10:04 am

This amendment (as compared to that circulated for comment in Feb 2023) is a step in the right direction. That said, however, the proposed rule still takes a broad and inflexible approach to a very narrow issue. Recall that the original petition from the UAJ raised concerns about "aggressive, inappropriate, or uninvited solicitation at an injury scene or hospital." Rather than a flat prohibition with certain exceptions carved out, the better approach is to have a narrowly tailored prohibition that addresses the specific concern raised. It seems to me that the rule could be most effectively amended by drafting it so as to prohibit uninvited solicitation for retention by a prospective client at the scene of an injury or treatment/medical facility, or any solicitation that is abusive.

The committee should start with the least restrictive approach in attempting to solve the problem and introduce additional restrictions only if the initial effort proves inadequate. The committee should bear in mind the contemporaneous efforts of the Bar to close the access to justice gap, and consider the proposed rule's impact on that initiative.

Douglas Thompson
July 19, 2023 at 10:08 am

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- CJA06-0301
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- CJA10-1-203
- CJA10-1-602
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- CJA11-0591
- CJA14-0515
- CJA14-0721
- CJA_Appx_F
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That got posted too soon. My apologies.

... and promotes an ends-justifies-the-means mentality, exactly the opposite of what both the bar and the government should be promoting. As Mr. Turner noted in his previous comment to the previous proposal, "If the government becomes a lawbreaker, it breeds contempt for the law; it invites every man to become a law unto himself, it invites anarchy." *Olmstead v. United States*, 277 U.S. 438 (1928)." We are talking about ethics, it should be simple. If the government wants to use dishonesty, fraud, deceit, and misrepresentation in its efforts to investigate crime, it is legal to do so. Let's not pretend like it is ethical to do so.

Eugene Austin

July 19, 2023 at 10:28 am

"employing deception for the purpose of detecting ongoing violations of law."

"Those lawful investigatory activities include governmental "sting" operations; use of testers in fair-housing cases to determine whether landlords or real estate agents discriminate against protected classes of applicants"

The language in this comment sounds like you are authorizing investigations that have no other purpose than to find a crime to hang on someone, and the government can do anything in the investigation to make that happen. The fact that you include the words "otherwise legal undercover criminal investigation" does not change this. Given the gross abuses of government power that have happened in the past, there should be some language that clearly limits these type of activities. At a minimum, you should have a reasonably articulable suspicion that the targets of the investigation are engaged in criminal activity and the attorney know of it before taking part in the investigation.

While this comment may be well intentioned, IT SHOULD NOT BE ASSUMED THAT ATTORNEYS CANNOT AND/OR WILL NOT INTERPRET THIS LANGUAGE TO FIT THEIR OWN NEEDS OR IN SUCH A WAY THAT THEY CAN VIOLATE THE RIGHTS OF US CITIZENS.

Kenneth Lougee

July 19, 2023 at 11:50 am

The revision to the portions of Rule 7.1 put the provision concerning unreasonable representations to clients who are naive as to hiring an attorney into the comments. I'm not so concerned about in person solicitation as I am about those

- CJC Terminology
- CJC01
- CJC02
- CJC02.11
- CJC02.12
- CJC02.3
- CJC03
- CJC03.7
- CJC04
- CJC04.1
- CJC05
- CJCApPLICABILITY
- Fourth District Local Rule 10-1-407
- LPP1.00
- LPP1.01
- LPP1.010
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- LPP15-0719
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- LPP15.01001
- LPP15.01101
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- LPP15.01103
- LPP15.01104

representations. Certain portions of the bar are testing the outer limits of what is allowed in advertising.

The Utah Advisory Ethics Opinion Committee opined that \$0 down bankruptcy advertising might be beyond the scope of the Rule given that the \$0 down was only filing the petition and that in order to obtain discharge, the lawyer would be charging fees. That opinion was cited in bankruptcy court but the practice continues unabated.

Passing rules on advertising and in-person solicitation is good but if the bar continues to ignore the rules that are passed, it is a futile waste of time. It is perhaps helpful that the provisions of Rule 8.1 are included but, again, what is the purpose if that rule is ignored as well?

Steven G Johnson
July 19, 2023 at 1:14 pm

The 30-day waiting period in Rule 7.1(c)(1) is a good compromise between an outright ban on personal solicitation and a desire to contact potential clients who may need legal assistance.

The 8.4 rule change is appropriate to protect otherwise lawful use of dishonesty, fraud, etc. in law enforcement and anti-terrorism activities. Other dishonesty, fraud, deceit or misrepresentation should continue to be prohibited.

Kenton Hynes
August 6, 2023 at 9:44 pm

Dear utcourts.gov admin, Thanks for the well-presented post!

Valentina De Fex
September 1, 2023 at 11:59 am

On behalf of the American Civil Liberties Union ("ACLU") of Utah, we write to request that the Court reject or defer voting on the proposed Rule of Professional Conduct 7.1 Amendments ("Proposed Rule") until an additional exception can be added to allow for the solicitation of clients in accordance with the United States Supreme Court's ruling in *In re Primus*, 436 U.S. 412 (1978). As presently written, the Proposed Rule raises constitutional concerns and may conflict with First Amendment protections.

- LPP15.01105
- LPP15.01106
- LPP15.01107
- LPP15.01108
- LPP15.01109
- LPP15.01110
- LPP15.01111
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- LPP15.0607
- LPP15.0901
- LPP15.0901
- LPP15.0902
- LPP15.0903

The ACLU of Utah is a non-profit non-partisan organization that has engaged in impact litigation in Utah for over 60 years. The organization's goal has been to consistently advance and defend civil rights, and the types of suits brought forth have differed throughout several decades and include a mixture of constitutional claims as well as other civil claims.

One constitutional infirmity contained in the Proposed Rule is the failure to differentiate between pecuniary and non-pecuniary solicitation. While the Proposed Rule contemplates various exceptions, the text does not include exceptions for solicitation for non-pecuniary reasons in instances where attorneys engage in litigation as a form of political expression and political association. As the Supreme Court recognized in *In Re Primus*, for organizations such as the ACLU and other civil liberties organizations, "litigation is not a technique of resolving private differences; it is a form of political expression and political association." *In re Primus*, 436 U.S. at 428 (citing *National Association for the Advancement of Colored People v. Robert Y. Button*, 436 U.S. 412, 428 (1963) (internal citations and quotations omitted)). Accordingly, as the Supreme Court recognized in *In Re Primus*, solicitation of prospective litigants by non-profit organizations that engage in such litigation enjoys First Amendment protections. See *id.*

Because the text of subsection (c) does not provide accommodations for counsel that may engage in non-pecuniary solicitation as contemplated in *In re Primus*, the Proposed Rule may conflict with the Supreme Court's directive providing First Amendment protections to the work of organizations which engage in such type of litigation. Accordingly, we kindly request the Committee defer on adopting these modifications to Rule 7.1 until language can be added to ensure that constitutionally protected conduct is not inadvertently barred by the Rule.

- LPP15.0904
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- LPP7.04
- LPP7.05
- LPP8.01
- LPP8.02
- LPP8.03
- LPP8.04
- LPP8.05
- Office of Professional Conduct
- Petition to Increase Bar Admission Fees
- Petition to Increase Licensing Fees.
- Regulatory Reform
- RGLPP15-0401
- RGLPP15-0402
- RGLPP15-0403
- RGLPP15-0404
- RGLPP15-0405
- RGLPP15-0406
- RGLPP15-0407
- RGLPP15-0408

Rule 7.1. Communications Concerning a Lawyer's Services.

Effective:

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

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

(2) is likely to create an unjustified or unreasonable expectation about results the lawyer can achieve or has achieved; or

(3) contains a testimonial or endorsement that violates any portion of this Rule.

(b) A lawyer shall not interact with a prospective client in a manner that involves coercion, duress, or harassment.

(c) A lawyer shall not directly communicate with a prospective client for the purpose of obtaining professional employment if the communication concerns a disaster or an action for personal injury or wrongful death, unless:

(1) the disaster, injury, or death occurred more than 30 days prior to the communication;

(2) the prospective client is a person who has a familial, close personal, or prior professional relationship with the lawyer or lawyer's law firm; or

(3) the communication is initiated by the prospective client or at the request of a third party who has a familial or close personal relationship with the prospective client.

Comments

[1] This Rule governs all communications about a lawyer's services. Whatever means are used to make known a lawyer's services, statements about them must be truthful.

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

[3] By way of example, this Rule permits the following, so long as they are not false or misleading: public dissemination of information concerning a lawyer's name or firm name,

address, email address, website, and telephone number; the kinds of services the lawyer will undertake; the basis on which the lawyer's fees are determined, including prices for specific services and payment and credit arrangements; the use of actors or dramatizations to portray the lawyer, law firm, client, or events; the courts or jurisdictions where the lawyer is permitted to practice, and other information that might invite the attention of those seeking legal assistance.

[4] An advertisement that truthfully reports a lawyer's achievements on behalf of clients or former clients may be misleading if presented so as to lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters without reference to the specific factual and legal circumstances of each client's case. Similarly, an unsubstantiated comparison of the lawyer's services or fees with the services or fees of other lawyers may be misleading if presented with such specificity as would lead a reasonable person to conclude that the comparison can be substantiated. The inclusion of an appropriate disclaimer or qualifying language may preclude a finding that a statement is likely to create unjustified expectations or otherwise mislead the public.

[5] A lawyer can communicate practice areas and can state that he or she "specializes" in a field based on experience, training, and education, subject to the "false or misleading" standard set forth in this Rule. A lawyer shall not state or imply that the lawyer is certified as a specialist in a particular field unless the lawyer has been certified as a specialist by an objective entity and the name of the entity is clearly identified in the communication.

[6] In order to avoid coercion, duress, or harassment, a lawyer should proceed with caution when initiating contact with someone in need of legal services, especially when the contact is "live," whether that be in-person, face-to-face, live telephone and other real-time visual or auditory person-to-person communications, where the person is subject to a direct personal encounter without time for reflection.

[7] Firm names, letterhead and professional designations are communications concerning a lawyer's services. A firm may be designated by the names of all or some of its current members, by the names of deceased or retired members where there has been a succession in the firm's identity or by a trade name if it is not false or misleading. A lawyer or law firm also may be designated by a distinctive website address, social media username or comparable professional designation that is not misleading. A law firm name or designation is misleading if it implies a connection with a government agency, with a deceased lawyer who was not a former member of

the firm, with a lawyer not associated with the firm or a predecessor firm, with a nonlawyer or with a public or charitable legal services organization. If a firm uses a trade name that includes a geographical name such as “Springfield Legal Clinic,” an express statement explaining that it is not a public legal aid organization may be required to avoid a misleading implication.

[8] A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction.

[9] Lawyers may not imply or hold themselves out as practicing together in one firm when they are not a firm, as defined in Rule 1.0(d), because to do so would be false and misleading.

[10] It is misleading to use the name of a lawyer holding public office in the name of a law firm, or in communications on the law firm’s behalf, during any substantial period in which the lawyer is not practicing with the firm. A firm may continue to use in its firm name the name of a lawyer who is serving in Utah’s part-time legislature as long as that lawyer is still associated with the firm.

[11] See Rules 5.3 (duties of lawyers and law firms with respect to the conduct of non-lawyers); Rule 8.4(a) (duty to avoid violating the Rules through the acts of another); and Rule 8.4(e) (prohibition against stating or implying 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).

[12] This Rule differs from the ABA Model Rule. ~~Additional changes have been made to the comments.~~

Tab 4

UTAH COURT RULES – PUBLISHED FOR COMMENT

The Supreme Court and Judicial Council invite comments about amending these rules. To view the proposed amendment, click on the rule number.

To submit a comment or view the comments of others, click on “Continue Reading.” To submit a comment, scroll down to the “Leave a Reply” section, and type your comment in the “Comment” field. Type your name and email address in the designated fields and click “Post Comment.”

Comments cannot be acknowledged, but all will be considered. Comments are saved to a buffer for review before publication.

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Posted: July 19, 2023

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Rules of Professional Conduct – Comment Period Closed September 2, 2023

RPC07.01. Communications Concerning a Lawyer’s Services. AMEND. Rule 7.1 was recently **circulated for comment** in response to a **petition** to the Supreme Court. That petition expressed concern about the direct solicitation of potential clients soon after traumatic events. The petition proposed returning to the Rules of Professional Conduct a ban on direct solicitation. Such a ban previously appeared in Rule 7.3 and still appears in the ABA Model Rule. The Utah Supreme Court **eliminated the ban** on direct solicitation in 2020. The proposed amendments that were drafted in response to the petition generated a large number of comments in opposition. Using *Fla. Bar v. Went For It, Inc.*, 515 U.S. 618, 620–21 (1995) as a guide, the rule was redrafted to more narrowly address the petition’s concerns. That rule proposal is now the subject of this comment period.

RPC08.04. Misconduct. AMEND. Rule 8.4 circulated for **comment** last year. The proposal attempted to codify in a new paragraph (2) **Ethics Advisory Opinion 02-05**, which concluded that 8.4(1)(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) does not apply to government

To view all comments submitted during a particular comment period, click on the comment deadline date. To view all comments to an amendment, click on the rule number.

CATEGORIES

- -Alternate Dispute Resolution
- -Code of Judicial Administration
- -Code of Judicial Conduct
- -Fourth District Court Local Rules
- -Licensed Paralegal Practitioners Rules of Professional Conduct
- -Rules Governing Licensed Paralegal Practitioner
- -Rules Governing the State Bar

attorneys overseeing an otherwise legal undercover criminal investigation. The proposal as written received a number of comments in opposition. A new proposal, which is now the subject of this comment period, provides that while it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation, a lawyer may participate in lawful investigatory activities employing deception for the purpose of detecting ongoing violations of law. Those lawful investigatory activities include governmental “sting” operations; use of testers in fair-housing cases to determine whether landlords or real estate agents discriminate against protected classes of applicants; and gathering evidence of copyright violations.

This entry was posted in [-Rules of Professional Conduct, RPC07.01, RPC08.04.](#)

« Rules of Professional Conduct – Comment Period Closed September 10, 2023

Rules Governing the Utah State Bar – Comment Period Closed August 13, 2023 »

UTAH COURTS

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13 thoughts on “Rules of Professional Conduct – Comment Period Closed September 2, 2023”

John P Mertens
July 19, 2023 at 9:01 am

There does not appear to be a redrafted proposed rule available for review.

- [-Rules of Appellate Procedure](#)
- [-Rules of Civil Procedure](#)
- [-Rules of Criminal Procedure](#)
- [-Rules of Evidence](#)
- [-Rules of Juvenile Procedure](#)
- [-Rules of Professional Conduct](#)
- [-Rules of Professional Practice](#)
- [-Rules of Small Claims Procedure](#)
- [ADR101](#)
- [ADR103](#)
- [Appendix B](#)
- [Appendix F](#)
- [CJA Appendix F](#)
- [CJA01-0201](#)
- [CJA01-0204](#)
- [CJA01-0205](#)
- [CJA01-0205](#)
- [CJA01-0302](#)
- [CJA01-0303](#)
- [CJA01-0304](#)
- [CJA01-0305](#)
- [CJA010-01-0404](#)
- [CJA010-1-020](#)
- [CJA02-0101](#)
- [CJA02-0103](#)
- [CJA02-0104](#)
- [CJA02-0106.01](#)
- [CJA02-0106.02](#)
- [CJA02-0106.03](#)
- [CJA02-0106.04](#)
- [CJA02-0106.05](#)
- [CJA02-0204](#)
- [CJA02-0206](#)
- [CJA02-0208](#)
- [CJA02-0208](#)
- [CJA02-0211](#)
- [CJA02-0212](#)
- [CJA03-0101](#)
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- [CJA03-0104](#)
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- [CJA03-0106](#)
- [CJA03-0106](#)
- [CJA03-0107](#)
- [CJA03-0108](#)
- [CJA03-0109](#)
- [CJA03-0111](#)
- [CJA03-0111.01](#)

Clancey
July 19, 2023 at 10:07 am

John,

The new proposed rule is linked in the post directly above your comment, also available here:

<http://legacy.utcourts.gov/utc/rules-comment/wp-content/uploads/sites/31/2023/07/RPC07.01.2nd-Comment.pdf>.

To your point, the link in the Notice e-mail is to the prior Feb. 2023 version.

George A Hunt
July 19, 2023 at 9:33 am

In my view any solicitation or advertisement by lawyers should be prohibited. During my early years as a lawyer, clients found the best representation by speaking with lawyers and former clients and receiving a recommendation based on experience. Now, clients find lawyers based on the amount the lawyers spend on advertising and the cleverness of their ad agency. In the end, the clients lose hand the profession no longer looks like a profession. Instead, it has been reduced to a crass business!

Scott Lythgoe
July 19, 2023 at 9:45 am

A 90 day waiting period for direct contact seems like a more appropriate waiting time for grieving family members.

Russell Weekes
July 19, 2023 at 10:00 am

There is no justifiable reason to restrict attorneys' first amendment rights to advertise their services. The rule changed in 2020 and few, if any, problems have arisen since. Many other states permit in-person solicitation and they don't have dramatic issues with lawyers overstepping common decency either.

- CJA03-0111.02
- CJA03-0111.03
- CJA03-0111.04
- CJA03-0111.05
- CJA03-0111.06
- CJA03-0112
- CJA03-0113
- CJA03-0114
- CJA03-0115
- CJA03-0116
- CJA03-0117
- CJA03-0201
- CJA03-0201.02
- CJA03-0202
- CJA03-0301
- CJA03-0301.01
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- CJA04-0202.06

Rule 7.1 already covers coercive, false and misleading statements, duress, and harassment. There is no need to restrict attorneys in this manner.

Douglas Thompson
July 19, 2023 at 10:00 am

RE: 8.04

It appears this latest proposal is an attempt to narrow the scope of dishonesty and deception allowed by government lawyers in their investigative capacities that would have been authorized by the previous proposal. I am not convinced it actually does narrow it much at all, at least not in practice. The prior version stated that government lawyers could employ dishonesty, fraud, misrepresentation and deceit in their covert government operations. The new proposal says they can employ deception for the purpose of detecting ongoing violations. The only real difference I see is the timing, the current version only allows for deception in detection of "ongoing violations of law" where the last version had no such limit.

My greater concern is with the exception generally and would urge the committee to leave rule alone. Authorizing, and even encouraging, government lawyers to be deceptive is antithetical to the rules of professional conduct entirely. Though it can hardly be doubted that if government lawyers are authorized to lie, cheat, deceive and defraud in their investigative activities, they will have more, and probably more efficient, tools at their disposal in detecting and punishing crime. But the ethical rules are not designed to give any specific set of lawyers the tools they want in order to be more effective in their individual areas of practice. This rule especially is designed to set a high bar, requiring those who want to practice law to do so "with honesty, fidelity, professionalism, and civility". Working for the government should not be a license to lie.

The committee suggests, in its comment, that these kinds of behaviors (lying, defrauding, etc., during investigative stings) are "legitimate activities that benefit the common good". Setting aside my doubts that many or most sting-type activities are legitimate or that they actually promote the common good, I still have grave concern about exempting any lawyer from the most basic of ethical obligations, honesty.

The proposed exception gives only government lawyers the authorization to lie. Perhaps it is because the committee believes that government lawyers are special, or their legal responsibilities are more important than other lawyers; Or perhaps this exception is proposed because the committee believes government lawyers can be trusted not to abuse this special exemption. I don't think any of these justifications are valid. In my experience government lawyers are not better or worse than other lawyers, they are just about as ethical and as

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- CJA04-0202.08
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- CJA04-0203
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- CJA04-0902
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- CJA04-0906
- CJA04-0907
- CJA05-0101
- CJA05-201
- CJA06-0101
- CJA06-0102

trustworthy as other lawyers in pursuing their professional ends. And in my experience the professional ends of government lawyers are about as noble and legitimate as the professional ends of most other lawyers. For example, when a civil liberties lawyer seeks to establish that his client's rights are being violated as a prison inmate, I believe that these are "legitimate activities that benefit the common good" similar to a government lawyer engaging in a covert criminal investigation. Does that legitimacy justify the civil liberties lawyer in employing deception in the form of dishonesty, fraud, deceit or misrepresentation to show prisoner abuse? No. Despite the legitimacy of his ends, the ethical practice of law holds all lawyers to a high standard that, at a minimum, eliminates fraud and deception as an available tools. Why should a government lawyer be treated differently?

The Rules of Professional Conduct are supposed to make lawyers different, to hold lawyers to a high standard. Exempting government lawyers from the most basic of these rules debases the practice as a whole and tends to de-legitimize the government generally. It is short-sighted, misguided, and promotes an ends-justify-the-means As Mr. Turner noted in his comment to the previous proposal,

Clancey Henderson
July 19, 2023 at 10:04 am

This amendment (as compared to that circulated for comment in Feb 2023) is a step in the right direction. That said, however, the proposed rule still takes a broad and inflexible approach to a very narrow issue. Recall that the original petition from the UAJ raised concerns about "aggressive, inappropriate, or uninvited solicitation at an injury scene or hospital." Rather than a flat prohibition with certain exceptions carved out, the better approach is to have a narrowly tailored prohibition that addresses the specific concern raised. It seems to me that the rule could be most effectively amended by drafting it so as to prohibit uninvited solicitation for retention by a prospective client at the scene of an injury or treatment/medical facility, or any solicitation that is abusive.

The committee should start with the least restrictive approach in attempting to solve the problem and introduce additional restrictions only if the initial effort proves inadequate. The committee should bear in mind the contemporaneous efforts of the Bar to close the access to justice gap, and consider the proposed rule's impact on that initiative.

Douglas Thompson
July 19, 2023 at 10:08 am

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- CJA06-0301
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- CJA09-0302
- CJA09-109
- CJA10-1-203
- CJA10-1-602
- CJA11-0101
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- CJA11-0501
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- CJA11-0513
- CJA11-0591
- CJA14-0515
- CJA14-0721
- CJA_Appx_F
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That got posted too soon. My apologies.

... and promotes an ends-justifies-the-means mentality, exactly the opposite of what both the bar and the government should be promoting. As Mr. Turner noted in his previous comment to the previous proposal, "If the government becomes a lawbreaker, it breeds contempt for the law; it invites every man to become a law unto himself, it invites anarchy." *Olmstead v. United States*, 277 U.S. 438 (1928)." We are talking about ethics, it should be simple. If the government wants to use dishonesty, fraud, deceit, and misrepresentation in its efforts to investigate crime, it is legal to do so. Let's not pretend like it is ethical to do so.

Eugene Austin

July 19, 2023 at 10:28 am

"employing deception for the purpose of detecting ongoing violations of law."

"Those lawful investigatory activities include governmental "sting" operations; use of testers in fair-housing cases to determine whether landlords or real estate agents discriminate against protected classes of applicants"

The language in this comment sounds like you are authorizing investigations that have no other purpose than to find a crime to hang on someone, and the government can do anything in the investigation to make that happen. The fact that you include the words "otherwise legal undercover criminal investigation" does not change this. Given the gross abuses of government power that have happened in the past, there should be some language that clearly limits these type of activities. At a minimum, you should have a reasonably articulable suspicion that the targets of the investigation are engaged in criminal activity and the attorney know of it before taking part in the investigation.

While this comment may be well intentioned, IT SHOULD NOT BE ASSUMED THAT ATTORNEYS CANNOT AND/OR WILL NOT INTERPRET THIS LANGUAGE TO FIT THEIR OWN NEEDS OR IN SUCH A WAY THAT THEY CAN VIOLATE THE RIGHTS OF US CITIZENS.

Kenneth Lougee

July 19, 2023 at 11:50 am

The revision to the portions of Rule 7.1 put the provision concerning unreasonable representations to clients who are naive as to hiring an attorney into the comments. I'm not so concerned about in person solicitation as I am about those

- CJC Terminology
- CJC01
- CJC02
- CJC02.11
- CJC02.12
- CJC02.3
- CJC03
- CJC03.7
- CJC04
- CJC04.1
- CJC05
- CJCApPLICABILITY
- Fourth District Local Rule 10-1-407
- LPP1.00
- LPP1.01
- LPP1.010
- LPP1.011
- LPP1.012
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- LPP15-0718
- LPP15-0719
- LPP15-0720
- LPP15.01001
- LPP15.01101
- LPP15.01102
- LPP15.01103
- LPP15.01104

representations. Certain portions of the bar are testing the outer limits of what is allowed in advertising.

The Utah Advisory Ethics Opinion Committee opined that \$0 down bankruptcy advertising might be beyond the scope of the Rule given that the \$0 down was only filing the petition and that in order to obtain discharge, the lawyer would be charging fees. That opinion was cited in bankruptcy court but the practice continues unabated.

Passing rules on advertising and in-person solicitation is good but if the bar continues to ignore the rules that are passed, it is a futile waste of time. It is perhaps helpful that the provisions of Rule 8.1 are included but, again, what is the purpose if that rule is ignored as well?

Steven G Johnson

July 19, 2023 at 1:14 pm

The 30-day waiting period in Rule 7.1(c)(1) is a good compromise between an outright ban on personal solicitation and a desire to contact potential clients who may need legal assistance.

The 8.4 rule change is appropriate to protect otherwise lawful use of dishonesty, fraud, etc. in law enforcement and anti-terrorism activities. Other dishonesty, fraud, deceit or misrepresentation should continue to be prohibited.

Kenton Hynes

August 6, 2023 at 9:44 pm

Dear utcourts.gov admin, Thanks for the well-presented post!

Valentina De Fex

September 1, 2023 at 11:59 am

On behalf of the American Civil Liberties Union ("ACLU") of Utah, we write to request that the Court reject or defer voting on the proposed Rule of Professional Conduct 7.1 Amendments ("Proposed Rule") until an additional exception can be added to allow for the solicitation of clients in accordance with the United States Supreme Court's ruling in *In re Primus*, 436 U.S. 412 (1978). As presently written, the Proposed Rule raises constitutional concerns and may conflict with First Amendment protections.

- LPP15.01105
- LPP15.01106
- LPP15.01107
- LPP15.01108
- LPP15.01109
- LPP15.01110
- LPP15.01111
- LPP15.01112
- LPP15.01113
- LPP15.01114
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- LPP15.01118
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- LPP15.0607
- LPP15.0901
- LPP15.0901
- LPP15.0902
- LPP15.0903

The ACLU of Utah is a non-profit non-partisan organization that has engaged in impact litigation in Utah for over 60 years. The organization's goal has been to consistently advance and defend civil rights, and the types of suits brought forth have differed throughout several decades and include a mixture of constitutional claims as well as other civil claims.

One constitutional infirmity contained in the Proposed Rule is the failure to differentiate between pecuniary and non-pecuniary solicitation. While the Proposed Rule contemplates various exceptions, the text does not include exceptions for solicitation for non-pecuniary reasons in instances where attorneys engage in litigation as a form of political expression and political association. As the Supreme Court recognized in *In Re Primus*, for organizations such as the ACLU and other civil liberties organizations, "litigation is not a technique of resolving private differences; it is a form of political expression and political association." *In re Primus*, 436 U.S. at 428 (citing *National Association for the Advancement of Colored People v. Robert Y. Button*, 436 U.S. 412, 428 (1963) (internal citations and quotations omitted)). Accordingly, as the Supreme Court recognized in *In Re Primus*, solicitation of prospective litigants by non-profit organizations that engage in such litigation enjoys First Amendment protections. See *id.*

Because the text of subsection (c) does not provide accommodations for counsel that may engage in non-pecuniary solicitation as contemplated in *In re Primus*, the Proposed Rule may conflict with the Supreme Court's directive providing First Amendment protections to the work of organizations which engage in such type of litigation. Accordingly, we kindly request the Committee defer on adopting these modifications to Rule 7.1 until language can be added to ensure that constitutionally protected conduct is not inadvertently barred by the Rule.

- LPP15.0904
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- LPP2.01
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- LPP3.05
- LPP4.01
- LPP4.02
- LPP4.03
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- LPP8.01
- LPP8.02
- LPP8.03
- LPP8.04
- LPP8.05
- Office of Professional Conduct
- Petition to Increase Bar Admission Fees
- Petition to Increase Licensing Fees.
- Regulatory Reform
- RGLPP15-0401
- RGLPP15-0402
- RGLPP15-0403
- RGLPP15-0404
- RGLPP15-0405
- RGLPP15-0406
- RGLPP15-0407
- RGLPP15-0408

Rule 8.4. Misconduct.

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, except that a lawyer may participate in lawful investigatory activities employing deception for the purpose of detecting ongoing violations of law;

(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.

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(b), (c), (d), (e), or (f) cannot be counted as a separate violation of Rule 8.4(a) for the purpose of determining sanctions. Conduct that violates other Rules of Professional Conduct, however, may be a violation of Rule 8.4(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.

[2a] Paragraph (c) provides a safe harbor for attorneys who engage in lawful covert operations, often in criminal investigations or investigations involving suspected violations of constitutional rights or civil law. Examples covered by this rule are governmental "sting" operations; use of testers in fair-housing cases to determine whether landlords or real estate agents discriminate against protected classes of applicants; and gathering evidence of copyright violations. These are legitimate activities that benefit the common good and that courts and commentators have long recognized do not violate ethics rules. The safe harbor does not apply when a lawyer uses deception to violate others' constitutional rights or directs others to do so, and it does not change the lawyer's obligations for candor and fairness under Rules 3.3 and 3.4.

[3] A lawyer who, in the course of representing a client, knowingly manifests by words or conduct bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status, violates paragraph (d) when such actions are prejudicial to the administration of justice. 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] 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] 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.

[6] This rule differs from ABA Model Rule 8.4.

Tab 5

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) "Fee sharing" refers to the division of legal fees obtained from the representation of a client's case or legal matter between lawyers who collaborate on the matter and are not in the same firm.

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(e) "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.

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

(g) "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.

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

(i) "Lawyer" denotes lawyers licensed to practice law in any jurisdiction of the United States, foreign legal consultants, and licensed paralegal practitioners, insofar as the licensed paralegal practitioner is authorized in Utah Special Practice Rule 14-802, unless provided otherwise.

(j) "Legal fees" refer to the charges that a lawyer or law firm assesses for their legal services, which may include time spent on legal research, preparation of legal documents, court

appearances, and advice on legal matters. These fees are typically negotiated and agreed upon between the lawyer and client in advance of the legal work, and may be based on factors such as the complexity of the legal issue, the lawyer's experience and expertise, and the amount of time and resources required to handle the matter.

(k) "Licensed Paralegal Practitioner" denotes a person authorized by the Utah Supreme Court to provide legal representation under Rule 15-701 of the Supreme Court Rules of Professional Practice.

(l) "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.

(m) "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.

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

(o) "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.

(p) "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.

(q) "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.

(r) "Referral fee" means a payment to a lawyer who does not represent or no longer represents a client in the referred matter for referring that client to another firm for legal services.

(s) "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.

(t) "Substantial" when used in reference to degree or extent denotes a material matter of clear and weighty importance.

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Deleted: or firm who does not represent or no longer represents a client for referring that client to another lawyer or firm for legal services.

Deleted: means any exchange of value beyond marginal or of minimal value that is paid for the referral of a client, whether in cash or in kind.

Deleted: Fees shared with a lawyer who continues to represent the client in the matter referred and fees paid for generating consumer interest for legal services with the goal of converting the interests into clients are not referral fees for purposes of these rules.

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(u) "Tribunal" denotes a court, an arbitrator in a binding 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.

(v) "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 the 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.

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[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).

Referral Fees

[8] Referral fees include any exchange of value beyond marginal or of minimal value that is paid for the referral of a client, whether in cash or in kind.

[9] The distinguishing factor between fee sharing and referral fees is whether there was ongoing collaboration between the lawyers when the fee was earned. Fees shared with a lawyer who continues to represent the client in the matter referred are not referral fees for purposes of these rules.

[10] Fees paid for generating consumer interest for legal services with the goal of converting the interests into clients, including lead generation service providers, online banner advertising, pay-per-click marketing, and similar marketing or advertising fees are not referral fees for purposes of these rules.

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183 **Screened**

184 ~~[11]~~ This definition applies to situations where screening of a personally disqualified lawyer is
185 permitted to remove imputation of a conflict of interest under Rules 1.10, 1.11, 1.12 or 1.18.

186 ~~[12]~~ The purpose of screening is to assure the affected parties that confidential information
187 known by the personally disqualified lawyer remains protected. The personally disqualified
188 lawyer should acknowledge the obligation not to communicate with any of the other lawyers
189 in the firm with respect to the matter. Similarly, other lawyers in the firm who are working on
190 the matter should be informed that the screening is in place and that they may not
191 communicate with the personally disqualified lawyer with respect to the matter. Additional
192 screening measures that are appropriate for the particular matter will depend on the
193 circumstances. To implement, reinforce and remind all affected lawyers of the presence of the
194 screening, it may be appropriate for the firm to undertake such procedures as a written
195 undertaking by the screened lawyer to avoid any communication with other firm personnel
196 and any contact with any firm files or other information, including information in electronic
197 form, relating to the matter, written notice and instructions to all other firm personnel
198 forbidding any communication with the screened lawyer relating to the matter, denial of
199 access by the screened lawyer to firm files or other information, including information in
200 electronic form, relating to the matter and periodic reminders of the screen to the screened
201 lawyer and all other firm personnel.

202 ~~[13]~~ In order to be effective, screening measures must be implemented as soon as practical
203 after a lawyer or law firm knows or reasonably should know that there is a need for screening.

204 ~~[13a]~~ The definitions of “consult” and “consultation,” while deleted from the ABA Model Rule
205 1.0, have been retained in the Utah Rule because “consult” and “consultation” are used in the
206 rules. See, e.g., Rules 1.2, 1.4, 1.14, and 1.18.

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