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

Location: Virtually via Webex Link

Date: January 6, 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
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

December 2, 2025

Via Webex

4:00 pm Mountain Time

Cory Talbot, Chair

Attendees:

Cory Talbot (Chair)
Jurhee Rice (Vice Chair)
Adam Bondy
Robert Gibbons
Alyson McAllister
Hon. Matthew Bates
Hon. Craig Hall
Hon. Richard Pehrson
Mark Hales
Ashley Gregson
Lynda Viti
Beth Kennedy (ex officio)
Christine Greenwood (ex officio)
Hon. Trent Nelson (emeritus)

Staff:

Stacy Haacke
Sonia Sweeney

Guests:

Excused:

Kent Davis
Lakshmi Vanderwerf
Robert Harrison
Mark Nickel
Ian Quiel
Paige Nelson (ex officio)
Jacqueline Carlton (ex officio)
Adam Duncan (ex officio)
Eric Weeks (ex officio)

1. Welcome, Approval of the November 4, 2025 meeting minutes (Chair Talbot)

Chair Cory Talbot opened the meeting by confirming that there were no new attendees joining the Committee. The committee proceeded to review the minutes from the previous meeting. Robert Gibbons moved to approve the minutes. Vice Chair Jurhee Rice intervened to note a minor factual correction was required, specifically clarifying that she was not present at the November 2025 meeting, although she was listed in the attendance. Chair Talbot acknowledged the correction. There being no objections voiced after the correction, the motion to approve the prior month's minutes was passed unanimously.

2. Rule 8.4 (Discussion)

Chair Talbot noted that the discussion on Rule 8.4 and its proposed amendments represents the longest-running issue brought before the Committee, spanning approximately eight years.

Ashley Gregson, speaking for the subcommittee, provided an overview of the two primary amendments under consideration: Rule 8.4(g) and Rule 8.4(h). Rule 8.4(g), originating from the 2016 ABA Model Rule amendment, addresses attorney misconduct related to harassment and discrimination. Rule 8.4(h) is intended to enforce the aspirational Standards of Professionalism and Civility by establishing that repeated or egregious violations of those standards constitute professional misconduct. Ms. Gregson explained that the Court tasked the subcommittee with defining the specific discriminatory conduct prohibited under Rule 8.4(g) rather than merely referencing existing, often complex, anti-discrimination statutes, as previous drafts had done. Ms. Gregson reported that defining the conduct proved challenging because legal definitions of harassment and discrimination are complex, rely heavily on evolving case law, and are difficult to summarize without being too vague or too voluminous if quoting statutes directly. She also noted a concern regarding the scope of Rule 8.4(g) in the employment context, as the rule would apply to all Utah lawyers regardless of firm size, unlike state and federal employment statutes, such as Title VII, which apply to entities that employ a certain number of employees. Ms.

Gregson confirmed that the subcommittee prepared a draft memo summarizing these issues and requesting further guidance from the Court.

Chair Talbot inquired about the constitutional history of the original ABA Model Rule 8.4(g) and whether subsequent case law has affirmed its constitutional adequacy. Judge Trent Nelson offered historical context, stating that while some jurisdictions have upheld their anti-bias rules, few have adopted the exact ABA version, and one federal court found it unconstitutional on First Amendment grounds. Judge Nelson elaborated on the constitutional tension, noting that attorneys retain free speech rights, unlike judges who, as government officials, are restricted from discriminating. He explained that the Committee had previously focused the rule narrowly on the employment context, where restrictions on discrimination are constitutionally sound, regardless of the firm's size. Judge Nelson concluded that due to the difficulty of creating an explicit, workable definition of the prohibited conduct, sending a memo back to the Supreme Court advising that the task "simply doesn't work" is the most pragmatic approach.

The Committee decided to move forward with sending the memorandum to the Utah Supreme Court requesting additional guidance on the Rule 8.4 amendments, specifically concerning the definition of prohibited discriminatory and harassing conduct.

Chair Talbot, in consultation with Ms. Gregson, will send a letter to the Supreme Court asking for more guidance on Rule 8.4 before the next committee meeting.

3. Rule 8.4 – Comment Request from Samantha Wilcox (Discussion)

Chair Talbot introduced a request received from attorney Samantha Wilcox to amend the Comments to Rule 8.4. The suggested addition addresses the ethics of conditioning a civil settlement upon the withdrawal or refraining from filing of a disciplinary complaint against opposing counsel, a situation Ms. Wilcox recently encountered. The proposed language, modeled after a measure considered by the Idaho State Bar, would expressly state that conditioning a civil resolution in this manner constitutes "conduct prejudicial to the administration of justice."

Christine Greenwood (OPC) confirmed that the Office of Professional Conduct already treats the threat or conditioning of withdrawing a bar complaint as prejudicial to the administration of justice, a violation of Rule 8.4(d)). However, Ms. Greenwood stated that having this principle explicitly set forth would be helpful because practitioners frequently do not seem to understand that they cannot use a bar complaint as leverage in a settlement. Judge Trent Nelson advised that if this issue is consistently arising and is viewed as a violation, it should be made explicit within the black-letter Rule, not just the Comments, as Comments are intended only to define or explain existing requirements, not to add new ones. Ms. Greenwood further suggested that any language developed should not be limited to civil disputes, as this conduct is observed in other matters as well. Judge Matthew Bates agreed with the need for clarity but cautioned that while the OPC may have a definitive view of this conduct, there was no controlling law addressing it.

Chair Talbot proposed forming a subcommittee to draft the proposed language, keeping Ms. Greenwood's recommended scope expansion beyond civil disputes in mind. The Committee decided to form a small subcommittee to draft proposed language concerning the ethical impropriety of conditioning a settlement on the withdrawal of a disciplinary complaint, considering whether the language should be integrated into the Rule itself. Ms. Greenwood and Beth Kennedy agreed to take on this work beginning in mid-January, which will be revisited at a subsequent meeting.

3. New Business

Chair Talbot followed up on the subcommittee tasked with revisiting the Referral Fee rules (Rules 1.0, 1.5, 5.4, and 5.8) which were previously sent back following public comment. Alyson McAllister reported that she had not yet scheduled a meeting because she was unsure of the current membership of the subcommittee, which has changed since 2020. Stacy Haacke confirmed the current members are Ms. McAllister, Ian Quiel, Robert Gibbons, Ms. Kennedy, and Cory Talbot. Ms. Haacke will email Ms. McAllister the list of current subcommittee members for Rules 1.0, 1.5, 5.4, and 5.8.

4. Upcoming Items

The next meeting of the Committee is scheduled for January 6, 2025. The meeting adjourned.

Tab 2

Summary from Alyson McAllister:

Current Rule Langauge	Problem from Comments	Solution from prior versions approved by committee
1.0(q) “Referral fee” denotes compensation paid to any person for the sole purpose of referring a legal matter.	ban on referral fees seems to preclude things like Crumbl cookies/lunch/small gestures	(q) “Referral fee” means any exchange of value beyond marginal or of minimal value that is paid for the referral of a client, whether in cash or in kind.
Comment to 1.0 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.		Also exclude things that "would be considered marginal or of minimal value for accounting and tax purposes" from the prohibition/definition
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	duplicative of 5.8(c)	keep in 1.5 and revise 5.4

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.		
1.5(e) Fee sharing is permitted as provided in Rules 5.4 and 5.8, and Supreme Court Standing Order No. 15.	no need to change	
5.4(c) Referral fees are prohibited.	timing of referral after intake - no referral fee early on incentivizes lawyers to keep cases longer which hurts clients	see suggestion under 5.8(c) - if we make changes to 5.8(c) do we need to add language like "except as permitted in 5.8?
5.4(d) Fee sharing with a lawyer is permissible only as provided in Rule 5.8.		5.4(c) A lawyer or law firm may share legal fees with other lawyers or law firms if: (1) each of them is providing legal services on behalf of the client in the matter, and (2) the total fee to be shared is reasonable.

5.8(a) Referral fees are prohibited.	duplicative of 5.4(c)?	remove from 5.8 and just keep in 5.4
5.8(b) 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.	keep these safeguards in place	no need to change
5.8(c) 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 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.	duplicative of 1.5(a)?	it looks like only #2 is new/different from 1.5; maybe consider referring to rule 1.5 and adding only additional factors here; this additional factors section may be where we can address the problems/concerns raised by the straight referral fee prohibition language? like maybe a factor to consider may be the time and cost incurred by the referring attorney to bring in the case (perhaps along with language regarding what is customarily paid in circumstances where the case is referred early on in litigation)?
	lawyers advertising for clients/cases they don't	Add Clarifying Comment Regarding Advertising (Rule

	have the experience to handle	7.1(8)) - Add a note emphasizing that lawyers referring cases remain subject to Rule 7.1(8), which prohibits advertising or solicitation in practice areas where the lawyer does not actually handle or litigate cases.

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 (gf) 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.

(ed) "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.

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

(gf) "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.

(hg) "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.

(ss) "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 (u~~t~~) 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 (u~~t~~).

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.

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.

Screened

[10~~8~~] This definition applies to situations where screening of a personally disqualified lawyer is permitted to remove imputation of a conflict of interest under Rules 1.10, 1.11, 1.12 or 1.18.

[11~~9~~] The purpose of screening is to assure the affected parties that confidential information known by the personally disqualified lawyer remains protected. The personally disqualified lawyer should acknowledge the obligation not to communicate with any of the other lawyers in the firm with respect to the matter. Similarly, other

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

[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, provides 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.

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

[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) 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) 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 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.

[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 (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: