

**Rule 8.5. Disciplinary Authority; Choice of Law.**

(a) Disciplinary Authority. A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs. A lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct.

(b) Choice of Law. In any exercise of the disciplinary authority of this jurisdiction, the rules of professional conduct to be applied shall be as follows:

(b)(1) for conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise; and

(b)(2) for any other conduct, the rules of the jurisdiction in which the lawyer's conduct ~~occur~~ occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. A lawyer shall not be subject to discipline if the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect of the lawyer's conduct will occur.

**Comment****Disciplinary Authority**

[1] It is longstanding law that the conduct of a lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction. Extension of the disciplinary authority of this jurisdiction to other lawyers who provide or offer to provide legal services in this jurisdiction is for the protection of the citizens of this jurisdiction. Reciprocal enforcement of a jurisdiction's disciplinary findings and sanctions will further advance the purposes of this Rule. See Rules 6 and 22, Utah Rules of Lawyer Discipline and Disability.

[1a] Utah has declined to adopt the portion of ABA Model Rule 8.5 Comment [1] providing that a lawyer who is subject to Utah disciplinary authority under Rule 8.5(a) is deemed to have appointed a court-designated official to receive service of process. This would be a substantive procedural rule that is not appropriate for these Rules. The last sentence of ABA Comment [1] is an unnecessary comment on jurisdiction in civil matters, and Utah has declined to adopt it.

**Choice of Law**

[2] A lawyer may be potentially subject to more than one set of rules of professional conduct ~~that~~ which-that impose different obligations. The lawyer may be licensed to practice in more than one jurisdiction with differing rules or may be admitted to practice before a particular court with rules that differ from those of the jurisdiction or jurisdictions in which the lawyer is licensed to practice. Additionally, the lawyer's conduct may involve significant contacts with more than one jurisdiction.

[3] Paragraph (b) seeks to resolve such potential conflicts. Its premise is that minimizing conflicts between rules, as well as uncertainty about which rules are applicable, is in the best ~~interests-interest~~ of both clients and the profession (as well as the bodies having authority to regulate the profession).

38 Accordingly, it takes the approach of (i) providing that any particular conduct of a lawyer shall be subject  
39 to only one set of rules of professional conduct, (ii) making the determination of which set of rules applies  
40 to particular conduct as straightforward as possible, consistent with recognition of appropriate regulatory  
41 interests of relevant jurisdictions, and (iii) providing protection from discipline for lawyers who act  
42 reasonably in the face of uncertainty.

43 [4] Paragraph (b)(1) provides that, as to a lawyer's conduct relating to a proceeding pending before a  
44 tribunal, the lawyer shall be subject only to the rules of the jurisdiction in which the tribunal sits unless the  
45 rules of the tribunal, including its choice of law rule, provide otherwise. As to all other conduct, including  
46 conduct in anticipation of a proceeding not yet pending before a tribunal, paragraph (b)(2) provides that a  
47 lawyer shall be subject to the rules of the jurisdiction in which the lawyer's conduct ~~occurs~~ occurred, or, if  
48 the predominant effect of the conduct is in another jurisdiction, the rules of that jurisdiction shall be  
49 applied to the conduct. In the case of conduct in anticipation of a proceeding that is likely to be before a  
50 tribunal, the predominant effect of such conduct could be where the conduct ~~occurs~~ occurred, where the  
51 tribunal sits or in another jurisdiction.

52 [5] When a lawyer's conduct involves significant contacts with more than one jurisdiction, it may not  
53 be clear whether the predominant effect of the lawyer's conduct will occur in a jurisdiction other than the  
54 one in which the conduct occurred. So long as the lawyer's conduct conforms to the rules of a jurisdiction  
55 in which the lawyer reasonably believes the predominant effect will occur, the lawyer shall not be subject  
56 to discipline under this Rule. With respect to conflicts of interest, in determining a lawyer's reasonable  
57 belief under paragraph (b)(2), a written agreement between the lawyer and client that reasonably  
58 specifies a particular jurisdiction as within the scope of that paragraph may be considered if the  
59 agreement was obtained with the client's informed consent confirmed in the agreement.

60 [6] If two admitting jurisdictions were to proceed against a lawyer for the same conduct, they should,  
61 applying this Rule, identify the same governing ethics rules. They should take all appropriate steps to see  
62 that they do apply the same rule to the same conduct and in all events should avoid proceeding against a  
63 lawyer on the basis of ~~two~~ two inconsistent rules.

64 [7] The choice-of-law provision applies to lawyers engaged in transnational practice, unless  
65 international law, treaties or other agreements between competent regulatory authorities in the affected  
66 jurisdictions provide otherwise.

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