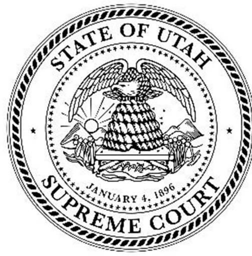


Utah Supreme Court
Advisory Committee on the Rules of Professional Conduct
Meeting Agenda
Cory Talbot, Chair

Location: Utah Law and Justice Center and virtually via Webex Link

Date: May 7, 2024

Time: 4:00 – 6:00 p.m.

Welcome and approval of minutes	Tab 1	Cory Talbot
Discussion: Rule 5.5, Utah lawyer with residence outside the state of Utah.	Tab 2	Adam Bondy
Discussion: Rule 1.0, review and recommendations.	Tab 3	Gary Sackett
Discussion: Referral fees found in rules 1.0, 1.5, 5.4 and 5.8.	Tab 4	Beth Kennedy
Discussion: Standards of Professionalism and Civility #16.	Tab 5	Robert Gibbons

Reminder: Check style guide for conformity before rules are sent to the Supreme Court.

Upcoming Items:

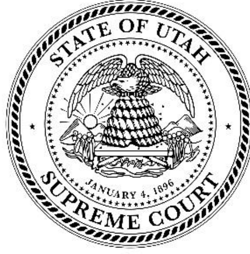
- Rule 8.4

Rules of Professional Conduct Committee Website: Link

Meeting Schedule:

Jan 2 ● Feb 6 ● Mar 5 ● April 2 ● May 7 ● June 4 ● Aug 6 ● Sep 3 ● Oct 1 ● Nov 5 ● Dec 3

Tab 1



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

[Draft] Meeting Minutes
April 2, 2024

Utah Law and Justice Center & Zoom
4:00 pm Mountain Time

Cory Talbot, Chair

Attendees:

Jurhee Rice (Co-Chair)
Corey Talbot (Co-Chair)
Ashley Gregson
Adam Bondy
Ian Quiel
Alyson McAllister
Robert Gibbons
Hon. James Gardner
Hon. Craig Hall
Mark Nickel
Mark Hales
Lynda Viti
Gary Sackett (emeritus)
Christine Greenwood (ex officio)
Sheradee Fleming (ex officio)
Hon. M. Alex Natt, Recording Secretary

Excused: Hon. Amy Oliver, Hon. Trent Nelson, Dane Thorley

Staff:

Stacy Haacke

Guests:

1. **Welcome, Approval of the March 5, 2024 meeting minutes (Chair Talbot)**

   Chair Talbot recognized the existence of a quorum and called the meeting to order at 4:02 p.m. He welcomed Stacy Haacke who will be helping the Committee going forward.

   Chair Talbot asked for a Motion to approve the March 5, 2024 meeting minutes. Robert Gibbons moved for approval. Jurhee Rice seconded. The Motion passed unanimously.

2. **Rule 5.5 and 14-806 (Ms. McAllister)**

   Mr. Talbot asked Ms. McAllister to remind the Committee of the history of the Committee's attempts to deal with questions regarding multi-jurisdictional practices. The Committee discussed whether changes needed to be made to the current rule to permit Utah lawyers who don't live in Utah or have a physical Utah office should be permitted to practice. The Committee questioned whether for pro hac vice admissions does it matter if a licensed Utah bar member must have a residency or have a physical business presence in the State. The Committee agreed that the only qualification should be that the sponsoring attorney is an attorney in good standing in Utah regardless of where they live or work.

   Chair Talbot wondered aloud whether this Committee can change the Rule at this time as the Rule is contained in the Code of Judicial Administration. It was decided that this Committee could make a recommendation to the Supreme Court.

   Ms. McAllister made a Motion to recommend changes to Rule 14-806(e)(5) to the Supreme Court. The proposed language is "The lawyer associates with an active Bar member in good standing. ("local counsel)."

   Judge Gardner seconded the Motion. The Motion carried unanimously.

   The Committee then considered whether language should be added to Rule 5.5. A discussion ensued about the desirability of adding a comment to the Rule rather than a rule change. The Chair asked Adam Bondy to lead a subcommittee with Sheradee Fleming and bring their opinion back to the Committee in May.

Chair Talbot noted that Gary Sackett's 30 year service to the Committee will conclude in June 2024. Gary will present the Committee with some final thoughts on the Rules at the May meeting.

Chair Talbot reported on Rule 8.4 and revised language for section G. The Supreme Court asked thes Committee to review the standards of professionalism and civility. Chair Talbot asked Judge Gardner, Robert Gibbons, Mark Nickel, Mark Hales to form a subcommittee to review the standards and report back to the Committee whether some

items in the standards should be removed and placed in other rules such as the Rules of Civil Procedure. Mr. Gibbons agreed to lead the Committee.

The referral fees issue was revisited. The Committee was unclear as to the status of this project and the Subcommittee lead by Ms. McAllister was asked to clarify the current direction of the project.

The next meeting of the Committee is May 7, 2024.

The meeting adjourned at 4:48 p.m.

Tab 2

Rule 5.5
Re: Utah lawyer with residence outside the state of Utah
Subcommittee: Adam Bondy and Sharadee Fleming

The Rule 5.5 subcommittee (of two) met and discussed the concept of adding a comment to Rule 5.5 clarifying that a Utah-licensed lawyer may practice Utah law even if the lawyer does not reside or maintain an office in Utah. We determined that such a comment is unnecessary and could be more confusing than helpful.

First, the comment would be misplaced. Rule 5.5 addresses the unauthorized practice of law. As such, it is aimed at lawyers who are not licensed in Utah. But the proposed comment would be aimed at lawyers who *are* licensed in Utah. Rule 5.5 is not the right home for a comment for licensed lawyers because it is solely concerned with unlicensed lawyers. Put another way, the people to whom the comment is addressed (persons with Utah licenses) would not be looking at or concerning themselves with Rule 5.5 (which is for persons without Utah licenses).

Second, the comment could contradict the Rules of other states. Under Rule 8.5(b)(2), the rules of professional conduct of the jurisdiction where the conduct occurs shall be applied. The proposed comment concerns conduct that takes place outside of Utah, i.e., the practice of Utah law by a Utah-licensed lawyer who does not have a physical presence in Utah. Accordingly, it is not our rules that apply, but the rules of the sister-state, which may well place restrictions on that conduct. Since we don't know what the sister-state rules are, we could not in good faith advise a Utah-licensed lawyer that they could practice Utah law while being physically present only in the sister state.

A counterargument may rely on Rule 8.5(b)(1), which says that, for conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction where the tribunal is located should be applied. That means, if a Utah-licensed lawyer appears in a Utah court, Utah rules apply. But Utah does not have a rule requiring a physical office or residence in Utah. So there would be no problem for that lawyer, provided that the sister state they do the work in does not have a contrary provision in their version of Rule 5.5. There just doesn't seem to be a large chance that anyone could think an office or residence is required.

Finally, it may be useful to think of the proposed comment as explaining that Utah does not have a rule prohibiting this conduct. But there are many rules that Utah does not have, and we do not (cannot possibly) provide a comment for every potential rule we don't have.

The subcommittee recommends that no comment of the sort proposed be added to Rule 5.5.

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

Effective: 5/1/2022

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

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

(1) must not, except as authorized by these Rules or other law, establish a public-facing office in this jurisdiction for the practice of law;

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

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

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

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

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

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

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

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

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

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

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

40

---

41 **Comment**

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

49 [2] The definition of the practice of law is established by law and varies from one
50 jurisdiction to another. The "practice of law" in Utah is defined in Rule 14-802(b)(1),
51 Authorization to Practice Law, of the Supreme Court Rules of Professional Practice.
52 This Rule does not prohibit a lawyer from employing the services of paraprofessionals

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

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

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

67 [4] Other than as authorized by law or this Rule, a lawyer who is not admitted to
68 practice generally in this jurisdiction violates paragraph (b)(1) if the lawyer establishes a
69 public-facing office in this jurisdiction for the practice of law. Such a lawyer must not
70 hold out to the public or otherwise represent that the lawyer is admitted to practice law
71 in this jurisdiction. See also Rule 7.1(a).

72 [4a] Utah's Rule 5.5(b) differs from the ABA Model Rule by recognizing in paragraph
73 (b)(3) that systematic and continuous physical presence in Utah while providing legal
74 services remotely to clients in a jurisdiction where the lawyer is admitted does not in
75 itself violate this Rule.

76 [5] There are occasions in which a lawyer admitted to practice in another United States
77 jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may
78 provide legal services on a temporary basis in this jurisdiction under circumstances that
79 do not create an unreasonable risk to the interests of their clients, the public or the

courts. Paragraph (c) identifies four such circumstances. The fact that conduct is not so identified does not imply that the conduct is or is not authorized. With the exception of paragraphs (d)(1) and (d)(2), this Rule does not authorize a lawyer to establish an office or other systematic and continuous presence in this jurisdiction without being admitted to practice generally here.

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

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

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

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

108 jurisdiction to obtain admission pro hac vice before appearing before a tribunal or
109 administrative agency, this Rule requires the lawyer to obtain that authority.

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

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

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

134 [13] Paragraph (c)(4) permits a lawyer admitted in another jurisdiction to provide
135 certain legal services on a temporary basis in this jurisdiction that arise out of or are

136 reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is
137 admitted but are not within paragraphs (c)(2) or (c)(3).

138 [13a] The last sentence in Comment [13] to ABA Model Rule 5.5 has been omitted to
139 comport with Utah's definition of the "practice of law" in Rule 14-802(b)(1).

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

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

162 [15a] Utah's Rule 5.5(d) differs from the ABA Model Rule by requiring a person
163 providing services to the lawyer's employer to have submitted an application for

164 admission to the Bar, such as an application for admission of attorney applicants under
165 Supreme Court Rules of Professional Practice, Rule 14-704; admission by motion under
166 Rule 14-705; or admission as House Counsel under Rule 14-719.

167 [15b] Utah Rule 5.5 does not adopt the ABA's provisions dealing with foreign lawyers,
168 as other rules in Article 7 of the Rules Governing the Utah State Bar cover this matter.

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

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

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

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

191 District of Utah; Rule 14-804 of the Supreme Court Rules of Professional Practice,
192 admission for military-lawyer practice; Rule 14-719(d)(2), which provides a six-month
193 period during which an in-house counsel is authorized to practice before submitting a
194 House Counsel application; practice as a patent attorney before the United States Patent
195 and Trademark Office.

196 [19] A lawyer who practices law in this jurisdiction pursuant to paragraphs (c) or (d) or
197 otherwise is subject to the disciplinary authority of this jurisdiction. See Rule 8.5(a).

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

203 [21] Paragraphs (c) and (d) do not authorize communications advertising legal services
204 in this jurisdiction by lawyers who are admitted to practice in other jurisdictions. Rule
205 7.1 governs whether and how lawyers may communicate the availability of their
206 services in this jurisdiction.

207

Tab 3

Rule 1.0 Review Summary
Gary Sackett
May 2024

This redline is the result of Rule 1.0 subcommittee work (plus my final changes). It is based on an August 29 version of the Rule, which included fee sharing and public facing office entries.

I approach possible changes to definitions from two perspectives: (a) that of a former mathematician for whom careful definitions are foundational to any useful development of mathematical theory, and (b) that of a long-time editor of various forms of the written English word.

I have attached my last edits to Rule 1.0. Some of the changes are aspirational—i.e., if I ignored the "legacy" language of the ABA definitions, here' how I would make changes. Therefore, this is offered only as a collection of suggestions when the Rule 1.0 subcommittee is reconstituted and can update the basic additions or changes that may have been made since then.

ABA language is not always the most precise or grammatical, so I offer some of the changes with the caveat: This would make the definition better, but the sanctity of traditional ABA language may prevail.

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~~ requires (i) a writing by the consenting person or a writing that a lawyer promptly transmits to the consenting person confirming an oral informed consent~~. See paragraph (f) for the definition of "informed consent." If it is~~ or (ii) if not feasible to obtain or transmit the writing at the time the person gives informed consent, ~~then the lawyer must~~ obtaining or transmitting 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~~ denotes the division of legal fees obtained from the representation of a client's case or a legal matter between lawyers who collaborate on the matter and are not in the same firm.

(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~~ a person licensed to practice law in any jurisdiction of the United States, a foreign legal consultant~~s~~, ~~and licensed paralegal practitioners, insofar as the~~ or a licensed paralegal practitioner, as ~~is~~ authorized ~~in Utah Special Practice~~ under Rule 14-802(c) of the Utah Supreme Court Rules of Professional Practice.~~, unless provided otherwise.~~

Comment [GS1]: Currently, ¶ (b) is the ABA definition that could be made more precise and grammatically correct. Also, eliminate the circularity of "informed consent . . . denotes informed consent." Finally, "Confirmed in writing . . . denotes . . . Consent" mismatches a participle with a noun.

Comment [GS2]: It shouldn't be necessary to refer the reader to other terms in a short list of definitions.

Comment [GS3]: Definitions should not include imperatives---i.e., instructions to lawyers.

Comment [GS4]: For consistency.

Comment [GS5]: Much as I disagree with the Oxford comma, I would defer to the Court's preference.

Comment [GS6]: Match singular nouns; simplify and correct reference to 14-802.

30 (j) "Legal fees" refer to the charges that a lawyer or law firm assesses for their legal services.,
31 which may include time spent on legal research, preparation of legal documents, court
32 appearances, and advice on legal matters. These fees are typically negotiated and agreed upon
33 between the lawyer and client in advance of the legal work, and may be based on factors such
34 as the complexity of the legal issue, the lawyer's experience and expertise, and the amount of
35 time and resources required to handle the matter.
36 (k) "Licensed Pparalegal Ppractitioner" denotes a person authorized by the Utah Supreme
37 Court to provide legal representation under is defined in Rule 15-701(q) of the Supreme Court
38 Rules of Professional Practice.
39 (l) "Partner" denotes a member of a partnership, a shareholder in a law firm organized as a
40 professional corporation, or a member of an association authorized to practice law.
41 (m) "Public-facing office" means an office that is open to or accessible by the public and
42 provides a service that is available to the population in that locationoffers to provide legal
43 services to Utah residents.
44 (n) "Reasonable" or "reasonably," when used in relation to conduct by a lawyer, denotes the
45 conduct of a reasonably prudent and competent lawyer.
46 (o) "Reasonable belief" or "reasonably believes," when used in reference to a lawyer, denotes
47 that the lawyer believes the matter in question and that the circumstances are such that the
48 belief is reasonable.
49 (p) "Reasonably should know," when used in reference to a lawyer, denotes that a lawyer of
50 reasonable prudence and competence would ascertain the matter in question.
51 (q) "Reckless" or "recklessly" denotes the conscious disregard of a duty that a lawyer is or
52 reasonably should be aware of, or a conscious indifference to the truth.
53 (r) "Referral fee" means a payment to any exchange of value with a lawyer who does not
54 represent or no longer represents a client in the referred matter for referring that client to
55 another firm for legal services.
56
57 (s) "Screened" denotes the isolation of a lawyer from any participation in a matter through the
58 timely imposition of procedures within a firm that are reasonably adequate under the

Comment [GS7]: What they "may include" and what are typical go in a comment. See proposed Comment [7(a)].

Comment [GS8]: Rule 15-701 doesn't "authorize" anything; it is the definition of LPP. Licensed paralegal practitioner is not capitalized in the RPC (although it may be elsewhere). We don't capitalize "lawyer"; why would we do it for LPPs?

Comment [GS9]: This only appears in Rule 5.5: "(b) A lawyer who is not admitted to practice in this jurisdiction: (1) must not, except as authorized by these Rules or other law, establish a public-facing office in this jurisdiction for the practice of law." Perhaps we also need a comment that explains this covers "virtual offices" that do not have a tangible presence.

Comment [GS10]: (n), (o) and (p) are as they appear in the ABA RPC, and we may not want to tinker with them. However, I am uncomfortable with the tautological definition in (o) that a lawyer has "reasonable belief" when the lawyer "believes" and the lawyer's "belief is reasonable."

Comment [GS11]: "payment" suggests a monetary exchange, although the related comment below tries to explain that it's anything of value. Why not put that in the definition?

Comment [GS12]: Is this definition still a work in progress? This version seems vague and incomplete.

59 circumstances to protect information that the isolated lawyer is obligated to protect under
60 these Rules or other law.
61 (t) "Substantial," when used in reference to degree or extent, denotes a material matter of clear
62 and weighty importance.
63 (u) "Tribunal" denotes a court, an arbitrator in a binding arbitration proceeding, or a legislative
64 body, administrative agency or other body acting in an adjudicative capacity. A legislative
65 body, administrative agency or other body acts in an adjudicative capacity when a neutral
66 official, after the presentation of evidence or legal argument by a party or parties, will render a
67 binding legal judgment directly affecting a party's interests in a particular matter.
68 (v) (i) "Writing" or "written" denotes a tangible or electronic record of a communication or
69 representation, including handwriting, typewriting, printing, ~~photostating~~photcopying,
70 photography, audio or video recording, and electronic communications. A "signed" writing
71 includes an electronic sound, symbol, or process attached to or logically associated with a
72 writing and executed or adopted by a person with the intent to sign the writing.
73 *Alternatively:*
74 (ii) "Signed writing" denotes a writing with an attachment of a signature, electric sound, or
75 symbol indicating a person has authenticated the writing.
76 **Comment**
77 **Confirmed in Writing**
78 [1] ~~If it is not feasible to obtain or transmit a written confirmation at the time the client gives~~
79 ~~informed consent, then the lawyer must obtain or transmit it within a reasonable time~~
80 ~~thereafter.~~ If a lawyer has obtained a client's informed consent, the lawyer may act in reliance
81 on that consent so long as it is confirmed in writing within a reasonable time thereafter.
82 **Firm**
83 [2] Whether two or more lawyers constitute a firm within paragraph (d) can depend on the
84 specific facts. For example, two practitioners who share office space and occasionally consult
85 or assist each other ordinarily would not be regarded as constituting a firm. However, if they
86 present themselves to the public in a way that suggests that they are a firm or conduct
87 themselves as a firm, they should be regarded as a firm for purposes of these Rules. The terms

Comment [GS13]: This is the ABA Rule 1.0(n). However, "Photostat" is (was) a trademark, and "photostating" is not a real word. "Photocopying," maybe.

Comment [GS14]: Even though, the extra definition in the second sentence is contained in ABA Model Rule 1.0(n), It would more properly be a separate, formal definition, as shown.

Comment [GS15]: This is merely a verbatim restatement of part of the rule, although it's in the ABA Comment..

88 of any formal agreement between associated lawyers are relevant in determining whether they
89 are a firm, as is the fact that they have mutual access to information concerning the clients they
90 serve. Furthermore, it is relevant in doubtful cases to consider the underlying purpose of the
91 rule that is involved. A group of lawyers could be regarded as a firm for purposes of the rule
92 that the same lawyer should not represent opposing parties in litigation, while it might not be
93 so regarded for purposes of the rule that information acquired by one lawyer is attributed to
94 another.

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

102 [4] Similar questions can also arise with respect to lawyers in legal aid and legal services
103 organizations. Depending upon the structure of the organization, the entire organization or
104 different components of it may constitute a firm or firms for purposes of these Rules.

105 **Fraud**

106 [5] When used in these Rules, the terms "fraud" or "fraudulent" refer to conduct that is
107 characterized as such under the substantive or procedural law of the applicable jurisdiction
108 and has a purpose to deceive. This does not include merely negligent misrepresentation or
109 negligent failure to apprise another of relevant information. For purposes of these Rules, it is
110 not necessary that anyone has suffered damages or relied on the misrepresentation or failure
111 to inform.

112 **Informed Consent**

113 [6] Many of the Rules of Professional Conduct require the lawyer to obtain the informed
114 consent of a client or other person (e.g., a former client or, under certain circumstances, a
115 prospective client) before accepting or continuing representation or pursuing a course of
116 conduct. See, e.g., Rules 1.2(c), 1.6(a), and 1.7(b)~~, 1.8, 1.9(b), 1.12(a), and 1.18(d)~~. The

Comment [GS16]: The first three citations are in the ABA Comment and perhaps the most important; the others are only four of many others--not sure why they are singled out in the Utah rule.

117 communication necessary to obtain such consent will vary according to the rule involved and
118 the circumstances giving rise to the need to obtain informed consent. Other rules require a
119 lawyer to make reasonable efforts to ensure that the client or other person possesses
120 information reasonably adequate to make an informed decision. See, e.g., Rules 1.4(b) and 1.8.
121 Ordinarily, this will require communication that includes a disclosure of the facts and
122 circumstances giving rise to the situation, any explanation reasonably necessary to inform the
123 client or other person of the material advantages and disadvantages of the proposed course of
124 conduct and a discussion of the client's or other person's options and alternatives. In some
125 circumstances it may be appropriate for a lawyer to advise a client or other person to seek the
126 advice of other counsel. A lawyer need not inform a client or other person of facts or
127 implications already known to the client or other person; nevertheless, a lawyer who does not
128 personally inform the client or other person assumes the risk that the client or other person is
129 inadequately informed and the consent is invalid. In determining whether the information and
130 explanation provided are reasonably adequate, relevant factors include whether the client or
131 other person is experienced in legal matters generally and in making decisions of the type
132 involved, and whether the client or other person is independently represented by other
133 counsel in giving the consent. Normally, such persons need less information and explanation
134 than others, and generally a client or other person who is independently represented by other
135 counsel in giving the consent should be assumed to have given informed consent.
136 [7] Obtaining informed consent will usually require an affirmative response by the client or
137 other person. In general, a lawyer may not assume consent from a client's or other person's
138 silence. Consent may be inferred, however, from the conduct of a client or other person who
139 has reasonably adequate information about the matter. A number of rules require that a
140 person's consent be confirmed in writing. See Rules 1.7(b) and 1.9(a). For a definition of
141 "writing" and "confirmed in writing," see paragraphs (r) and (b). Other rules require that a
142 client's consent be obtained in a writing signed by the client. See, e.g., Rules 1.8(a) and (g). For
143 a definition of "signed," see paragraph (r).
144 **Legal Fees**

[7.1] Legal fees may include charges for time spent on legal research, preparation of legal documents, court appearances, and advice on legal matters. 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.

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 ~~r~~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 ~~r~~Rules.

Screened

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

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

Comment [GS17]: Is there a difference? Minimal is a little more objective, as "marginal" seems to depend on an unspecified margin.

174 and any contact with any firm files or other information, including information in electronic
175 form, relating to the matter, written notice and instructions to all other firm personnel
176 forbidding any communication with the screened lawyer relating to the matter, denial of
177 access by the screened lawyer to firm files or other information, including information in
178 electronic form, relating to the matter and periodic reminders of the screen to the screened
179 lawyer and all other firm personnel.
180 [13] In order to be effective, screening measures must be implemented as soon as practical
181 after a lawyer or law firm knows or reasonably should know that there is a need for screening.
182 [13a] The definitions of "consult" and "consultation," while deleted from the ABA Model Rule
183 1.0, have been retained in the Utah Rule because "consult" and "consultation" are used in the
184 rules. See, e.g., Rules 1.2, 1.4, 1.14, and 1.18.

Tab 4

Referral Fees
Rules 1.0, 1.5, 5.4, and 5.8
Subcommittee: Alyson McAlister, Ian Quiel, Robert Gibbons, Sharadee Fleming, Beth Kennedy, Cory Talbot

The referral fee subcommittee is proposing amendments to rules 1.0, 1.5, and 5.4, along with a new rule 5.8. These amendments are aimed at defining and prohibiting referral fees. The redline for the new rule 5.8 tracks changes since the last time this rule was presented to the Committee.

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 a legal fee between persons who are not in the same firm.

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

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

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

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

(i~~h~~) “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.

~~(i) “Legal Professional” denotes a lawyer and a licensed paralegal practitioner.~~

Formatted: Indent: Left: 0"

(j~~j~~) “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.

(k~~k~~) "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.

(~~l~~l) “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.

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

(n~~n~~) "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.

(o~~o~~) "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.

(p~~p~~) “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.

(q) “Referral fee” refers to compensation paid to any person for the sole purpose of ensuring the referral of legal work.

(r~~q~~) "Screened" denotes the isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate

under the circumstances to protect information that the isolated lawyer is obligated to protect under these Rules or other law.

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

(t~~s~~) "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.

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

Comment

Confirmed in Writing

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

Fee sharing

[2] A fee sharing arrangement may be appropriate when a lawyer or law firm replaces prior counsel in a matter.

Firm

[32] 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.

[43] 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.

[54] 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

105 [6~~5~~] When used in these Rules, the terms "fraud" or "fraudulent" refer to conduct that is
106 characterized as such under the substantive or procedural law of the applicable
107 jurisdiction and has a purpose to deceive. This does not include merely negligent
108 misrepresentation or negligent failure to apprise another of relevant information. For
109 purposes of these Rules, it is not necessary that anyone has suffered damages or relied
110 on the misrepresentation or failure to inform.

111 Informed Consent

112 [7~~6~~] Many of the Rules of Professional Conduct require the lawyer to obtain the
113 informed consent of a client or other person (e.g., a former client or, under certain
114 circumstances, a prospective client) before accepting or continuing representation or
115 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
116 1.18(d). The communication necessary to obtain such consent will vary according to the
117 rule involved and the circumstances giving rise to the need to obtain informed consent.
118 Other rules require a lawyer to make reasonable efforts to ensure that the client or other
119 person possesses information reasonably adequate to make an informed decision. See,
120 e.g., Rules 1.4(b) and 1.8. Ordinarily, this will require communication that includes a
121 disclosure of the facts and circumstances giving rise to the situation, any explanation
122 reasonably necessary to inform the client or other person of the material advantages
123 and disadvantages of the proposed course of conduct and a discussion of the client's or
124 other person's options and alternatives. In some circumstances it may be appropriate for
125 a lawyer to advise a client or other person to seek the advice of other counsel. A lawyer
126 need not inform a client or other person of facts or implications already known to the
127 client or other person; nevertheless, a lawyer who does not personally inform the client
128 or other person assumes the risk that the client or other person is inadequately
129 informed and the consent is invalid. In determining whether the information and
130 explanation provided are reasonably adequate, relevant factors include whether the
131 client or other person is experienced in legal matters generally and in making decisions
132 of the type involved, and whether the client or other person is independently

133 represented by other counsel in giving the consent. Normally, such persons need less
134 information and explanation than others, and generally a client or other person who is
135 independently represented by other counsel in giving the consent should be assumed to
136 have given informed consent.

137 [87] Obtaining informed consent will usually require an affirmative response by the
138 client or other person. In general, a lawyer may not assume consent from a client's or
139 other person's silence. Consent may be inferred, however, from the conduct of a client
140 or other person who has reasonably adequate information about the matter. A number
141 of rules require that a person's consent be confirmed in writing. See Rules 1.7(b) and
142 1.9(a). For a definition of "writing" and "confirmed in writing," see paragraphs (t) and
143 (b). Other rules require that a client's consent be obtained in a writing signed by the
144 client. See, e.g., Rules 1.8(a) and (g). For a definition of "signed," see paragraph (t).

145 Screened

146 [98] This definition applies to situations where screening of a personally disqualified
147 lawyer is permitted to remove imputation of a conflict of interest under Rules 1.10, 1.11,
148 1.12 or 1.18.

149 [109] The purpose of screening is to assure the affected parties that confidential
150 information known by the personally disqualified lawyer remains protected. The
151 personally disqualified lawyer should acknowledge the obligation not to communicate
152 with any of the other lawyers in the firm with respect to the matter. Similarly, other
153 lawyers in the firm who are working on the matter should be informed that the
154 screening is in place and that they may not communicate with the personally
155 disqualified lawyer with respect to the matter. Additional screening measures that are
156 appropriate for the particular matter will depend on the circumstances. To implement,
157 reinforce and remind all affected lawyers of the presence of the screening, it may be
158 appropriate for the firm to undertake such procedures as a written undertaking by the
159 screened lawyer to avoid any communication with other firm personnel and any
160 contact with any firm files or other information, including information in electronic

form, relating to the matter, written notice and instructions to all other firm personnel forbidding any communication with the screened lawyer relating to the matter, denial of access by the screened lawyer to firm files or other information, including information in electronic form, relating to the matter and periodic reminders of the screen to the screened lawyer and all other firm personnel.

[11~~0~~] In order to be effective, screening measures must be implemented as soon as practical after a lawyer or law firm knows or reasonably should know that there is a need for screening.

~~[10a] The definitions of "consult" and "consultation," while deleted from the ABA Model Rule 1.0, have been retained in the Utah Rule because "consult" and "consultation" are used in the rules. See, e.g., Rules 1.2, 1.4, 1.14, and 1.18.~~[11] This rule differs from the ABA model rule.

1 **Rule 1.5. Fees**
2 (a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or
3 an unreasonable amount for expenses. The factors to be considered in determining the
4 reasonableness of a fee include the following:
5 (1) the time and labor required, the novelty and difficulty of the questions involved
6 and the skill requisite to perform the legal service properly;
7 (2) the likelihood, if apparent to the client, that the acceptance of the particular
8 employment will preclude other employment by the lawyer;
9 (3) the fee customarily charged in the locality for similar legal services;
10 (4) the amount involved and the results obtained;
11 (5) the time limitations imposed by the client or by the circumstances;
12 (6) the nature and length of the professional relationship with the client;
13 (7) the experience, reputation and ability of the lawyer or lawyers performing the
14 services; and
15 (8) whether the fee is fixed or contingent.
16 (b) The scope of the representation and the basis or rate of the fee and expenses for
17 which the client will be responsible shall be communicated to the client, preferably in
18 writing, before or within a reasonable time after commencing the representation, except
19 when the lawyer will charge a regularly represented client on the same basis or rate.
20 Any changes in the basis or rate of the fee or expenses shall also be communicated to
21 the client.
22 (c) A fee may be contingent on the outcome of the matter for which the service is
23 rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or
24 other law. A contingent fee agreement shall be in a writing signed by the client and
25 shall state the method by which the fee is to be determined, including the percentage or
26 percentages that shall accrue to the lawyer in the event of settlement, trial or appeal;
27 litigation and other expenses to be deducted from the recovery; and whether such
28 expenses are to be deducted before or after the contingent fee is calculated. The
29 agreement must clearly notify the client of any expenses for which the client will be

30 liable whether or not the client is the prevailing party. Upon conclusion of a contingent
31 fee matter, the lawyer shall provide the client with a written statement stating the
32 outcome of the matter and, if there is a recovery, showing the remittance to the client
33 and the method of its determination.
34 (d) A lawyer shall not enter into an arrangement for, charge, or collect:
35 (1) any fee in a domestic relations matter, the payment or amount of which is
36 contingent upon the securing of a divorce or upon the amount of alimony or
37 support, or property settlement in lieu thereof; or
38 (2) a contingent fee for representing a defendant in a criminal case.
39 (f) Fee sharing is permitted as provided in Rule 5.8.
40 (ge) A licensed paralegal practitioner may not enter into a contingent fee agreement
41 with a client.
42 (hf) Before providing any services, a licensed paralegal practitioner must provide the
43 client with a written agreement that:
44 (1) states the purpose for which the licensed paralegal practitioner has been retained;
45 (2) identifies the services to be performed;
46 (3) identifies the rate or fee for the services to be performed and whether and to
47 what extent the client will be responsible for any costs, expenses or disbursements in
48 the course of the representation;
49 (4) includes a statement printed in 12-point boldface type that the licensed paralegal
50 practitioner is not an attorney and is limited to practice in only those areas in which
51 the licensed paralegal practitioner is licensed;
52 (5) includes a provision stating that the client may report complaints relating to a
53 licensed paralegal practitioner or the unauthorized practice of law to the Office of
54 Professional Conduct, including a toll-free number and Internet website;
55 (6) describes the document to be prepared;
56 (7) describes the purpose of the document;
57 (8) describes the process to be followed in preparing the document;

58 (9) states whether the licensed paralegal practitioner will be filing the document on
59 the client's behalf; and
60 (10) states the approximate time necessary to complete the task.
61 (ig) A licensed paralegal practitioner may not make an oral or written statement
62 guaranteeing or promising an outcome, unless the licensed paralegal practitioner has
63 some basis in fact for making the guarantee or promise.

64 **Comment**

65 Reasonableness of Fee and Expenses

66 [1] Paragraph (a) requires that lawyers charge fees that are reasonable under the
67 circumstances. The factors specified in (a)(1) through (a)(8) are not exclusive. Nor will
68 each factor be relevant in each instance. Paragraph (a) also requires that expenses for
69 which the client will be charged must be reasonable. A lawyer may seek reimbursement
70 for the cost of services performed in-house, such as copying, or for other expenses
71 incurred in-house, such as telephone charges, either by charging a reasonable amount to
72 which the client has agreed in advance or by charging an amount that reasonably
73 reflects the cost incurred by the lawyer.

74 Basis or Rate of Fee

75 [2] When the lawyer has regularly represented a client, they ordinarily will have
76 evolved an understanding concerning the basis or rate of the fee and the expenses for
77 which the client will be responsible. In a new client-lawyer relationship, however, an
78 understanding as to fees and expenses must be promptly established. Generally, it is
79 desirable to furnish the client with at least a simple memorandum or copy of the
80 lawyer's customary fee arrangements that states the general nature of the legal services
81 to be provided, the basis, rate or total amount of the fee and whether and to what extent
82 the client will be responsible for any costs, expenses or disbursements in the course of
83 the representation. A written statement concerning the terms of the engagement
84 reduces the possibility of misunderstanding.

85 [3] Contingent fees, like any other fees, are subject to the reasonableness standard of
86 paragraph (a) of this Rule. In determining whether a particular contingent fee is

87 reasonable, or whether it is reasonable to charge any form of contingent fee, a lawyer
88 must consider the factors that are relevant under the circumstances. Applicable law
89 may impose limitations on contingent fees, such as a ceiling on the percentage
90 allowable, or may require a lawyer to offer clients an alternative basis for the fee.
91 Applicable law also may apply to situations other than a contingent fee, for example,
92 government regulations regarding fees in certain tax matters.
93 Terms of Payment
94 [4] A lawyer may require advance payment of a fee but is obligated to return any
95 unearned portion. See Rule1.16(d). A lawyer may accept property in payment for
96 services, such as an ownership interest in an enterprise, providing this does not involve
97 acquisition of a proprietary interest in the cause of action or subject matter of the
98 litigation contrary to Rule 1.8(i). However, a fee paid in property instead of money may
99 be subject to the requirements of Rule 1.8(a) because such fees often have the essential
100 qualities of a business transaction with the client.
101 [5] An agreement may not be made whose terms might induce the lawyer improperly to
102 curtail services for the client or perform them in a way contrary to the client's interest.
103 For example, a lawyer should not enter into an agreement whereby services are to be
104 provided only up to a stated amount when it is foreseeable that more extensive services
105 probably will be required, unless the situation is adequately explained to the client.
106 Otherwise, the client might have to bargain for further assistance in the midst of a
107 proceeding or transaction. However, it is proper to define the extent of services in light
108 of the client's ability to pay. A lawyer should not exploit a fee arrangement based
109 primarily on hourly charges by using wasteful procedures.
110 Prohibited Contingent Fees
111 [6] Paragraph (d) prohibits a lawyer from charging a contingent fee in a domestic
112 relations matter when payment is contingent upon the securing of a divorce or upon the
113 amount of alimony or support or property settlement to be obtained. This provision
114 does not preclude a contract for a contingent fee for legal representation in connection

115 with the recovery of post-judgment balances due under support, alimony or other
116 financial orders because such contracts do not implicate the same policy concerns.
117 Fee Sharing
118 [7] Fee sharing between lawyers and non-lawyers is permitted only in accordance with
119 Rule 5.8 and Supreme Court Standing Order No. 15.
120 Disputes over Fees
121 [8~~7~~] If a procedure has been established for resolution of fee disputes, such as an
122 arbitration or mediation procedure established by the Bar, the lawyer must comply with
123 the procedure when it is mandatory, and, even when it is voluntary, the lawyer should
124 conscientiously consider submitting to it. Law may prescribe a procedure for
125 determining a lawyer's fee, for example, in representation of an executor or
126 administrator, a class or a person entitled to a reasonable fee as part of the measure of
127 damages. The lawyer entitled to such a fee and a lawyer representing another party
128 concerned with the fee should comply with the prescribed procedure.
129 [9~~8~~] This rule differs from the ABA model rule.
130 [9~~8~~a] This rule differs from the ABA Model Rule by including certain restrictions on
131 licensed paralegal practitioners.

Rule 5.4. Professional independence of a lawyer

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

(1) professional independence of judgment,

(2) duty of loyalty to a client, and

(3) protection of client confidences.

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

(c) Referral fees are prohibited.

(d) A lawyer or law firm may share legal fees with another lawyer or law firm only as permitted in Rule 5.8.

(e~~c~~) A lawyer or law firm may share legal fees with a nonlawyer only if:

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

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

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

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

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

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

the lawyer practices or that one or more nonlawyers exercises managerial authority over the lawyer; and

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

Comment~~s~~

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

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

[3] Fee sharing arrangements with nonlawyers are governed by Supreme Court Standing Order No. 15. Fee sharing and referral fees are defined in Rule 1.0.

[4] Before engaging in any fee sharing arrangement, lawyers should be familiar with Utah law regarding prohibitions on kickbacks. ~~Paragraph (c) permits individual lawyers or law firms to pay for client referrals, share fees with nonlawyers, or allow~~

57 ~~third party retention. In each of these instances, the financial arrangement must be~~
58 ~~reasonable, authorized as required under Supreme Court Standing Order No. 15, and~~
59 ~~disclosed in writing to the client before engagement and before fees are shared.~~
60 ~~Whether in accepting or paying for referrals, or fee-sharing, the lawyer must protect the~~
61 ~~lawyer's professional judgment, ensure the lawyer's loyalty to the client, and protect~~
62 ~~client confidences.~~
63 [5~~4~~] Paragraph (d) permits individual lawyers or law firms to enter into business or
64 employment relationships with nonlawyers, whether through nonlawyer ownership or
65 investment in a law practice, joint venture, or through employment by a nonlawyer
66 owned entity. In each instance, the nonlawyer owned entity must be approved by the
67 Utah Supreme Court for authorization under Standing Order No. 15.
68 [6~~5~~] This r~~R~~ule differs from the ABA Model Rule.~~ Additional changes have been made~~
69 ~~to the comments.~~

Rule 5.8. ~~Referral Fees~~Fee Sharing Between Lawyers

(a) Referral fees ~~paid to anyone who is not a lawyer~~ are prohibited.

(b) A lawyer or law firm may share legal fees with another lawyer or law firm only if~~A referral fee must~~:

(1) no lawyer receives any part of the fee ~~not be paid~~ until ~~a~~the ~~legal~~ fee is payable ~~to the lawyer representing~~by the client in the ~~referred~~ matter;

(2) ~~not be passed along to the client either as a cost or~~the fee sharing does not result in an increase of the total legal fee; and

(3) ~~be subject to~~ the client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing~~the client's giving informed consent, confirmed in writing, to the terms of the referral fee arrangement~~.

(c) A lawyer's portion of a ~~ny referral~~ fee must be reasonable relative to the total ~~legal~~ fee~~s~~ that ~~may~~ ultimately may be earned. The factors to be considered in determining the reasonableness of a ~~referral~~ divided fee include the following:

(1) the ~~referral fee~~portion customarily paid in the locality ~~for~~ in similar ~~referrals~~fee sharing arrangements;

(2) the amount of work the lawyer anticipated to perform and the amount of work the lawyer actually performed ~~by the referring lawyer and the amount of work anticipated to be performed by the lawyer taking over the matter~~;

(3) the amounts involved and the potential results; and

(4) the nature and length of the ~~referrer's~~ lawyer's relationship with the client.

Formatted: Indent: Left: 0"

Comment

[1] Paragraph (a) forbids payments to anyone ~~who is not a lawyer~~ for referring clients or legal matters.

26 [24] A lawyer should only refer a matter to another lawyer whom the referring lawyer
27 reasonably believes is competent to handle the matter diligently. See Rules 1.1 and 1.3.

28 [3] Fee sharing with lawyers is permitted in accordance with Rule 5.4. Fee sharing with
29 non-lawyers is permitted only in accordance with Rule 5.4 and Supreme Court Standing
30 Order No. 15.

31 [4] A lawyer should only refer a matter to another lawyer whom the referring lawyer
32 reasonably believes is competent to handle the matter diligently. See Rules 1.1 and 1.3.

33 [42] Paragraph (b)(1) prohibits lawyers from paying out a divided a referral fee until at
34 least one the lawyer who represents the client in the matter is entitled to be paid a legal
35 fee.

36 [53] In the case of a contingent fee matter, no lawyer may receive any portion of the
37 lawyer may not pay the referralthe fee until the at least one of the lawyers is entitled to
38 receive the contingent fee, which may be at the conclusion of the matter.

39 [4] A lawyer should only refer a matter to another lawyer whom the referring lawyer
40 reasonably believes is competent to handle the matter diligently. See Rules 1.1 and 1.3.

41 [65] Paragraph (b)(2) prohibits a lawyer with a fee sharing arrangement from charging a
42 client in a referred matter a higher fee, or from seeking payment of greater costs, than
43 the lawyer charges other clients where no referral fee was paidthe fee is not shared. For
44 the definitions of "informed consent," "confirmed in writing," "lawyer," and "legal
45 fees," and "referral fees," see Rule 1.0.

46 [76] The term "amounts involved" in paragraph (c)(3) refers to things such as the
47 estimated value of the case, claims, estate, commercial transaction, anticipated recovery,
48 insurance limits, and statutory limits.

49 [8[7[Before engaging in any referral fee sharing arrangement, legal professionals
50 should be familiar with Utah law regarding prohibitions on kickbacks.

51 [98] This rule is not part of the ABA Model Rules.

Tab 5

Standards of Professionalism and Civility
Subcommittee: Robert Gibbons, Mark Nickel, Mark Hales, Judge Gardner

The subcommittee reviewed the Standards of Professionalism and Civility for any proposed incorporation into other rules. The subcommittee reports the following on incorporation of Standard #16 into the Utah Rules of Civil Procedure:

Standard #16:

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

- Supreme Court Discussion on Standard #16 and its interplay with the Rules of Civil Procedure:

  ¶ 40 We agree with the court of appeals' assessment. A party's counsel can and should simultaneously comply with the rules of civil procedure and the standards of professionalism and civility. Our standards of professionalism and civility often promulgate guidelines that are more rigorous than those required by the Utah Rules of Civil Procedure and the Utah Code of Professional Conduct. Adherence to those standards promotes cooperation and resolution of matters in a "rational, peaceful, and efficient manner." Utah Standards of Professionalism and Civility pmbl. The rules of civil procedure establish minimum requirements that litigants must follow; the standards of professionalism supplement those rules with aspirational guidelines that encourage legal professionals to act with the utmost integrity at all times. *See* Gus Chin, Utah Standards of Professionalism and Civility: *Standard 2—Civility, Courtesy and Fairness,* 18 Utah Bar Journal 34, 35 (2005) (quoting Chief Justice E. Norman Veasey, *Making it Right: Veasey Plans Action to Reform Lawyer Conduct,* Bus. L. Today, Mar.–Apr. 1998, 42, 44) ("Ethics is a set of rules that lawyers must obey. Violations of these rules can result in disciplinary action or disbarment. Professionalism, however, is not what a lawyer must do or must not do. It is a higher calling of what a lawyer should do to serve a client and the public.").

  ¶ 41 In this case, we interpret Utah Rule of Civil Procedure 5(a) to require parties to serve notice of pleadings and papers to all parties who have formally appeared before the court in which the matter is pending. Although not required by rule 5, our standards of professionalism and civility further advise lawyers to give notice of default to *known parties* before entering notice of default, whether or not the parties have made a formal appearance. Utah Standards of Professionalism and Civility 14–301(16). Adhering to such a practice is easy, promotes fairness, and reduces the number of motions to set aside default judgments filed under Utah Rule of Civil Procedure 60.

  . . .

  ¶ 43 We find that requiring attorneys to give opposing parties a final opportunity to make a formal appearance before entering default judgment is urged by our Standards of Professionalism and Civility and is a simple step that promotes fairness and efficiency in our judicial system. We encourage lawyers and litigants to follow this standard, and we caution that lawyers who fail to do so without justification may open themselves to bar

complaints or other disciplinary consequences if their conduct also runs afoul of the Utah Rules of Professional Conduct.

Arbogast Family Trust ex rel. Arbogast v. River Crossings, LLC, 2010 UT 40.

- Arizona default judgment rule:

(3) *Notice*. For any default entered under Rule 55(a)(1), notice must be provided as follows:

. . .

(B) To the Attorney for a Represented Party. If the party requesting the entry of default knows that the party claimed to be in default is represented by an attorney in the action in which default is sought or in a related matter, a copy of the application also must be mailed to that attorney, whether or not that attorney has formally appeared in the action. A party requesting the entry of default is not required to make affirmative efforts to determine the existence or identity of an attorney representing the party claimed to be in default.

https://govt.westlaw.com/azrules/Document/N35087A2256C811EEACF9B1FBBEC5BD4D?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default)