

Agenda

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

October 5, 2020

5:00 to 7:00 p.m.

Via Webex

Welcome and approval of minutes	Tab 1	Simón Cantarero, Chair
Combining the LPP Rules of Professional Conduct with the Attorney Rules of Professional Conduct	Attachment	Elizabeth Wright, Steve Johnson
Rule 8.4(h): <ul style="list-style-type: none">Review comments to Rule 8.4(h) Rule 14-301: <ul style="list-style-type: none">Review comments about constitutionality concernsReview Steve Johnson's suggested amendments	Tab 2	Adam Bondy, Alyson McAllister, Judge Mike Edwards, Steve Johnson, Dan Brough, Simón Cantarero
Discussion of regulatory reform question		Simón Cantarero

2020 Meeting Schedule:

November 2, 2020

December 7, 2020

Tab 1

Approval of minutes

Attached are the draft minutes from the August 31, 2020 meeting for the committee's review and approval.



Utah Supreme Court's Rules of Professional Conduct Committee

Meeting Minutes

August 31, 2020

Via WebEx

The Meeting commenced at 5:05 p.m.

Simón Cantarero, Chair

Attendees:

Simón Cantarero, Chair
Angie Allen
Adam Bondy
Daniel Brough
Hon. Michael Edwards
Hon. James Gardner
Steven G. Johnson (Emeritus)
Joni Jones
Philip Lowry
Alyson Carter McAllister
Amy Oliver
Vanessa Ramos
Jurhee Rice
Gary Sackett (Emeritus)
Cory Talbot
Dane Thorley
Katherine Venti
Billy Walker

Not Present

Tim Conde
Austin Riter

Staff:

Nancy Sylvester
(Vacant) Recording Secretary

Guests:

Chris Williams, Office of Legislative Research
Elizabeth Wright, Utah State Bar

Welcome and approval of the August 03, 2020 meeting date's minutes: Simón Cantarero, Chair

Simón Cantarero welcomed everyone to the meeting and asked for approval of the minutes.

Vanessa Ramos moved to approve the August 03, 2020 minutes. Alyson McAllister seconded the motion, and it passed unanimously.

Welcome of new members, Angie Allen, LPP, and Dane Thorley, Ph.D., J.D.

1. Discussion-Combining the LPP Rules of Professional Conduct with the Attorney Rules of Professional Conduct: Elizabeth Wright, Steven Johnson

The Committee has requested the following be reviewed and/or added to the combined rules prior to submission to the Supreme Court:

- a. Elizabeth Wright and Steven Johnson will add comment(s) showing how the merged rule(s) deviates from the ABA model rule and URCP 86 and the definitions of LPP, lawyer and attorney.
- b. Define lawyer using RPC definition under Rule 14-506: anything deemed the practice of law.
- c. Under section 14-802 (c), the Committee recommends revision and uniform use of the term lawyer within the document.
- d. Under URCP 86: A lawyer includes LPPs. Must define when the scope of practice exceeds that of the LPP.

It is anticipated that the Court will rescind the current LPP rules in favor of the combined rules.

2. Discussion: Review of Comments to Rules 8.4(g) and (h) and 14-301 (comment period closed August 1, 2020) and suggested changes: Adam Bondy, Alyson McAllister, Judge Edwards, Steve Johnson, Dan Brough, Simón Cantarero

The subcommittee met and made the following changes to propose to the committee as a whole.

Rule 6.51 - Modify (c)(2) to read "receives no fees directly from those matters."

Rule 8.4 - Modify (g) to read "engage in any conduct that is listed as a discriminatory or prohibited employment practice under 42 USC Sec 2000e-2, as amended, or under Section 34A-5-106 of the Utah Antidiscrimination Act, as amended, or pursuant to applicable court cases, notwithstanding the number of employees in the lawyer's firm;"

Rule 8.4 - Comment [3]: eliminate the sentence regarding peremptory challenges

Rule 8.4 - Ask the committee as a whole to consider whether (h) should be held in committee until the standards in 14-301 have been reviewed for aspirational/mandatory language.

With the above-proposed changes, Rule 8.4 (g) will read as follows:

(g) engage in any conduct that is listed as a discriminatory or prohibited employment practice under 42 U.S.C. Sec. 2000e-2, as amended, or under Section 34A-5-106 of the Utah Antidiscrimination Act, as amended, or pursuant to applicable court cases, notwithstanding the number of employees in the lawyer's firm

8.4 (h) will be held in committee as requested by the subcommittee. This will allow further review of the 8.4(h) comments and constitutionality concerns. Rule 8.4(h) comments, constitutionality, and any recommended improvements to both 8.4(h) and standard 14-303 will be discussed at the October 5, 2020 meeting.

Motion

Joni Jones moved to separate Rule 8.4(g) from 8.4(h) with the recommended changes to 8.4(g). Adam Bondy seconded the motion. The motion passed by simple majority with 10 in favor and 3 against.

Simón Cantarero will present the motion to the Court.

Motion

Katherine Venti moved to approve amended rule 6.5 with addition of phrase "direct." Vanessa Ramos seconded the motion. The Motion passed unanimously.

3. Other business/Next meeting

October 05, 2020 at 5:00 p.m.

November 02, 2020 at 5:00 p.m.

December 07, 2020 at 5:00 p.m. (tentative)

The meeting adjourned at 6:59 p.m. The next meeting will be held on October 05, 2020 at 5:00 p.m. via WebEx.

Tab 2

Rules 8.4(h) and 14-301

Attached are Rule 8.4 as amended at our last meeting, as well as suggestions from Steve Johnson for amendments to Rule 14-301. The comments to both rules that circulated at the last meeting are found in the prior agenda web blog. I will also recirculate them by email.

Rule 8.4. Misconduct.

It is professional misconduct for a lawyer to:

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

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

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

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

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

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

(g) engage in any conduct that is listed as a discriminatory or prohibited employment practice under Sec 2000e-2 [Section 703] of Title VII of the Civil Rights Act of 1964, as amended, or under Section 34A-5-106 of the Utah Antidiscrimination Act, as amended, or pursuant to applicable court cases,

notwithstanding the number of employees in the lawyer's firm; or

(h) egregiously violate, or engage in a pattern of repeated violations of, Rule 14-301 if such violations harm the lawyer's client or another lawyer's client or are prejudicial to the administration of justice.

Comment

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

[1a] An act of professional misconduct under Rule 8.4(b), (c), (d), (e), (f), or (g), ~~or (h)~~ cannot be counted as a separate violation of Rule 8.4(a) for the purpose of determining sanctions. Conduct that violates other Rules of Professional Conduct, however, may be a violation of Rule 8.4(a) for the purpose of determining sanctions.

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

Comment [NS1]: This has already been approved to go to the Supreme Court.

Comment [NS2]: This is being held in committee pending review of comments on constitutionality.

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, if
40 the individual is 40 years of age or older; religion; national origin; disability; age, sexual orientation;
41 gender identity; or genetic information socioeconomic status, may violate ~~violates~~ paragraph (d) when
42 such actions are prejudicial to the administration of justice. The protected classes listed in this comment
43 are consistent with those enumerated in the Utah Antidiscrimination Act of 1965, Utah Code Sec. 34A-5-
44 106(1)(a) (2016), and in federal statutes and is not meant to be an exhaustive list as the statutes may be
45 amended from time to time. Legitimate advocacy respecting the foregoing factors does not violate
46 paragraph (d). ~~A trial judge's finding that peremptory challenges were exercised on a discriminatory basis~~
47 ~~does not alone establish a violation of this rule.~~

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

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

63 [5] Paragraph (g) does not apply to expression or conduct protected by the First Amendment to the
64 United States Constitution or by Article I of the Utah Constitution.

65 [6] A lawyer does not violate paragraph (g) by limiting the scope or subject matter of the lawyer's
66 practice or by limiting the lawyer's practice to members of underserved populations in accordance with
67 these Rules and other law. A lawyer may charge and collect reasonable fees and expenses for a
68 representation. Rule 1.5(a). Lawyers also should be mindful of their professional obligations under Rule
69 6.1 to provide legal services to those who are unable to pay and their obligation under Rule 6.2 not to
70 avoid appointments from a tribunal except for good cause. See Rule 6.2(a), (b), and (c). A lawyer's
71 representation of a client does not constitute an endorsement by the lawyer of the client's views or
72 activities. See Rule 1.2(b).

73 | ~~[7]~~^[4] A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that
74 | no valid obligation exists. The provisions of Rule 1.2(d) concerning a good faith challenge to the validity,
75 | scope, meaning or application of the law apply to challenges of legal regulation of the practice of law.

76 | ~~[8]~~ ~~[6]~~ Lawyers holding public office assume legal responsibilities going beyond those of other
77 | citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of lawyers.
78 | The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian,
79 | agent and officer, director or manager of a corporation or other organization.

80 | [9] This rule differs from ABA Model Rule 8.4 to the extent that it changes paragraph (g) and modifies
81 | the comments accordingly.

82

Rule 14-301. Standards of Professionalism and Civility.

Preamble

For the purposes of these Standards, the term “lawyer” includes a licensed paralegal practitioner.

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

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

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

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

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

Although for ease of usage the term “court” is used throughout, However, these standards should be followed by all judges and lawyers in all interactions with each other and in any proceedings in this State. Copies may be made available to clients to reinforce our obligation to maintain

and foster these standards. Nothing in these standards supersedes or detracts from existing disciplinary codes or standards of conduct.

Although originally intended to be aspirational, the Supreme Court, by adopting Rule 8.4(h) of the Rules of Professional Conduct, has made these Standards mandatory to the extent that an egregious violation of the Standards or a pattern of repeated violations of the Standards where a client is harmed or if the conduct is prejudicial to the administration of justice, may subject the lawyer to disciplinary action.

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

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

Comment: Lawyers should maintain the dignity and decorum of judicial and administrative proceedings, as well as the esteem of the legal profession. Respect for the court includes lawyers' dress and conduct. When appearing in court, lawyers should dress professionally, use appropriate language, and maintain a professional demeanor. In addition, lawyers should advise clients and witnesses about proper courtroom decorum, including proper dress and language, and should, to the best of their ability, prevent clients and witnesses from creating distractions or disruption in the courtroom.

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

Cross-References: R. Prof. Cond. 1.4; R. Prof. Cond. 1.16(a)(1); R. Prof. Cond. 2.1; R. Prof. Cond. 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. 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. 10(h); R. Civ. P. 12(f); R. App. P. 24(k); R. Crim. P. 33(a); Fed. R. Civ. P. 12(f).

2. Lawyers shall advise their clients that civility, courtesy, and fair dealing are expected. They are tools for effective advocacy and not signs of

weakness. Clients have no right to demand that lawyers abuse anyone or engage in any offensive or improper conduct.

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

3. Lawyers shall not, without an adequate factual basis, attribute to other counsel or the court improper motives, purpose, or conduct. Lawyers should avoid hostile, demeaning, or humiliating words in written and oral communications with adversaries. Neither written submissions nor oral presentations should disparage the integrity, intelligence, morals, ethics, or personal behavior of an adversary or other participant in the legal process unless such matters are directly relevant under controlling substantive law or are necessary for legitimate advocacy.

Lawyers shall avoid hostile, demeaning, humiliating or discriminatory conduct in law-related activities. Discriminatory conduct includes all discrimination against protected classes as those classed are enumerated in Utah Code Section 34A-5-106(1)(a), and federal statutes, as amended from time to time.

~~Comment: Hostile, demeaning, and humiliating communications include all expressions of discrimination on the basis of race, religion, gender, sexual orientation, age, handicap, veteran status, or national origin, or casting aspersions on physical traits or appearance. Lawyers should refrain from acting upon or manifesting bigotry, discrimination, or prejudice toward any participant in the legal process, even if a client requests it.~~

Lawyers should refrain from expressing scorn, superiority, or disrespect. Legal process should not be issued merely to annoy, humiliate, intimidate, or harass. Special care should be taken to protect witnesses, especially those who are disabled or under the age of 18, from harassment or undue contention. Lawyers shall refrain from acting upon or manifesting bigotry, discrimination, or prejudice toward any person in the legal process, even if a client requests it.

Law-related activities include, but are not limited to, settlement negotiations; depositions; mediations; court appearances; CLE's; events sponsored by the Bar, Bar sections, or Bar associations; and firm parties.

Cross-References: R. Prof. Cond. Preamble [5]; R. Prof. Cond. 3.1; R. Prof. Cond. 3.5; R. Prof. Cond. 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).

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

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

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

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

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

Cross-References: R. Prof. Cond. 1.1; R. Prof. Cond. 1.3; R. Prof. Cond. 1.4(a), (b); R. Prof. Cond. 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. 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. 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. Prof. Cond. 8.4(c); R. Prof. Cond. 8.4(d).

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

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

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

8. When permitted or required by court rule or otherwise, lawyers shall draft orders that accurately and completely reflect the court’s ruling. Lawyers shall promptly prepare and submit proposed orders to other counsel and

attempt to reconcile any differences before the proposed orders and any objections are presented to the court.

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

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

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

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

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

11. Lawyers shall avoid impermissible ex parte communications.

Cross-References: R. Prof. Cond. 1.2; R. Prof. Cond. 2.2; R. Prof. Cond. 2.9; R. Prof. Cond. 3.5; R. 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. P. 2.9(A); Fed. R. Civ. P. 77(b).

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

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

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

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

14. Lawyers shall advise their clients that they reserve the right to determine whether to grant accommodations to other counsel in all matters not directly affecting the merits of the cause or prejudicing the client's rights, such as extensions of time, continuances, adjournments, and admissions of facts. Lawyers shall agree to reasonable requests for extension of time and

waiver of procedural formalities when doing so will not adversely affect their clients' legitimate rights. Lawyers shall never request an extension of time solely for the purpose of delay or to obtain a tactical advantage.

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

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

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

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

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

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

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

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

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

Cross-References: R. Prof. Cond. 3.1; R. Prof. Cond. 3.2; R. Prof. Cond. 3.4; R. Prof. Cond. 4.1; R. 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), (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. 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).

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

Cross-References: R. Prof. Cond. 3.2; R. Prof. Cond. 3.3(a)(1); R. Prof. Cond. 3.4; R. Prof. Cond. 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. Civ. P. 30(d)(2); Fed. R. Civ. P. 30(d)(3)(A).

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

Cross-References: R. Prof. Cond. 3.2; R. Prof. Cond. 3.4; R. Prof. Cond. 8.4; R. Prof. Cond. 3.4; R. 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).

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

Adopted by Supreme Court order October 16, 2003.