

1 **Rule 1.6. Confidentiality of Information.**

2 (a) A lawyer shall not reveal information relating to the representation of a client unless the client
3 gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or
4 the disclosure is permitted by paragraph (b).

5 (b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer
6 reasonably believes necessary:

7 (b)(1) to prevent reasonably certain death or substantial bodily harm;

8 (b)(2) to prevent the client from committing a crime or fraud that is reasonably certain to result in
9 substantial injury to the financial interests or property of another and in furtherance of which the client
10 has used or is using the lawyer's services;

11 (b)(3) to prevent, mitigate or rectify substantial injury to the financial interests or property of
12 another that is reasonably certain to result or has resulted from the client's commission of a crime or
13 fraud in furtherance of which the client has used the lawyer's services;

14 (b)(4) to secure legal advice about the lawyer's compliance with these Rules;

15 (b)(5) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer
16 and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon
17 conduct in which the client was involved, or to respond to allegations in any proceeding concerning
18 the lawyer's representation of the client;

19 (b)(6) to comply with other law or a court order; or

20 (b)(7) to detect and resolve conflicts of interest arising from the lawyer's change of employment or
21 from changes in the composition or ownership of a firm, but only if the revealed information would not
22 compromise the attorney-client privilege or otherwise prejudice the client.

23 (c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or
24 unauthorized access to, information relating to the representation of a client.

25 (d) For purposes of this rule, representation of a client includes counseling a lawyer about the need
26 for or availability of treatment for substance abuse or psychological or emotional problems by members of
27 the Utah State Bar serving on a Utah State Bar endorsed lawyer assistance program.

28 Comment

29 [1] This Rule governs the disclosure by a lawyer of information relating to the representation of a
30 client during the lawyer's representation of the client. See Rule 1.18 for the lawyer's duties with respect to
31 information provided to the lawyer by a prospective client, Rule 1.9(c)(2) for the lawyer's duty not to reveal
32 information relating to the lawyer's prior representation of a former client and Rules 1.8(b) and 1.9(c)(l) for
33 the lawyer's duties with respect to the use of such information to the disadvantage of clients and former
34 clients.

35 [2] A fundamental principle in the client-lawyer relationship is that, in the absence of the client's
36 informed consent, the lawyer must not reveal information relating to the representation. See Rule 1.0(e) for
37 the definition of informed consent. This contributes to the trust that is the hallmark of the client-lawyer

38 relationship. The client is thereby encouraged to seek legal assistance and to communicate fully and
39 frankly with the lawyer even as to embarrassing or legally damaging subject matter. The lawyer needs
40 this information to represent the client effectively and, if necessary, to advise the client to refrain from
41 wrongful conduct. Almost without exception, clients come to lawyers in order to determine their rights and
42 what is, in the complex of laws and regulations, deemed to be legal and correct. Based upon experience,
43 lawyers know that almost all clients follow the advice given, and the law is upheld.

44 [3] The principle of client-lawyer confidentiality is given effect by related bodies of law: the attorney-
45 client privilege, the work product doctrine and the rule of confidentiality established in professional ethics.
46 The attorney-client privilege and work product doctrine apply in judicial and other proceedings in which a
47 lawyer may be called as a witness or otherwise required to produce evidence concerning a client. The
48 rule of client-lawyer confidentiality applies in situations other than those where evidence is sought from
49 the lawyer through compulsion of law. The confidentiality rule, for example, applies not only to matters
50 communicated in confidence by the client but also to all information relating to the representation,
51 whatever its source. A lawyer may not disclose such information except as authorized or required by the
52 Rules of Professional Conduct or other law. See also Scope.

53 [4] Paragraph (a) prohibits a lawyer from revealing information relating to the representation of a
54 client. This prohibition also applies to disclosures by a lawyer that do not in themselves reveal protected
55 information but could reasonably lead to the discovery of such information by a third person. A lawyer's
56 use of a hypothetical to discuss issues relating to the representation is permissible so long as there is no
57 reasonable likelihood that the listener will be able to ascertain the identity of the client or the situation
58 involved.

59 Authorized Disclosure

60 [5] Except to the extent that the client's instructions or special circumstances limit that authority, a
61 lawyer is impliedly authorized to make disclosures about a client when appropriate in carrying out the
62 representation. In some situations, for example, a lawyer may be impliedly authorized to admit a fact that
63 cannot properly be disputed or to make a disclosure that facilitates a satisfactory conclusion to a matter.
64 Lawyers in a firm may, in the course of the firm's practice, disclose to each other information relating to a
65 client of the firm, unless the client has instructed that particular information be confined to specified
66 lawyers.

67 Disclosure Adverse to Client

68 [6] Although the public interest is usually best served by a strict rule requiring lawyers to preserve the
69 confidentiality of information relating to the representation of their clients, the confidentiality rule is subject
70 to limited exceptions. Paragraph (b)(1) recognizes the overriding value of life and physical integrity and
71 permits disclosure reasonably necessary to prevent reasonably certain death or substantial bodily harm.
72 Such harm is reasonably certain to occur if it will be suffered imminently or if there is a present and
73 substantial threat that a person will suffer such harm at a later date if the lawyer fails to take action
74 necessary to eliminate the threat. Thus, a lawyer who knows that a client has accidentally discharged

75 toxic waste into a town's water supply may reveal this information to the authorities if there is a present
76 and substantial risk that a person who drinks the water will contract a life-threatening or debilitating
77 disease and the lawyer's disclosure is necessary to eliminate the threat or reduce the number of victims.

78 [7] Paragraph (b)(2) is a limited exception to the rule of confidentiality that permits the lawyer to reveal
79 information to the extent necessary to enable affected persons or appropriate authorities to prevent the
80 client from committing a crime or fraud, as defined in Rule 1.0(~~de~~), that is reasonably certain to result in
81 substantial injury to the financial or property interests of another and in furtherance of which the client has
82 used or is using the lawyer's services. Such a serious abuse of the client-lawyer relationship by the client
83 forfeits the protection of this Rule. The client can, of course, prevent such disclosure by refraining from
84 the wrongful conduct. Although paragraph (b)(2) does not require the lawyer to reveal the client's
85 misconduct, the lawyer may not counsel or assist the client in conduct the lawyer knows is criminal or
86 fraudulent. See Rule 1.2(d). See also Rule 1.16 with respect to the lawyer's obligation or right to withdraw
87 from the representation of the client in such circumstances, and Rule 1.13(c) which permits the lawyer,
88 where the client is an organization, to reveal information relating to the representation in limited
89 circumstances.

90 [8] Paragraph (b)(3) addresses the situation in which the lawyer does not learn of the client's crime or
91 fraud until after it has been consummated. Although the client no longer has the option of
92 preventing disclosure by refraining from the wrongful conduct, there will be situations in which the loss
93 suffered by the affected person can be prevented, rectified or mitigated. In such situations, the lawyer
94 may disclose information relating to the representation to the extent necessary to enable the affected
95 persons to prevent or mitigate reasonably certain losses or to attempt to recoup their losses. Paragraph
96 (b)(3) does not apply when a person who has committed a crime or fraud thereafter employs a lawyer for
97 representation concerning that offense.

98 [9] A lawyer's confidentiality obligations do not preclude a lawyer from securing confidential legal
99 advice about the lawyer's personal responsibility to comply with these Rules. In most situations,
100 disclosing information to secure such advice will be impliedly authorized for the lawyer to carry out the
101 representation. Even when the disclosure is not impliedly authorized, paragraph (b)(4) permits such
102 disclosure because of the importance of a lawyer's compliance with the Rules of Professional Conduct.

103 [10] Where a legal claim or disciplinary charge alleges complicity of the lawyer in a client's conduct or
104 other misconduct of the lawyer involving representation of the client, the lawyer may respond to the extent
105 the lawyer reasonably believes necessary to establish a defense. The same is true with respect to a claim
106 involving the conduct or representation of a former client. Such a charge can arise in a civil, criminal,
107 disciplinary or other proceeding and can be based on a wrong allegedly committed by the lawyer against
108 the client or on a wrong alleged by a third person, for example, a person claiming to have been defrauded
109 by the lawyer and client acting together. The lawyer's right to respond arises when an assertion of such
110 complicity has been made. Paragraph (b)(5) does not require the lawyer to await the commencement of
111 an action or proceeding that charges such complicity, so that the defense may be established by

112 responding directly to a third party who has made such an assertion. The right to defend also applies, of
113 course, where a proceeding has been commenced.

114 [11] A lawyer entitled to a fee is permitted by paragraph (b)(5) to prove the services rendered in an
115 action to collect it. This aspect of the rule expresses the principle that the beneficiary of a fiduciary
116 relationship may not exploit it to the detriment of the fiduciary.

117 [12] Other law may require that a lawyer disclose information about a client. Whether such a law
118 supersedes Rule 1.6 is a question of law beyond the scope of these Rules. When disclosure of
119 information relating to the representation appears to be required by other law, the lawyer must discuss
120 the matter with the client to the extent required by Rule 1.4. If, however, the other law supersedes this
121 Rule and requires disclosure, paragraph (b)(6) permits the lawyer to make such disclosures as are
122 necessary to comply with the law.

123 Detection of Conflicts of Interest

124 [13] Paragraph (b)(7) recognizes that lawyers in different firms may need to disclose limited
125 information to each other to detect and resolve conflicts of interest, such as when a lawyer is considering
126 an association with another firm, two or more firms are considering a merger, or a lawyer is considering
127 the purchase of a law practice. See Rule 1.17. Comment [7]. Under these circumstances, lawyers and
128 law firms are permitted to disclose limited information, but only once substantive discussions regarding
129 the new relationship have occurred. Any such disclosure should ordinarily include no more than the
130 identity of the persons and entities involved in a matter, a brief summary of the general issues involved,
131 and information about whether the matter has terminated. Even this limited information, however, should
132 be disclosed only to the extent reasonably necessary to detect and resolve conflicts of interest that might
133 arise from the possible new relationship. Moreover, the disclosure of any information is prohibited if it
134 would compromise the attorney-client privilege or otherwise prejudice the client (e.g., the fact that a
135 corporate client is seeking advice on a corporate takeover that has not been publicly announced; that a
136 person has consulted a lawyer about the possibility of divorce before the person's intentions are known to
137 the person's spouse; or that a person has consulted a lawyer about a criminal investigation that has not
138 led to a public charge). Under those circumstances, paragraph (a) prohibits disclosure unless the client or
139 former client gives informed consent. A lawyer's fiduciary duty to the lawyer's firm may also govern a
140 lawyer's conduct when exploring an association with another firm and is beyond the scope of these Rules.

141 [14] Any information disclosed pursuant to paragraph (b)(7) may be used or further disclosed only to
142 the extent necessary to detect and resolve conflicts of interest. Paragraph (b)(7) does not restrict the use
143 of information acquired by means independent to any disclosure pursuant to paragraph (b)(7). Paragraph
144 (b)(7) also does not affect the disclosure of information within a law firm when the disclosure is otherwise
145 authorized, see Comment [5], such as when a lawyer in a firm discloses information to another lawyer in
146 the same firm to detect and resolve conflicts of interest that could arise in connection with undertaking a
147 new representation.

148 [15] A lawyer may be ordered to reveal information relating to the representation of a client by a court
149 or by another tribunal or governmental entity claiming authority pursuant to other law to compel the
150 disclosure. Absent informed consent of the client to do otherwise, the lawyer should assert on behalf of
151 the client all nonfrivolous claims that the order is not authorized by other law or that the information
152 sought is protected against disclosure by the attorney-client privilege or other applicable law. In the event
153 of an adverse ruling, the lawyer must consult with the client about the possibility of appeal to the extent
154 required by Rule 1.4. Unless review is sought, however, paragraph (b)(6) permits the lawyer to
155 comply with the court's order.

156 [16] Paragraph (b) permits disclosure only to the extent the lawyer reasonably believes the disclosure
157 is necessary to accomplish one of the purposes specified. Where practicable, the lawyer should first seek
158 to persuade the client to take suitable action to obviate the need for disclosure. In any case, a disclosure
159 adverse to the client's interest should be no greater than the lawyer reasonably believes necessary to
160 accomplish the purpose. If the disclosure will be made in connection with a judicial proceeding, the
161 disclosure should be made in a manner that limits access to the information to the tribunal or other
162 persons having a need to know it and appropriate protective orders or other arrangements should be
163 sought by the lawyer to the fullest extent practicable.

164 [17] Paragraph (b) permits but does not require the disclosure of information relating to a client's
165 representation to accomplish the purposes specified in paragraphs (b)(1) through (b)(6). In exercising the
166 discretion conferred by this Rule, the lawyer may consider such factors as the nature of the lawyer's
167 relationship with the client and with those who might be injured by the client, the lawyer's own
168 involvement in the transaction and factors that may extenuate the conduct in question. A lawyer's
169 decision not to disclose as permitted by paragraph (b) does not violate this Rule. Disclosure may be
170 required, however, by other rules. Some rules require disclosure only if such disclosure would be
171 permitted by paragraph (b). See Rules 1.2(d), 4.1(b), 8.1 and 8.3. Rule 3.3, on the other hand, requires
172 disclosure in some circumstances regardless of whether such disclosure is permitted by this Rule. See
173 Rule 3.3(ed).

174 Acting Competently to Preserve Confidentiality

175 [18] Paragraph (c) requires a lawyer to act competently to safeguard information relating to the
176 representation of a client against unauthorized access by third parties and against inadvertent or
177 unauthorized disclosure by the lawyer or other persons who are participating in the representation of the
178 client or who are subject to the lawyer's supervision. See Rules 1.1, 5.1 and 5.3. The unauthorized
179 access to, or the inadvertent or unauthorized disclosure of, information relating to the representation of a
180 client does not constitute a violation of paragraph (c) if the lawyer has made reasonable efforts to prevent
181 the access or disclosure. Factors to be considered in determining the reasonableness of the lawyer's
182 efforts include, but are not limited to, the sensitivity of the information, the likelihood of disclosure if
183 additional safeguards are not employed, the cost of employing additional safeguards, the difficulty of
184 implementing the safeguards, and the extent to which the safeguards adversely affect the lawyer's ability

185 to represent clients (e.g., by making a device or important piece of software excessively difficult to use). A
186 client may require the lawyer to implement special security measures not required by this Rule or may
187 give informed consent to forgo security measures that would otherwise be required by this Rule. Whether
188 a lawyer may be required to take additional steps to safeguard a client's information in order to comply
189 with other law, such as state and federal laws that govern data privacy or that impose notification
190 requirements upon the loss of, or unauthorized access to, electronic information, is beyond the scope of
191 these Rules. For a lawyer's duties when sharing information with nonlawyers outside the lawyer's own
192 firm, see rule 5.3. Comments [3]-[4].

193 [19] When transmitting a communication that includes information relating to the representation of a
194 client, the lawyer must take reasonable precautions to prevent the information from coming into the hands
195 of unintended recipients. This duty, however, does not require that the lawyer use special security
196 measures if the method of communication affords a reasonable expectation of privacy. Special
197 circumstances, however, may warrant special precautions. Factors to be considered in determining the
198 reasonableness of the lawyer's expectation of confidentiality include the sensitivity of the information and
199 the extent to which the privacy of the communication is protected by law or by a confidentiality
200 agreement. A client may require the lawyer to implement special security measures not required by this
201 Rule or may give informed consent to the use of a means of communication that would otherwise be
202 prohibited by this Rule. Whether a lawyer may be required to take additional steps in order to comply with
203 other law, such as state and federal laws that govern data privacy, is beyond the scope of these Rules.

204 Former Client

205 [20] The duty of confidentiality continues after the client-lawyer relationship has terminated. See Rule
206 1.9(c)(2). See Rule 1.9(c)(1) for the prohibition against using such information to the disadvantage of the
207 former client.

208 [20a] Paragraph (d) is an addition to ABA Model Rule 1.6 and provides for confidentiality of
209 information between lawyers providing assistance to other lawyers under a Utah State Bar endorsed
210 lawyer assistance program.