

Utah Supreme Court’s Advisory Committee on the Rules of Professional Conduct

Agenda

March 5, 2024

4:00 to 6:00 p.m.

Utah Law and Justice Center with [Zoom](#) available

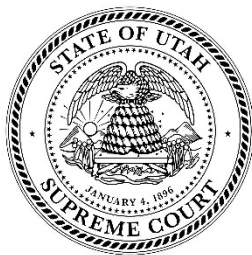
Welcome; approval of minutes.	Tab 1	Cory Talbot (chair)
Discussion: Possible amendments to of Rule 14-301 (Standards of Professionalism and Civility)	Tab 2	Judge Amy Oliver (sub-committee chair)
Discussion: Report on Supreme Court Conference discussion of proposed changes to Rules 8.4 and 14-301 ; creation of new sub-committee	Tab 3	Cory Talbot (chair)
Discussion: Update on proposed “pecuniary gain” revisions to rule 7.1	Tab 4	Robert Gibbons (sub-committee chair)
Update: Committee staff changes		Cory Talbot (chair)
Projects in the pipeline: <ul style="list-style-type: none">- Revisions to Rule 1.0 (terminology) for consistency; on hold until current revisions to Rule 1.0 are resolved.		

Meetings are held at the Utah Law and Justice Center, usually on the first Tuesday of the month from 4 to 6 p.m.

2024 Meeting Schedule: Jan 2 • Feb 6 • Mar 5 • April 2 • May 7 • June 4 • Aug 6 • Sep 3 • Oct 1 • Nov 5 • Dec 3

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

Tab 1



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

[Draft] Meeting Minutes

February 6, 2023

Utah Law and Justice Center & Zoom

4:00 pm Mountain Time

Cory Talbot, Chair

Attendees:

Cory Talbot (Chair)
Ashley Gregson
Jurhee Rice
Adam Bondy
Ian Quiel
Alyson McAllister
Robert Gibbons
Hon. Amy Oliver
Hon. James Gardner
Austin Riter
Dane Thorley
Lynda Viti
Gary Sackett (emeritus)
Christine Greenwood (ex officio)
Billy Walker (ex officio)
Hon. M. Alex Natt, Recording
Secretary

Staff:

Guests:

Excused: Mark Nickel, Jacqueline
Carlton, Julie J. Nelson, Hon. Trent
Nelson, Hon. Craig Hall; Beth
Kennedy

1. Welcome, Approval of the January 2, 2024 meeting minutes (Chair Talbot)

Chair Talbot recognized the existence of a quorum and called the meeting to order at 4:10 p.m. The Committee welcomed new member Lynda Viti and pursuant to the Committee's rules, the Chair asked each member to introduce themselves.

Chair Talbot asked for a Motion to approve the January 2, 2024 meeting minutes. Ms. McAllister moved for approval. Mr. Hales seconded. The Motion passed unanimously.

2. ABA Request for Input on Amendments to Rule 5.5 (Chair Talbot)

The Committee noted that the ABA was asking various jurisdictions to provide input to possible changes to Rule 5.5 which would increase permissible cross-border practice of law. The ABA has not suggested any course of action. The Committee did not feel that it was appropriate for it to provide the requested guidance at this time. The Chair indicated he would seek further guidance from the Supreme Court in his next meeting with that body.

3. Mandatory Nature of Rule 14-301 and the Attorney Oath (Chair Talbot)

The Chair noted that there had been some question regarding whether the Rule is written in a manner that indicates that the dictates of the Rule and the standards contained therein are mandatory which the Supreme Court (and the Committee) recognizes is the case. The Committee noted that the Rule doesn't appear to contain discretionary language. The Committee has been asked review the Rule and standards to ensure they are not perceived to be simply aspirational. The Chair appointed a subcommittee to review the Rule to ensure the language does not lead a reader to believe it is simply aspirational. Judge Oliver was appointed to lead the subcommittee with Judge Natt and Ms. Viti as members.

4. Update on Rule 7.1 Discussions

Mr. Gibbons updated the Committee on Rule 7.1. He met with a member of the ACLU and prior versions of the Rule spoke to pecuniary interest language. Mr. Gibbons adduced his support adding back in the language regarding pecuniary interest language to the current Rule. Discussion ensued regarding a legislative proposal to amend U.C.A 13-68-401 that might affect the Committee's position on Rule 7.1. The Committee noted that the Supreme Court has plenary authority over the practice of the law within the State of Utah. Judge Oliver noted that the Judicial Council is the proper entity to address any issues with the Bill. The Committee decided to await the outcome of the legislative session to take any further action on Rule 7.1.

The next meeting of the Committee is March 5, 2024.

The meeting adjourned at 4:59 p.m.

Tab 2

Utah Supreme Court Rules of Professional Practice

Chapter 14. Rules Governing the Utah State Bar

Article 3. Standards of Professionalism and Civility

Rule 14-301. Standards of Professionalism and Civility.

Preamble

A lawyer's conduct ~~should~~must 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~~must 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.

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 Utah. 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, these standards ~~should~~must be followed by all judges and lawyers in all interactions with each other and in any proceedings in Utah. 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.

1. Lawyers ~~shall~~will 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~~will treat all other counsel, parties, judges, witnesses, and other participants in all proceedings in a courteous and dignified manner.

2. Lawyers shall will 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.
3. Lawyers shall will 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 unless such matters are directly relevant under controlling substantive law.
4. Lawyers shall will 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.
5. Lawyers shall will not lightly seek sanctions and will never seek sanctions against or disqualification of another lawyer for any improper purpose.
6. Lawyers shall will adhere to their express promises and agreements, oral or written, and to all commitments reasonably implied by the circumstances or by local custom.
7. When committing oral understandings to writing, lawyers shall will do so accurately and completely. They shall will 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 will bring to the attention of other counsel changes from prior drafts.
8. When permitted or required by court rule or otherwise, lawyers shall will draft orders that accurately and completely reflect the court's ruling. Lawyers shall will 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.
9. Lawyers shall will not hold out the potential of settlement for the purpose of foreclosing discovery, delaying trial, or obtaining other unfair advantage, and lawyers shall will timely respond to any offer of settlement or inform opposing counsel that a response has not been authorized by the client.
10. Lawyers shall will 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.
11. Lawyers shall will avoid impermissible ex parte communications.
12. Lawyers shall will 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.

13. Lawyers shall will 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.

14. Lawyers shall will 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 will 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 will never request an extension of time solely for the purpose of delay or to obtain a tactical advantage.

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

16. Lawyers shall will 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.

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

18. During depositions lawyers shall will 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 will engage only in conduct that would be appropriate in the presence of a judge.

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

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

Tab 3

1 **Rule 8.4. Misconduct.**

2 (1) It is professional misconduct for a lawyer to:

3 (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist
4 or induce another 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,
6 trustworthiness or fitness as 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
10 or to achieve results by means that violate the Rules of Professional Conduct or other
11 law; or

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

14 (g) notwithstanding the number of employees in the lawyer's firm, engage in any
15 conduct that is listed as a discriminatory or prohibited employment practice under
16 Sec 2000e-2 [Section 703] of Title VII of the Civil Rights Act of 1964, as amended, or
17 under Section 34A-5-106 of the Utah Antidiscrimination Act, as amended, or pursuant
18 to applicable court cases; or

19 (h) egregiously violate, or engage in a pattern of repeated violations of, Rule 14-301 if
20 such violations harm a participant in the legal process and are prejudicial to the
21 administration of justice.

22 (2) Paragraph (1)(c) does not apply to a government lawyer who participates in a lawful,
23 covert governmental operation that entails conduct employing dishonesty, fraud,
24 misrepresentation, or deceit for the purpose of gathering relevant information.

25 (3) Paragraphs (1)(d), (1)(g), and (1)(h) do not apply to expression or conduct protected
26 by the First Amendment to the United States Constitution or by Article I of the Utah
27 Constitution.

28 (4) Legitimate advocacy does not violate this rule.

29 **Comment**

30 [1] Lawyers are subject to discipline when they violate or attempt to violate the Rules of
31 Professional Conduct or knowingly assist or induce another to do so through the acts of
32 another, as when they request or instruct an agent to do so on the lawyer's behalf.
33 Paragraph (a), however, does not prohibit a lawyer from advising a client concerning
34 action the client is legally entitled to take.

35 [1a] An act of professional misconduct under Rule 8.4(1)(b), (c), (d), (e), ~~or~~ (f), (g), or (h)
36 cannot be counted as a separate violation of Rule 8.4(a)(1) for the purpose of determining
37 sanctions. Conduct that violates other Rules of Professional Conduct, however, may be a
38 violation of Rule 8.4(1)(a) for the purpose of determining sanctions.

39 [2] Many kinds of illegal conduct reflect adversely on fitness to practice law, such as
40 offenses involving fraud and the offense of willful failure to file an income tax return.
41 However, some kinds of offenses carry no such implication. Traditionally, the distinction
42 was drawn in terms of offenses involving "moral turpitude." That concept can be
43 construed to include offenses concerning some matters of personal morality, such as
44 adultery and comparable offenses, that have no specific connection to fitness for the
45 practice of law. Although a lawyer is personally answerable to the entire criminal law, a
46 lawyer should be professionally answerable only for offenses that indicate lack of those
47 characteristics relevant to law practice. Offenses involving violence, dishonesty, breach
48 of trust or serious interference with the administration of justice are in that category. A
49 pattern of repeated offenses, even ones of minor significance when considered separately,
50 can indicate indifference to legal obligation.

51 [3] A lawyer who, in the course of representing a client, knowingly manifests by words
52 or conduct bias or prejudice based upon race; color; sex; pregnancy, childbirth, or

53 pregnancy-related conditions; age, if the individual is 40 years of age or older; religion;
54 national origin; disability; age, sexual orientation; gender identity; or genetic
55 information, or socioeconomic status, may violates paragraph (d) when such actions are
56 prejudicial to the administration of justice. Legitimate advocacy respecting the foregoing
57 factors does not violate paragraph (d). A trial judge's finding that peremptory challenges
58 were exercised on a discriminatory basis does not alone establish a violation of this rule.
59 The protected classes listed in this comment are consistent with those enumerated in the
60 Utah Antidiscrimination Act of 1965 and in federal statutes and is not meant to be an
61 exhaustive list as the statutes may be amended from time to time.

62 ~~[3a] The Standards of Professionalism and Civility approved by the Utah Supreme Court~~
63 ~~are intended to improve the administration of justice. An egregious violation or a pattern~~
64 ~~of repeated violations of the Standards of Professionalism and Civility may support a~~
65 ~~finding that the lawyer has violated paragraph (d).~~

66 [4] The substantive law of antidiscrimination and anti-harassment statutes and case law
67 governs the application of paragraph (g), except that for the purpose of determining a
68 violation of paragraph (g), the size of the law firm or number of employees is not a
69 defense. Paragraph (g) does not limit the ability of a lawyer to accept, decline, or, in
70 accordance with Rule 1.16, withdraw from representation; nor does paragraph (g)
71 preclude legitimate advice or advocacy consistent with these rules. Discrimination or
72 harassment does not need to be previously proven by a judicial or administrative tribunal
73 or fact finder in order to allege or prove a violation of paragraph (g). Lawyers may discuss
74 the benefits and challenges of diversity and inclusion without violating paragraph (g).
75 Unless otherwise prohibited by law, implementing or declining to implement initiatives
76 aimed at recruiting, hiring, retaining, and advancing employees of diverse backgrounds
77 or from historically underrepresented groups, or sponsoring diverse law student
78 organizations, are not violations of paragraph (g).

79 [5] A lawyer does not violate paragraph (g) by limiting the scope or subject matter of the
80 lawyer's practice or by limiting the lawyer's practice to members of any particular
81 population in accordance with these Rules and other law. A lawyer may charge and

82 collect reasonable fees and expenses for a representation. See Rule 1.5(a). Lawyers also
83 should be mindful of their professional obligations under Rule 6.1 to provide legal
84 services to those who are unable to pay and their obligations under Rule 6.2 not to avoid
85 appointments from a tribunal except for good cause. See Rule 6.2(a), (b), and (c). A
86 lawyer's representation of a client does not constitute an endorsement by the lawyer of
87 the client's views or activities. See Rule 1.2(b).

88 [6] Participants in the legal process include lawyers, clients, witnesses, judges, clerks,
89 court reporters, translators, bailiffs, arbitrators, and mediators.

90 [7][4] A lawyer may refuse to comply with an obligation imposed by law upon a good
91 faith belief that no valid obligation exists. The provisions of Rule 1.2(d) concerning a good
92 faith challenge to the validity, scope, meaning or application of the law apply to
93 challenges of legal regulation of the practice of law.

94 [8][5] Lawyers holding public office assume legal responsibilities going beyond those of
95 other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the
96 professional role of lawyers. The same is true of abuse of positions of private trust such
97 as trustee, executor, administrator, guardian, agent and officer, director or manager of a
98 corporation or other organization.

99 [9] This rule differs from ABA Model Rule 8.4 to the extent that it renumbers the
100 paragraphs, changes paragraph (1)(g), adds paragraphs (1)(h), (2), (3), and (4), and
101 modifies the comments accordingly.

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

2 Preamble

3 The fair and equal administration of justice is an important function of a civil society.
4 The Supreme Court has a compelling interest to ensure and promote the fair
5 administration of justice, to ensure all participants in the judicial system or legal process
6 are treated fairly and respectfully, and to provide remedial measures when lawyers and
7 legal professionals face discrimination in their employment. Unlawful discrimination or
8 harassment in legal proceedings or in the operation of a law practice is inappropriate and
9 damages the perception that the administration of justice is based on fairness. As such,
10 the Supreme Court has determined that these standards are enforceable consistent with
11 the Rules of Professional Conduct.

12 A lawyer's conduct should be characterized at all times by personal courtesy and
13 professional integrity in the fullest sense of those terms. In fulfilling a duty to represent a
14 client vigorously as lawyers, we must be mindful of our obligations to the administration
15 of justice, which is a truth-seeking process designed to resolve human and societal
16 problems in a rational, peaceful, and efficient manner. We must remain committed to the
17 rule of law as the foundation for a just and peaceful society. For the purposes of these
18 standards, the term "lawyer" includes a licensed legal practitioner.

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

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

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

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

38 Although for ease of usage the term "court" is used throughout, these standards
39 should be followed by all judges and lawyers in all interactions with each other and in
40 any ~~proceedings-law-related activities~~ in this State. Law-related activities include, but are
41 not limited to, settlement negotiations, depositions, mediations, arbitrations,
42 representation in legal matters, and court appearances. Copies may be made available to
43 clients to reinforce our obligation to maintain and foster these standards. Nothing in these
44 standards supersedes or detracts from existing disciplinary codes or standards of
45 conduct.

46 Cross-References: R. Prof. Cond. Preamble [1], [13]; R. Civ. P. 1; R. Civ. P. 65B(b)(5);
47 R. Crim. P. 1(b); R. Juv. P. 1(b); R. Third District Court 10-1-306; Fed. R. Civ. P. 1; DUCivR
48 83-1.1(g).

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

53 Comment: Lawyers should maintain the dignity and decorum of judicial and
54 administrative proceedings, as well as the esteem of the legal profession. Respect for the
55 court includes lawyers' dress and conduct. When appearing in court, lawyers should

56 dress professionally, use appropriate language, and maintain a professional demeanor.
57 In addition, lawyers should advise clients and witnesses about proper courtroom
58 decorum, including proper dress and language, and should, to the best of their ability,
59 prevent clients and witnesses from creating distractions or disruption in the courtroom.

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

65 Cross-References: R. Prof. Cond. 1.4; R. Prof. Cond. 1.16(a)(1); R. Prof. Cond. 2.1; R.
66 Prof. Cond. 3.1; R. Prof. Cond. 3.2; R. Prof. Cond. 3.3(a)(1); R. Prof. Cond. 3.4; R. Prof.
67 Cond. 3.5(d); R. Prof. Cond. 3.8; R. Prof. Cond. 3.9; R. Prof. Cond. 4.1(a); R. Prof. Cond.
68 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.
69 33(a); Fed. R. Civ. P. 12(f).

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

74 Cross-References: R. Prof. Cond. Preamble [5]; R. Prof. Cond. 1.2(a); R. Prof. Cond.
75 1.2(d); R. Prof. Cond. 1.4(a)(5).

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

83 Lawyers acting in the practice of law, as defined in Rule 14-802(b)(1) of the Rules
84 Governing the Utah State Bar, shall avoid unlawful discrimination against protected
85 classes as those classes are enumerated in the Utah Antidiscrimination Act of 1965 and
86 applicable federal statutes, as amended from time to time.

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

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

97 Cross-References: R. Prof. Cond. Preamble [5]; R. Prof. Cond. 3.1; R. Prof. Cond. 3.5;
98 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.
99 R. Civ. P. 12(f); Utah Sup. Ct. R. Prof. Practice 14-802(b)(1).

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

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

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

107 Cross-References: R. Prof. Cond. 3.1; R. Prof. Cond. 3.2; R. Prof. Cond. 8.4(c); R. Prof.
108 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).

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

111 Cross-References: R. Prof. Cond. 1.1; R. Prof. Cond. 1.3; R. Prof. Cond. 1.4(a), (b); R.
112 Prof. Cond. 1.6(a); R. Prof. Cond. 1.9; R. Prof. Cond. 1.13(a), (b); R. Prof. Cond. 1.14; R.
113 Prof. Cond. 1.15; R. Prof. Cond. 1.16(d); R. Prof. Cond. 1.18(b), (c); R. Prof. Cond. 2.1; R.
114 Prof. Cond. 3.2; R. Prof. Cond. 3.3; R. Prof. Cond. 3.4(c); R. Prof. Cond. 3.8; R. Prof. Cond.
115 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).

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

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

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

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

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

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

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

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

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

147 11. Lawyers shall avoid impermissible ex parte communications.

148 Cross-References: R. Prof. Cond. 1.2; R. Prof. Cond. 2.2; R. Prof. Cond. 2.9; R. Prof.
149 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);
150 R. Civ. P. 77(b); R. Juv. P. 2.9(A); Fed. R. Civ. P. 77(b).

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

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

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

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

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

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

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

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

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

185 Comment: When scheduling and attending depositions, hearings, or conferences,
186 lawyers should be respectful and considerate of clients' and adversaries' time, schedules,
187 and commitments to others. This includes arriving punctually for scheduled
188 appointments. Lawyers should arrive sufficiently in advance of trials, hearings, meetings,
189 depositions, and other scheduled events to be prepared to commence on time. Lawyers

190 should also advise clients and witnesses concerning the need to be punctual and
191 prepared. Lawyers who will be late for a scheduled appointment or are aware that
192 another participant will be late, should notify the court, if applicable, and all other
193 participants as soon as possible.

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

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

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

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

204 Cross-References: R. Prof. Cond. 3.1; R. Prof. Cond. 3.2; R. Prof. Cond. 3.4; R. Prof.
205 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);
206 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.
207 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);
208 Fed. R. Civ. P. 26(g)(1)(B)(ii), (iii).

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

214 Cross-References: R. Prof. Cond. 3.2; R. Prof. Cond. 3.3(a)(1); R. Prof. Cond. 3.4; R.
215 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.
216 Civ. P. 30(c)(2); Fed. R. Civ. P. 30(d)(2); Fed. R. Civ. P. 30(d)(3)(A).

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

222 Cross-References: R. Prof. Cond. 3.2; R. Prof. Cond. 3.4; R. Prof. Cond. 8.4; R. Prof.
223 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;
224 Fed. R. Civ. P. 37(a)(4).

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

227 Adopted by Supreme Court order October 16, 2003.

Tab 4

UTAH RULES OF PROFESSIONAL CONDUCT
SOLICITATION RULE

Relevant Portion of Old Rule

Rule 7.3.Solicitation of Clients.

(a) A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment from a prospective client **when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain**, unless the person contacted:

- (1) is a lawyer;
- (2) has a family, close personal, or prior professional relationship with the lawyer, or
- (3) is unable to make personal contact with a lawyer and the lawyer's contact with the prospective client has been initiated by a third party on behalf of the prospective client.

(b) A lawyer shall not solicit professional employment by written, recorded or electronic communication or by in-person, live telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:

- (1) the target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or
- (2) the solicitation involves coercion, duress or harassment.

Current Version of Rule:

Rule 7.1. Communications Concerning a Lawyer's Services.

(a) A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it:

- (1) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;
- (2) is likely to create an unjustified or unreasonable expectation about results the lawyer can achieve or has achieved; or
- (3) contains a testimonial or endorsement that violates any portion of this Rule.

(b) A lawyer shall not interact with a prospective client in a manner that involves coercion, duress, or harassment.

(c) A lawyer shall not directly communicate with a prospective client for the purpose of obtaining professional employment if the communication concerns a disaster or an action for personal injury or wrongful death, unless:

- (1) the disaster, injury, or death occurred more than 30 days prior to the communication;
- (2) the prospective client is a person who has a familial, close personal, or prior professional relationship with the lawyer or law firm; or
- (3) the communication is initiated by the prospective client or at the request of a third party who has a familial or close personal relationship with the prospective client.

New Proposed Version:

Rule 7.1. Communications Concerning a Lawyer's Services.

(a) A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it:

(1) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;

(2) is likely to create an unjustified or unreasonable expectation about results the lawyer can achieve or has achieved; or

(3) contains a testimonial or endorsement that violates any portion of this Rule.

(b) A lawyer shall not interact with a prospective client in a manner that involves coercion, duress, or harassment.

(c) A lawyer shall not directly communicate with a prospective client, when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, for the purpose of obtaining professional employment if the communication concerns a disaster or an action for personal injury or wrongful death, unless:

(1) the disaster, injury, or death occurred more than 30 days prior to the communication;

(2) the prospective client is a person who has a familial, close personal, or prior professional relationship with the lawyer or law firm; or

(3) the communication is initiated by the prospective client or at the request of a third party who has a familial or close personal relationship with the prospective client.