

IN THE SUPREME COURT OF THE STATE OF UTAH

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In re: Proposed Amendments
to Rules 1.0, 1.1, 1.4, 1.6, 1.17, 1.18,
4.4, 5.3, 5.5, 7.1, 7.2, 7.3, and 8.5
of the RULES OF PROFESSIONAL CONDUCT

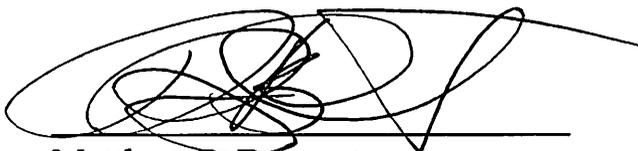
ORDER

IT IS HEREBY ORDERED that the proposed amendments to Rules 1.0, 1.1, 1.4, 1.6, 1.17, 1.18, 4.4, 5.3, 5.5, 7.1, 7.2, 7.3, and 8.5 of the Rules of Professional Conduct are adopted as submitted and promulgated effective May 1, 2015.

FOR THE COURT:

3-3-15

Date

A handwritten signature in black ink, appearing to read 'Matthew B. Durrant', written over a horizontal line.

Matthew B. Durrant
Chief Justice

1 **Rule 1.0. Terminology.**

2 (a) "Belief" or "believes" denotes that the person involved actually supposed the fact in question to be
3 true. A person's belief may be inferred from circumstances.

4 (b) "Confirmed in writing," when used in reference to the informed consent of a person, denotes
5 informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the
6 person confirming an oral informed consent. See paragraph (f) for the definition of "informed consent." If it
7 is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the
8 lawyer must obtain or transmit it within a reasonable time thereafter.

9 (c) "Consult" or "consultation" denotes communication of information reasonably sufficient to permit
10 the client to appreciate the significance of the matter in question.

11 (d) "Firm" or "law firm" denotes a lawyer or lawyers in a law partnership, professional corporation,
12 sole proprietorship or other association authorized to practice law; or lawyers employed in a legal
13 services organization or the legal department of a corporation or other organization.

14 (e) "Fraud" or "fraudulent" denotes conduct that is fraudulent under the substantive or procedural law
15 of the applicable jurisdiction and has a purpose to deceive.

16 (f) "Informed consent" denotes the agreement by a person to a proposed course of conduct after the
17 lawyer has communicated adequate information and explanation about the material risks of and
18 reasonably available alternatives to the proposed course of conduct.

19 (g) "Knowingly," "~~know~~known" or "knows" denotes actual knowledge of the fact in question. A
20 person's knowledge may be inferred from circumstances.

21 (h) "Partner" denotes a member of a partnership, a shareholder in a law firm organized as a
22 professional corporation, or a member of an association authorized to practice law.

23 (i) "Reasonable" or "reasonably" when used in relation to conduct by a lawyer denotes the conduct of
24 a reasonably prudent and competent lawyer.

25 (j) "Reasonable belief" or "reasonably believes" when used in reference to a lawyer denotes that the
26 lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.

27 (k) "Reasonably should know" when used in reference to a lawyer denotes that a lawyer of
28 reasonable prudence and competence would ascertain the matter in question.

29 (l) "Screened" denotes the isolation of a lawyer from any participation in a matter through the timely
30 imposition of procedures within a firm that are reasonably adequate under the circumstances to protect
31 information that the isolated lawyer is obligated to protect under these Rules or other law.

32 (m) "Substantial" when used in reference to degree or extent denotes a material matter of clear and
33 weighty importance.

34 (n) "Tribunal" denotes a court, an arbitrator in a binding arbitration proceeding or a legislative body,
35 administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative
36 agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of

37 evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a
38 party's interests in a particular matter.

39 (o) "Writing" or "written" denotes a tangible or electronic record of a communication or representation,
40 including handwriting, typewriting, printing, photostating, photography, audio or videorecording and e-
41 ~~mail~~electronic communications. A "signed" writing includes an electronic sound, symbol or process
42 attached to or logically associated with a writing and executed or adopted by a person with the intent to
43 sign the writing.

44 Comment

45 Confirmed in Writing

46 [1] If it is not feasible to obtain or transmit a written confirmation at the time the client gives informed
47 consent, then the lawyer must obtain or transmit it within a reasonable time thereafter. If a lawyer has
48 obtained a client's informed consent, the lawyer may act in reliance on that consent so long as it is
49 confirmed in writing within a reasonable time thereafter.

50 Firm

51 [2] Whether two or more lawyers constitute a firm within paragraph (d) can depend on the specific
52 facts. For example, two practitioners who share office space and occasionally consult or assist each other
53 ordinarily would not be regarded as constituting a firm. However, if they present themselves to the public
54 in a way that suggests that they are a firm or conduct themselves as a firm, they should be regarded as a
55 firm for purposes of these Rules. The terms of any formal agreement between associated lawyers are
56 relevant in determining whether they are a firm, as is the fact that they have mutual access to information
57 concerning the clients they serve. Furthermore, it is relevant in doubtful cases to consider the underlying
58 purpose of the rule that is involved. A group of lawyers could be regarded as a firm for purposes of the
59 rule that the same lawyer should not represent opposing parties in litigation, while it might not be so
60 regarded for purposes of the rule that information acquired by one lawyer is attributed to another.

61 [3] With respect to the law department of an organization, including the government, there is ordinarily
62 no question that the members of the department constitute a firm within the meaning of the Rules of
63 Professional Conduct. There can be uncertainty, however, as to the identity of the client. For example, it
64 may not be clear whether the law department of a corporation represents a subsidiary or an affiliated
65 corporation, as well as the corporation by which the members of the department are directly employed. A
66 similar question can arise concerning an unincorporated association and its local affiliates.

67 [4] Similar questions can also arise with respect to lawyers in legal aid and legal services
68 organizations. Depending upon the structure of the organization, the entire organization or different
69 components of it may constitute a firm or firms for purposes of these Rules.

70 Fraud

71 [5] When used in these Rules, the terms "fraud" or "fraudulent" refer to conduct that is characterized
72 as such under the substantive or procedural law of the applicable jurisdiction and has a purpose to
73 deceive. This does not include merely negligent misrepresentation or negligent failure to apprise another

74 of relevant information. For purposes of these Rules, it is not necessary that anyone has suffered
75 damages or relied on the misrepresentation or failure to inform.

76 Informed Consent

77 [6] Many of the Rules of Professional Conduct require the lawyer to obtain the informed consent of a
78 client or other person (e.g., a former client or, under certain circumstances, a prospective client) before
79 accepting or continuing representation or pursuing a course of conduct. See, e.g, Rules 1.2(c), 1.6(a) and
80 1.7(b). The communication necessary to obtain such consent will vary according to the rule involved and
81 the circumstances giving rise to the need to obtain informed consent. The lawyer must make reasonable
82 efforts to ensure that the client or other person possesses information reasonably adequate to make an
83 informed decision. Ordinarily, this will require communication that includes a disclosure of the facts and
84 circumstances giving rise to the situation, any explanation reasonably necessary to inform the client or
85 other person of the material advantages and disadvantages of the proposed course of conduct and a
86 discussion of the client's or other person's options and alternatives. In some circumstances it may be
87 appropriate for a lawyer to advise a client or other person to seek the advice of other counsel. A lawyer
88 need not inform a client or other person of facts or implications already known to the client or other
89 person; nevertheless, a lawyer who does not personally inform the client or other person assumes the
90 risk that the client or other person is inadequately informed and the consent is invalid. In determining
91 whether the information and explanation provided are reasonably adequate, relevant factors include
92 whether the client or other person is experienced in legal matters generally and in making decisions of the
93 type involved, and whether the client or other person is independently represented by other counsel in
94 giving the consent. Normally, such persons need less information and explanation than others, and
95 generally a client or other person who is independently represented by other counsel in giving the
96 consent should be assumed to have given informed consent.

97 [7] Obtaining informed consent will usually require an affirmative response by the client or other
98 person. In general, a lawyer may not assume consent from a client's or other person's silence. Consent
99 may be inferred, however, from the conduct of a client or other person who has reasonably adequate
100 information about the matter. A number of rules require that a person's consent be confirmed in writing.
101 See Rules 1.7(b) and 1.9(a). For a definition of "writing" and "confirmed in writing," see paragraphs (o)
102 and (b). Other rules require that a client's consent be obtained in a writing signed by the client. See, e.g.,
103 Rules 1.8(a) and (g). For a definition of "signed," see paragraph (o).

104 Screened

105 [8] This definition applies to situations where screening of a personally disqualified lawyer is permitted
106 to remove imputation of a conflict of interest under Rules 1.10, 1.11, 1.12 or 1.18.

107 [9] The purpose of screening is to assure the affected parties that confidential information known by
108 the personally disqualified lawyer remains protected. The personally disqualified lawyer should
109 acknowledge the obligation not to communicate with any of the other lawyers in the firm with respect to
110 the matter. Similarly, other lawyers in the firm who are working on the matter should be informed that the

111 screening is in place and that they may not communicate with the personally disqualified lawyer with
112 respect to the matter. Additional screening measures that are appropriate for the particular matter will
113 depend on the circumstances. To implement, reinforce and remind all affected lawyers of the presence of
114 the screening, it may be appropriate for the firm to undertake such procedures as a written undertaking by
115 the screened lawyer to avoid any communication with other firm personnel and any contact with any firm
116 files or other ~~materials~~information, including information in electronic form, relating to the matter, written
117 notice and instructions to all other firm personnel forbidding any communication with the screened lawyer
118 relating to the matter, denial of access by the screened lawyer to firm files or other ~~materials~~information,
119 including information in electronic form, relating to the matter and periodic reminders of the screen to the
120 screened lawyer and all other firm personnel.

121 [10] In order to be effective, screening measures must be implemented as soon as practical after a
122 lawyer or law firm knows or reasonably should know that there is a need for screening.

123 [10a] The definitions of "consult" and "consultation," while deleted from the ABA Model Rule 1.0, has
124 have been retained in the Utah Rule because "consult" and "consultation" are used in the rules. See, e.g.,
125 Rules 1.2, 1.4, 1.14, and 1.18.
126

1 **Rule 1.1. Competence.**

2 A lawyer shall provide competent representation to a client. Competent representation requires the
3 legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

4 Comment

5 Legal Knowledge and Skill

6 [1] In determining whether a lawyer employs the requisite knowledge and skill in a particular matter,
7 relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general
8 experience, the lawyer's training and experience in the field in question, the preparation and study the
9 lawyer is able to give the matter and whether it is feasible to refer the matter to, or associate or consult
10 with, a lawyer of established competence in the field in question. In many instances, the required
11 proficiency is that of a general practitioner. Expertise in a particular field of law may be required in some
12 circumstances.

13 [2] A lawyer need not necessarily have special training or prior experience to handle legal problems of
14 a type with which the lawyer is unfamiliar. A newly admitted lawyer can be as competent as a practitioner
15 with long experience. Some important legal skills, such as the analysis of precedent, the evaluation of
16 evidence and legal drafting, are required in all legal problems. Perhaps the most fundamental legal skill
17 consists of determining what kind of legal problems a situation may involve, a skill that necessarily
18 transcends any particular specialized knowledge. A lawyer can provide adequate representation in a
19 wholly novel field through necessary study. Competent representation can also be provided through the
20 association of a lawyer of established competence in the field in question.

21 [3] In an emergency a lawyer may give advice or assistance in a matter in which the lawyer does not
22 have the skill ordinarily required where referral to or consultation or association with another lawyer would
23 be impractical. Even in an emergency, however, assistance should be limited to that reasonably
24 necessary in the circumstances, for ill-considered action under emergency conditions can jeopardize the
25 client's interest.

26 [4] A lawyer may accept representation where the requisite level of competence can be achieved by
27 reasonable preparation. This applies as well to a lawyer who is appointed as counsel for an
28 unrepresented person. See also Rule 6.2.

29 Thoroughness and Preparation

30 [5] Competent handling of a particular matter includes inquiry into and analysis of the factual and
31 legal elements of the problem and use of methods and procedures meeting the standards of competent
32 practitioners. It also includes adequate preparation. The required attention and preparation are
33 determined in part by what is at stake; major litigation and complex transactions ordinarily require more
34 extensive treatment than matters of lesser complexity and consequence. An agreement between the
35 lawyer and the client regarding the scope of the representation may limit the matters for which the lawyer
36 is responsible. See Rule 1.2(c).

37 | Retaining or Contracting With Other Lawyers

38 [6] Before a lawyer retains or contracts with other lawyers outside the lawyer's own firm to provide or
39 assist in the provision of legal services to a client, the lawyer should ordinarily obtain informed consent
40 from the client and must reasonably believe that the other lawyers' services will contribute to the
41 competent and ethical representation of the client. The reasonableness of the decision to retain or
42 contract with other lawyers outside the lawyer's own firm will depend upon the circumstances, including
43 the education, experience and reputation of the nonfirm lawyers; the nature of the services assigned to
44 the nonfirm lawyers; and the legal protections, professional conduct rules, and ethical environments of the
45 jurisdictions in which the services will be performed, particularly relating to confidential information.

46 [7] When lawyers from more than one law firm are providing legal services to the client on a particular
47 matter, the lawyers ordinarily should consult with each other and the client about the scope of their
48 respective representations and the allocation of responsibility among them. See Rule 1.2. When making
49 allocations of responsibility in a matter pending before a tribunal, lawyers and parties may have additional
50 obligations that are a matter of law beyond the scope of these Rules.

51 Maintaining Competence

52 [68] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the
53 law and its practice, including the benefits and risks associated with relevant technology, engage in
54 continuing study and education and comply with all continuing legal education requirements to which the
55 lawyer is subject.

1 **Rule 1.4. Communication.**

2 (a) A lawyer shall:

3 (a)(1) promptly inform the client of any decision or circumstance with respect to which the client's
4 informed consent, as defined in Rule 1.0(e), is required by these Rules;

5 (a)(2) reasonably consult with the client about the means by which the client's objectives are to be
6 accomplished;

7 (a)(3) keep the client reasonably informed about the status of the matter;

8 (a)(4) promptly comply with reasonable requests for information; and

9 (a)(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer
10 knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

11 (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make
12 informed decisions regarding the representation.

13 Comment

14 [1] Reasonable communication between the lawyer and the client is necessary for the client
15 effectively to participate in the representation.

16 Communicating with Client

17 [2] If these Rules require that a particular decision about the representation be made by the client,
18 paragraph (a)(1) requires that the lawyer promptly consult with and secure the client's consent prior to
19 taking action unless prior discussions with the client have resolved what action the client wants the lawyer
20 to take. For example, a lawyer who receives from opposing counsel an offer of settlement in a civil
21 controversy or a proffered plea bargain in a criminal case must promptly inform the client of its substance
22 unless the client has previously indicated that the proposal will be acceptable or unacceptable or has
23 authorized the lawyer to accept or to reject the offer. See Rule 1.2(a).

24 [3] Paragraph (a)(2) requires the lawyer to reasonably consult with the client about the means to be
25 used to accomplish the client's objectives. In some situations—depending on both the importance of the
26 action under consideration and the feasibility of consulting with the client—this duty will require
27 consultation prior to taking action. In other circumstances, such as during a trial when an immediate
28 decision must be made, the exigency of the situation may require the lawyer to act without prior
29 consultation. In such cases the lawyer must nonetheless act reasonably to inform the client of actions the
30 lawyer has taken on the client's behalf. Additionally, paragraph (a)(3) requires that the lawyer keep the
31 client reasonably informed about the status of the matter, such as significant developments affecting the
32 timing or the substance of the representation.

33 [4] A lawyer's regular communication with clients will minimize the occasions on which a client will
34 need to request information concerning the representation. When a client makes a reasonable request for
35 information, however, paragraph (a)(4) requires prompt compliance with the request, or if a prompt
36 response is not feasible, that the lawyer, or a member of the lawyer's staff, acknowledge receipt of the

37 request and advise the client when a response may be expected. ~~Client telephone calls~~ A lawyer should
38 ~~be promptly returned~~ respond to or ~~acknowledged~~ acknowledge client communications.

39 Explaining Matters

40 [5] The client should have sufficient information to participate intelligently in decisions concerning the
41 objectives of the representation and the means by which they are to be pursued, to the extent the client is
42 willing and able to do so. Adequacy of communication depends in part on the kind of advice or assistance
43 that is involved. For example, when there is time to explain a proposal made in a negotiation, the lawyer
44 should review all important provisions with the client before proceeding to an agreement. In litigation a
45 lawyer should explain the general strategy and prospects of success and ordinarily should consult the
46 client on tactics that are likely to result in significant expense or to injure or coerce others. On the other
47 hand, a lawyer ordinarily will not be expected to describe trial or negotiation strategy in detail. The guiding
48 principle is that the lawyer should fulfill reasonable client expectations for information consistent with the
49 duty to act in the client's best interests and the client's overall requirements as to the character of
50 representation. In certain circumstances, such as when a lawyer asks a client to consent to a
51 representation affected by a conflict of interest, the client must give informed consent, as defined in Rule
52 1.0(e).

53 [6] Ordinarily, the information to be provided is that appropriate for a client who is a comprehending
54 and responsible adult. However, fully informing the client according to this standard may be impracticable,
55 for example, where the client is a child or suffers from diminished capacity. See Rule 1.14. When the
56 client is an organization or group, it is often impossible or inappropriate to inform every one of its
57 members about its legal affairs; ordinarily, the lawyer should address communications to the appropriate
58 officials of the organization. See Rule 1.13. Where many routine matters are involved, a system of limited
59 or occasional reporting may be arranged with the client.

60 Withholding Information

61 [7] In some circumstances, a lawyer may be justified in delaying transmission of information when the
62 client would be likely to react imprudently to an immediate communication. Thus, a lawyer might withhold
63 a psychiatric diagnosis of a client when the examining psychiatrist indicates that disclosure would harm
64 the client. A lawyer may not withhold information to serve the lawyer's own interest or convenience or the
65 interests or convenience of another person. Rules or court orders governing litigation may provide that
66 information supplied to a lawyer may not be disclosed to the client. Rule 3.4(c) directs compliance with
67 such rules or orders.

68

Rule 1.6. Confidentiality of Information.

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

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

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

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

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

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

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

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

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

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

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

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Comment

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

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

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

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

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

59 Authorized Disclosure

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

67 Disclosure Adverse to Client

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

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

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

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

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

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

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

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

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

123 Detection of Conflicts of Interest

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

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

148 ~~{13}~~[15] A lawyer may be ordered to reveal information relating to the representation of a client by a
149 court or by another tribunal or governmental entity claiming authority pursuant to other law to compel the
150 disclosure. Absent informed consent of the client to do otherwise, the lawyer should assert on behalf of
151 the client all nonfrivolous claims that the order is not authorized by other law or that the information
152 sought is protected against disclosure by the attorney-client privilege or other applicable law. In the event
153 of an adverse ruling, the lawyer must consult with the client about the possibility of appeal to the extent
154 required by Rule 1.4. Unless review is sought, however, paragraph (b)(6) permits the lawyer to comply
155 with the court's order.

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156 ~~{14}~~[16] Paragraph (b) permits disclosure only to the extent the lawyer reasonably believes the
157 disclosure is necessary to accomplish one of the purposes specified. Where practicable, the lawyer
158 should first seek to persuade the client to take suitable action to obviate the need for disclosure. In any
159 case, a disclosure adverse to the client's interest should be no greater than the lawyer reasonably
160 believes necessary to accomplish the purpose. ~~If~~ the disclosure will be made in connection with a judicial
161 proceeding, the disclosure should be made in a manner that limits access to the information to the
162 tribunal or other persons having a need to know it and appropriate protective orders or other
163 arrangements should be sought by the lawyer to the fullest extent practicable.

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164 ~~{15}~~[17] Paragraph (b) permits but does not require the disclosure of information relating to a client's
165 representation to accomplish the purposes specified in paragraphs (b)(1) through (b)(6). In exercising the
166 discretion conferred by this Rule, the lawyer may consider such factors as the nature of the lawyer's
167 relationship with the client and with those who might be injured by the client, the lawyer's own
168 involvement in the transaction and factors that may extenuate the conduct in question. A lawyer's
169 decision not to disclose as permitted by paragraph (b) does not violate this Rule. Disclosure may be
170 required, however, by other rules. Some rules require disclosure only if such disclosure would be
171 permitted by paragraph (b). See Rules 1.2(d), 4.1(b), 8.1 and 8.3. Rule 3.3, on the other hand, requires
172 disclosure in some circumstances regardless of whether such disclosure is permitted by this Rule. See
173 Rule 3.3(c).

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Acting Competently to Preserve Confidentiality

174
175 ~~{16}~~A-~~[18]~~ Paragraph (c) requires a lawyer ~~must~~to act competently to safeguard information relating
176 to the representation of a client against unauthorized access by third parties and against inadvertent or
177 unauthorized disclosure by the lawyer or other persons who are participating in the representation of the
178 client or who are subject to the lawyer's supervision. See Rules 1.1, 5.1 and 5.3. The unauthorized
179 access to, or the inadvertent or unauthorized disclosure of, information relating to the representation of a
180 client does not constitute a violation of paragraph (c) if the lawyer has made reasonable efforts to prevent
181 the access or disclosure. Factors to be considered in determining the reasonableness of the lawyer's
182 efforts include, but are not limited to, the sensitivity of the information, the likelihood of disclosure if
183 additional safeguards are not employed, the cost of employing additional safeguards, the difficulty of
184 implementing the safeguards, and the extent to which the safeguards adversely affect the lawyer's ability

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

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193 [47-19] When transmitting a communication that includes information relating to the representation of
 194 a client, the lawyer must take reasonable precautions to prevent the information from coming into the
 195 hands of unintended recipients. This duty, however, does not require that the lawyer use special security
 196 measures if the method of communication affords a reasonable expectation of privacy. Special
 197 circumstances, however, may warrant special precautions. Factors to be considered in determining the
 198 reasonableness of the lawyer's expectation of confidentiality include the sensitivity of the information and
 199 the extent to which the privacy of the communication is protected by law or by a confidentiality
 200 agreement. A client may require the lawyer to implement special security measures not required by this
 201 Rule or may give informed consent to the use of a means of communication that would otherwise be
 202 prohibited by this Rule. Whether a lawyer may be required to take additional steps in order to comply with
 203 other law, such as state and federal laws that govern data privacy, is beyond the scope of these Rules.

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204 Former Client

205 [4820] The duty of confidentiality continues after the client-lawyer relationship has terminated. See
 206 Rule 1.9(c)(2). See Rule 1.9(c)(1) for the prohibition against using such information to the disadvantage of
 207 the former client.

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208 [4920a] Paragraph (ed) is an addition to ABA Model Rule 1.6 and provides for confidentiality of
 209 information between lawyers providing assistance to other lawyers under an a Utah State Bar endorsed
 210 lawyer assistance program.

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Rule 1.17. Sale of Law Practice.

A lawyer or a law firm may sell or purchase a law practice or an area of practice, including good will, if the following conditions are satisfied:

(a) The seller ceases to engage in the private practice of law, or in the area of practice that has been sold in the geographic area in which the practice has been conducted;

(b) The entire practice, or the entire area of practice, is sold to one or more lawyers or law firms;

(c) The seller gives written notice to each of the seller's clients regarding:

(c)(1) the proposed sale and the identity of the purchaser;

(c)(2) the client's right to retain other counsel or to take possession of the file; and

(c)(3) the fact that the client's consent to the transfer of the client's files will be presumed if the client does not take any action or does not otherwise object within ninety (90) days of ~~mailing of the~~sending written notice; and

(d) The fees charged clients are not increased by reason of the sale.

Comment

[1] The practice of law is a profession, not merely a business. Clients are not commodities who can be purchased and sold at will. Pursuant to this Rule, when a lawyer or an entire firm ceases to practice, or ceases to practice in an area of law, and other lawyers or firms take over the representation, the selling lawyer or firm may obtain compensation for the reasonable value of the practice as may withdrawing partners of law firms. See Rules 5.4 and 5.6.

Notification

In complying with this Rule, a seller must undertake reasonable steps in locating the clients who would be subject to the sale of the practice or area of practice. Typically, this would require attempts to contact the client at the last known address.

Termination of Practice by the Seller

[2] The requirement that all of the private practice, or all of an area of practice, be sold is satisfied if the seller in good faith makes the entire practice or the area of practice available for sale to the purchasers. The fact that a number of the seller's clients decide not to be represented by the purchasers but take their matters elsewhere, therefore, does not result in a violation. Return to private practice as a result of an unanticipated change in circumstances does not necessarily result in a violation. For example, a lawyer who has sold the practice to accept an appointment to judicial office does not violate the requirement that the sale be attendant to cessation of practice if the lawyer later resumes private practice upon being defeated in a contested or a retention election for the office or resigns from a ~~Judiciary~~ judicial position.

[3] The requirement that the seller cease to engage in the private practice of law in the geographic area does not prohibit employment as a lawyer on the staff of a public agency or a legal services entity that provides legal services to the poor, or as in-house counsel to a business.

37 [4] The Rule permits a sale of an entire practice attendant upon retirement from the private practice of
38 law within the geographic area. The remaining language of the Model Rule Comment [4] has been
39 intentionally omitted as unnecessary.

40 [5] This Rule also permits a lawyer or law firm to sell an area of practice. If an area of practice is sold,
41 the law firm or the lawyer remaining in the active practice of law must cease accepting any matters in the
42 area of practice that has been sold, either as counsel or co-counsel or by assuming joint responsibility for
43 a matter in connection with the division of a fee with another lawyer as would otherwise be permitted by
44 Rule 1.5(e). Selling a law practice or an area of practice is distinct from selling an ownership interest in a
45 law firm, and nothing in this Rule prohibits the latter even when the divesting lawyer remains active in the
46 practice of law as a non-owning associate or in an of counsel capacity. For example, a lawyer or law firm
47 with a substantial number of estate planning matters and a substantial number of probate administration
48 cases may sell the estate planning portion of the practice but remain in the practice of law by
49 concentrating on probate administration; however, that practitioner or law firm may not thereafter accept
50 any estate planning matters. Although a lawyer who leaves a geographical area typically would sell the
51 entire practice, this Rule permits the lawyer to limit the sale to one or more areas of the practice, thereby
52 preserving the lawyer's right to continue practice in the areas of the practice that were not sold.

53 Sale of Entire Practice or Entire Area of Practice

54 [6] ~~This~~The Rule requires that the seller's entire practice or an entire area of practice be sold. The
55 prohibition against sale of less than an entire practice area protects those clients whose matters are less
56 lucrative and who might find it difficult to secure other counsel if a sale could be limited to substantial fee-
57 generating matters. The purchasers are required to undertake all client matters in the practice or practice
58 area, subject to client consent. This requirement is satisfied, however, even if a purchaser is unable to
59 undertake a particular client matter because of a conflict of interest.

60 Client Confidences, Consent and Notice

61 [7] Negotiations between seller and prospective purchaser prior to disclosure of information relating to
62 a specific representation of an identifiable client no more violate the confidentiality provisions of Rule 1.6
63 than do preliminary discussions concerning the possible association of another lawyer or mergers
64 between firms, with respect to which client consent is not required. Providing the purchaser access to
65 client-specific information relating to the representation and to the file, however, requires client consent.
66 The Rule provides that before such information can be disclosed by the seller to the purchaser, the client
67 must be given actual written notice of the contemplated sale.

68 [8] Intentionally omitted as unnecessary.

69 [9] All elements of client autonomy, including the client's absolute right to discharge a lawyer and
70 transfer the representation to another, survive the sale of the practice or area of practice.

71 Fee Arrangements Between Client and Purchaser

72 | [10] The sale may not be financed by increases in fees charged to the clients of the practice. Existing
73 | ~~agreements~~arrangements between the seller and the client as to fees and the scope of the work must be
74 | honored by the purchaser.

75 | Other Applicable Ethical Standards

76 | [11] Lawyers participating in the sale of a law practice or a practice area are subject to the ethical
77 | standards applicable to involving another lawyer in the representation of a client. These include, for
78 | example, the seller's obligation to exercise competence in identifying a purchaser qualified to assume the
79 | practice and the purchaser's obligation to undertake the representation competently (see Rule 1.1); to
80 | charge reasonable fees (see Rule 1.5); to protect client confidences (see Rule 1.6); to ~~resolve conflict~~
81 | situations~~avoid disqualifying conflicts and secure the client's informed consent for those conflicts for which~~
82 | there is agreement (see Rules 1.7; 1.9 and Rule 1.0(e) for the definition of informed consent); to releases
83 | of liability (see Rule 1.8(h); and to withdrawal of representation (see Rule 1.16)).

84 | [12] If approval of the substitution of the purchasing lawyer for the selling lawyer is required by the
85 | rules of any tribunal in which a matter is pending, such approval must be obtained before the matter can
86 | be included in the sale (see Rule 1.16).

87 | Applicability of the Rule

88 | [13] This Rule applies to the sale of a law practice by representatives of a deceased, disabled or
89 | disappeared lawyer. Thus, the seller may be represented by a nonlawyer representative not subject to
90 | these Rules. Since, however, no lawyer may participate in a sale of a law practice which does not
91 | conform to the requirements of this Rule, the representatives of the seller as well as the purchasing
92 | lawyer can be expected to see to it that they are met.

93 | [14] Admission to or retirement from a law partnership or professional association, retirement plans
94 | and similar arrangements, and a sale of tangible assets of a law practice, do not constitute a sale or
95 | purchase governed by this Rule.

96 | [15] This Rule does not apply to the ~~transfer~~transfers of legal representation between lawyers when
97 | such transfers are unrelated to the sale of a practice or an area of practice.

98 | [15a] This Rule does not prohibit a lawyer from selling an interest in a law firm and thereafter
99 | continuing association with the firm or in an of-counsel capacity.

100 | [15b] The body of the ABA Model Rule 1.17 does not provide for inclusion of the identity of the
101 | purchaser in the written notice; however, Comment [7] to the ABA Model Rule does indicate that the
102 | identity of the purchaser should be given in writing to clients. Utah's Rule 1.17 departs from the ABA
103 | Model Rule by requiring only one written notice and enumerating in the body of the rule all required
104 | content of the notice.

105 | [15c] Section (c)(3) of Utah's Rule 1.17 deviates from the ABA Model Rule by providing that the 90-
106 | day client objection period begins to run from the mailing of the notice rather than from receipt of the
107 | notice. The only practical way to prove receipt would be by commercial courier or certified/registered mail.
108 | Proving receipt of notice could therefore be cost-prohibitive, especially to the small sole practitioner. Often

109 when a lawyer does not have a viable address for a client, it is because the subject-matter of the
110 representation has become stale or the client has failed to keep in touch with the lawyer presumably due
111 to a loss of interest in the matter. Both the Utah Rules of Civil Procedure and the Utah Rules of Criminal
112 Procedure allow for notices to be given by regular U.S. mail at the last-known address for the client and
113 provide a presumption of service upon deposit of the notice in the mail, postage pre-paid. There does not
114 appear to be good reason to place a more onerous burden upon a lawyer selling a law practice or area of
115 practice. Whether the client received actual notice of the proposed sale of a practice or area of practice,
116 the client is not abandoned; there is new counsel to protect the client's existing rights. The last paragraph
117 of Model Rule 1.17(c)(3) has been intentionally omitted as unnecessary.

118 [15d] The Utah version of Rule 1.17 deletes the provision of the ABA Model Rule (c)(3) relating to
119 obtaining court order for transfer of representation in those instances where the lawyer cannot give and
120 prove actual notice of the proposed sale of a law practice or area of practice to a client. As discussed
121 above, Utah's version of Rule 1.17 does not require proof of actual notice of the sale of a law practice or
122 area of practice before the 90-day client objection period begins to run; therefore, it is impossible to know
123 which clients received actual notice and which did not.

124 [15e] The Utah version of Rule 1.17 changes the context of the ABA Model Rule 1.17(d) regarding
125 fees from "shall not" to "are" because the ABA wording seemed to be in the nature of a mandate and out
126 of place with the conditional language of the Rule.

127

Rule 1.18. Duties to Prospective Client.

(a) A person who ~~discusses~~consults with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.

(b) Even when no client-lawyer relationship ensues, a lawyer who has ~~had discussions with~~learned information from a prospective client shall not use or reveal that ~~information learned in the consultation~~, except as Rule 1.9 would permit with respect to information of a former client.

(c) A lawyer subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in paragraph (d). If a lawyer is disqualified from representation under this paragraph, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (d).

(d) When the lawyer has received disqualifying information as defined in paragraph (c), representation is permissible if:

(d)(1) both the affected client and the prospective client have given informed consent, confirmed in writing, or;

(d)(2) the lawyer who received the information took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client; and

(d)(2)(i) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(d)(2)(ii) written notice is promptly given to the prospective client.

Comment

[1] Prospective clients, like clients, may disclose information to a lawyer, place documents or other property in the lawyer's custody, or rely on the lawyer's advice. A lawyer's ~~discussions~~consultations with a prospective client usually are limited in time and depth and leave both the prospective client and the lawyer free (and sometimes required) to proceed no further. Hence, prospective clients should receive some but not all of the protection afforded clients.

~~[2] Not all persons who communicate information to a lawyer are entitled to protection under this Rule. A person who communicates information unilaterally to a lawyer, without any reasonable expectation that the lawyer is willing to discuss the possibility of forming a client-lawyer relationship, is not a "prospective client" within the meaning of paragraph (a).~~

[2] A person becomes a prospective client by consulting with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter. Whether communications, including written, oral, or electronic communications, constitute a consultation depends on the circumstances. For example, a consultation is likely to have occurred if a lawyer, either in person or through the lawyer's advertising in any medium, specifically requests or invites the submission of information about a potential

38 representation without clear and reasonably understandable warnings and cautionary statements that
39 limit the lawyer's obligations, and a person provides information in response. See also Comment [4]. In
40 contrast, a consultation does not occur if a person provides information to a lawyer in response to
41 advertising that merely describes the lawyer's education, experience, areas of practice, and contact
42 information, or provides legal information of general interest. Such a person communicates information
43 unilaterally to a lawyer, without any reasonable expectation that the lawyer is willing to discuss the
44 possibility of forming a client-lawyer relationship, and is thus not a "prospective client". Moreover, a
45 person who communicates with a lawyer for the purpose of disqualifying the lawyer is not a "prospective
46 client."

47 [3] It is often necessary for a prospective client to reveal information to the lawyer during an initial
48 consultation prior to the decision about formation of a client-lawyer relationship. The lawyer often must
49 learn such information to determine whether there is a conflict of interest with an existing client and
50 whether the matter is one that the lawyer is willing to undertake. Paragraph (b) prohibits the lawyer from
51 using or revealing that information, except as permitted by Rule 1.9, even if the client or lawyer decides
52 not to proceed with the representation. The duty exists regardless of how brief the initial conference may
53 be.

54 [4] In order to avoid acquiring disqualifying information from a prospective client, a lawyer considering
55 whether or not to undertake a new matter should limit the initial ~~interview~~consultation to only such
56 information as reasonably appears necessary for that purpose. Where the information indicates that a
57 conflict of interest or other reason for non-representation exists, the lawyer should so inform the
58 prospective client or decline the representation. If the prospective client wishes to retain the lawyer, and if
59 consent is possible under Rule 1.7, then consent from all affected present or former clients must be
60 obtained before accepting the representation.

61 [5] A lawyer may condition ~~conversations~~a consultation with a prospective client on the person's
62 informed consent that no information disclosed during the consultation will prohibit the lawyer from
63 representing a different client in the matter. See Rule 1.0(e) for the definition of informed consent. If the
64 agreement expressly so provides, the prospective client may also consent to the lawyer's subsequent use
65 of information received from the prospective client.

66 [6] Even in the absence of an agreement, under paragraph (c), the lawyer is not prohibited from
67 representing a client with interests adverse to those of the prospective client in the same or a
68 substantially related matter unless the lawyer has received from the prospective client information that
69 could be significantly harmful if used in the matter.

70 [7] Under paragraph (c), the prohibition in this Rule is imputed to other lawyers as provided in Rule
71 1.10, but, under paragraph (d)(1), imputation may be avoided if the lawyer obtains the informed consent,
72 confirmed in writing, of both the prospective and affected clients. In the alternative, imputation may be
73 avoided if the conditions of paragraph (d)(2) are met and all disqualified lawyers are timely screened and
74 written notice is promptly given to the prospective client. See Rule 1.0(l)(requirements for screening

75 procedures). Paragraph (d)(2)(i) does not prohibit the screened lawyer from receiving a salary or
76 partnership share established by prior independent agreement, but that lawyer may not receive
77 compensation directly related to the matter in which the lawyer is disqualified.

78 [8] Notice, including a general description of the subject matter about which the lawyer was consulted,
79 and of the screening procedures employed, generally should be given as soon as practicable after the
80 need for screening becomes apparent..

81 [9] For the duty of competence of a lawyer who gives assistance on the merits of a matter to a
82 prospective client, see Rule 1.1. For a lawyer's duties when a prospective client entrusts valuables or
83 papers to the lawyer's care, see Rule 1.15.

84

1 **Rule 4.4. Respect for Rights of Third Persons.**

2 (a) In representing a client, a lawyer shall not use means that have no substantial purpose other than
3 to embarrass, delay or burden a third person, or use methods of obtaining evidence that violate the legal
4 rights of such a person.

5 (b) A lawyer who receives a document or electronically stored information relating to the
6 representation of the lawyer's client and knows or reasonably should know that the document or
7 electronically stored information was inadvertently sent shall promptly notify the sender.

8 Comment

9 [1] Responsibility to a client requires a lawyer to subordinate the interests of others to those of the
10 client, but that responsibility does not imply that a lawyer may disregard the rights of third persons. It is
11 impractical to catalogue all such rights, but they include legal restrictions on methods of obtaining
12 evidence from third persons and unwarranted intrusions into privileged relationships, such as the client-
13 lawyer relationship.

14 [2] Paragraph (b) recognizes that lawyers sometimes receive ~~documents~~ a document or electronically
15 stored information that ~~were~~ was mistakenly sent or produced by opposing parties or their lawyers. A
16 document or electronically stored information is inadvertently sent when it is accidentally transmitted, such
17 as when an email or letter is misaddressed or a document or electronically stored information is
18 accidentally included with information that was intentionally transmitted. If a lawyer knows or reasonably
19 should know that such a document or electronically stored information was sent inadvertently, then this
20 Rule requires the lawyer to promptly notify the sender in order to permit that person to take protective
21 measures. Whether the lawyer is required to take additional steps, such as returning or deleting the
22 original document or electronically stored information, is a matter of law beyond the scope of these Rules,
23 as is the question of whether the privileged status of a document or electronically stored information has
24 been waived. Similarly, this Rule does not address the legal duties of a lawyer who receives a document
25 or electronically stored information that the lawyer knows or reasonably should know may have been
26 ~~wrongfully~~ inappropriately obtained by the sending person. For purposes of this Rule, "document or
27 electronically stored information" includes in addition to paper documents, e-mail or other electronic
28 ~~modes of transmission~~ and other forms of electronically stored information, including embedded data
29 (commonly referred to as "metadata"), that is subject to being read or put into readable form. Metadata in
30 electronic documents creates an obligation under this Rule only if the receiving lawyer knows or
31 reasonably should know that the metadata was inadvertently sent to the receiving lawyer.

32 [3] Some lawyers may choose to return a document or delete electronically stored information
33 unread, for example, when the lawyer learns before receiving ~~the document~~ it that it was inadvertently
34 sent ~~to the wrong address~~. Where a lawyer is not required by applicable law to do so, the decision to
35 voluntarily return such a document or delete electronically stored information is a matter of professional
36 judgment ordinarily reserved to the lawyer. See Rules 1.2 and 1.4.

37

Rule 5.3. Responsibilities Regarding Nonlawyer Assistants~~Assistance~~.

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a partner, and a lawyer who individually or together with other lawyers ~~possesses~~ possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(c)(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved;

or

(c)(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Comment

[1] Paragraph (a) requires lawyers with managerial authority within a law firm to make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that nonlawyers in the firm and nonlawyers outside the firm who work on firm matters act in a way compatible with the professional obligations of the lawyer. See Comment [6] to Rule 1.1 (retaining lawyers outside the firm) and Comment [1] to Rule 5.1 (responsibilities with respect to lawyers within a firm). Paragraph (b) applies to lawyers who have supervisory authority over such nonlawyers within or outside the firm. Paragraph (c) specifies the circumstances in which a lawyer is responsible for the conduct of such nonlawyers within or outside the firm that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer. The firm's compliance with paragraph (a) resides with each partner or other lawyer in the firm with comparable authority.

[1a] Utah's Comment [1] differs from the ABA Model Rule's Comment [1]. The Model Rule Comment suggests the possibility that a firm could be in violation of this Rule without an individual or group of individuals also being in violation. Utah's Comment [1] makes clear that, even though the concept of firm discipline is possible, a firm should not be responsible in the absence of individual culpability for a rule violation.

Nonlawyers Within the Firm

[2] Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer must give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be

38 responsible for their work product. The measures employed in supervising nonlawyers should take
39 account of the fact that they do not have legal training and are not subject to professional discipline.

40 ~~[2] Paragraph (a) requires lawyers with managerial authority within a law firm to make reasonable~~
41 ~~efforts to establish internal policies and procedures designed to provide reasonable assurance that~~
42 ~~nonlawyers in the firm will act in a way compatible with the Rules of Professional Conduct. See Comment~~
43 ~~[1] to Rule 5.1. Paragraph (b) applies to lawyers who have supervisory authority over the work of a~~
44 ~~nonlawyer. Paragraph (c) specifies the circumstances in which a lawyer is responsible for conduct of a~~
45 ~~nonlawyer that would be a violation of the Rules of Professional Conduct if engaged in by a~~
46 ~~lawyer.~~ Nonlawyers Outside the Firm

47 [3] A lawyer may use nonlawyers outside the firm to assist the lawyer in rendering legal services to
48 the client. Examples include the retention of an investigative or paraprofessional service, hiring a
49 document management company to create and maintain a database for complex litigation, sending client
50 documents to a third party for printing or scanning, and using an Internet-based service to store client
51 information. When using such services outside the firm, a lawyer must make reasonable efforts to ensure
52 that the services are provided in a manner that is compatible with the lawyer's professional obligations.
53 The extent of this obligation will depend upon the circumstances, including the education, experience and
54 reputation of the nonlawyer; the nature of the services involved; the terms of any arrangements
55 concerning the protection of client information; and the legal and ethical environments of the jurisdictions
56 in which the services will be performed, particularly with regard to confidentiality. See also Rules 1.1
57 (competence), 1.2 (allocation of authority), 1.4 (communication with client), 1.6 (confidentiality),
58 5.4(a)(professional independence of the lawyer), and 5.5(a)(unauthorized practice of law). When retaining
59 or directing a nonlawyer outside the firm, a lawyer should communicate directions appropriate under the
60 circumstances to give reasonable assurance that the nonlawyer's conduct is compatible with the
61 professional obligations of the lawyer.

62 [4] Where the client directs the selection of a particular nonlawyer service provider outside the firm,
63 the lawyer ordinarily should agree with the client concerning the allocation of responsibility for monitoring
64 as between the client and the lawyer. See Rule 1.2. When making such an allocation in a matter pending
65 before a tribunal, lawyers and parties may have additional obligations that are a matter of law beyond the
66 scope of these Rules.

67 ~~The firm's compliance with paragraph (a) resides with each partner or other lawyer in the firm with~~
68 ~~comparable authority.~~

69 ~~[2a] Utah's Comment [2] differs from the ABA Model Rule's Comment [2]. The Model Rule Comment~~
70 ~~suggests the possibility that a firm could be in violation of this Rule without an individual or group of~~
71 ~~individuals also being in violation. Utah's Comment [2] makes clear that, even though the concept of firm~~
72 ~~discipline is possible, a firm should not be responsible in the absence of individual culpability for a rule~~
73 ~~violation.~~

74

1 **Rule 5.5. Unauthorized Practice of Law; Multijurisdictional Practice of Law.**

2 (a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession
3 in that jurisdiction, or assist another in doing so.

4 (b) A lawyer who is not admitted to practice in this jurisdiction shall not:

5 (b)(1) except as authorized by these Rules or other law, establish an office or other systematic and
6 continuous presence in this jurisdiction for the practice of law; or

7 (b)(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this
8 jurisdiction.

9 (c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from
10 practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

11 (c)(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and
12 who actively participates in the matter;

13 (c)(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or
14 another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to
15 appear in such proceeding or reasonably expects to be so authorized;

16 (c)(3) are in or reasonably related to a pending or potential arbitration, mediation or other alternative
17 dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably
18 related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not
19 services for which the forum requires pro hac vice admission; or

20 (c)(4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the
21 lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.

22 (d) A lawyer admitted in another United States jurisdiction and not disbarred or suspended from
23 practice in any jurisdiction may provide legal services through an office or other systematic and
24 continuous presence in this jurisdiction without admission to the Utah State Bar if that:

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25 (d)(1) the services are provided to the lawyer's employer or its organizational affiliates while the
26 lawyer has a pending application for admission to the Utah State Bar and are not services for which the
27 forum requires pro hac vice admission; or

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28 (d)(2) the services provided are are services that the lawyer is authorized to provide by specific
29 federal or Utah law or by applicable rule, law or other law or rule of this jurisdiction.

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30 Comment

31 [1] A lawyer may practice law only in a jurisdiction in which the lawyer is authorized to practice. A
32 lawyer may be admitted to practice law in a jurisdiction on a regular basis or may be authorized by court
33 rule or order or by law to practice for a limited purpose or on a restricted basis. Paragraph (a) applies to
34 unauthorized practice of law by a lawyer, whether through the lawyer's direct action or by the lawyer's
35 assisting another person. For example, a lawyer may not assist a person in practicing law in violation of
36 the rules governing professional conduct in that person's jurisdiction.

37 [2] The definition of the practice of law is established by law and varies from one jurisdiction to
38 another. The "practice of law" in Utah is defined in ~~Chapter 13A, Rule 1-0~~ Rule 14-802(b)(1),
39 Authorization to Practice Law, of the Supreme Court Rules of Professional Practice. This Rule does not
40 prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, so
41 long as the lawyer supervises the delegated work and retains responsibility for their work. See Rule 5.3.

42 [2a] The Utah rule modifies the second sentence of ABA Comment [2] to reflect and be consistent
43 with Rule 14-802(b)(1), Authorization to Practice Law, of the Supreme Court Rules of Professional
44 Practice, which both defines the "practice of law" and expressly authorizes nonlawyers to engage in some
45 aspects of the practice of law as long as their activities are confined to the categories of services
46 specified in that rule.

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47 [3] A lawyer may provide professional advice and instruction to nonlawyers whose employment
48 requires knowledge of the law; for example, claims adjusters, employees of financial or commercial
49 institutions, social workers, accountants and persons employed in government agencies. Lawyers also
50 may assist independent nonlawyers, such as paraprofessionals, who are authorized by the law of a
51 jurisdiction to provide particular law-related services. In addition, a lawyer may counsel nonlawyers who
52 wish to proceed pro se.

53 [4] Other than as authorized by law or this Rule, a lawyer who is not admitted to practice generally in
54 this jurisdiction violates paragraph (b)(1) if the lawyer establishes an office or other systematic and
55 continuous presence in this jurisdiction for the practice of law. Presence may be systematic and
56 continuous even if the lawyer is not physically present here. Such a lawyer must not hold out to the public
57 or otherwise represent that the lawyer is admitted to practice law in this jurisdiction. See also Rules 7.1(a)
58 and 7.5(b).

59 [5] There are occasions in which a lawyer admitted to practice in another United States jurisdiction,
60 and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a
61 temporary basis in this jurisdiction under circumstances that do not create an unreasonable risk to the
62 interests of their clients, the public or the courts. Paragraph (c) identifies four such circumstances. The
63 fact that conduct is not so identified does not imply that the conduct is or is not authorized. With the
64 exception of paragraphs (d)(1) and (d)(2), this Rule does not authorize a lawyer to establish an office or
65 other systematic and continuous presence in this jurisdiction without being admitted to practice generally
66 here.

67 [6] There is no single test to determine whether a lawyer's services are provided on a "temporary
68 basis" in this jurisdiction and may therefore be permissible under paragraph (c). Services may be
69 "temporary" even though the lawyer provides services in this jurisdiction on a recurring basis, or for an
70 extended period of time, as when the lawyer is representing a client in a single lengthy negotiation or
71 litigation.

72 [7] Paragraphs (c) and (d) apply to lawyers who are admitted to practice law in any United States
73 jurisdiction, which includes the District of Columbia and any state, territory or commonwealth of the United

74 States. The word "admitted" in ~~paragraph~~paragraphs (c) and (d) contemplates that the lawyer is
75 authorized to practice in the jurisdiction in which the lawyer is admitted and excludes a lawyer who while
76 technically admitted is not authorized to practice, because, for example, the lawyer is on inactive status.

77 [8] Paragraph (c)(1) recognizes that the interests of clients and the public are protected if a lawyer
78 admitted only in another jurisdiction associates with a lawyer licensed to practice in this jurisdiction. For
79 this paragraph to apply, however, the lawyer admitted to practice in this jurisdiction must actively
80 participate in and share responsibility for the representation of the client.

81 [9] Lawyers not admitted to practice generally in a jurisdiction may be authorized by law or order of a
82 tribunal or an administrative agency to appear before the tribunal or agency. This authority may be
83 granted pursuant to formal rules governing admission pro hac vice or pursuant to informal practice of the
84 tribunal or agency. Under paragraph (c)(2), a lawyer does not violate this Rule when the lawyer appears
85 before a tribunal or agency pursuant to such authority. To the extent that a court rule or other law of this
86 jurisdiction requires a lawyer who is not admitted to practice in this jurisdiction to obtain admission pro
87 hac vice before appearing before a tribunal or administrative agency, this Rule requires the lawyer to
88 obtain that authority.

89 [10] Paragraph (c)(2) also provides that a lawyer rendering services in this jurisdiction on a temporary
90 basis does not violate this Rule when the lawyer engages in conduct in anticipation of a proceeding or
91 hearing in a jurisdiction in which the lawyer is authorized to practice law or in which the lawyer reasonably
92 expects to be admitted pro hac vice. Examples of such conduct include meetings with the client,
93 interviews of potential witnesses and the review of documents. Similarly, a lawyer admitted only in
94 another jurisdiction may engage in conduct temporarily in this jurisdiction in connection with pending
95 litigation in another jurisdiction in which the lawyer is or reasonably expects to be authorized to appear,
96 including taking depositions in this jurisdiction.

97 [11] When a lawyer has been or reasonably expects to be admitted to appear before a court or
98 administrative agency, paragraph (c)(2) also permits conduct by lawyers who are associated with that
99 lawyer in the matter, but who do not expect to appear before the court or administrative agency. For
100 example, subordinate lawyers may conduct research, review documents and attend meetings with
101 witnesses in support of the lawyer responsible for the litigation.

102 [12] Paragraph (c)(3) permits a lawyer admitted to practice law in another jurisdiction to perform
103 services on a temporary basis in this jurisdiction if those services are in or reasonably related to a
104 pending or potential arbitration, mediation or other alternative dispute resolution proceeding in this or
105 another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a
106 jurisdiction in which the lawyer is admitted to practice. The lawyer, however, must obtain admission pro
107 hac vice in the case of a court-annexed arbitration or mediation or otherwise if court rules or law so
108 require.

109 [13] Paragraph (c)(4) permits a lawyer admitted in another jurisdiction to provide certain legal services
 110 on a temporary basis in this jurisdiction that arise out of or are reasonably related to the lawyer's practice
 111 in a jurisdiction in which the lawyer is admitted but are not within paragraphs (c)(2) or (c)(3).

112 [13a] The last sentence in Comment [13] to ABA Model Rule 5.5 has been omitted to comport with
 113 Utah's definition of the "practice of law" in Rule 14-802(b)(1).

114 [14] Paragraphs (c)(3) and (c)(4) require that the services arise out of or be reasonably related to the
 115 lawyer's practice in a jurisdiction in which the lawyer is admitted. A variety of factors evidence such a
 116 relationship. The lawyer's client may have been previously represented by the lawyer or may be resident
 117 in or have substantial contacts with the jurisdiction in which the lawyer is admitted. The matter, although
 118 involving other jurisdictions, may have a significant connection with that jurisdiction. In other cases,
 119 significant aspects of the lawyer's work might be conducted in that jurisdiction or a significant aspect of
 120 the matter may involve the law of that jurisdiction. The necessary relationship might arise when the
 121 client's activities or the legal issues involve multiple jurisdictions, such as when the officers of a
 122 multinational corporation survey potential business sites and seek the services of their lawyer in
 123 assessing the relative merits of each. In addition, the services may draw on the lawyer's recognized
 124 expertise developed through the regular practice of law on behalf of clients in matters involving a
 125 particular body of federal, nationally-uniform, foreign or international law.

126 [15] Paragraph (d) identifies two circumstances in which a lawyer who is admitted to practice in
 127 another United States jurisdiction, and is not disbarred or suspended from practice in any jurisdiction,
 128 may establish an office or other systematic and continuous presence in this jurisdiction for the practice of
 129 law as well as provide legal services on a temporary basis. Except as provided in paragraphs (d)(1) and
 130 (d)(2), a lawyer who is admitted to practice law in another jurisdiction and who establishes an office or
 131 other systematic or continuous presence in this jurisdiction must become admitted to practice law
 132 generally in this jurisdiction.

133 [15a] Utah's Rule 5.5(d) differs from the ABA Model Rule by requiring a person providing services to
 134 the lawyer's employer to have submitted an application for admission to the Bar, such as an application
 135 for admission of attorney applicants under Supreme Court Rules of Professional Practice, Rule 14-704;
 136 admission by motion under Rule 14-705; or admission as House Counsel under Rule 14-719.

137 [15b] Utah Rule 5.5 does not adopt the ABA's provisions dealing with foreign lawyers, as other rules
 138 in Article 7 of the Rules Governing the Utah State Bar cover this matter.

139 [16] Paragraph (d)(1) applies to a lawyer who is employed by a client to provide legal services to the
 140 client or its organizational affiliates, i.e., entities that control, are controlled by or are under common
 141 control with the employer. This paragraph does not authorize the provision of personal legal services to
 142 the employer's officers or employees. The paragraph applies to in-house corporate lawyers, government
 143 lawyers and others who are employed to render legal services to the employer. The lawyer's ability to
 144 represent the employer outside the jurisdiction in which the lawyer is licensed generally serves the

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145 interests of the employer and does not create an unreasonable risk to the client and others because the
 146 employer is well situated to assess the lawyer's qualifications and the quality of the lawyer's work.

147 [17] If an employed lawyer establishes an office or other systematic presence in this jurisdiction for
 148 the purpose of rendering legal services to the employer under paragraph (d)(1), the lawyer may be
 149 subject to Utah admission and licensing registration or other requirements, including assessments for
 150 annual licensing fees and client protection funds, and mandatory continuing legal education.

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151 [18] Paragraph (d)(2) recognizes that a lawyer may provide legal services in a jurisdiction in which
 152 the lawyer is not licensed when authorized ~~to do so~~ by federal or other law, which includes statute, court
 153 rule, executive regulation or judicial precedent.

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154 [18a] The Utah version of Paragraph (d)(2) clarifies that a lawyer not admitted to practice in Utah
 155 may provide legal services under that paragraph only if the lawyer can cite specific federal or state law or
 156 an applicable rule that authorizes the services. See, e.g., Rule DUCivR 83-1.1, Rules of Practice of the
 157 United States District Court of the District of Utah; Rule 14-804 of the Supreme Court Rules of
 158 Professional Practice, admission for military-lawyer practice; Rule 14-719(d)(2), which provides a six-
 159 month period during which an in-house counsel is authorized to practice before submitting a House
 160 Counsel application; practice as a patent attorney before the United States Patent and Trademark Office.

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161 [19] A lawyer who practices law in this jurisdiction pursuant to paragraphs (c) or (d) or otherwise is
 162 subject to the disciplinary authority of this jurisdiction. See Rule 8.5(a).

163 [20] In some circumstances, a lawyer who practices law in this jurisdiction pursuant to paragraphs (c)
 164 or (d) may have to inform the client that the lawyer is not licensed to practice law in this jurisdiction. For
 165 example, that may be required when the representation occurs primarily in this jurisdiction and requires
 166 knowledge of the law of this jurisdiction. See Rule 1.4(b).

167 [21] Paragraphs (c) and (d) do not authorize communications advertising legal services ~~to prospective~~
 168 ~~clients in this jurisdiction by lawyers who are admitted to practice in other jurisdictions. Whether and how~~
 169 ~~lawyers may communicate the availability of their services to prospective clients in this jurisdiction are~~
 170 ~~governed by Rules 7.1 to 7.5.~~

171 [21a] Utah Rule 5.5 differs from the ABA Model Rule 5.5 in Comment [2], where the second sentence
 172 has been modified to reflect and be consistent with Chapter 13A, Rule 14-802(b)(1.0), Authorization to
 173 Practice Law, or of the Supreme Court Rules of Professional Practice, which both defines the "practice of
 174 law" and expressly authorizes nonlawyers to engage in some aspects of the practice of law as long as
 175 their activities are confined to the categories of services specified in that rule. Similarly, the last sentence
 176 in ABA Model Rule 5.5 Comment [13] has been omitted to comport with Utah's definition of the "practice
 177 of law". Utah's Rule also differs from the ABA Model Rule 5.5 in that Utah has not adopted the ABA's
 178 provisions dealing with foreign lawyers. Utah has its own Rule 14-718 of the Supreme Court Rules of
 179 Professional Practice, Licensing of Foreign Legal Consultants, covering this matter.

180

Rule 7.1. Communications Concerning a Lawyer's Services.

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:

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

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

(c) compares the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated; or

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

Comment

[1] This Rule governs all communications about a lawyer's services, including advertising permitted by Rule 7.2. Whatever means are used to make known a lawyer's services, statements about them must be truthful.

[2] Truthful statements that are misleading are also prohibited by this Rule. A truthful statement is misleading if it omits a fact necessary to make the lawyer's communication considered as a whole not materially misleading. A truthful statement is also misleading if there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no reasonable factual foundation.

[3] An advertisement that truthfully reports a lawyer's achievements on behalf of clients or former clients may be misleading if presented so as to lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters without reference to the specific factual and legal circumstances of each client's case. Similarly, an unsubstantiated comparison of the lawyer's services or fees with the services or fees of other lawyers may be misleading if presented with such specificity as would lead a reasonable person to conclude that the comparison can be substantiated. The inclusion of an appropriate disclaimer or qualifying language may preclude a finding that a statement is likely to create unjustified expectations or otherwise mislead a prospective client the public.

[4] See also Rule 8.4(e) for the prohibition against stating or implying 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.

[4a] The Utah Rule is different from the ABA Model Rule. Subsections (b), and (c), and (d) are added to the Rule to give further guidance as to which communications are false or misleading.

1 **Rule 7.1. Communications Concerning a Lawyer's Services.**

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16 lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services for
17 which there is no reasonable factual foundation.

18 [3] An advertisement that truthfully reports a lawyer's achievements on behalf of clients or former
19 clients may be misleading if presented so as to lead a reasonable person to form an unjustified
20 expectation that the same results could be obtained for other clients in similar matters without reference
21 to the specific factual and legal circumstances of each client's case. Similarly, an unsubstantiated
22 comparison of the lawyer's services or fees with the services or fees of other lawyers may be misleading
23 if presented with such specificity as would lead a reasonable person to conclude that the comparison can
24 be substantiated. The inclusion of an appropriate disclaimer or qualifying language may preclude a
25 finding that a statement is likely to create unjustified expectations or otherwise mislead the public.

26 [4] See also Rule 8.4(e) for the prohibition against stating or implying an ability to influence improperly
27 a government agency or official or to achieve results by means that violate the Rules of Professional
28 Conduct or other law.

29 [4a] The Utah Rule is different from the ABA Model Rule. Subsections (b) and (c) are added to the
30 Rule to give further guidance as to which communications are false or misleading.

31

Rule 7.2. Advertising.

(a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media. ~~As used in these Rules, "advertisement" shall mean any communication made to induce persons to use a lawyer's services.~~

~~(b) If the advertisement uses any actors to portray a lawyer, members of the law firm, or clients or utilizes depictions of fictionalized events or scenes, the same must be disclosed.~~

~~(c) All advertisements disseminated pursuant to these Rules shall include the name and office address of at least one lawyer or law firm responsible for their content.~~

~~(d) Every advertisement indicating that the charging of a fee is contingent on outcome or that the fee will be a percentage of the recovery shall set forth clearly the client's responsibility for the payment of costs and other expenses.~~

~~(e) A lawyer who advertises a specific fee or range of fees shall include all relevant charges and fees, and the duration such fees are in effect.~~

~~(f) A lawyer shall not give anything of value to a person for recommending the lawyer's services; except that a lawyer may: pay the reasonable cost of advertising permitted by these Rules and may pay the usual charges of a lawyer referral service or other legal service plan.~~

~~(b)(1) pay the reasonable costs of advertisements or communications permitted by this Rule;~~

~~(b)(2) pay the usual charges of a legal service plan or a lawyer referral service.~~

~~(b)(3) pay for a law practice in accordance with Rule 1.17; or~~

~~(b)(4) divide a fee with another lawyer as permitted by Rule 1.5(e).~~

~~(c) Any communication made pursuant to this Rule shall include the name and office address of at least one lawyer of the firm responsible for its content.~~

Comment

[1] To assist the public in learning about and obtaining legal services, lawyers should be allowed to make known their services not only through reputation but also through organized information campaigns in the form of advertising. Advertising involves an active quest for clients, contrary to the tradition that a lawyer should not seek clientele. However, the public's need to know about legal services can be fulfilled in part through advertising. This need is particularly acute in the case of persons of moderate means who have not made extensive use of legal services. The interest in expanding public information about legal services ought to prevail over considerations of tradition. Nevertheless, advertising by lawyers entails the risk of practices that are misleading or overreaching.

[2] This Rule permits public dissemination of information concerning a lawyer's name or firm name, address, email address, website and telephone number; the kinds of services the lawyer will undertake; the basis on which the lawyer's fees are determined, including prices for specific services and payment and credit arrangements; a lawyer's foreign language ability; names of references and, with their consent,

36 names of clients regularly represented; and other information that might invite the attention of those
37 seeking legal assistance.

38 [3] Questions of effectiveness and taste in advertising are matters of speculation and subjective
39 judgment. Some jurisdictions have had extensive prohibitions against television and other forms of
40 advertising, against advertising going beyond specified facts about a lawyer or against "undignified"
41 advertising. Television is, the Internet and other forms of electronic communication are now one of among
42 the most powerful media for getting information to the public, particularly persons of low and moderate
43 income; prohibiting television, Internet, and other forms of electronic advertising, therefore, would impede
44 the flow of information about legal services to many sectors of the public. Limiting the information that
45 may be advertised has a similar effect and assumes that the Bar can accurately forecast the kind of
46 information that the public would regard as relevant. Similarly, electronic media, such as the Internet, can
47 be an important source of information about legal services, and lawful communication by electronic
48 mail is permitted by this Rule. But see Rule 7.3(a) for the prohibition against the solicitation of a
49 prospective client through a real-time electronic exchange that is not initiated by the prospective
50 client lawyer.

51 [4] Neither this Rule nor Rule 7.3 prohibits communications authorized by law, such as notice to
52 members of a class in class action litigation.

53 Paying Others to Recommend a Lawyer

54 [5] ~~Lawyers~~ Except as permitted by Paragraph (f), lawyers are not permitted to pay others for
55 recommending the lawyer's services or for channeling professional work. Paragraph (b)(1) in a manner
56 that violates Rule 7.3. A communication contains a recommendation if it endorses or vouches for a
57 lawyer's credentials, abilities, competence, character, or other professional qualities. Paragraph (f),
58 however, allows a lawyer to pay for advertising and communications permitted by this Rule, including the
59 costs of print directory listings, on-line directory listings, newspaper ads, television and radio airtime,
60 domain-name registrations, sponsorship fees, banner ads, Internet-based advertisements and group
61 advertising. A lawyer may compensate employees, agents and vendors who are engaged to provide
62 marketing or client-development services, such as publicists, public-relations personnel, business-
63 development staff and website designers. See Rule 5.3 for the duties of lawyers and law firms with
64 respect to the conduct of nonlawyers who prepare marketing materials for them. Moreover, a lawyer
65 may pay others for generating client leads, such as Internet-based client leads, as long as the lead
66 generator does not recommend the lawyer, and any payment to the lead generator is consistent with the
67 lawyer's obligations under these rules. Rules 1.5(e) (division of fees) and 5.4 (professional independence
68 of the lawyer), and the lead generator's communications are consistent with Rule 7.1 (communications
69 concerning lawyer's services). To comply with Rule 7.1, a lawyer must not pay a lead generator that
70 states, implies, or creates a reasonable impression that it is recommending the lawyer, is making the
71 referral without payment from the lawyer, or has analyzed a person's legal problems when determining

72 which lawyer should receive the referral. See Rule 5.3 (duties of lawyers and law firms with respect to the
73 conduct of non-lawyers); Rule 8.4(a) (duty to avoid violating the Rules through the acts of another).

74 [6] A lawyer may pay the usual charges of a legal service plan or a lawyer referral service. A legal
75 service plan is a prepaid or group legal service plan or a similar delivery system that assists prospective
76 clients to secure legal representation. A lawyer referral service, on the other hand, is an organization that
77 holds itself out to the public to provide referrals to lawyers with appropriate experience in the subject
78 matter of the representation. No fee generating referral may be made to any lawyer or firm that has an
79 ownership interest in, or who operates or is employed by, a-the legal lawyer referral service, or who is
80 associated with a firm that has an ownership interest in, or operates or is employed by, a the lawyer
81 referral service.

82 [7] A lawyer who accepts assignments or referral from a legal service plan or referrals from a lawyer
83 referral service must act reasonably to assure that the activities of the plan or service are compatible with
84 the lawyer's professional obligations. See Rule 5.3. Legal service plans and lawyer referral services may
85 communicate with ~~prospective clients~~the public, but such communication must be in conformity with
86 these Rules. Thus, advertising must not be false or misleading, as would be the case if the
87 communications of a group advertising program or a group legal services plan would mislead ~~prospective~~
88 ~~clients~~the public to think that it was a lawyer referral service sponsored by a state agency or bar
89 association. Nor could the lawyer allow in-person, telephonic, or real-time contacts that would violate Rule
90 7.3.

91 ~~[7a]-[8]~~ [8] For the disciplinary authority and choice of law provisions applicable to advertising, see Rule
92 8.5.

93 [8a] This Rule differs from the ABA Model Rule in that it defines "advertisement" and places some
94 limitations on advertisements. Utah Rule 7.2(b)(2) also differs from the ABA Model Rule by permitting a
95 lawyer to pay the usual charges of any lawyer referral service. This is not limited to not-for-profit services.
96 Comment [6] to the Utah rule is modified accordingly.
97

1 **Rule 7.3. ~~Direct Contact with Prospective~~ Solicitation of Clients.**

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

5 (a)(1) is a lawyer; or

6 (a)(2) has a family, close personal, or prior professional relationship with the lawyer; or

7 (a)(3) is unable to make personal contact with a lawyer and the lawyer's contact with the prospective
8 client has been initiated by a third party on behalf of the prospective client.

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

12 (b)(1) the ~~prospective client~~ target of the solicitation has made known to the lawyer a desire not to be
13 solicited by the lawyer; or

14 (b)(2) the solicitation involves coercion, duress or harassment.

15 (c) Every written, recorded or electronic communication from a lawyer soliciting professional
16 employment from a ~~prospective client~~ anyone known to be in need of legal services in a particular matter
17 shall include the words "Advertising Material" on the outside envelope, if any, and at the beginning of any
18 recorded or electronic communication, unless the recipient of the communication is a person specified in
19 paragraphs (a)(1) or (a)(2). For the purposes of this subsection, "written communication" does not include
20 advertisement through public media, including but not limited to a telephone directory, legal directory,
21 newspaper or other periodical, outdoor advertising, radio, ~~or television~~ or webpage.

22 (d) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group
23 legal service plan operated by an organization not owned or directed by the lawyer that uses in-person or
24 other real-time communication to solicit memberships or subscriptions for the plan from persons who are
25 not known to need legal services in a particular matter covered by the plan.

26 Comment

27 [1] A solicitation is a targeted communication initiated by the lawyer that is directed to a specific
28 person and that offers to provide, or can reasonably be understood as offering to provide, legal services.
29 In contrast, a lawyer's communication typically does not constitute a solicitation if it is directed to the
30 general public, such as through a billboard, an Internet banner advertisement, a website or a television
31 commercial, or if it is in response to a request for information or is automatically generated in response to
32 Internet searches.

33 ~~[1]~~ [2] There is a potential for abuse ~~inherent in~~ when a solicitation involves direct in-person, ~~or other~~
34 ~~real-time communication~~ live telephone or real-time electronic contact by a lawyer with a ~~prospective~~
35 ~~client~~ someone known to need legal services. These forms of contact ~~between a lawyer and a~~
36 ~~prospective client~~ subject the layperson a person to the private importuning of the trained advocate in a
37 direct interpersonal encounter. The ~~prospective client~~ person, who may already feel overwhelmed by the

38 circumstances giving rise to the need for legal services, may find it difficult fully to evaluate all available
39 alternatives with reasoned judgment and appropriate self-interest in the face of the lawyer's presence and
40 insistence upon being retained immediately. The situation is fraught with the possibility of undue
41 influence, intimidation, and over-reaching.

42 ~~{1a} "Real time communication" means telephonic, electronic, radio, wire, wireless or other similar~~
43 ~~communication directed to a specific recipient and characterized by the immediacy and interactivity of~~
44 ~~response between individuals, such as that provided through standard telephone connections and~~
45 ~~Internet "chat rooms." This Comment is not included in the ABA Model Rule 7.3, and is added to clarify~~
46 ~~that the definition of real time communication is broad enough to cover real time communication of all~~
47 ~~types.~~

48 ~~{2} The {3} This potential for abuse inherent in direct in-person, and other real-time live telephone or~~
49 ~~real-time electronic solicitation of prospective clients justifies its prohibition, particularly since lawyers~~
50 ~~advertising and written and recorded communication permitted under Rule 7.2 offer have alternative~~
51 ~~means of conveying necessary information to those who may be in need of legal services. Advertising~~
52 ~~and written and recorded In particular, communications that may can be mailed or autodialed transmitted~~
53 ~~by email or other electronic means that do not involve real-time contact and do not violate other laws~~
54 ~~governing solicitations. These forms of communications and solicitations make it possible for a~~
55 ~~prospective client the public to be informed about the need for legal services, and about the qualifications~~
56 ~~of available lawyers and law firms, without subjecting the prospective client public to direct in-person, or~~
57 ~~other real-time live telephone or real-time electronic persuasion that may overwhelm the client's a~~
58 ~~person's judgment.~~

59 ~~{3} {4} The use of general advertising and written, recorded or electronic communications to transmit~~
60 ~~information from lawyer to prospective client the public, rather than direct in-person or other real-time~~
61 ~~communications, will help to ensure that the information flows cleanly as well as freely. The contents of~~
62 ~~advertisements and communications permitted under Rule 7.2 can be permanently recorded so that they~~
63 ~~cannot be disputed and may be shared with others who know the lawyer. This potential for informal~~
64 ~~review is itself likely to help guard against statements and claims that might constitute false and~~
65 ~~misleading communications in violation of Rule 7.1. The contents of direct in-person, ~~or other real-time~~~~
66 ~~communication between a lawyer and a prospective client live telephone or real-time electronic contact~~
67 ~~can be disputed and may not be subject to third-party scrutiny. Consequently, they are much more likely~~
68 ~~to approach (and occasionally cross) the dividing line between accurate representations and those that~~
69 ~~are false and misleading.~~

70 ~~{4} {5} There is far less likelihood that a lawyer would engage in abusive practices against an~~
71 ~~individual who is a former client, or a person with whom the lawyer has a close personal or family~~
72 ~~relationship, or where the lawyer has been asked by a third party to contact a prospective client who is~~
73 ~~unable to contact a lawyer, for example when the prospective client is incarcerated and is unable to place~~
74 ~~a call, or is mentally incapacitated and unable to appreciate the need for legal counsel. Nor is there a~~

75 serious potential for abuse in situations where the lawyer is motivated by considerations other than the
76 lawyer's pecuniary gain, or when the person contacted is also a lawyer. This rule is not intended to
77 prohibit a lawyer from applying for employment with an entity, for example, as in-house counsel. ~~or in~~
78 ~~situations in which the lawyer is motivated by considerations other than the lawyer's pecuniary gain. Nor~~
79 ~~is there a serious potential for abuse when the person contacted is a lawyer.~~ Consequently, the general
80 prohibition in Rule 7.3(a) and the requirements of Rule 7.3(c) are not applicable in those situations. Also,
81 paragraph (a) is not intended to prohibit a lawyer from participating in constitutionally protected activities
82 of public or charitable legal-service organizations or *bona fide* political, social, civic, fraternal, employee or
83 trade organizations whose purposes include providing or recommending legal services to ~~its~~their
84 members or beneficiaries.

85 [5a] Utah's Rule 7.3(a) differs from the ABA Model Rule by authorizing in-person or other real-time
86 contact by a lawyer with a prospective client when that prospective client is unable to make personal
87 contact with a lawyer, but a third party initiates contact with a lawyer on behalf of the prospective client
88 and the lawyer then contacts the prospective client.

89 ~~[5]~~[6] But even permitted forms of solicitation can be abused. Thus, any solicitation which contains
90 information that is false or misleading within the meaning of Rule 7.1, that involves coercion, duress or
91 harassment within the meaning of Rule 7.3(b)(2), or that involves contact with ~~a prospective client~~
92 someone who has made known to the lawyer a desire not to be solicited by the lawyer within the meaning
93 of Rule 7.3(b)(1) is prohibited. Moreover, if after sending a letter or other communication ~~to a client as~~
94 permitted by Rule 7.2 the lawyer receives no response, any further effort to communicate with the
95 ~~prospective client recipient of the communication~~ may violate the provisions of Rule 7.3(b).

96 ~~[6]~~[7] This Rule is not intended to prohibit a lawyer from contacting representatives of organizations
97 or groups that may be interested in establishing a group or prepaid legal plan for their members, insureds,
98 beneficiaries or other third parties for the purpose of informing such entities of the availability of and the
99 details concerning the plan or arrangement which the lawyer or lawyer's firm is willing to offer. This form
100 of communication is not directed to ~~a prospective client~~ people who are seeking legal services for
101 themselves. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a
102 supplier of legal services for others who may, if they choose, become prospective clients of the lawyer.
103 Under these circumstances, the activity which the lawyer undertakes in communicating with such
104 representatives and the type of information transmitted to the individual are functionally similar to and
105 serve the same purpose as advertising permitted under Rule 7.2.

106 ~~[7]~~[8] The requirement in Rule 7.3(c) that certain communications be marked "Advertising Material"
107 does not apply to communications sent in response to requests of potential clients or their spokespersons
108 or sponsors. General announcements by lawyers, including changes in personnel or office location, do
109 not constitute communications soliciting professional employment from a client known to be in need of
110 legal services within the meaning of this Rule.

111 | ~~[7a]~~~~[8a]~~ Utah Rule 7.3(c) requires the words "Advertising Material" to be marked on the outside of an
112 envelope, if any, and at the beginning of any recorded or electronic communication, but not at the end as
113 the ABA Model Rule requires. Lawyer solicitations in public media that regularly contain advertisements
114 do not need the " Advertising Material" notice because persons who view or hear such media usually
115 recognize the nature of the communications.

116 | ~~[8]~~~~[9]~~ Paragraph (d) of this Rule permits a lawyer to participate with an organization that uses
117 personal contact to solicit members for its group or prepaid legal service plan, provided that the personal
118 contact is not undertaken by any lawyer who would be a provider of legal services through the plan. The
119 organization must not be owned by or directed (whether as manager or otherwise) by any lawyer or law
120 firm that participates in the plan. For example, paragraph (d) would not permit a lawyer to create an
121 organization controlled directly or indirectly by the lawyer and use the organization for the in-person or
122 telephone, live person-to-person contacts or other real-time electronic solicitation of legal employment of
123 the lawyer through memberships in the plan or otherwise. The communication permitted by these
124 organizations also must not be directed to a person known to need legal services in a particular matter,
125 but is to be designed to inform potential plan members generally of another means of affordable legal
126 services. Lawyers who participate in a legal service plan must reasonably assure that the plan sponsors
127 are in compliance with Rules 7.1, 7.2 and 7.3(b). See Rule 8.4(a).

128

Rule 8.5. Disciplinary Authority; Choice of Law.

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

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

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

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

Comment**Disciplinary Authority**

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

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

Choice of Law

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

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

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

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

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

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

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

67