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

Location: Virtually via Webex Link

Date: February 3, 2026

Time: 4:00 – 6:00 p.m.

Welcome and approval of minutes	Tab 1	Cory Talbot
Referral Fee Rules – Public Comments (*Discussion*)	Tab 2	Alyson McAllister
Rule 8.4 – Conditioning resolution to litigation on promise to withdraw OPC Complaint (*Discussion*)	Tab 3	Beth Kennedy and Christine Greenwood
New / Old Business		

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

Upcoming Items:

Rules of Professional Conduct Committee Website: Link

2026 Meeting Schedule:

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

Tab 1

Utah Supreme Court's

Advisory Committee on the Rules of Professional Conduct

Meeting Minutes

January 6, 2026

Via Webex

4:00 pm Mountain Time

Cory Talbot, Chair

Attendees:

Cory Talbot (Chair)
Jurhee Rice (Vice Chair)
Robert Gibbons
Alyson McAllister
Kent Davis
Robert Harrison
Ian Quiel
Adam Bondy
Lakshmi Vanderwerf
Hon. Craig Hall
Hon. Richard Pehrson
Hon. Matthew Bates
Mark Hales
Mark Nickel
Beth Kennedy (ex officio)
Christine Greenwood (ex officio)
Hon. Trent Nelson (emeritus)

Staff:

Stacy Haacke
Sonia Sweeney

Guests:

Excused:
Ashley Gregson
Lynda Viti

1. Welcome, Approval of the December 2, 2025 meeting minutes (Chair Talbot)

Chair Cory Talbot welcomed the committee members. The first order of business was the review and approval of the minutes from the December 2, 2025, meeting. Chair Talbot requested a motion to approve the minutes. Mark Hales moved to approve the minutes as presented. Jurhee Rice seconded the motion. There was no further discussion or objection. The motion passed unanimously.

2. Referral Fee Rules – Public Comments (Discussion)

Alyson McAllister led a discussion regarding the Referral Fee rules (Rules 1.0, 1.5, 5.4, and 5.8), addressing public comments, and the work of the subcommittee. Ms. McAllister began by addressing a concern regarding the definition of "Referral Fee" in Rule 1.0. She noted that the current strict ban on referral fees could be interpreted to preclude small gestures of appreciation, such as sending cookies or taking a colleague to lunch. Ms. McAllister referenced a previous version of the rule approved by the committee which defined a referral fee as an "exchange of value beyond marginal or minimal value." Ian Quiel suggested adding language to the comments to clarify that "gifts" of marginal value are acceptable. Robert Harrison sought clarification on whether buying dinner would be prohibited, to which Ms. McAllister confirmed that such small gestures were never intended to be excluded. The committee reached a consensus to amend the Comment to Rule 1.0 to clarify that small gifts of marginal or minimal value are not considered compensation under the definition of a referral fee.

Ms. McAllister next addressed potential redundancies between Rule 1.5(a) and Rule 5.8(c). She explained that most of the factors listed in Rule 5.8(c) for determining the reasonableness of a fee share are already listed in Rule 1.5(a). She proposed retaining Rule 1.5(a) as is, but amending Rule 5.8(c) to remove duplicative factors and instead refer back to Rule 1.5, while retaining the unique factor regarding "the amount of work the lawyer anticipated to perform and the amount of work the lawyer actually performed." Chair Talbot and the committee agreed with this approach to streamline the rules.

The discussion then moved to the substantive issue of fee sharing and the timing of referrals (Rules 5.4 and 5.8). Ms. McAllister highlighted public comments suggesting that the current prohibition on referral fees incentivizes lawyers to keep cases they are not qualified to handle, thereby harming clients, because referring the case out early would preclude the referring lawyer from sharing in the fee. She proposed reinstating language or factors allowing for fee sharing

even when a case is referred early, provided the share is reasonable relative to the work or value provided. Beth Kennedy questioned whether this proposal conflicted with the Supreme Court's explicit direction that “referral fees are prohibited.” Ms. McAllister explained that clarification is needed because the term “referral fee” is used differently in common practice than in the rules, and that fee sharing should be permissible if structured correctly to avoid client harm. Chair Talbot recalled the Supreme Court's previous reasoning, noting the Court’s stance was that they were looking at the overall amount of the fee that the client actually pays regarding reasonableness, and that lawyers could decide how to divide that fee among themselves.

The committee discussed the confusion surrounding the terminology of “referral fees” versus “fee sharing.” Ms. McAllister suggested that the subcommittee draft language to clarify that fee sharing is permissible even for cases referred early, potentially by adding a factor regarding the time and cost incurred by the referring attorney. Additionally, Ms. McAllister pointed out a redundancy where both Rule 5.4(c) and Rule 5.8(a) state that “Referral fees are prohibited,” and suggested removing the statement from Rule 5.8(a). The committee agreed that the subcommittee should meet to draft these specific changes and clarifications.

Before the next committee meeting on February 3, 2026, the Referral Fees Subcommittee (Ms. McAllister, Mr. Quiel, Mr. Gibbons, Ms. Kennedy, and Chair Talbot) will meet to draft amendments to Rule 1.0 (clarifying gifts of minimal value), Rule 5.8 (removing duplicative factors and clarifying fee sharing eligibility early in a case), and removing the redundant prohibition in Rule 5.8(a).

3. New / Old Business

Chair Talbot requested an update on the status of the memorandum to the Supreme Court regarding Rule 8.4 (discrimination and harassment). Stacy Haacke reported that Ashley Gregson, who was excused from the meeting, is currently amending the memo and will provide an updated version shortly. Judge Trent Nelson requested a specific deadline for when this matter would be presented to the Court. Ms. Haacke explained the Court's new procedure, which involves submitting materials to the Chief of Staff and awaiting placement on an agenda. Ms. Haacke committed to notifying Judge Nelson as soon as the item is scheduled.

4. Upcoming Items

The next meeting of the Committee is scheduled for February 3, 2026. The meeting adjourned.

Tab 2

Referral Fee Rules
Back from public comment
Rules 1.0, 1.5, 5.4, and 5.8

In summary, here is what we suggest:
Rule 1.0:

- The full committee tentatively approved adding a sentence to the comment on referral fees to clarify that small gifts are not included in the definition.
- The subcommittee agrees that it is better to just refer generally to the factors listed in 1.5 as opposed to listing some but not all of those factors in the comment on legal fees and suggests making that change.

Rule 1.5: We have no suggested changes to Rule 1.5.
Rule 5.4:

- We suggest adding a comment about fee sharing for cases that are referred early in litigation to address the confusion apparent in the public comments between the Court/rule's definition of "referral fee" and the way it is used in the industry. This is where the majority of the public comment is focused and the comments appear to be more of a problem in understanding the rule rather than with the rule itself.

Rule 5.8:

- The subcommittee recommends removing 5.8(a) as it is completely duplicative of 5.4(c) and seems to be contributing to the confusion about referral fees vs fee sharing.
- The subcommittee recommends referring to rule 1.5 factors rather than relisting them in the factors to consider in determining the reasonable of a fee division. We would like some discussion/input from the full committee about whether it makes sense to also include factors related to work that typically occurs at the onset/intake of a case in order to make it even more clear what the rule means by fee divisions vs referral fees, but we are not sure if that is necessary if we already add the proposed comment to Rule 5.4.

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.

Posted: September 2, 2025

Utah Courts

Rules of Professional Conduct – Comment Period Closed October 17, 2025

A new rule 5.8 is proposed that outlines requirements for fee sharing between lawyers. Along with this new rule, amendments are proposed to rule 1.0 to include definitions for fee sharing, legal fees, referral fees, and new comments for legal fees and referral fees. Furthermore, amendments are proposed to rules 1.5 and 5.4 to include language regarding fee sharing and referral fees.

RPC01.0. Terminology. AMEND.
RPC01.5. Fees. AMEND.
RPC05.4. Professional independence of a lawyer. AMEND.
RPC05.8. Fee sharing between lawyers. NEW.

This entry was posted in **-Rules of Professional Conduct**, **RPC01.00**, **RPC01.05**, **RPC05.04**, **RPC05.08**.

« Mandatory Continuing Legal Education Rule Changes –

Rules of Appellate Procedure – Comment Period Closed

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

Comment Period Closed October 20, 2025

October 6, 2025 »

UTAH COURTS

View more posts from this author

21 thoughts on “Rules of Professional Conduct – Comment Period Closed October 17, 2025”

Clay Randle
September 3, 2025 at 8:01 am

On September 2, 2025, I received an email from the CLE department about cultivating and retaining attorneys in Utah. The description said there would be a discussion on what Utah can do better to retain attorneys and talent in Utah. On the same day, the bar proposed these changes in these rules. This seems contrary to the stated desire to retain talent in Utah. This rule would cause attorneys to question returning referrals from friends with small acts of kindness. I have sent many Crumbl cookies to friends and other attorneys who have sent clients to me. I’ve sent lunch to offices for referrals. This rule would seem to punish that behavior.

Paul Maxfield
September 4, 2025 at 8:48 am

The change to the rules proposed here does nothing to further the client’s interests. The primary purpose of these changes seems to express an intent to stop referral fees or other forms of compensation for referrals. See Clay’s comment from September 3rd. Even small gestures of gratitude are technically impermissible. The current rule includes the following language: “Whether in accepting or paying for referrals, or fee-sharing, the lawyer must protect the lawyer’s professional judgment, ensure the lawyer’s loyalty to the client, and protect client confidences.” Is there some other or new client interest that is being protected? Is this proposed rule change primarily benefiting

- -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 A
- Appendix B
- Appendix F
- CJA 1-101
- 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
- CJA014-0701
- CJA014-0704
- CJA014-0705
- CJA014-0719
- CJA02-0101
- CJA02-0102
- 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
- CJA03-0102
- CJA03-0103
- CJA03-0103
- CJA03-0104
- CJA03-0105

larger firms that include in their compensation portions of legal fees from clients brought to the firm when the legal work is performed by other attorneys within the firm while simultaneously excluding independent and small firm attorneys from having some similar methods of compensation between themselves? Usually, the changes to our rules are to clarify a point or ensure that the client's best interest is protected. Here, it does neither.

Alex Leeman
September 4, 2025 at 5:00 pm

Referring to the proposed Comment 8 to Rule 1.0, the comment should refer to Rule 1.5(a) rather than simply listing three of the factors that may be the basis of legal fees.

Referring to Rule 5.8, subpart (a) is unnecessary because it is already stated in the proposed Rule 5.4.

In addition, in the proposed Rule 5.8(b)(1), the word "payable" is confusing. It would be more appropriate to state that no lawyer should receive any part of the fee until the fee is "earned" by the lawyer. In a comment, it would be appropriate to state that the prohibition on "receiving" fees does not apply to fees held in the lawyer's trust account. As written, one might think a lawyer cannot receive a retainer for a matter where the fee is being shared with another lawyer.

Subpart (c) of the proposed Rule 5.8 is unnecessary and confuses the existing standard that already applies. Under Rule 1.5, lawyers are already prohibited from receiving unreasonable fees. There is no reason a different standard should apply simply because a lawyer is sharing a fee with another lawyer. The factors in Rule 1.5(a) already dictate whether a fee is reasonable. There is no reason to restate a subset of the factors in Rule 5.8. (By the same reasoning, Comment 5 to Rule 5.8 is also unnecessary.)

Finally, I agree with other commenters that this rule seems to be trying to fix a problem that doesn't exist, or that is adequately covered by existing rules. Also, I agree that there should be an exception for a lawyer to give a de minimis gratuity or thank-you to someone who refers a case.

Tyler Young
September 16, 2025 at 1:55 pm

The prohibition of referral fees under Rule 5.8(a) creates unintended consequences that harm Utahns and distort ethical incentives. A well-regulated referral fee system—limited to

licensed attorneys and subject to client disclosure—would better serve the public, the courts, and the legal profession. I respectfully request that the Court revise Rule 5.8 to permit referral fees between lawyers under appropriate safeguards.

First, I believe allowing referral fees protects clients from incompetent representation. Prohibiting referral fees incentivizes lawyers to retain cases outside their expertise to avoid losing compensation. This leads to poor case development, missed deadlines, and maybe even malpractice—especially in complex matters like trucking accidents where evidence preservation must occur early in a case. Permitting referral fees encourages lawyers to refer cases to specialists, ensuring clients receive competent and diligent representation.

Second, allowing referral fees prevents sham participation. Under the proposed rule, lawyers may feel compelled to perform token tasks to justify fee sharing, even when they lack the skill or capacity to handle the matter. This limits a lawyer's ability to dedicate time to other cases the lawyer is competent to handle and unnecessarily requires their participation in a matter where their utility is questionable.

Third, allowing referral fees encourages ethical collaboration. Referral fees foster professional networks that connect clients with the right legal expertise. Solo and small firm practitioners often rely on referrals to serve clients effectively. When referral fees are permitted, lawyers are rewarded for ethical decision-making—not penalized for doing the right thing.

Fourth, allowing referral fees seems to align with the trend in many other jurisdictions. Based on my internet searches, it appears to me that 10 states allow "pure" referral fees (CA, CT, DE, KA, ME, MA, MI, NV, NH, OR). In addition, it appears that 10 more states allow referral fees with some vicarious liability or other safeguard/limit (AL, AZ, CO, FL, IL, LA, NJ, NY, TX, WI). I was unable to locate a single state that historically allowed payment of referral fees that changed its rule to prohibit them.

Finally, if referral fees are allowed, I support the following conditions: (a) Written disclosure and client consent of the referral fee arrangement. (b) No increase in total legal fees to the client. (c) Referral only to competent counsel.

Beau Burbidge
September 18, 2025 at 12:04 pm

Our bar's president-elect has provided a thoughtful, articulate and entirely correct critique of this proposed rule. Mr. Young has worked in a field of law that often involves referral fees and co-counsel relationships, and he has practiced long enough to have seen the development of rules in this arena. His thoughts come from his own experience and should be given great weight.

- CJA04-0110
- CJA04-0201
- CJA04-0202
- CJA04-0202.01
- CJA04-0202.02
- CJA04-0202.03
- CJA04-0202.04
- CJA04-0202.05
- CJA04-0202.06
- CJA04-0202.07
- CJA04-0202.08
- CJA04-0202.09
- CJA04-0202.10
- CJA04-0202.11
- CJA04-0202.12
- CJA04-0203
- CJA04-0205
- CJA04-0206
- CJA04-0208
- CJA04-0302
- CJA04-0401
- CJA04-0401.01
- CJA04-0401.02
- CJA04-0401.03
- CJA04-0402
- CJA04-0403
- CJA04-0404
- CJA04-0405
- CJA04-0408
- CJA04-0408.01
- CJA04-0409
- CJA04-0410
- CJA04-0411
- CJA04-0501
- CJA04-0502
- CJA04-0503
- CJA04-0508
- CJA04-0509
- CJA04-0510
- CJA04-0510.01
- CJA04-0510.02
- CJA04-0510.03
- CJA04-0510.04
- CJA04-0510.05
- CJA04-0510.06
- CJA04-0601
- CJA04-0602
- CJA04-0603
- CJA04-0609
- CJA04-0610
- CJA04-0613
- CJA04-0701
- CJA04-0702
- CJA04-0704
- CJA04-0801
- CJA04-0901
- CJA04-0902

I will add that in reviewing this proposed Rule 5.8, and comparing it with Rule 5.4, it appears there would be fewer restrictions on sharing a fee with a non-lawyer than sharing a fee with a licensed lawyer. That seems very wrong. The Supreme Court established the Sandbox and opened up new avenues for commercial interactions between lawyers and non-lawyers. It appears to make little sense that they would permit this scheme to proceed while tightening restrictions on licensed lawyers who are officers of the court, bound by professional and ethical obligations, and should consequently be given greater trust than those outside the profession who do not have the same duties and obligations.

Kurt London
September 17, 2025 at 2:57 pm

Prohibiting referral fees between licensed attorneys disincentivizes attorneys from referring legal claims to the appropriate co-counsel. Such a prohibition would encourage unqualified attorneys to work on cases that they should refer to another attorney better suited for that subject matter. Also, out of state attorneys will be less likely to refer a Utah case to a Utah licensed attorney and instead attempt to resolve the matter on their own. The change should be that referral fees can only be given to another licensed attorney subject to appropriate client disclosure. Referral fees to non-attorneys should be forbidden for obvious reasons.

Benjamin Cloward
September 18, 2025 at 2:59 pm

The community will be harmed by prohibiting referral fees under Rule 5.8(a) because lawyers who are not qualified to handle a case in a specific area will not be incentivized to refer out cases to lawyers who are better equipped and more knowlegeable. Instead, those less qualified lawyers will try and handle those cases – to the detriment of the members of the public who are the clients.

I support the following conditions: (a) Written disclosure and client consent of the referral fee arrangement. (b) No increase in total legal fees to the client. (c) Referral only to competent counsel.

I do not support referral fees to non-lawyers as this will encourage “marketing” and other “referral” groups to advertise for cases. Those marketing and referral groups do not owe the same fiduciary and other obligations to the clients and thus the clients’ rights will not be protected the same was as if a lawyer is

- CJA04-0903
- CJA04-0904
- CJA04-0905
- CJA04-0906
- CJA04-0907
- CJA05-0101
- CJA05-201
- CJA06-0101
- CJA06-0102
- CJA06-0104
- CJA06-0301
- CJA06-0303
- CJA06-0304
- CJA06-0401
- CJA06-0402
- CJA06-0501
- CJA06-0503
- CJA06-0504
- CJA06-0505
- CJA06-0506
- CJA06-0506
- CJA06-0507
- CJA06-0601
- CJA07-0101
- CJA07-0102
- CJA07-0301
- CJA07-0302
- CJA07-0302
- CJA07-0303
- CJA07-0304
- CJA07-0307
- CJA07-0308
- CJA09-0101
- CJA09-0103
- CJA09-0105
- CJA09-0107
- CJA09-0108
- CJA09-0109
- CJA09-0301
- CJA09-0302
- CJA09-109
- CJA10-1-203
- CJA10-1-602
- CJA11-0101
- CJA11-0102
- CJA11-0103
- CJA11-0104
- CJA11-0105
- CJA11-0106
- CJA11-0107
- CJA11-0201
- CJA11-0202
- CJA11-0203
- CJA11-0301
- CJA11-0302
- CJA11-0303
- CJA11-0401

initially signing up the case. Referral fees should be limited among lawyers.

Benjamin Allred
September 18, 2025 at 3:07 pm

I agree with Tyler.

Smaller firms won't be able to refer cases without a referral fee. Each case is too important for these firms.

This proposed rule seems to disregard the client's best interest. Smaller, less-experienced firms will be disincentivized to refer cases to more specialized firms or firms with better resources, resulting in suboptimal outcomes and ultimately damaging the client.

Ricky Shelton
September 19, 2025 at 9:17 am

I agree with Tyler Young's comment above against Proposed Rule of Professional Conduct 5.8. I, too, oppose the proposed rule for the same reasons. The only safeguards needed for referral fees to attorneys are written consent by client and no increase in the total legal fees charged. Going beyond those safeguards will cause more harm than good.

Joshua Jewkes
September 19, 2025 at 9:23 am

I am concerned about the prohibition of referral fees under Rule 5.8(a). Most jurisdictions seem to allow referral fees. They make legal services more accessible to the populace by incentivizing lawyers to find the right practitioner to handle the representation and to share the burdens of representation jointly. Some carefully crafted limitations, like written disclosure and client consent, should prevent most abuses of this rule. Disallowing referral fees, on the other hand, will encourage practitioners to accept cases that they may not be equipped to handle.

S. Brook Millard

- CJA11-0501
- CJA11-0503
- CJA11-0510
- CJA11-0511
- CJA11-0513
- CJA11-0520
- CJA11-0521
- CJA11-0591
- CJA14-0515
- CJA14-0721
- CJA_Appx_F
- CJA_Appx_I
- CJA_Appx_J
- CJC Terminology
- CJC01
- CJC02
- CJC02.11
- CJC02.12
- CJC02.3
- CJC03
- CJC03.7
- CJC04
- CJC04.1
- CJC05
- CJCApplicability
- CR1008
- CR1101
- CR430
- CR432
- Fourth District Local Rule 10-1-407
- LPP1.00
- LPP1.01
- LPP1.010
- LPP1.011
- LPP1.012
- LPP1.013
- LPP1.014
- LPP1.015
- LPP1.016
- LPP1.017
- LPP1.018
- LPP1.02
- LPP1.03
- LPP1.04
- LPP1.05
- LPP1.06
- LPP1.07
- LPP1.08
- LPP1.09
- LPP15-0701
- LPP15-0702
- LPP15-0703
- LPP15-0704
- LPP15-0705
- LPP15-0706
- LPP15-0707

September 19, 2025 at 9:41 am

I concur with Tyler Young's post that the proposed changes should be modified to reflect pre-sandbox referral fee rules. Although I felt the change to referral fees related to the emergence of the sandbox was problematic, I believe fee sharing by licensed lawyers gives our client the best of both worlds. There will be no increased fee by a referral and if, as the pre-sandbox rule was put back in place, the client would be able to pursue any claims by both the referring and referral attorneys, potentially giving them more protection than a ban on referral fees. Competency of counsel is paramount to providing legal services that will protect Utah citizens. Under our Rules of Professional Conduct, we have the ability to "get competent" and handle matters outside our wheelhouse, the ability to refer generally gives lawyers the opportunity to utilize more competent referral sources where indicated. This is a win for Utah citizens. Removing the ability to refer cases and receive compensation would be a loss.

Lonnie Eliason
September 19, 2025 at 4:39 pm

This is clearly proposed over-regulation. If the continued practice was injuring the public in any way, I may see it differently. But it seems that no one is damaged by the proposed changes except attorneys. Referring attorneys like it; and attorneys receiving referrals like it. The amount of the fee paid by the client does not increase. The client receives better representation by a more qualified attorney. Why change a win-win?

Brooke Hansen
September 22, 2025 at 9:53 am

I disagree with this proposition because it will hurt Utah consumers and is not in the public's interest. Utah consumers are protected when attorneys have the incentive to refer claims to attorneys who have more bandwidth to add to their current case load, or who specialize or practice in a more applicable area of law that the prospective client needs.

Having an incentive to refer potential claims to more competent and able attorneys also means that claims move through the claims process or litigation efficiently, cutting down on court backlog, because when claims are in the hands of an attorney with the knowledge and ability to accurately pursue the claim, it naturally moves through the system quicker.

- LPP15-0708
- LPP15-0709
- LPP15-0710
- LPP15-0711
- LPP15-0712
- LPP15-0713
- LPP15-0715
- LPP15-0716
- LPP15-0717
- LPP15-0718
- LPP15-0719
- LPP15-0720
- LPP15.01001
- LPP15.01101
- LPP15.01102
- LPP15.01103
- LPP15.01104
- LPP15.01105
- LPP15.01106
- LPP15.01107
- LPP15.01108
- LPP15.01109
- LPP15.01110
- LPP15.01111
- LPP15.01112
- LPP15.01113
- LPP15.01114
- LPP15.01115
- LPP15.01116
- LPP15.01117
- LPP15.01118
- LPP15.01119
- LPP15.01120
- LPP15.0301
- LPP15.0501
- LPP15.0502
- LPP15.0503
- LPP15.0505
- LPP15.0506
- LPP15.0508
- LPP15.0509
- LPP15.0510
- LPP15.0511
- LPP15.0512
- LPP15.0513
- LPP15.0514
- LPP15.0515
- LPP15.0516
- LPP15.0517
- LPP15.0518
- LPP15.0519
- LPP15.0520
- LPP15.0522
- LPP15.0523
- LPP15.0525
- LPP15.0526
- LPP15.0527

At the end of the day, this proposal hurts Utah citizens and it hurts the relationships that firms have built with each other to help the right cases get to the right attorney.

Clancey Henderson
September 22, 2025 at 3:31 pm

I agree with the comments made by Mr. Young, and believe he articulates well how the ability to pay or receive a referral fee would serve pragmatic goals for the legal profession.

I am also of the opinion that a prohibition on referral fees creates a disparity in the legal community. A prohibition disadvantages small firms and solo practitioners by extinguishing a source of client leads on the one hand and revenue on the other. This is a significant consequence for firms with smaller marketing budgets or limited networks. In contrast, large firms can rely on existing regional or nationwide brands and invest in expensive digital marketing to attract clients. Not all clients are looking for large firms, and prohibiting referral fees diminishes the incentive to help a person connect with their preferred attorney type.

It seems to me that the goals of the committee to safeguard against greed or negligence can be accomplished without the imposition of a flat prohibition on referral fees. The Bar membership would welcome the opportunity to comment on the committee's well-thought proposals to guide the responsible use of referral fees.

Mark Dahl
September 25, 2025 at 9:27 am

I agree with the comments opposing this change to the rules. As a specialist in medical malpractice I have seen far too many attorneys attempt to do a medical malpractice case, only to later withdraw when they decide that it is too complex or too expensive. These clients are often dropped shortly before the statute of limitations expires and they are not given any solid justification for why their prior attorney dropped the case. Allowing referral fees encourages attorneys to refer complex cases to attorneys specialized in the correct area of practice, benefiting the public.

I am not aware of any negative consequence that has prompted the desire to restrict referral fees.

Jacque Findlay
September 25, 2025 at 10:00 am

As a paralegal, it's very frustrating to watch attorneys work on cases outside their practice areas just because they don't want to lose the potential fees to be earned. Allowing for referral fees alleviates that problem. I agree that this is obvious over-regulation and will only negatively impact clients and their ability to get into the hands of an expert. Allowing attorneys and firms to make their own decision about if/what referral fees should be paid is the right thing to do.

I agree with Benjamin Cloward: "I support the following conditions: (a) Written disclosure and client consent of the referral fee arrangement. (b) No increase in total legal fees to the client. (c) Referral only to competent counsel."

Randall Spencer
September 26, 2025 at 2:14 pm

Eliminating referral fees between lawyers is not in the interests of Utah citizens in need of good and competent legal assistance. I suspect the most common area where referral fees are paid are personal injury cases which are typically handled on a contingency fee basis. Referral fees between lawyers does not increase the cost of legal services to the consumer. Rather, referral fees are typically paid when a lawyer, though competent to handle a case, feels that another lawyer is more competent and can add value to the client by associating with the more experienced lawyer. The lawyers then agree on a referral fee that is within the original contingency fee the client agreed to pay. It is a positive thing for all parties involved.

Even in other areas of the law, referral fees amongst lawyers is beneficial to clients in need of legal services. It promotes attorneys to stay within their lane and refer cases outside of their comfort zone to other attorneys rather than muddle along trying to learn as they proceed on the case.

I cannot imagine that there has been any significant problem related to referral fees amongst attorneys that would outweigh the benefit to consumers by incentivizing lawyers to stay in their lane and refer cases they have retained to others and recover at least some of the case value and case acquisition expenses.

Dean Smith

October 9, 2025 at 1:13 pm

I oppose the proposed new rule that would prohibit referral fees between attorneys. After years of trying to build a reputation, I'm fortunate to be contacted frequently by potential clients that need assistance that is related to the industry that I specialize in, but outside of my preferred scope of practice, which is somewhat narrow. Over the last several years I've vetted a small number of firms that are experienced and well qualified to provide those services, and I've established referral arrangements with them. After some inquiry to confirm their needs, I've referred hundreds of potential clients in this manner, and I don't think a single one of them has ever come back to me with a complaint. The firms that I refer potential clients to value these leads, and I value the referral fees. The incentives are in place to produce results that benefit everyone involved. I recognize that there is a potential for referral fees to be abused, but I'm thinking that type of behavior would be inconsistent with several of our existing professional standards. From my perspective, the proposed new rule is unnecessary and harmful to both clients and attorneys.

D. Scott Crook
October 11, 2025 at 1:41 pm

I am opposed to the proposed Rule 5.8 of the Utah Rules of Professional Conduct.

As the rules committee is certainly aware, in 2021, the Utah Supreme Court eliminated Rule 7.2(f) of the Utah Rules of Professional Conduct which had prohibited referral fees. The amendment was part of a package that was intended to allow innovation that might increase access to justice.

In my experience, this reform has worked to increase access. It encouraged firms to work with other firms to direct clients to lawyers that have particularized experience or practice structures that would help individuals looking for representation.

As any practicing lawyer knows, lawyers are often inundated with emails or calls from individuals looking for services. Many are seeking services outside of an attorney's practice area. Some attorneys, eager for any business, may attempt to provide service to those individuals, despite their lack of competence. Allowing referral agreements encourages attorneys to find trusted attorneys who do have expertise in those areas and enter into agreements that will compensate the referring attorneys for referring individuals to those having the expertise.

Since the amendment of the rules, my firm has entered into agreements to refer clients and accept clients who have the

- RPC01.16
- RPC01.17
- RPC01.18
- RPC02.01
- RPC02.02
- RPC02.03
- RPC02.04
- RPC03.01
- RPC03.02
- RPC03.03
- RPC03.04
- RPC03.05
- RPC03.06
- RPC03.07
- RPC03.08
- RPC03.09
- RPC04.01
- RPC04.02
- RPC04.03
- RPC04.04
- RPC05.01
- RPC05.02
- RPC05.03
- RPC05.04
- RPC05.04A
- RPC05.04B
- RPC05.05
- RPC05.06
- RPC05.07
- RPC05.08
- RPC06.01
- RPC06.02
- RPC06.03
- RPC06.04
- RPC06.05
- RPC07.01
- RPC07.02
- RPC07.02A
- RPC07.02B
- RPC07.03
- RPC07.04
- RPC07.05
- RPC08.01
- RPC08.02
- RPC08.03
- RPC08.04
- RPC08.05
- RPP014.515
- RPP11-0101
- RPP11-0107
- RPP11-0581
- RPP11-0582
- RPP11-0583
- RPP11-0584
- RPP11-0585
- RPP11-0586

inclination and expertise to provide those services clients need. It has worked well.

The usual objections to referral agreements are simply not supported by my experience. These objections include that (a) referral relationships may create a conflict between an attorney's personal financial interests and a prospective client's, (b) the referral agreement undermines the integrity of the profession by treating clients as commodities, (c) referral agreements interfere with a client's ability to choose the client's own attorney, or (d) attorneys may refer to other attorneys based on financial incentive, rather than by competence.

Most of these objections are exaggerated and can be overcome with the application of other rules of professional conduct. For instance, objection (a) is no different from any attorney relationship with a client. There is an inherent tension between an attorney's financial interests and any client. The fact that lawyers are most often paid hourly by their clients (excepting pro bono relationships) creates natural tensions between an attorney's interests and a client's, e.g., a lawyer is rewarded by being less efficient in his or her work. Yet, the bar does not prohibit hourly work—in fact, many rules encourage hourly work (See Rule 1.5.) There is no rational argument that a referral fee creates a greater tension on a lawyer's duties to a potential client than an hourly relationship does. And the bar has other rules that can punish a lawyer for violating his or her professional duty to prioritize his or her client's interest over the lawyer's.

Objection (b) has similar problems. Although the legal profession requires its practitioners to act as fiduciaries, all lawyers must be paid. And lawyers compete with each other to secure the biggest and best cases from clients even without referral fees. If anything, referral fees encourage professional treatment of other practitioners and incentivize attorneys to find relationships that will allow lawyers to get a client to the best practitioner to handle a case.

Objection (c) presumes that a potential client has no ability to refuse to retain the lawyer the client has been referred to. Even in a referral relationship, a client has the ability to make his or her own choice in determining to retain an attorney. The only way this objection makes sense is if one assumes that a client has an absolute right to demand that the first attorney the client contacted take his or her case. Of course, except in cases where a court assigns a case to an attorney, the committee is certainly aware that no attorney is required to take a case after a client has sought out representation.

The only objection that merits significant attention is objection (d), which is that attorneys may refer to another attorney based on financial interest rather than professional competence. While this could be true, external forces will likely correct that concern. In the first instance, this objection assumes that the attorney receiving the referral will ignore his or her duties to the client and take the case outside of his or her areas of competence—an assumption that is significantly troubling. In

- Rules of Business and Chancery Court
- Standing Order 15
- StandingOrder08
- Uncategorized
- URAP 21A
- URAP001
- URAP002
- URAP003
- URAP004
- URAP005
- URAP008
- URAP008A
- URAP009
- URAP010
- URAP011
- URAP012
- URAP013
- URAP014
- URAP015
- URAP016
- URAP017
- URAP019
- URAP019
- URAP020
- URAP021
- URAP021
- URAP022
- URAP023
- URAP023B
- URAP023C
- URAP023C
- URAP024
- URAP024A
- URAP025
- URAP025A
- URAP026
- URAP027
- URAP028A
- URAP029
- URAP029
- URAP030
- URAP031
- URAP033
- URAP034
- URAP035
- URAP036
- URAP037
- URAP038
- URAP038A
- URAP038B
- URAP039
- URAP040
- URAP040.A
- URAP041
- URAP042
- URAP043

fact, if one accepts that presumption, not allowing referral fees is more likely to lead to bad results. Allowing a referral fee encourages a lawyer to make money by referring cases to a competent lawyer rather than by taking a case for which the lawyer lacks competence.

Perhaps more importantly, an attorney who is primarily financially incentivized will want to refer to attorneys who will do a good job, because a client, once referred, may return and complain if the referred attorney is doing a bad job, thus increasing the opportunity cost for the referral. Moreover, a bad attorney will likely be driven from the market, eliminating the attorney as a referral source. And again, enforcement of other professional rules is a better and more direct way to prevent abusive practices.

While I do not agree that the underlying objections justify the elimination of referral fees, if, in fact, there is actual abuse, it makes much more sense to allow referral fees but with prohibitions that reduce a specific abusive practice. For instance, if there is an actual problem of referrals to attorneys that are incompetent, the committee might consider requiring attorneys to demonstrate that they have exercised reasonable diligence in entering into referral relationships to ensure that the referral is to an attorney or firm that has competence in the referred area. The committee may also want to consider restricting referral relationships that require an attorney to send all referrals regardless of area of practice to a single attorney or firm.

Thank you for considering my comments. I am happy to provide additional thoughts if the committee believes that they may be helpful.

Rachel Sykes
October 13, 2025 at 1:24 pm

I am opposed to proposed Rule 5.8 as written. I think this will discourage attorneys from referring cases to more experienced counsel. Too often, attorneys accept complex cases, but they are not equipped to handle them. This proposed change could lead to consumer harm because less scrupulous attorneys will be less incentivized to refer cases to competent counsel. I second Tyler Young's comment above.

D. Scott Crook
October 15, 2025 at 12:35 pm

In addition to the comments I made earlier, I would also note that these changes unfairly impact smaller law firms with no

- URAP044
- URAP045
- URAP046
- URAP047
- URAP048
- URAP049
- URAP050
- URAP051
- URAP052
- URAP053
- URAP054
- URAP055
- URAP056
- URAP057
- URAP058
- URAP059
- URAP060
- URAP55A
- URBCP001
- URBCP008
- URBCP010
- URBCP013
- URBCP014
- URBCP016
- URBCP018
- URBCP019
- URBCP020
- URBCP022
- URBCP024
- URBCP026
- URBCP038
- URBCP042
- URBCP063
- URBCP065A
- URBCP065B
- URBCP077
- URBCP085
- URBCP086
- URCP001
- URCP004
- URCP005
- URCP006
- URCP007
- URCP007A
- URCP007B
- URCP008
- URCP009
- URCP010
- URCP011
- URCP012
- URCP013
- URCP015
- URCP016
- URCP016A
- URCP017
- URCP018
- URCP023A

apparent rationale. Larger law firms often create compensation formulas that provide compensation to an attorney for his or her origination of work when they have done no work on a case at all. In other words, they receive a referral fee. There is no prohibition in these rules against those internal law firm compensation schemes. Yet, if an attorney decides to work in a smaller firm, he or she is prohibited from entering into agreements that essentially replicate the compensation formulas in larger firms. If there is a danger in these referral fee arrangements between smaller firms, why is there no danger in a large firm? There appears to be no logical rationale for the distinction. In fact, the effect of the rule is to give a competitive advantage to larger firms.

- URCP024
- URCP025
- URCP026
- URCP026.01
- URCP026.02
- URCP026.03
- URCP026.04
- URCP029
- URCP030
- URCP031
- URCP032
- URCP033
- URCP034
- URCP035
- URCP036
- URCP037
- URCP040
- URCP041
- URCP042
- URCP043
- URCP045
- URCP047
- URCP050
- URCP051
- URCP052
- URCP053A
- URCP054
- URCP055
- URCP056
- URCP058A
- URCP058B
- URCP058C
- URCP059
- URCP060
- URCP062
- URCP063
- URCP063A
- URCP064
- URCP064A
- URCP064B
- URCP064C
- URCP064D
- URCP064E
- URCP064F
- URCP065C
- URCP066
- URCP068
- URCP069
- URCP069A
- URCP069B
- URCP069C
- URCP071
- URCP073
- URCP074
- URCP075
- URCP076
- URCP081

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 (g.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" denotes 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~~by Rule 14-802 of the Supreme Court Rules of Professional Practice, unless provided otherwise.

(j) "Legal fee~~s~~" denotes~~refer to~~ the charge~~s~~ that a lawyer or law firm assesses for ~~their~~ legal services.

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

(k~~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.

(l~~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.

(m~~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.

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

(o~~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.

(p~~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.

(q~~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" denotes~~refers to~~ compensation paid to any person for the sole purpose of referring a legal matter.

(rq) "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.

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

(ts) "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.

(ut) "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 (ed) 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.

[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 (ut) 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 (ut).

Legal Fees

[8] 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.~~those listed in Rule 1.5.

Commented [AM1]: We agree with the public comment that this should refer to all factors listed in the rule and not just a handful of them.

Referral Fees

[9] 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. Small gifts of marginal or minimal value are not considered compensation under this rule.

Commented [AM2]: This is the sentence already approved by the full committee in January to address concerns about small gifts (i.e., the crumbl cookie concern)

Screened

[108] 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.

[119] The purpose of screening is to assure the affected parties that confidential information known by the personally disqualified lawyer remains protected. The

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

[12~~10~~] In order to be effective, screening measures must be implemented as soon as practical after a lawyer or law firm knows or reasonably should know that there is a need for screening.

~~[10a] The definitions of "consult" and "consultation," while deleted from the ABA Model Rule 1.0, have been retained in the Utah Rule because "consult" and "consultation" are used in the rules. See, e.g., Rules 1.2, 1.4, 1.14, and 1.18.~~[13] This rule differs from the ABA M~~m~~odel R~~r~~ule.

Effective date: ~~05/01/2022~~

Rule 1.5. Fees.

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

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

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

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

(4) the amount involved and the results obtained;

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

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

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

(8) whether the fee is fixed or contingent.

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

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement ~~shall~~must be in a writing signed by the client and ~~shall~~must state the method by which the fee is to be determined, including the percentage or percentages that will~~shall~~ accrue to the lawyer in the event of settlement, trial, or appeal; litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable

whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer ~~shall~~must provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

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

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

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

(e~~f~~) Fee sharing is permitted as provided in Rules 5.4 and 5.8, and Supreme Court Standing Order No. 15.

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

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

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

(2) identifies the services to be performed;

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

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

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

(6) describes the document to be prepared;

(7) describes the purpose of the document;

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

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

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

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

Comment

Reasonableness of Fee and Expenses

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

Basis or Rate of Fee

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

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

Terms of Payment

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

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

Prohibited Contingent Fees

[6] Paragraph (d) prohibits a lawyer from charging a contingent fee in a domestic relations matter when payment is contingent upon the securing of a divorce or upon the amount of alimony or support or property settlement to be obtained. This provision does

not preclude a contract for a contingent fee for legal representation in connection with the recovery of post-judgment balances due under support, alimony, or other financial orders because such contracts do not implicate the same policy concerns.

Fee Sharing

[7] Fee sharing between lawyers and non-lawyers is permitted only in accordance with Rules 5.4 and 5.8, and Supreme Court Standing Order No. 15.

Disputes over Fees

[8~~7~~] If a procedure has been established for resolution of fee disputes, such as an arbitration or mediation procedure established by the Bar, the lawyer must comply with the procedure when it is mandatory, and, even when it is voluntary, the lawyer should conscientiously consider submitting to it. Law may prescribe a procedure for determining a lawyer~~'~~s fee, for example, in representation of an executor or administrator, a class, or a person entitled to a reasonable fee as part of the measure of damages. The lawyer entitled to such a fee and a lawyer representing another party concerned with the fee should comply with the prescribed procedure.

[9~~8~~] This rule differs from the ABA M~~m~~odel R~~r~~ule.

[9~~8~~a] This rule differs from the ABA Model Rule by including certain restrictions on licensed paralegal practitioners.

Effective date: ~~05/01/2021~~

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) Fee sharing with a lawyer is permissible only as provided 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~~s~~ 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) sets forth in writing to a client the financial and managerial structure of the organization in which the lawyer practices.

Comments

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

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

[3] ~~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. An agreement under which a lawyer who originates or initially evaluates a matter receives a portion of the contingent fee ultimately earned by successor counsel constitutes fee sharing as defined in Rule 1.0, even when the referring lawyer's services occur only at the inception of the representation.

Commented [AM1]: We suggest adding this comment to address what appears to be confusion from the public comments about the difference between fee sharing and referral fees between lawyers.

[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 third-party retention. In each of these instances, the financial arrangement must be reasonable, authorized as required under Supreme Court Standing Order No. 15, and disclosed in writing to the client before engagement and before fees are shared. Whether in accepting or paying for referrals, or fee-sharing, the lawyer must protect the lawyer's professional judgment, ensure the lawyer's loyalty to the client, and protect client confidences.~~

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

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

Effective date: ~~05/01/2021~~

Rule 5.8. Fee sharing between lawyers.

~~(a) Referral fees are prohibited.~~

~~(b)~~(a) Fee sharing is only permissible if:

(1) no lawyer receives any part of the fee until the fee is payable by the client in the matter;

(2) the fee sharing does not result in an increase of the total legal fee; and

(3) the client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing.

~~(c)~~(b) A lawyer's portion of a fee must be reasonable relative to the total fee that ultimately may be earned. The factors to be considered in determining the reasonableness of a shared fee include the factors listed in Rule 1.5, the amount of work the lawyer anticipated to perform and the amount of work the lawyer actually performed, client intake, factual investigation, and legal analysis ~~the following:~~

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

~~(2) the amount of work the lawyer anticipated to perform and the amount of work the lawyer actually performed;~~

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

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

Comment

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

[2] Fee sharing with non lawyers is permitted only in accordance with Rule 5.4 and Supreme Court Standing Order No. 15.

Formatted: Highlight

Commented [AM1]: Question for the full committee: Do we want to include these other factors to help address some of the public comments indicating confusion about what a referral fee is, or does what we are adding to comments in 5.4 sufficiently clarify that issue?

Formatted: Indent: Left: 0"

[3] In the case of a contingent fee matter, no lawyer may receive any portion of the fee until at least one of the lawyers is entitled to receive the contingent fee, which may be at the conclusion of the matter.

[4] Paragraph (a~~b~~)(2) prohibits a lawyer with a fee sharing arrangement from charging a client a ~~a~~ higher fee, or from seeking payment of greater costs, than the lawyer charges other clients where the fee is not shared. For the definitions of "informed consent," "confirmed in writing," "lawyer," and "legal fee," see Rule 1.0.

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

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

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

Effective date:

Tab 3

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. Note adopted 2023.

[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).

[3b] It is prejudicial to the administration of justice for a lawyer to condition resolution of a legal dispute on a promise to withdraw or not to file a Complaint.

[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 the ABA Model Rule.