

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

Location: Virtually via [Webex Link](#)

Date: May 6, 2025

Time: 4:00 – 6:00 p.m.

Welcome and approval of minutes	Tab 1	Cory Talbot
Rule 3.3 – No public comments received (<i>Discussion</i>)		Cory Talbot
Use of language in rules – lawyer / legal professionals / LPPs (<i>Discussion</i>)	Tab 2	Beth Kennedy
Fee sharing with nonlawyers (LPPs) (<i>Discussion</i>)	Tab 3	Beth Kennedy

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

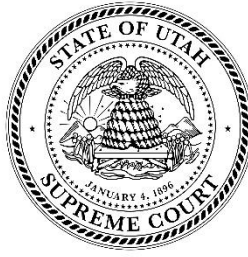
Upcoming Items:
Rule 8.4

Rules of Professional Conduct Committee Website: [Link](#)

2025 Meeting Schedule:

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

Tab 1



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

[Draft] Meeting Minutes

April 1, 2025

Via Webex

4:00 pm Mountain Time

Cory Talbot, Chair

Attendees:

Jurhee Rice (Vice Chair)
Adam Bondy
Ian Quiel
Robert Gibbons
Alyson McAllister
Hon. Amy Oliver
Hon. Matthew Bates
Mark Nickel
Mark Hales
Kent Davis
Lakshmi Vanderwerf
Robert Harrison
Ashley Gregson
Lynda Viti
Beth Kennedy (ex officio)
Christine Greenwood (ex officio)
Hon. Trent Nelson (emeritus)

Excused: Cory Talbot; Ashley Gregson,
Hon. Craig Hall

Staff:

Stacy Haacke

Guests:

1. Welcome, Approval of the January 7, 2025 meeting minutes (Vice Chair Rice)

Vice Chair Rice recognized the existence of a quorum and called the meeting to order at 4:01 p.m.

Vice Chair Rice asked for a Motion to approve the January 7, 2025 meeting minutes. Mark Hales moved for approval. Alyson McAllister seconded. The Motion passed unanimously.

2. Rule 1.8(e) (Vice Chair Rice)

The ABA Rules have a humanitarian exception under Rule 1.8(e), and Cory Talbot thought it was worth considering and discussing. Arizona recently rejected this humanitarian exception under 1.8(e). ABA rule does include this exception. As the Utah rule is currently written the Committee does not think it would include a similar exception to the ABA rule. Ian Quiel asks if there is a need and that is where the request is coming from, but no committee member has heard of a need for this exception.

Alyson McAllister notes it could be problematic if some attorneys are able to provide and others are not. Adam Bondy thinks it would make sense to limit it to pro bono, but is unclear how often this situation comes up. Alyson wonders if there are any organizations that would have more information about funding they have and would like to use but are unable to do so under the rules.

Judge Oliver said that the Supreme Court in Arizona circulated the request to amend the rule, noting it may be confusing for attorneys who come to Arizona from other states and are used to the model rule. There were comments about nonprofits being restricted in assisting their clients.

Lakshmi Vanderwerf practices in this area a lot and thinks adding this to the rule could add a lot of grey area and does not think it would be beneficial. Rather it may be more confusing with how to handle it ethically.

Committee decides not to propose amendments to this rule at this time. Does not appear to be a problem or an issue

3. Historical Amendments to the ABA Rules (Vice Chair Rice)

While discussing the ABA Rules Chair Talbot asked whether the recent amendments to the ABA rules could be reviewed or addressed. The Committee notes in the past they have just addressed differences in the rules as they arose and did not review each rule for differences. Vice Chair Rice will circle back with Chair Talbot on this one.

4. Rule 11-567 and *Bernacchi* ruling (Stacy Haacke)

Stacy Haacke provides a brief background on the *Matter of Discipline of Bernacchi* and Rule 11-567 as there is a footnote in the opinion for an advisory committee to review for clarity. Christine Greenwood indicates the OPC Oversight Committee and the OPC have been discussing these rules. The amended jurisdictional rules are pretty broad right now. Christine thinks this will be covered because it is on the radar for OPC, but they are open to thoughts. Committee agrees they do not need to address if it is being handled by OPC.

5. Upcoming Items

Nothing for this month.

The next meeting of the Committee is May 6, 2025.

The meeting adjourned at 4:30 p.m.

Tab 2

Topic: Cleaning up use of lawyer/legal professionals/LPPs in the rules
From: Courtney Risk Easterling, Utah State Bar, Ethics Hotline

Rule 1.0 defines lawyer to include LPPs. There is also a definition for Legal Professional which includes LPPs and lawyers as well as a definition for LPPs. Ideally, if the committee has time, lawyer would be used to denote just a lawyer while legal professional would be used to denote lawyers and LPPs. However, I know that is not necessarily feasible.

In many instances, using the term lawyer to include LPPs is clear. However, in rules where discussion of "nonlawyers" occurs, it would provide more clarity to change "lawyer" to legal professional. For example, under Rule 5.4 discussion of fee sharing and partnership options use the term lawyer and nonlawyer.

- If the intention is to allow LPPs to share fees with lawyers, 5.4(c) should be amended to read: "A legal professional or law firm may share legal fees..."
- Additionally, if the intention is to allow LPPs to enter into partnerships with lawyers, 5.4(d) should be amended to clarify this. It could be amended, for example, to say: "A lawyer or LPP may practice law..." The rule could also be amended to add a provision specifically stating that LPPs can have an ownership interest in a firm.

Tab 3

Topic: Referral Fees

From: Courtney Risk Easterling, Utah State Bar, Ethics Hotline

After the 2020 amendments changing rules 7.1, et. al., the legislature subsequently made it illegal to share referral fees with nonlawyers. ([Utah 76-10-3201](#)). The statute does allow fee sharing between individuals permitted to practice law. This raises questions regarding whether fee sharing can occur between lawyers and LPPs--would LPPs be considered authorized to practice law? I think there is a strong argument that, yes, they are. But some clarity in rule 5.4 by including a specific reference to LPPs may be helpful.

Additionally, rule 5.4(c) prohibits sharing legal fees with nonlawyers unless it is approved through the Sandbox. Comment 3 adds language prohibiting client referral fees or "third party retention" unless it is within the Sandbox. Indeed, comment 3 creates some confusion as it appears to indicate sharing *any* legal fees must occur within the Sandbox. I suspect this was not the intention.

Whether fee sharing or referral fees are allowed is a policy decision. However, whatever that decision is--the rule itself needs to include language consistent with the commentary. Sharing legal fees can be different than paying a set referral fee so clarifying what is and is not allowed would be helpful.

For example, I have received questions regarding the use of legal referral websites. Paying a marketing fee to a website seems very different than paying a physician a percentage of a settlement. However, the confusion in the rules may be inadvertently preventing lawyers from taking advantage of marketing opportunities. I think a fresh look at these issues within the constraints of the new criminal statute could be helpful.