

Agenda

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

August 20, 2018
5:00 to 7:00 p.m.

Administrative Office of the Courts
Scott M. Matheson Courthouse
450 South State Street
Salt Lake City
Judicial Council Room, Suite N31

Welcome, Rule 11-101 introductions, and approval of minutes	Tab 1	5:00	Steve Johnson, Chair
Supreme Court Standing Order 7 update		5:05 p.m.	Tim Conde (subcommittee chair), Don Winder, Cristie Roach, Padma Veeru-Collings, and Judge James Gardner
Rule 8.4 and Standards of Professionalism and Civility	Tab 2	5:15 p.m.	Simón Cantarero (subcommittee chair), Billy Walker, Vanessa Ramos, Joni Jones, and Trent Nelson
ADA issue December 2017 materials provided	Tab 3	6:00 p.m.	Guests/Jacey Skinner
Other business		6:55 p.m.	Steve Johnson

Committee Webpage: <http://www.utcourts.gov/committees/RulesPC/>

Next meeting: September 17, 2018

Tab 1

**MINUTES OF THE SUPREME COURT'S
ADVISORY COMMITTEE ON THE RULES OF PROFESSIONAL CONDUCT**

June 18, 2018

DRAFT

The meeting commenced at 5:00 p.m.

Committee Members Attending:

Steven G. Johnson, Chair
Daniel Brough
J. Simon Cantarero via telephone
Tim Conde
Hon. James Gardner
Joni Jones
Phil Lowry via telephone
Hon. Trent D. Nelson via telephone
Vanessa M. Ramos
Austin Riter
Cristie Roach
Gary G. Sackett
Padma Veeru-Collings via telephone
Billy Walker
Donald Winder
Katherine Venti (recording secretary)

Guests:

Patricia Owen

Members Excused:

Thomas B. Bruner
Hon. Darold McDade
Timothy Merrill

Staff:

Nancy Sylvester

I. Welcome and Approval of Minutes

Mr. Johnson welcomed the committee.

Motion on the Minutes:

Ms. Roach moved to approve the minutes from April 23, 2018. Mr. Riter seconded the motion. The motion to approve carried unanimously.

Mr. Johnson reported that as of July 1, 2018, two members' terms on the committee will end. Gary Sackett and Judge Nelson requested emeritus status and the Supreme Court approved their request. Mr. Johnson also reported that Katherine Venti was approved by the Court for full membership. Applications for new members are pending.

Mr. Johnson advised the committee of an upcoming ABA seminar on lawyer well-being issues. Lawyer well-being issues may become an area addressed by this Committee.

Mr. Johnson also reported a request from an attorney to make changes to the advertising rules, which will come up for discussion in later meetings.

II. Rule 8.4(g) and Standards of Professionalism and Civility

Ms. Sylvester advised the Committee prior to the meeting that it has a few remaining questions to answer regarding Rule 8.4 and Standard of Professionalism and Civility No. 3, specifically:

1. What do we mean by "age" in Comment [3]?
2. Should we match the categories in 8.4 comment [3] and Standard 3 to 34A-5-106?
3. What should we do about Comment 2, which says "Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professional answerable only for offenses that indicate lack of those characteristics relevant to law practice?" Does it comport well with what we've done with Rules 8.4(g), (h), and Comment [3]?

Mr. Johnson opened the discussion regarding the differences in the language between proposed Rule 8.4 and the Standards. He noted the chart he'd prepared for the materials that compared the suspect classes listed in ABA Model Rule 8.4, proposed Rule 8.4 comment [3], Standard 3, and Utah Code § 34A-5-106. The committee discussed the dubious illegality of "casting aspersions on physical traits or appearance" that appeared in the comment to Standard 3. With new 8.4(h) adding more teeth to the standards, the committee questioned enforcement of that standard.

Motion on Change of Language: Mr. Sackett moved that the phrase "casting aspersions on physical traits or appearance" be eliminated from the comment to Standard 3. Mr. Riter seconded. The motion carried with one vote against it.

The committee then discussed the differences between gender identity, gender, and sex. The committee determined that "gender identity" should be used instead of "gender" in conformity with Utah Code § 34A-5-106.

Motion on Change of Language: Ms. Roach moved to change “gender” to “sex” in the comment to Standard 3 in order to match the language of Rule 8.4 comment [3]. Ms. Ramos seconded. The motion carried unanimously.

Mr. Johnson introduced a discussion regarding liability for personal conduct in comment 2 to Rule 8.4. The committee discussed the issue but determined that comment 2 did not implicate paragraphs (g) and (h). It dealt with paragraphs (b) and (c).

Motion on Potential Change of Language: Mr. Walker moved to keep the language in proposed Comment 2 as written. Mr. Winder seconded. The motion carried unanimously,

Mr. Sackett noted that some of the Model Rule comments were omitted from proposed Rule 8.4. The subcommittee members present did not think that had been done intentionally.

Motion on Language of Model Rule Comment 5: Mr. Riter made a motion to delete proposed Comment 4(a), re-insert that sentence in Comment 5, and include all of Comment 5 of the Model Rule into the rule revision so that Comment 5 reads:

[5] A trial judge’s finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of this rule. A lawyer does not violate paragraph (g) by limiting the scope or subject matter of the lawyer’s practice or by limiting the lawyer’s practice to members of underserved populations in accordance with these Rules and other law. A lawyer may charge and collect reasonable fees and expenses for a representation. Rule 1.5(a). Lawyers also should be mindful of their professional obligations under Rule 6.1 to provide legal services to those who are unable to pay, and their obligation under Rule 6.2 not to avoid appointments from a tribunal except for good cause. See Rule 6.2(a), (b) and (c). A lawyer’s representation of a client does not constitute an endorsement by the lawyer of the client’s views or activities. See Rule 1.2(b).

Ms. Jones seconded. The motion carried unanimously

Motion on Potential Language of Comment 4: Mr. Sackett made a motion to rewrite the second sentence in proposed Comment 4 as follows: “Paragraph (g) does not limit the ability of a lawyer to accept, decline, or in accordance with Rule 1.16, withdraw from a representation, nor does paragraph (g) preclude legitimate advice or advocacy consistent with these rules. Mr. Winder seconded. The motion carried unanimously.

The committee then discussed Comment 8 and the language “This rule differs from the ABA Model Rule 8.4.” The committee determined that it has typically written a more specific comment about how the rules differs from the model rule.

Motion on Potential Change in Language for Comment 8: Mr. Sackett made a motion to revise proposed Comment [8] to read: “This rule differs from ABA Model Rule 8.4 to the extent that it changes Paragraph (g), adds paragraph (h), and makes changes to Comments 3 and 4 of the ABA Model Rule.” Mr. Walker seconded. The motion carried unanimously

III. Supreme Court Standing Order No. 7 Update

Tim Conde reported on behalf of the subcommittee on Standing Order No. 7. The standing order allows lawyers, judges, and/or OPC to refer a complaint regarding uncivil behavior to the governing Board for professional counseling.

The committee received a request from the Supreme Court on Standing Order No. 7 to (1) consider how the referral process is made; and (2) propose language that would codify the process in a rule.

Mr. Conde reported that the subcommittee met and discussed the issues and also discussed the Supreme Court’s request with the current, but new, governing board.

Mr. Conde said the subcommittee proposes creating a new Rule 14-302 of the Rules of Professional Practice. Mr. Conde provided the proposed new rule to the committee in its meeting materials. The committee discussed the subcommittee’s proposed rule and, specifically, the subcommittee’s suggestion that the rule (1) not permit anonymous complaints; and (2) not discuss recusals by judges who make referrals to the Board. Judge Gardner noted that the Code of Judicial Conduct and [Informal Opinion 05-2](#) already deal with recusal when a judge reports an attorney to the Bar for misconduct.

A further discussion was had regarding the language of the proposed preamble to new rule 14-302. The committee asked that the subcommittee consider placing a reference to the counseling board in Rule 14-301.

Mr. Johnson requested that the subcommittee consider the comments made in the meeting discussion and report to the Committee again at the August 20, 2018 meeting.

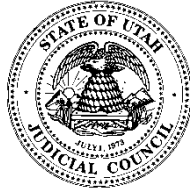
IV. Next Meeting:

The next meeting is scheduled for August 20, 2018 at 5:00 p.m.

V. Adjournment

The meeting adjourned at 6:30 p.m.

Tab 2

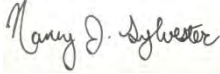


Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

MEMORANDUM

Richard H. Schwermer
State Court Administrator
Raymond H. Wahl
Deputy Court Administrator

To: Advisory Committee on the Utah Rules of Professional Conduct
From: Nancy Sylvester 
Date: August 16, 2018
Re: Rule 8.4 and Standards of Professionalism and Civility

The following is correspondence from Steve Johnson to Simón Cantarero following our July 18 meeting with the Supreme Court. Steve would like committee members to come prepared to discuss whether a violation of any of the Standards should *not* give rise to any disciplinary action. The subcommittee will also provide an update on its discussions of the Court's feedback.

The Court was concerned with a couple of things. First, regarding our proposed paragraph 8.4(h) which makes an egregious violation or a pattern of violations of the Standards of Professionalism and Civility subject to potential disciplinary action, the Court is concerned that a violation of some of the Standards maybe shouldn't give rise to potential disciplinary action. One example, and I saw this immediately, is Standard 2. If a lawyer fails to advise his or her client that civility is expected, should the lawyer be disciplined? Probably not. We need to look and see if there are other Standards in this same category. Our search may result in our re-writing subparagraph (h).

The second concern of the Court is constitutional. Do the anti-discrimination laws provide sufficient exceptions so that religious rights are not violated by our subparagraph (g)? In answer to this question, the Utah anti-discrimination statute clearly has a religion exception. Section 34A-5-102(i)(ii) provides that "employer" does not mean a religious organization or association. I believe that this specific exception to the discrimination statutes provides a safe harbor for religions. Further, Section 34A-5-102.5 provides that this chapter supersedes and preempts any local ordinance, regulation, standard or other legal action by a local

**The mission of the Utah judiciary is to provide the people an open, fair,
efficient, and independent system for the advancement of justice under the law.**

government entity. Thus no city can pass a more stringent anti-discrimination law or ordinance.

The Utah statute also includes a “bona fide occupational qualification” exception to the anti-discrimination rule. See Sections 34A-5-102(c), 34A-5-106(1)(ii), 34A-5-106(1)(f)(ii), and 34A-5-106(3). The justices tossed this phrase around a bit—they have apparently encountered it in another situation.

I have not reviewed the federal laws and cases yet. I do know that Title VII of the Civil Rights Act of 1964 includes an exception for religious corporations, associations, educational institutions, or societies. See 42 USC 2000e-1. However, I do not know whether case law has added an exception for bona fide occupational qualifications. We need to check the cases.

I believe that if we can show the Court that the state and federal laws sufficiently protect religious institutions (in other words, that there is a sufficient carve out for religious organizations from the anti-discrimination rules), then they will sign off on our subparagraph (g). Of course, with the major change from what was originally noticed out for comment, the Court will likely want to publish the rule out for comment again.

FYI, the new California rule can be found at [https://www.calbar.ca.gov/portals/0/documents/rules/rrc2014/final_rules/rrc2-8.4.1_\[2-400\]-all.pdf](https://www.calbar.ca.gov/portals/0/documents/rules/rrc2014/final_rules/rrc2-8.4.1_[2-400]-all.pdf). The rule was approved by the California Supreme Court on May 10th. It is a well-drafted rule in my opinion, but it’s quite lengthy.



**SUPREME COURT OF THE STATE OF UTAH
ADVISORY COMMITTEES**

**HON. MATTHEW B. DURRANT
CHIEF JUSTICE**

**HON. THOMAS R. LEE
ASSOCIATE CHIEF JUSTICE**

**HON. DENO G. HIMONAS
JUSTICE**

**HON. JOHN A. PEARCE
JUSTICE**

**HON. PAIGE PETERSEN
JUSTICE**

**CHAIRS OF ADVISORY
COMMITTEES**

**PAUL C. BURKE
APPELLATE RULES**

**JONATHAN O. HAFEN
CIVIL RULES**

**PATRICK W. CORUM
CRIMINAL RULES**

**JOHN R. LUND
EVIDENCE RULES**

**CAROL L. C. VERDOIA
JUVENILE RULES**

**STEVEN G. JOHNSON
PROFESSIONAL CONDUCT
RULES**

June 19, 2018

Chief Justice Matthew B. Durrant
Utah Supreme Court
450 South State Street
Salt Lake City, UT 84114-0210

Re: Rules of Professional Conduct 8.4(g) and (h)
Discrimination and Bias by Lawyers

Dear Chief Justice Durrant:

The Court's Advisory Committee on the Rules of Professional Conduct (the "Committee") has met since the February 21st Court Conference to discuss what recommendations should be made to the Court regarding proposals to make discrimination and harassment by lawyers subject to the Court's discipline. The stated purpose of adopting a new Rule 8.4(g) is to create a new category of professional misconduct in order to deter and penalize

discrimination and harassment committed by lawyers. The Committee recommends that the following new subsection be added to Rule 8.4:

It is professional misconduct for a lawyer to:

(g) engage in conduct that amounts to unlawful discrimination or harassment under applicable local, state or federal law, irrespective of the number of employees.

Merely prohibiting discrimination and harassment pursuant to current laws would allow small firms and attorneys who employ less than 15 people to avoid disciplinary procedures even if they engage in serious discrimination or harassment. Existing federal and Utah antidiscrimination laws generally apply only to employers of 15 or more persons, exempting smaller employers. Using the phrases “that amounts to” and “irrespective of the number of employees” should insure that all lawyers, irrespective of the size of their firm or company, may not engage in discrimination or harassment.

The Rules of Professional Conduct impose on lawyers a professional responsibility broader than, and beyond those of, the legal requirements of statutes or case law. For example, a lawyer may commit professional misconduct under Rules 8.4(b) or (c) even though the lawyer may not have been previously found guilty beyond a reasonable doubt of the applicable criminal statutes. Similarly, proposed Rule 8.4(g) would impose a professional responsibility on lawyers to not discriminate or harass, even when the relevant laws may not be applicable to the company or law firm that employs the offending lawyer because of the firm or company size.

The Committee also recommends adding a few additional protected classes and conditions to Comment 3 of this Rule to be consistent with the Utah Antidiscrimination Act, Utah Code Annotated, §34A-5-106. Those additional classes and conditions are “color,” “pregnancy,” “childbirth,” and “pregnancy-related conditions.”

In addition, the Standards of Professionalism and Civility (“Standards”) were originally intended to be aspirational rather than mandatory for Utah lawyers. Over time, however, the Court has felt the need to make them more compulsory on lawyers. For example, each Utah lawyer is now required to certify each year in their Attorney Oath that they are familiar with and pledge to abide by the Standards. The Standards were then amended to add comments which referenced the Rules of Professional Conduct. Finally, Rule 8.4 of the Rules of Professional Conduct was amended to add Comment 3a, which states that “[a]n 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)” of Rule 8.4.

Concerned that black-letter rules should be in the Rules themselves and not in the comments to the Rules, the Committee now recommends that the language of Comment 3a be moved into the Rules themselves as a new Rule 8.4(h). This change, in conjunction with the new Rule 8.4(g), deters discrimination and harassment in contexts beyond “the administration of justice” and expands the applicability of the Standards. This new rule makes egregious violations and patterns of repeated violations of the Standards professional misconduct subject to discipline. Doing so helps to achieve the goals of civility and professionalism and will enhance the daily experience of lawyers and the reputation of the Bar.

The Committee unanimously adopted the recommendations to add the new paragraphs (g) and (h) to Rule 8.4.

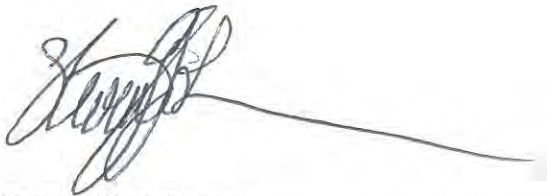
The Advisory Committee also deliberated on the rephrasing of the language and the applicability of the Standards themselves. The Committee unanimously recommends that the Court amend Standard #3. This amendment will guide conduct by an attorney towards another attorney or legal professional (judges, paralegals, administrative staff, law clerks, court clerks and staff, etc.), and not sanction harassment or discrimination by a lawyer in his or her private affairs with another private citizen where there may or may not be an applicable law or avenue for relief to the person who is subject to the harassment or discrimination.

In conjunction with this amendment of Standard #3, the Committee recommends adding to the comment to this Standard the additional protected classes as found in Utah's anti-discrimination statute (Utah Code Annotated §34A-5-106).

Red-lined and clean copies of the Committee's recommendations to the Court for Rule 8.4 and for the Standards are enclosed herewith.

I would be glad to discuss these matters further with the Court in an upcoming conference.

Sincerely,

A handwritten signature in black ink, appearing to read 'Steven G. Johnson', with a long horizontal line extending to the right.

Steven G. Johnson
Chair, Advisory Committee on the Rules of Professional Conduct

Enclosures

1 **Rule 8.4. Misconduct.**

2 It is professional misconduct for a lawyer to:

3 (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another
4 to do so, or do so through the acts of another;

5 (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as
6 a lawyer in other respects;

7 (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

8 (d) engage in conduct that is prejudicial to the administration of justice;

9 (e) state or imply an ability to influence improperly a government agency or official or to achieve
10 results by means that violate the Rules of Professional Conduct or other law; ~~or~~

11 (f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial
12 conduct or other law;:-

13 (g) engage in conduct that amounts to unlawful discrimination or harassment under applicable local,
14 state or federal law, irrespective of the number of employees; or

15 (h) egregiously violate or engage in a pattern of repeated violations of the Standards of
16 Professionalism and Civility.

17 Comment

18 [1] Lawyers are subject to discipline when they violate or attempt to violate the Rules of Professional
19 Conduct or knowingly assist or induce another to do so through the acts of another, as when they request
20 or instruct an agent to do so on the lawyer's behalf. Paragraph (a), however, does not prohibit a lawyer
21 from advising a client concerning action the client is legally entitled to take.

22 [1a] A violation of paragraph (a) based solely on the lawyer's violation of another Rule of Professional
23 Conduct shall not be charged as a separate violation. However, this rule defines professional misconduct
24 as a violation of the Rules of Professional Conduct as the term professional misconduct is used in the
25 Supreme Court Rules of Professional Practice, including the Standards for Imposing Lawyer Sanctions. In
26 this respect, if a lawyer violates any of the Rules of Professional Conduct, the appropriate discipline may
27 be imposed pursuant to Rule 14-605.

28 [2] Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses
29 involving fraud and the offense of willful failure to file an income tax return. However, some kinds of
30 offenses carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving
31 "moral turpitude." That concept can be construed to include offenses concerning some matters of
32 personal morality, such as adultery and comparable offenses, that have no specific connection to fitness
33 for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer
34 should be professionally answerable only for offenses that indicate lack of those characteristics relevant
35 to law practice. Offenses involving violence, dishonesty, breach of trust or serious interference with the
36 administration of justice are in that category. A pattern of repeated offenses, even ones of minor
37 significance when considered separately, can indicate indifference to legal obligation.

38 [3] A lawyer who, in the course of representing a client, knowingly manifests by words or conduct bias
39 or prejudice based upon race, color, sex, pregnancy, childbirth, or pregnancy-related conditions, age,
40 religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status, or
41 socioeconomic status, ~~may violate~~ violates paragraph (d) when such actions are prejudicial to the
42 administration of justice. Legitimate advocacy respecting the foregoing factors does not violate paragraph
43 (d). ~~A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not~~
44 ~~alone establish a violation of this rule.~~

45 ~~[3a] The Standards of Professionalism and Civility approved by the Utah Supreme Court are~~
46 ~~intended to improve the administration of justice. An egregious violation or a pattern of repeated~~
47 ~~violations of the Standards of Professionalism and Civility may support a finding that the lawyer has~~
48 ~~violated paragraph (d).~~

49 [4] The substantive law of antidiscrimination and anti-harassment statutes, ordinances, and case law
50 guides the application of paragraph (g), except that for purposes of determining a violation of paragraph
51 (g), the size of a law firm or number of employees is not a defense. Paragraph (g) does not limit the
52 ability of a lawyer to accept, decline, or in accordance with Rule 1.16 or, withdraw from a representation
53 in accordance with Rule 1.16, nor does paragraph (g) preclude legitimate advice or advocacy consistent
54 with these rules. Discrimination or harassment does not need to be previously proven by a judicial or
55 administrative tribunal or fact-finder in order to allege or prove a violation of this rule. Lawyers may
56 engage in conduct undertaken to discuss diversity and inclusion, including any benefits and challenges,
57 without violating this rule. Implementing initiatives aimed at recruiting, hiring, retaining and advancing
58 employees of diverse backgrounds or from historically underrepresented groups, or sponsoring diverse
59 law student organizations, are not violations of paragraph (g).

60 [5] A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does
61 not alone establish a violation of this rule. A lawyer does not violate paragraph (g) by limiting the scope or
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64 fees and expenses for a representation. Rule 1.5(a). Lawyers also should be mindful of their professional
65 obligations under Rule 6.1 to provide legal services to those who are unable to pay, and their obligation
66 under Rule 6.2 not to avoid appointments from a tribunal except for good cause. See Rule 6.2(a), (b) and
67 (c). A lawyer's representation of a client does not constitute an endorsement by the lawyer of the client's
68 views or activities. See Rule 1.2(b).

69 [6][4] A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that
70 no valid obligation exists. The provisions of Rule 1.2(d) concerning a good faith challenge to the validity,
71 scope, meaning or application of the law apply to challenges of legal regulation of the practice of law.

72 [7][5] Lawyers holding public office assume legal responsibilities going beyond those of other citizens.
73 A lawyer's abuse of public office can suggest an inability to fulfill the professional role of lawyers. The

74 same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian,
75 agent and officer, director or manager of a corporation or other organization.

76 | [8] This rule differs from ABA Model Rule 8.4 to the extent that it changes paragraph (g), adds
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78

1 **Rule 8.4. Misconduct.**

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10 results by means that violate the Rules of Professional Conduct or other law;

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13 (g) engage in conduct that amounts to unlawful discrimination or harassment under applicable local,
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41 socioeconomic status, may violate paragraph (d) when such actions are prejudicial to the administration
42 of justice. Legitimate advocacy respecting the foregoing factors does not violate paragraph (d).

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57 populations in accordance with these Rules and other law. A lawyer may charge and collect reasonable
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62 views or activities. See Rule 1.2(b).

63 [6] A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no
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65 scope, meaning or application of the law apply to challenges of legal regulation of the practice of law.

66 [7] Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A
67 lawyer's abuse of public office can suggest an inability to fulfill the professional role of lawyers. The same
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69 officer, director or manager of a corporation or other organization.

70 [8] This rule differs from ABA Model Rule 8.4 to the extent that it changes paragraph (g), adds
71 paragraph (h), and changes comments [3] and [4].

72

1 **Rule 14-301. Standards of Professionalism and Civility.**

2 **Preamble**

3 A lawyer's conduct should be characterized at all times by personal courtesy and professional
4 integrity in the fullest sense of those terms. In fulfilling a duty to represent a client vigorously as lawyers,
5 we must be mindful of our obligations to the administration of justice, which is a truth-seeking process
6 designed to resolve human and societal problems in a rational, peaceful, and efficient manner. We must
7 remain committed to the rule of law as the foundation for a just and peaceful society.

8 Conduct that may be characterized as uncivil, abrasive, abusive, hostile, or obstructive impedes the
9 fundamental goal of resolving disputes rationally, peacefully, and efficiently. Such conduct tends to delay
10 and often to deny justice.

11 Lawyers should exhibit courtesy, candor and cooperation in dealing with the public and participating
12 in the legal system. The following standards are designed to encourage lawyers to meet their obligations
13 to each other, to litigants and to the system of justice, and thereby achieve the twin goals of civility and
14 professionalism, both of which are hallmarks of a learned profession dedicated to public service.

15 Lawyers should educate themselves on the potential impact of using digital communications and
16 social media, including the possibility that communications intended to be private may be republished or
17 misused. Lawyers should understand that digital communications in some circumstances may have a
18 widespread and lasting impact on their clients, themselves, other lawyers, and the judicial system.

19 We expect judges and lawyers will make mutual and firm commitments to these standards.
20 Adherence is expected as part of a commitment by all participants to improve the administration of justice
21 throughout this State. We further expect lawyers to educate their clients regarding these standards and
22 judges to reinforce this whenever clients are present in the courtroom by making it clear that such tactics
23 may hurt the client's case.

24 Although for ease of usage the term "court" is used throughout, these standards should be followed
25 by all judges and lawyers in all interactions with each other and in any proceedings in this State. Copies
26 may be made available to clients to reinforce our obligation to maintain and foster these standards.
27 Nothing in these standards supersedes or detracts from existing disciplinary codes or standards of
28 conduct.

29 *Cross-References: R. Prof. Cond. Preamble [1], [13]; R. Civ. P. 1; R. Civ. P. 65B(b)(5); R. Crim. P.*
30 *1(b); R. Juv. P. 1(b); R. Third District Court 10-1-306; Fed. R. Civ. P. 1; DUCivR 83-1.1(g).*

31 1. Lawyers shall advance the legitimate interests of their clients, without reflecting any ill-will that
32 clients may have for their adversaries, even if called upon to do so by another. Instead, lawyers shall treat
33 all other counsel, parties, judges, witnesses, and other participants in all proceedings in a courteous and
34 dignified manner.

35 **Comment:** Lawyers should maintain the dignity and decorum of judicial and administrative
36 proceedings, as well as the esteem of the legal profession. Respect for the court includes lawyers' dress
37 and conduct. When appearing in court, lawyers should dress professionally, use appropriate language,

38 and maintain a professional demeanor. In addition, lawyers should advise clients and witnesses about
39 proper courtroom decorum, including proper dress and language, and should, to the best of their ability,
40 prevent clients and witnesses from creating distractions or disruption in the courtroom.

41 The need for dignity and professionalism extends beyond the courtroom. Lawyers are expected to
42 refrain from inappropriate language, maliciousness, or insulting behavior in depositions, meetings with
43 opposing counsel and clients, telephone calls, email, and other exchanges. They should use their best
44 efforts to instruct their clients and witnesses to do the same.

45 *Cross-References: R. Prof. Cond. 1.4; R. Prof. Cond. 1.16(a)(1); R. Prof. Cond. 2.1; R. Prof. Cond.*
46 *3.1; R. Prof. Cond. 3.2; R. Prof. Cond. 3.3(a)(1); R. Prof. Cond. 3.4; R. Prof. Cond. 3.5(d); R. Prof. Cond.*
47 *3.8; R. Prof. Cond. 3.9; R. Prof. Cond. 4.1(a); R. Prof. Cond. 4.4(a); R. Prof. Cond. 8.4(d); R. Civ. P.*
48 *10(h); R. Civ. P. 12(f); R. App. P. 24(k); R. Crim. P. 33(a); Fed. R. Civ. P. 12(f).*

49 2. Lawyers shall advise their clients that civility, courtesy, and fair dealing are expected. They are
50 tools for effective advocacy and not signs of weakness. Clients have no right to demand that lawyers
51 abuse anyone or engage in any offensive or improper conduct.

52 *Cross-References: R. Prof. Cond. Preamble [5]; R. Prof. Cond. 1.2(a); R. Prof. Cond. 1.2(d); R. Prof.*
53 *Cond. 1.4(a)(5).*

54 3. Lawyers shall not, without an adequate factual basis, attribute to other counsel or the court
55 improper motives, purpose, or conduct. Lawyers ~~should~~ shall avoid hostile, demeaning, ~~or~~ humiliating,
56 intimidating, harassing, or discriminatory conduct ~~words in written and oral communications with all other~~
57 counsel, parties, judges, witnesses, and other participants in all proceedings ~~adversaries~~. Neither written
58 submissions nor oral presentations should disparage the integrity, intelligence, morals, ethics, or personal
59 behavior of any such participant ~~adversary~~ unless such matters are directly relevant under controlling
60 substantive law.

61 **Comment:** Hostile, demeaning, and humiliating communications include all expressions of
62 discrimination on the basis of race, color, sex, pregnancy, childbirth or pregnancy-related conditions,
63 religion, national origin, gender, ethnicity, sexual orientation, gender identity, marital status, age,
64 handicap/disability, veteran status, or national origin, ~~or socioeconomic status~~ casting aspersions on
65 physical traits or appearance. Lawyers should refrain from acting upon or manifesting bigotry,
66 discrimination, or prejudice toward any participant in the legal process, even if a client requests it.

67 Lawyers should refrain from expressing scorn, superiority, or disrespect. Legal process should not be
68 issued merely to annoy, humiliate, intimidate, or harass. Special care should be taken to protect
69 witnesses, especially those who are disabled or under the age of 18, from harassment or undue
70 contention.

71 *Cross-References: R. Prof. Cond. Preamble [5]; R. Prof. Cond. 3.1; R. Prof. Cond. 3.5; R. Prof. Cond.*
72 *8.4; R. Civ. P. 10(h); R. Civ. P. 12(f); R. App. P. 24(k); R. Crim. P. 33(a); Fed. R. Civ. P. 12(f).*

73 4. Lawyers shall never knowingly attribute to other counsel a position or claim that counsel has not
74 taken or seek to create such an unjustified inference or otherwise seek to create a “record” that has not
75 occurred.

76 *Cross-References: R. Prof. Cond. 3.1; R. Prof. Cond. 3.3(a)(1); R. Prof. Cond. 3.5(a); R. Prof. Cond.*
77 *8.4(c); R. Prof. Cond. 8.4(d).*

78 5. Lawyers shall not lightly seek sanctions and will never seek sanctions against or disqualification of
79 another lawyer for any improper purpose.

80 *Cross-References: R. Prof. Cond. 3.1; R. Prof. Cond. 3.2; R. Prof. Cond. 8.4(c); R. Prof. Cond. 8.4(d);*
81 *R. Civ. P. 11(c); R. Civ. P. 16(d); R. Civ. P. 37(a); Fed. R. Civ. P. 11(c)(2).*

82 6. Lawyers shall adhere to their express promises and agreements, oral or written, and to all
83 commitments reasonably implied by the circumstances or by local custom.

84 *Cross-References: R. Prof. Cond. 1.1; R. Prof. Cond. 1.3; R. Prof. Cond. 1.4(a), (b); R. Prof. Cond.*
85 *1.6(a); R. Prof. Cond. 1.9; R. Prof. Cond. 1.13(a), (b); R. Prof. Cond. 1.14; R. Prof. Cond. 1.15; R. Prof.*
86 *Cond. 1.16(d); R. Prof. Cond. 1.18(b), (c); R. Prof. Cond. 2.1; R. Prof. Cond. 3.2; R. Prof. Cond. 3.3; R.*
87 *Prof. Cond. 3.4(c); R. Prof. Cond. 3.8; R. Prof. Cond. 5.1; R. Prof. Cond. 5.3; R. Prof. Cond. 8.3(a), (b); R.*
88 *Prof. Cond. 8.4(c); R. Prof. Cond. 8.4(d).*

89 7. When committing oral understandings to writing, lawyers shall do so accurately and completely.
90 They shall provide other counsel a copy for review, and never include substantive matters upon which
91 there has been no agreement, without explicitly advising other counsel. As drafts are exchanged, lawyers
92 shall bring to the attention of other counsel changes from prior drafts.

93 **Comment:** When providing other counsel with a copy of any negotiated document for review, a
94 lawyer should not make changes to the written document in a manner calculated to cause the opposing
95 party or counsel to overlook or fail to appreciate the changes. Changes should be clearly and accurately
96 identified in the draft or otherwise explicitly brought to the attention of other counsel. Lawyers should be
97 sensitive to, and accommodating of, other lawyers' inability to make full use of technology and should
98 provide hard copy drafts when requested and a redline copy, if available.

99 *Cross-References: R. Prof. Cond. 3.4(a); R. Prof. Cond. 4.1(a); R. Prof. Cond. 8.4(c); R. Prof. Cond.*
100 *8.4(d); R. App. P. 11(f).*

101 8. When permitted or required by court rule or otherwise, lawyers shall draft orders that accurately
102 and completely reflect the court's ruling. Lawyers shall promptly prepare and submit proposed orders to
103 other counsel and attempt to reconcile any differences before the proposed orders and any objections are
104 presented to the court.

105 *Cross-References: R. Prof. Cond. 3.2; R. Prof. Cond. 8.4; R. Civ. P. 7(f); R. Third District Court 10-1-*
106 *306(6).*

107 9. Lawyers shall not hold out the potential of settlement for the purpose of foreclosing discovery,
108 delaying trial, or obtaining other unfair advantage, and lawyers shall timely respond to any offer of
109 settlement or inform opposing counsel that a response has not been authorized by the client.

110 *Cross-References: R. Prof. Cond. 3.2; R. Prof. Cond. 3.4(a); R. Prof. Cond. 4.1(a); R. Prof. Cond.*
111 *8.4(c); R. Prof. Cond. 8.4(d).*

112 10. Lawyers shall make good faith efforts to resolve by stipulation undisputed relevant matters,
113 particularly when it is obvious such matters can be proven, unless there is a sound advocacy basis for not
114 doing so.

115 *Cross-References: R. Prof. Cond. 3.1; R. Prof. Cond. 3.2; R. Prof. Cond. 3.4(d); R. Prof. Cond.*
116 *8.4(d); R. Third District Court 10-1-306 (1)(A); Fed. R. Civ. P. 16(2)(C).*

117 11. Lawyers shall avoid impermissible ex parte communications.

118 *Cross-References: R. Prof. Cond. 1.2; R. Prof. Cond. 2.2; R. Prof. Cond. 2.9; R. Prof. Cond. 3.5; R.*
119 *Prof. Cond. 5.1; R. Prof. Cond. 5.3; R. Prof. Cond. 8.4(a); R. Prof. Cond. 8.4(d); R. Civ. P. 77(b); R. Juv.*
120 *P. 2.9(A); Fed. R. Civ. P. 77(b).*

121 12. Lawyers shall not send the court or its staff correspondence between counsel, unless such
122 correspondence is relevant to an issue currently pending before the court and the proper evidentiary
123 foundations are met or as such correspondence is specifically invited by the court.

124 *Cross-References: R. Prof. Cond. 3.5(a); R. Prof. Cond. 3.5(b); R. Prof. Cond. 5.1; R. Prof. Cond.*
125 *5.3; R. Prof. Cond. 8.4(a); R. Prof. Cond. 8.4(d).*

126 13. Lawyers shall not knowingly file or serve motions, pleadings or other papers at a time calculated
127 to unfairly limit other counsel's opportunity to respond or to take other unfair advantage of an opponent, or
128 in a manner intended to take advantage of another lawyer's unavailability.

129 *Cross-References: R. Prof. Cond. 8.4(c); R. Juv. P. 19.*

130 14. Lawyers shall advise their clients that they reserve the right to determine whether to grant
131 accommodations to other counsel in all matters not directly affecting the merits of the cause or prejudicing
132 the client's rights, such as extensions of time, continuances, adjournments, and admissions of facts.
133 Lawyers shall agree to reasonable requests for extension of time and waiver of procedural formalities
134 when doing so will not adversely affect their clients' legitimate rights. Lawyers shall never request an
135 extension of time solely for the purpose of delay or to obtain a tactical advantage.

136 **Comment:** Lawyers should not evade communication with other counsel, should promptly
137 acknowledge receipt of any communication, and should respond as soon as reasonably possible.
138 Lawyers should only use data-transmission technologies as an efficient means of communication and not
139 to obtain an unfair tactical advantage. Lawyers should be willing to grant accommodations where the use
140 of technology is concerned, including honoring reasonable requests to retransmit materials or to provide
141 hard copies.

142 Lawyers should not request inappropriate extensions of time or serve papers at times or places
143 calculated to embarrass or take advantage of an adversary.

144 *Cross-References: R. Prof. Cond. 1.2(a); R. Prof. Cond. 2.1; R. Prof. Cond. 3.2; R. Prof. Cond. 8.4;*
145 *R. Juv. P. 54.*

146 15. Lawyers shall endeavor to consult with other counsel so that depositions, hearings, and
147 conferences are scheduled at mutually convenient times. Lawyers shall never request a scheduling
148 change for tactical or unfair purpose. If a scheduling change becomes necessary, lawyers shall notify
149 other counsel and the court immediately. If other counsel requires a scheduling change, lawyers shall
150 cooperate in making any reasonable adjustments.

151 **Comment:** When scheduling and attending depositions, hearings, or conferences, lawyers should be
152 respectful and considerate of clients' and adversaries' time, schedules, and commitments to others. This
153 includes arriving punctually for scheduled appointments. Lawyers should arrive sufficiently in advance of
154 trials, hearings, meetings, depositions, and other scheduled events to be prepared to commence on time.
155 Lawyers should also advise clients and witnesses concerning the need to be punctual and prepared.
156 Lawyers who will be late for a scheduled appointment or are aware that another participant will be late,
157 should notify the court, if applicable, and all other participants as soon as possible.

158 *Cross-References: R. Prof. Cond. 3.2; R. Prof. Cond. 3.4; R. Prof. Cond. 5.1; R. Prof. Cond. 8.4(a);*
159 *R. Juv. P. 20; R. Juv. P. 20A.*

160 16. Lawyers shall not cause the entry of a default without first notifying other counsel whose identity is
161 known, unless their clients' legitimate rights could be adversely affected.

162 *Cross-References: R. Prof. Cond. 8.4; R. Civ. P. 55(a); Fed. R. Civ. P. 55(b)(2).*

163 17. Lawyers shall not use or oppose discovery for the purpose of harassment or to burden an
164 opponent with increased litigation expense. Lawyers shall not object to discovery or inappropriately assert
165 a privilege for the purpose of withholding or delaying the disclosure of relevant and non-protected
166 information.

167 *Cross-References: R. Prof. Cond. 3.1; R. Prof. Cond. 3.2; R. Prof. Cond. 3.4; R. Prof. Cond. 4.1; R.*
168 *Prof. Cond. 4.4(a); R. Prof. Cond. 8.4; R. Civ. P. 26(b)(1); R. Civ. P. 26(b)(8)(A); R. Civ. P. 37(a)(1)(A),*
169 *(D); R. Civ. P. 37(c); R. Crim. P. 16(b); R. Crim. P. 16(c); R. Crim. P. 16(d); R. Crim. P. 16(e); R. Juv. P.*
170 *20; R. Juv. P. 20A; R. Juv. P. 27(b); Fed. R. Civ. P. 26(b)(1); Fed. R. Civ. P. 26(g)(1)(B)(ii), (iii).*

171 18. During depositions lawyers shall not attempt to obstruct the interrogator or object to questions
172 unless reasonably intended to preserve an objection or protect a privilege for resolution by the court.
173 "Speaking objections" designed to coach a witness are impermissible. During depositions or conferences,
174 lawyers shall engage only in conduct that would be appropriate in the presence of a judge.

175 *Cross-References: R. Prof. Cond. 3.2; R. Prof. Cond. 3.3(a)(1); R. Prof. Cond. 3.4; R. Prof. Cond.*
176 *3.5; R. Prof. Cond. 8.4; R. Civ. P. 30(c)(2); R. Juv. P. 20; R. Juv. P. 20A; Fed. R. Civ. P. 30(c)(2); Fed. R.*
177 *Civ. P. 30(d)(2); Fed. R. Civ. P. 30(d)(3)(A).*

178 19. In responding to document requests and interrogatories, lawyers shall not interpret them in an
179 artificially restrictive manner so as to avoid disclosure of relevant and non-protected documents or
180 information, nor shall they produce documents in a manner designed to obscure their source, create
181 confusion, or hide the existence of particular documents.

182 *Cross-References: R. Prof. Cond. 3.2; R. Prof. Cond. 3.4; R. Prof. Cond. 8.4; R. Prof. Cond. 3.4; R.*
183 *Civ. P. 26(b)(1); R. Civ. P. 37; R. Crim. P. 16(a); R. Juv. P. 20; R. Juv. P. 20A; Fed. R. Civ. P. 37(a)(4).*

184 20. Lawyers shall not authorize or encourage their clients or anyone under their direction or
185 supervision to engage in conduct proscribed by these Standards.

186

187 Adopted by Supreme Court order October 16, 2003.

188

189

1 **Rule 14-301. Standards of Professionalism and Civility.**

2 **Preamble**

3 A lawyer's conduct should be characterized at all times by personal courtesy and professional
4 integrity in the fullest sense of those terms. In fulfilling a duty to represent a client vigorously as lawyers,
5 we must be mindful of our obligations to the administration of justice, which is a truth-seeking process
6 designed to resolve human and societal problems in a rational, peaceful, and efficient manner. We must
7 remain committed to the rule of law as the foundation for a just and peaceful society.

8 Conduct that may be characterized as uncivil, abrasive, abusive, hostile, or obstructive impedes the
9 fundamental goal of resolving disputes rationally, peacefully, and efficiently. Such conduct tends to delay
10 and often to deny justice.

11 Lawyers should exhibit courtesy, candor and cooperation in dealing with the public and participating
12 in the legal system. The following standards are designed to encourage lawyers to meet their obligations
13 to each other, to litigants and to the system of justice, and thereby achieve the twin goals of civility and
14 professionalism, both of which are hallmarks of a learned profession dedicated to public service.

15 Lawyers should educate themselves on the potential impact of using digital communications and
16 social media, including the possibility that communications intended to be private may be republished or
17 misused. Lawyers should understand that digital communications in some circumstances may have a
18 widespread and lasting impact on their clients, themselves, other lawyers, and the judicial system.

19 We expect judges and lawyers will make mutual and firm commitments to these standards.
20 Adherence is expected as part of a commitment by all participants to improve the administration of justice
21 throughout this State. We further expect lawyers to educate their clients regarding these standards and
22 judges to reinforce this whenever clients are present in the courtroom by making it clear that such tactics
23 may hurt the client's case.

24 Although for ease of usage the term "court" is used throughout, these standards should be followed
25 by all judges and lawyers in all interactions with each other and in any proceedings in this State. Copies
26 may be made available to clients to reinforce our obligation to maintain and foster these standards.
27 Nothing in these standards supersedes or detracts from existing disciplinary codes or standards of
28 conduct.

29 *Cross-References: R. Prof. Cond. Preamble [1], [13]; R. Civ. P. 1; R. Civ. P. 65B(b)(5); R. Crim. P.*
30 *1(b); R. Juv. P. 1(b); R. Third District Court 10-1-306; Fed. R. Civ. P. 1; DUCivR 83-1.1(g).*

31 1. Lawyers shall advance the legitimate interests of their clients, without reflecting any ill-will that
32 clients may have for their adversaries, even if called upon to do so by another. Instead, lawyers shall treat
33 all other counsel, parties, judges, witnesses, and other participants in all proceedings in a courteous and
34 dignified manner.

35 **Comment:** Lawyers should maintain the dignity and decorum of judicial and administrative
36 proceedings, as well as the esteem of the legal profession. Respect for the court includes lawyers' dress
37 and conduct. When appearing in court, lawyers should dress professionally, use appropriate language,

38 and maintain a professional demeanor. In addition, lawyers should advise clients and witnesses about
39 proper courtroom decorum, including proper dress and language, and should, to the best of their ability,
40 prevent clients and witnesses from creating distractions or disruption in the courtroom.

41 The need for dignity and professionalism extends beyond the courtroom. Lawyers are expected to
42 refrain from inappropriate language, maliciousness, or insulting behavior in depositions, meetings with
43 opposing counsel and clients, telephone calls, email, and other exchanges. They should use their best
44 efforts to instruct their clients and witnesses to do the same.

45 *Cross-References: R. Prof. Cond. 1.4; R. Prof. Cond. 1.16(a)(1); R. Prof. Cond. 2.1; R. Prof. Cond.*
46 *3.1; R. Prof. Cond. 3.2; R. Prof. Cond. 3.3(a)(1); R. Prof. Cond. 3.4; R. Prof. Cond. 3.5(d); R. Prof. Cond.*
47 *3.8; R. Prof. Cond. 3.9; R. Prof. Cond. 4.1(a); R. Prof. Cond. 4.4(a); R. Prof. Cond. 8.4(d); R. Civ. P.*
48 *10(h); R. Civ. P. 12(f); R. App. P. 24(k); R. Crim. P. 33(a); Fed. R. Civ. P. 12(f).*

49 2. Lawyers shall advise their clients that civility, courtesy, and fair dealing are expected. They are
50 tools for effective advocacy and not signs of weakness. Clients have no right to demand that lawyers
51 abuse anyone or engage in any offensive or improper conduct.

52 *Cross-References: R. Prof. Cond. Preamble [5]; R. Prof. Cond. 1.2(a); R. Prof. Cond. 1.2(d); R. Prof.*
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55 improper motives, purpose, or conduct. Lawyers shall avoid hostile, demeaning, humiliating, intimidating,
56 harassing, or discriminatory conduct with all other counsel, parties, judges, witnesses, and other
57 participants in all proceedings. Neither written submissions nor oral presentations should disparage the
58 integrity, intelligence, morals, ethics, or personal behavior of any such participant unless such matters are
59 directly relevant under controlling substantive law.

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64 discrimination, or prejudice toward any participant in the legal process, even if a client requests it.

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66 issued merely to annoy, humiliate, intimidate, or harass. Special care should be taken to protect
67 witnesses, especially those who are disabled or under the age of 18, from harassment or undue
68 contention.

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72 taken or seek to create such an unjustified inference or otherwise seek to create a "record" that has not
73 occurred.

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77 another lawyer for any improper purpose.

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87 7. When committing oral understandings to writing, lawyers shall do so accurately and completely.
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89 there has been no agreement, without explicitly advising other counsel. As drafts are exchanged, lawyers
90 shall bring to the attention of other counsel changes from prior drafts.

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93 party or counsel to overlook or fail to appreciate the changes. Changes should be clearly and accurately
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107 settlement or inform opposing counsel that a response has not been authorized by the client.

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114 *8.4(d); R. Third District Court 10-1-306 (1)(A); Fed. R. Civ. P. 16(2)(C).*

115 11. Lawyers shall avoid impermissible ex parte communications.

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144 15. Lawyers shall endeavor to consult with other counsel so that depositions, hearings, and
145 conferences are scheduled at mutually convenient times. Lawyers shall never request a scheduling
146 change for tactical or unfair purpose. If a scheduling change becomes necessary, lawyers shall notify

147 other counsel and the court immediately. If other counsel requires a scheduling change, lawyers shall
148 cooperate in making any reasonable adjustments.

149 **Comment:** When scheduling and attending depositions, hearings, or conferences, lawyers should be
150 respectful and considerate of clients' and adversaries' time, schedules, and commitments to others. This
151 includes arriving punctually for scheduled appointments. Lawyers should arrive sufficiently in advance of
152 trials, hearings, meetings, depositions, and other scheduled events to be prepared to commence on time.
153 Lawyers should also advise clients and witnesses concerning the need to be punctual and prepared.
154 Lawyers who will be late for a scheduled appointment or are aware that another participant will be late,
155 should notify the court, if applicable, and all other participants as soon as possible.

156 *Cross-References: R. Prof. Cond. 3.2; R. Prof. Cond. 3.4; R. Prof. Cond. 5.1; R. Prof. Cond. 8.4(a);*
157 *R. Juv. P. 20; R. Juv. P. 20A.*

158 16. Lawyers shall not cause the entry of a default without first notifying other counsel whose identity is
159 known, unless their clients' legitimate rights could be adversely affected.

160 *Cross-References: R. Prof. Cond. 8.4; R. Civ. P. 55(a); Fed. R. Civ. P. 55(b)(2).*

161 17. Lawyers shall not use or oppose discovery for the purpose of harassment or to burden an
162 opponent with increased litigation expense. Lawyers shall not object to discovery or inappropriately assert
163 a privilege for the purpose of withholding or delaying the disclosure of relevant and non-protected
164 information.

165 *Cross-References: R. Prof. Cond. 3.1; R. Prof. Cond. 3.2; R. Prof. Cond. 3.4; R. Prof. Cond. 4.1; R.*
166 *Prof. Cond. 4.4(a); R. Prof. Cond. 8.4; R. Civ. P. 26(b)(1); R. Civ. P. 26(b)(8)(A); R. Civ. P. 37(a)(1)(A),*
167 *(D); R. Civ. P. 37(c); R. Crim. P. 16(b); R. Crim. P. 16(c); R. Crim. P. 16(d); R. Crim. P. 16(e); R. Juv. P.*
168 *20; R. Juv. P. 20A; R. Juv. P. 27(b); Fed. R. Civ. P. 26(b)(1); Fed. R. Civ. P. 26(g)(1)(B)(ii), (iii).*

169 18. During depositions lawyers shall not attempt to obstruct the interrogator or object to questions
170 unless reasonably intended to preserve an objection or protect a privilege for resolution by the court.
171 "Speaking objections" designed to coach a witness are impermissible. During depositions or conferences,
172 lawyers shall engage only in conduct that would be appropriate in the presence of a judge.

173 *Cross-References: R. Prof. Cond. 3.2; R. Prof. Cond. 3.3(a)(1); R. Prof. Cond. 3.4; R. Prof. Cond.*
174 *3.5; R. Prof. Cond. 8.4; R. Civ. P. 30(c)(2); R. Juv. P. 20; R. Juv. P. 20A; Fed. R. Civ. P. 30(c)(2); Fed. R.*
175 *Civ. P. 30(d)(2); Fed. R. Civ. P. 30(d)(3)(A).*

176 19. In responding to document requests and interrogatories, lawyers shall not interpret them in an
177 artificially restrictive manner so as to avoid disclosure of relevant and non-protected documents or
178 information, nor shall they produce documents in a manner designed to obscure their source, create
179 confusion, or hide the existence of particular documents.

180 *Cross-References: R. Prof. Cond. 3.2; R. Prof. Cond. 3.4; R. Prof. Cond. 8.4; R. Prof. Cond. 3.4; R.*
181 *Civ. P. 26(b)(1); R. Civ. P. 37; R. Crim. P. 16(a); R. Juv. P. 20; R. Juv. P. 20A; Fed. R. Civ. P. 37(a)(4).*

182 20. Lawyers shall not authorize or encourage their clients or anyone under their direction or
183 supervision to engage in conduct proscribed by these Standards.

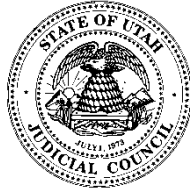
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185 Adopted by Supreme Court order October 16, 2003.

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Tab 3



Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

MEMORANDUM

Richard H. Schwermer
State Court Administrator
Raymond H. Wahl
Deputy Court Administrator

To: Advisory Committee on the Utah Rules of Professional Conduct
From: Nancy Sylvester *Nancy J. Sylvester*
Date: November 29, 2017
Re: ADA lawsuits and abusive practices

Austin Riter, on behalf of the ADA Subcommittee, provided the following response to the committee's charge of studying whether the Rules of Professional Conduct should be amended to address abusive practices by attorneys filing ADA lawsuits against businesses:

The ADA Subcommittee decided against proposing any specific language to address the ADA strike-suit issue for now. After discussing, our view is that Rule 11 of the Federal and Utah Rules of Civil Procedure and Rule 3.1 of the Utah Rules of Professional Conduct already cover the issue, and that any attempt to amend the text of the ethics rules to address the issue would raise federalism concerns and a host of practical problems regarding where to draw the line in defining abuse of legal procedure through a strike suit. If the Committee as a whole disagrees and thinks we should attempt to do something, at most we'd suggest considering amending the Comment to Rule 3.1. The Comment already states that an advocate has "a duty not to abuse legal procedure" and a duty to refrain from filing a "frivolous action," which together cover the issue. But we could consider amending the Comment to address the issue of strike suits in general (rather than in the ADA context alone) as an example of abusing legal procedure. If that is the Committee's inclination, we'll draft up a proposed amendment to the Comment for consideration at our next meeting. But I think the issue is not lack of an available remedy in the rules but lack of enforcement of that remedy. And I don't know that amending the Comment would do much to ameliorate that. It also would entail the risk of a more specific example of abuse of legal procedure potentially limiting interpretation of the scope of what other conduct constitutes such abuse.

The mission of the Utah judiciary is to provide the people an open, fair, efficient, and independent system for the advancement of justice under the law.