

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," "known" or "knows" denotes actual knowledge of the fact in question. A person's
20 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) "Reckless" or "recklessly" denotes the conscious disregard of a duty that a lawyer is or reasonably
30 should be aware of, or a conscious indifference to the truth.

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

34 (n) "Substantial" when used in reference to degree or extent denotes a material matter of clear and
35 weighty importance.

36 (o) "Tribunal" denotes a court, an arbitrator in a binding arbitration proceeding or a legislative body,
37 administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative

38 agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of
39 evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a
40 party's interests in a particular matter.

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

46 Comment

47 Confirmed in Writing

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

52 Firm

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

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

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

72 Fraud

73 [5] When used in these Rules, the terms "fraud" or "fraudulent" refer to conduct that is characterized
74 as such under the substantive or procedural law of the applicable jurisdiction and has a purpose to

75 deceive. This does not include merely negligent misrepresentation or negligent failure to apprise another
76 of relevant information. For purposes of these Rules, it is not necessary that anyone has suffered
77 damages or relied on the misrepresentation or failure to inform.

78 Informed Consent

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

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

106 Screened

107 [8] This definition applies to situations where screening of a personally disqualified lawyer is permitted
108 to remove imputation of a conflict of interest under Rules 1.10, 1.11, 1.12 or 1.18.

109 [9] The purpose of screening is to assure the affected parties that confidential information known by
110 the personally disqualified lawyer remains protected. The personally disqualified lawyer should
111 acknowledge the obligation not to communicate with any of the other lawyers in the firm with respect to

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

123 [10] In order to be effective, screening measures must be implemented as soon as practical after a
124 lawyer or law firm knows or reasonably should know that there is a need for screening.

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

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