

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 lawyer  
6 promptly transmits to the person confirming an oral informed consent. See paragraph (f) for  
7 the definition of "informed consent." If it is not feasible to obtain or transmit the writing at the  
8 time the person gives informed consent, then the lawyer must obtain or transmit it within a  
9 reasonable time thereafter.

10 (c) "Consult" or "consultation" denotes communication of information reasonably sufficient to  
11 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 lawyers  
14 employed in a legal services organization or the legal department of a corporation or other  
15 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 conduct  
19 after the lawyer has communicated adequate information and explanation about the material  
20 risks of and reasonably available alternatives to the proposed course of conduct.

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

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

- 27 (i) "Legal Professional" ~~includes~~ denotes a lawyer and a licensed paralegal practitioner.
- 28 (j) "Licensed Paralegal Practitioner" denotes a person authorized by the Utah Supreme Court  
29 to provide legal representation under Rule 15-701 of the Supreme Court Rules of Professional  
30 Practice.
- 31 (k) "Partner" denotes a member of a partnership, a shareholder in a law firm organized as a  
32 professional corporation, or a member of an association authorized to practice law.
- 33 (l) "Public-facing office" means an office that is open to the public and provides a service that  
34 is available to the population in that location.
- 35 ~~(lm)~~ "Reasonable" or "reasonably" when used in relation to conduct by a lawyer denotes the  
36 conduct of a reasonably prudent and competent lawyer.
- 37 ~~(mn)~~ "Reasonable belief" or "reasonably believes" when used in reference to a lawyer denotes  
38 that the lawyer believes the matter in question and that the circumstances are such that the  
39 belief is reasonable.
- 40 ~~(no)~~ "Reasonably should know" when used in reference to a lawyer denotes that a lawyer of  
41 reasonable prudence and competence would ascertain the matter in question.
- 42 ~~(op)~~ "Reckless" or "recklessly" denotes the conscious disregard of a duty that a lawyer is or  
43 reasonably should be aware of, or a conscious indifference to the truth.
- 44 ~~(pq)~~ "Screened" denotes the isolation of a lawyer from any participation in a matter through  
45 the timely imposition of procedures within a firm that are reasonably adequate under the  
46 circumstances to protect information that the isolated lawyer is obligated to protect under  
47 these Rules or other law.
- 48 ~~(qr)~~ "Substantial" when used in reference to degree or extent denotes a material matter of clear  
49 and weighty importance.
- 50 ~~(rs)~~ "Tribunal" denotes a court, an arbitrator in a binding arbitration proceeding or a legislative  
51 body, administrative agency or other body acting in an adjudicative capacity. A legislative  
52 body, administrative agency or other body acts in an adjudicative capacity when a neutral

53 official, after the presentation of evidence or legal argument by a party or parties, will render a  
54 binding legal judgment directly affecting a party's interests in a particular matter.

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

## 60 **Comment**

### 61 **Confirmed in Writing**

62 [1] If it is not feasible to obtain or transmit a written confirmation at the time the client gives  
63 informed consent, then the lawyer must obtain or transmit it within a reasonable time  
64 thereafter. If a lawyer has obtained a client's informed consent, the lawyer may act in reliance  
65 on that consent so long as it is confirmed in writing within a reasonable time thereafter.

### 66 **Firm**

67 [2] Whether two or more lawyers constitute a firm within paragraph (d) can depend on the  
68 specific facts. For example, two practitioners who share office space and occasionally consult  
69 or assist each other ordinarily would not be regarded as constituting a firm. However, if they  
70 present themselves to the public in a way that suggests that they are a firm or conduct  
71 themselves as a firm, they should be regarded as a firm for purposes of these Rules. The terms  
72 of any formal agreement between associated lawyers are relevant in determining whether they  
73 are a firm, as is the fact that they have mutual access to information concerning the clients they  
74 serve. Furthermore, it is relevant in doubtful cases to consider the underlying purpose of the  
75 rule that is involved. A group of lawyers could be regarded as a firm for purposes of the rule  
76 that the same lawyer should not represent opposing parties in litigation, while it might not be  
77 so regarded for purposes of the rule that information acquired by one lawyer is attributed to  
78 another.

79 [3] With respect to the law department of an organization, including the government, there is  
80 ordinarily no question that the members of the department constitute a firm within the  
81 meaning of the Rules of Professional Conduct. There can be uncertainty, however, as to the  
82 identity of the client. For example, it may not be clear whether the law department of a  
83 corporation represents a subsidiary or an affiliated corporation, as well as the corporation by  
84 which the members of the department are directly employed. A similar question can arise  
85 concerning an unincorporated association and its local affiliates.

86 [4] Similar questions can also arise with respect to lawyers in legal aid and legal services  
87 organizations. Depending upon the structure of the organization, the entire organization or  
88 different components of it may constitute a firm or firms for purposes of these Rules.

#### 89 **Fraud**

90 [5] When used in these Rules, the terms "fraud" or "fraudulent" refer to conduct that is  
91 characterized as such under the substantive or procedural law of the applicable jurisdiction  
92 and has a purpose to deceive. This does not include merely negligent misrepresentation or  
93 negligent failure to apprise another of relevant information. For purposes of these Rules, it is  
94 not necessary that anyone has suffered damages or relied on the misrepresentation or failure  
95 to inform.

#### 96 **Informed Consent**

97 [6] Many of the Rules of Professional Conduct require the lawyer to obtain the informed  
98 consent of a client or other person (e.g., a former client or, under certain circumstances, a  
99 prospective client) before accepting or continuing representation or pursuing a course of  
100 conduct. See, e.g, Rules 1.2(c), 1.6(a), 1.7(b), 1.8, 1.9(b), 1.12(a), and 1.18(d). The communication  
101 necessary to obtain such consent will vary according to the rule involved and the  
102 circumstances giving rise to the need to obtain informed consent. Other rules require a lawyer  
103 to make reasonable efforts to ensure that the client or other person possesses information  
104 reasonably adequate to make an informed decision. See, e.g., Rules 1.4(b) and 1.8. Ordinarily,  
105 this will require communication that includes a disclosure of the facts and circumstances  
106 giving rise to the situation, any explanation reasonably necessary to inform the client or other

107 person of the material advantages and disadvantages of the proposed course of conduct and a  
108 discussion of the client's or other person's options and alternatives. In some circumstances it  
109 may be appropriate for a lawyer to advise a client or other person to seek the advice of other  
110 counsel. A lawyer need not inform a client or other person of facts or implications already  
111 known to the client or other person; nevertheless, a lawyer who does not personally inform the  
112 client or other person assumes the risk that the client or other person is inadequately informed  
113 and the consent is invalid. In determining whether the information and explanation provided  
114 are reasonably adequate, relevant factors include whether the client or other person is  
115 experienced in legal matters generally and in making decisions of the type involved, and  
116 whether the client or other person is independently represented by other counsel in giving the  
117 consent. Normally, such persons need less information and explanation than others, and  
118 generally a client or other person who is independently represented by other counsel in giving  
119 the consent should be assumed to have given informed consent.

120 [7] Obtaining informed consent will usually require an affirmative response by the client or  
121 other person. In general, a lawyer may not assume consent from a client's or other person's  
122 silence. Consent may be inferred, however, from the conduct of a client or other person who  
123 has reasonably adequate information about the matter. A number of rules require that a  
124 person's consent be confirmed in writing. See Rules 1.7(b) and 1.9(a). For a definition of  
125 "writing" and "confirmed in writing," see paragraphs (¶t) and (b). Other rules require that a  
126 client's consent be obtained in a writing signed by the client. See, e.g., Rules 1.8(a) and (g). For  
127 a definition of "signed," see paragraph (¶t).

## 128 **Screened**

129 [8] This definition applies to situations where screening of a personally disqualified lawyer is  
130 permitted to remove imputation of a conflict of interest under Rules 1.10, 1.11, 1.12 or 1.18.

131 [9] The purpose of screening is to assure the affected parties that confidential information  
132 known by the personally disqualified lawyer remains protected. The personally disqualified  
133 lawyer should acknowledge the obligation not to communicate with any of the other lawyers  
134 in the firm with respect to the matter. Similarly, other lawyers in the firm who are working on

135 the matter should be informed that the screening is in place and that they may not  
136 communicate with the personally disqualified lawyer with respect to the matter. Additional  
137 screening measures that are appropriate for the particular matter will depend on the  
138 circumstances. To implement, reinforce and remind all affected lawyers of the presence of the  
139 screening, it may be appropriate for the firm to undertake such procedures as a written  
140 undertaking by the screened lawyer to avoid any communication with other firm personnel  
141 and any contact with any firm files or other information, including information in electronic  
142 form, relating to the matter, written notice and instructions to all other firm personnel  
143 forbidding any communication with the screened lawyer relating to the matter, denial of  
144 access by the screened lawyer to firm files or other information, including information in  
145 electronic form, relating to the matter and periodic reminders of the screen to the screened  
146 lawyer and all other firm personnel.

147 [10] In order to be effective, screening measures must be implemented as soon as practical  
148 after a lawyer or law firm knows or reasonably should know that there is a need for screening.

149 [10a] The definitions of “consult” and “consultation,” while deleted from the ABA Model Rule  
150 1.0, have been retained in the Utah Rule because “consult” and “consultation” are used in the  
151 rules. See, e.g., Rules 1.2, 1.4, 1.14, and 1.18.