

1 **Rule 1.0. Terminology.**

2 (a) "Belief" or "believes" denotes that the person involved actually supposed the fact in  
3 question to be 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,  
5 denotes informed consent that is given in writing by the person or a writing that a  
6 lawyer promptly transmits to the person confirming an oral informed consent. See  
7 paragraph (f) for the definition of "informed consent." If it is not feasible to obtain or  
8 transmit the writing at the time the person gives informed consent, then the lawyer  
9 must obtain or transmit it within a reasonable time thereafter.

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

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

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

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

22 (g) "Knowingly," "known" or "knows" denotes actual knowledge of the fact in question.

23 A person's knowledge may be inferred from circumstances.

24 (h[EW1]) "Lawyer" includes lawyers licensed to practice law in any jurisdiction of the  
25 United States, foreign legal consultants, and licensed paralegal practitioners, insofar as  
26 the licensed paralegal practitioner is authorized in Utah Special Practice Rule 14-802,  
27 unless provided otherwise.

28 (hi) "Legal Professional" includes a-lawyers and a-licensed paralegal practitioners in the  
29 practice areas for which licensed paralegal practitioners are authorized to practice in  
30 Utah Special Practice Rule 14-802.

31 (ij) "Licensed pParalegal pPractitioner" denotes a person authorized by the Utah  
32 Supreme Court to provide legal representation ~~under Rule 15-701 of the Supreme Court~~  
33 Rules of Professional Practiceas authorized in Utah Special Practice Rule 14-802.

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

36 (kl) "Reasonable" or "reasonably" when used in relation to conduct by a lawyer denotes  
37 the conduct of a reasonably prudent and competent lawyer.

38 (lm) "Reasonable belief" or "reasonably believes" when used in reference to a lawyer  
39 denotes that the lawyer believes the matter in question and that the circumstances are  
40 such that the belief is reasonable.

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

43 (~~no~~) "Reckless" or "recklessly" denotes the conscious disregard of a duty that a lawyer  
44 is or reasonably should be aware of, or a conscious indifference to the truth.

45 (~~ep~~) "Screened" denotes the isolation of a lawyer from any participation in a matter  
46 through the timely imposition of procedures within a firm that are reasonably adequate  
47 under the circumstances to protect information that the isolated lawyer is obligated to  
48 protect under these Rules or other law.

49 (~~pq~~) "Substantial" when used in reference to degree or extent denotes a material matter  
50 of clear and weighty importance.

51 (~~qr~~) "Tribunal" denotes a court, an arbitrator in a binding arbitration proceeding or a  
52 legislative body, administrative agency or other body acting in an adjudicative capacity.  
53 A legislative body, administrative agency or other body acts in an adjudicative capacity  
54 when a neutral official, after the presentation of evidence or legal argument by a party  
55 or parties, will render a binding legal judgment directly affecting a party's interests in a  
56 particular matter.

57 (~~rs~~) "Writing" or "written" denotes a tangible or electronic record of a communication or  
58 representation, including handwriting, typewriting, printing, photostating,  
59 photography, audio or video recording and electronic communications. A "signed"  
60 writing includes an electronic sound, symbol or process attached to or logically  
61 associated with a writing and executed or adopted by a person with the intent to sign  
62 the writing.

63 **Comment**

64 **Confirmed in Writing**

65 [1] If it is not feasible to obtain or transmit a written confirmation at the time the  
66 client gives informed consent, then the lawyer must obtain or transmit it within a  
67 reasonable time thereafter. If a lawyer has obtained a client's informed consent, the  
68 lawyer may act in reliance on that consent so long as it is confirmed in writing within a  
69 reasonable time thereafter.

#### 70 **Firm**

71 [2] Whether two or more lawyers constitute a firm within paragraph (d) can depend  
72 on the specific facts. For example, two practitioners who share office space and  
73 occasionally consult or assist each other ordinarily would not be regarded as  
74 constituting a firm. However, if they present themselves to the public in a way that  
75 suggests that they are a firm or conduct themselves as a firm, they should be regarded  
76 as a firm for purposes of these Rules. The terms of any formal agreement between  
77 associated lawyers are relevant in determining whether they are a firm, as is the fact  
78 that they have mutual access to information concerning the clients they serve.  
79 Furthermore, it is relevant in doubtful cases to consider the underlying purpose of the  
80 rule that is involved. A group of lawyers could be regarded as a firm for purposes of the  
81 rule that the same lawyer should not represent opposing parties in litigation, while it  
82 might not be so regarded for purposes of the rule that information acquired by one  
83 lawyer is attributed to another.

84 [3] With respect to the law department of an organization, including the  
85 government, there is ordinarily no question that the members of the department  
86 constitute a firm within the meaning of the Rules of Professional Conduct. There can be

87 uncertainty, however, as to the identity of the client. For example, it may not be clear  
88 whether the law department of a corporation represents a subsidiary or an affiliated  
89 corporation, as well as the corporation by which the members of the department are  
90 directly employed. A similar question can arise concerning an unincorporated  
91 association and its local affiliates.

92 [4] Similar questions can also arise with respect to lawyers in legal aid and legal  
93 services organizations. Depending upon the structure of the organization, the entire  
94 organization or different components of it may constitute a firm or firms for purposes of  
95 these Rules.

#### 96 **Fraud**

97 [5] When used in these Rules, the terms "fraud" or "fraudulent" refer to conduct that  
98 is characterized as such under the substantive or procedural law of the applicable  
99 jurisdiction and has a purpose to deceive. This does not include merely negligent  
100 misrepresentation or negligent failure to apprise another of relevant information. For  
101 purposes of these Rules, it is not necessary that anyone has suffered damages or relied  
102 on the misrepresentation or failure to inform.

#### 103 **Informed Consent**

104 [6] Many of the Rules of Professional Conduct require the lawyer to obtain the  
105 informed consent of a client or other person (e.g., a former client or, under certain  
106 circumstances, a prospective client) before accepting or continuing representation or  
107 pursuing a course of conduct. See, e.g, Rules 1.2(c), 1.6(a) and 1.7(b). The  
108 communication necessary to obtain such consent will vary according to the rule

109 involved and the circumstances giving rise to the need to obtain informed consent. The  
110 lawyer must make reasonable efforts to ensure that the client or other person possesses  
111 information reasonably adequate to make an informed decision. Ordinarily, this will  
112 require communication that includes a disclosure of the facts and circumstances giving  
113 rise to the situation, any explanation reasonably necessary to inform the client or other  
114 person of the material advantages and disadvantages of the proposed course of conduct  
115 and a discussion of the client's or other person's options and alternatives. In some  
116 circumstances it may be appropriate for a lawyer to advise a client or other person to  
117 seek the advice of other counsel. A lawyer need not inform a client or other person of  
118 facts or implications already known to the client or other person; nevertheless, a lawyer  
119 who does not personally inform the client or other person assumes the risk that the  
120 client or other person is inadequately informed and the consent is invalid. In  
121 determining whether the information and explanation provided are reasonably  
122 adequate, relevant factors include whether the client or other person is experienced in  
123 legal matters generally and in making decisions of the type involved, and whether the  
124 client or other person is independently represented by other counsel in giving the  
125 consent. Normally, such persons need less information and explanation than others,  
126 and generally a client or other person who is independently represented by other  
127 counsel in giving the consent should be assumed to have given informed consent. A  
128 licensed paralegal practitioner may be required to advise a client or other person to seek  
129 the advice of a lawyer licensed to provide legal services without restrictions or  
130 limitations.

131 [7] Obtaining informed consent will usually require an affirmative response by the  
132 client or other person. In general, a lawyer may not assume consent from a client's or  
133 other person's silence. Consent may be inferred, however, from the conduct of a client  
134 or other person who has reasonably adequate information about the matter. A number  
135 of rules require that a person's consent be confirmed in writing. See, e.g., Rules 1.7(b)  
136 and 1.9(a). For a definition of "writing" and "confirmed in writing," see paragraphs (r)  
137 and (b). Other rules require that a client's consent be obtained in a writing signed by the  
138 client. See, e.g., Rules 1.8(a) and (g). For a definition of "signed," see paragraph (r).

139 **Screened**

140 [8] This definition applies to situations where screening of a personally disqualified  
141 lawyer is permitted to remove imputation of a conflict of interest under Rules 1.10, 1.11,  
142 1.12 or 1.18.

143 [9] The purpose of screening is to assure the affected parties that confidential  
144 information known by the personally disqualified lawyer remains protected. The  
145 personally disqualified lawyer should acknowledge the obligation not to communicate  
146 with any of the other lawyers in the firm with respect to the matter. Similarly, other  
147 lawyers in the firm who are working on the matter should be informed that the  
148 screening is in place and that they may not communicate with the personally  
149 disqualified lawyer with respect to the matter. Additional screening measures that are  
150 appropriate for the particular matter will depend on the circumstances. To implement,  
151 reinforce and remind all affected lawyers of the presence of the screening, it may be  
152 appropriate for the firm to undertake such procedures as a written undertaking by the

153 screened lawyer to avoid any communication with other firm personnel and any  
154 contact with any firm files or other information, including information in electronic  
155 form, relating to the matter, written notice and instructions to all other firm personnel  
156 forbidding any communication with the screened lawyer relating to the matter, denial  
157 of access by the screened lawyer to firm files or other information, including  
158 information in electronic form, relating to the matter and periodic reminders of the  
159 screen to the screened lawyer and all other firm personnel.

160 [10] In order to be effective, screening measures must be implemented as soon as  
161 practical after a lawyer or law firm knows or reasonably should know that there is a  
162 need for screening.

163 [10a] The definitions of “consult” and “consultation,” while deleted from the ABA  
164 Model Rule 1.0, have been retained in the Utah Rule because “consult” and  
165 “consultation” are used in the rules. See, e.g., Rules 1.2, 1.4, 1.14, and 1.18.

166 Effective May 1, 2019