

1 Preliminary Note.

2 The Rules of Professional Conduct apply to lawyers and, where consistent with a
3 licensed paralegal practitioner's permitted scope of practice, to licensed paralegal
4 practitioners. Therefore, the term "lawyer" as used in these Rules means both lawyers
5 and licensed paralegal practitioners unless the Rule specifically refers to one type of
6 licensee or does not apply because of the limited scope of the licensed paralegal
7 practitioner's practice.

8 **Preamble: A Lawyer's Responsibilities.**

9 [1] A lawyer is a representative of clients, an officer of the legal system and a public citizen
10 having special responsibility for the quality of justice. Every lawyer is responsible to
11 observe the law and the Rules of Professional Conduct, shall take the Attorney's-Lawyer's
12 Oath upon ~~admission to the practice of law~~licensure, and shall be subject to the Rules of
13 Lawyer Discipline and Disability.

14 Attorney's-Lawyer's Oath

15 "I do solemnly swear that I will support, obey and defend the Constitution of the United
16 States and the Constitution of Utah; that I will discharge the duties of ~~attorney-lawyer~~
17 and counselor at law as an officer of the courts of this State with honesty, fidelity,
18 professionalism, and civility; and that I will faithfully observe the Rules of Professional
19 Conduct and the Standards of Professionalism and Civility promulgated by the Supreme
20 Court of the State of Utah."

21 [2] As a representative of clients, a lawyer performs various functions. As advisor, a
22 lawyer provides a client with an informed understanding of the client's legal rights and
23 obligations and explains their practical implications. As advocate, a lawyer zealously
24 asserts the client's position under the rules of the adversary system. As negotiator, a
25 lawyer seeks a result advantageous to the client but consistent with requirements of
26 honest dealings with others. As an evaluator, a lawyer acts by examining a client's legal
27 affairs and reporting about them to the client or to others. A lawyer's representation of a
28 client, including representation by appointment, does not constitute an endorsement of
29 the client's political, economic, social or moral views or activities.

30 [3] In addition to these representational functions, a lawyer may serve as a third-party
31 neutral, a nonrepresentational role helping the parties to resolve a dispute or other
32 matter. Some of these Rules apply directly to lawyers who are or have served as third-
33 party neutrals. See, e.g., Rules 1.12 and 2.4. In addition, there are rules that apply to
34 lawyers who are not active in the practice of law or to practicing lawyers even when they
35 are acting in a nonprofessional capacity. For example, a lawyer who commits fraud in the
36 conduct of a business is subject to discipline for engaging in conduct involving
37 dishonesty, fraud, deceit or misrepresentation. See Rule 8.4.

38 [4] In all professional functions a lawyer should be competent, prompt and diligent. A
39 lawyer should maintain communication with a client concerning the representation. A
40 lawyer should keep in confidence information relating to representation of a client except

41 so far as disclosure is required or permitted by the Rules of Professional Conduct or other
42 law.

43 [5] A lawyer's conduct should conform to the requirements of the law, both in
44 professional service to clients and in the lawyer's business and personal affairs. A lawyer
45 should use the law's procedures only for legitimate purposes and not to harass or
46 intimidate others. A lawyer should demonstrate respect for the legal system and for those
47 who serve it, including judges, other lawyers and public officials. While it is a lawyer's
48 duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty
49 to uphold legal process.

50 [6] As a public citizen, a lawyer should seek improvement of the law, access to the legal
51 system, the administration of justice and the quality of service rendered by the legal
52 profession. As a member of a learned profession, a lawyer should cultivate knowledge of
53 the law beyond its use for clients, employ that knowledge in reform of the law and work
54 to strengthen legal education. In addition, a lawyer should further the public's
55 understanding of and confidence in the rule of law and the justice system because legal
56 institutions in a constitutional democracy depend on popular participation and support
57 to maintain their authority. A lawyer should be mindful of deficiencies in the
58 administration of justice and of the fact that the poor, and sometimes persons who are
59 not poor, cannot afford adequate legal assistance and therefore, all lawyers should devote
60 professional time and resources and use civic influence in their behalf to ensure equal
61 access to our system of justice for all those who because of economic or social barriers

62 cannot afford or secure adequate legal counsel. A lawyer should aid the legal profession
63 in pursuing these objectives and should help the Bar regulate itself in the public interest.

64 [7] Many of a lawyer's professional responsibilities are prescribed in the Rules of
65 Professional Conduct, as well as substantive and procedural law. However, a lawyer is
66 also guided by personal conscience and the approbation of professional peers. A lawyer
67 should strive to attain the highest level of skill, to improve the law and the legal
68 profession and to exemplify the legal profession's ideals of public service.

69 [8] A lawyer's responsibilities as a representative of clients, an officer of the legal system
70 and a public citizen are usually harmonious. Thus, when an opposing party is well
71 represented, a lawyer can be a zealous advocate on behalf of a client and at the same time
72 assume that justice is being done. So also, a lawyer can be sure that preserving client
73 confidences ordinarily serves the public interest because people are more likely to seek
74 legal advice, and thereby heed their legal obligations, when they know their
75 communications will be private.

76 [9] In the nature of law practice, however, conflicting responsibilities are encountered.
77 Virtually all difficult ethical problems arise from conflict between a lawyer's
78 responsibilities to clients, to the legal system and to the lawyer's own interest in
79 remaining an ethical person while earning a satisfactory living. The Rules of Professional
80 Conduct often prescribe terms for resolving such conflicts. Within the framework of these
81 Rules, however, many difficult issues of professional discretion can arise. Such issues
82 must be resolved through the exercise of sensitive professional and moral judgment

83 guided by the basic principles underlying the Rules. These principles include the lawyer's
84 obligation zealously to protect and pursue a client's legitimate interests, within the
85 bounds of the adversarial system, while maintaining a professional, courteous and civil
86 attitude toward all persons involved in the legal system.

87 [10] The legal profession is largely self-governing. Although other professions also have
88 been granted powers of self-government, the legal profession is unique in this respect
89 because of the close relationship between the profession and the processes of government
90 and law enforcement. This connection is manifested in the fact that ultimate authority
91 over the legal profession is vested largely in the courts.

92 [11] To the extent that lawyers meet the obligations of their professional calling, the
93 occasion for government regulation is obviated. Self-regulation also helps maintain the
94 legal profession's independence from government domination. An independent legal
95 profession is an important force in preserving government under law, for abuse of legal
96 authority is more readily challenged by a profession whose members are not dependent
97 on government for the right to practice.

98 [12] The legal profession's relative autonomy carries with it special responsibilities of self-
99 government. The profession has a responsibility to ensure that its regulations are
100 conceived in the public interest and not in furtherance of parochial or self-interested
101 concerns of the Bar. Every lawyer is responsible for observance of the Rules of
102 Professional Conduct. A lawyer should also aid in securing their observance by other

103 lawyers. Neglect of these responsibilities compromises the independence of the
104 profession and the public interest which it serves.

105 [13] Lawyers play a vital role in the preservation of society. The fulfillment of this role
106 requires an understanding by lawyers of their relationship to our legal system. The Rules
107 of Professional Conduct, when properly applied, serve to define that relationship.

108 Scope.

109 [14] The Rules of Professional Conduct are rules of reason. They should be interpreted
110 with reference to the purposes of legal representation and of the law itself. Some of the
111 Rules are imperatives, cast in the terms "shall" or "shall not." These define proper conduct
112 for purposes of professional discipline. Others, generally cast in the term "may," are
113 permissive and define areas under the Rules in which the lawyer has discretion to
114 exercise professional judgment. No disciplinary action should be taken when the lawyer
115 chooses not to act or acts within the bounds of such discretion. Other Rules define the
116 nature of relationships between the lawyer and others. The Rules are thus partly
117 obligatory and disciplinary and partly constitutive and descriptive in that they define a
118 lawyer's professional role. Many of the Comments use the term "should." Comments do
119 not add obligations to the Rules but provide guidance for practicing in compliance with
120 the Rules.

121 [15] The Rules presuppose a larger legal context shaping the lawyer's role. That context
122 includes court rules and statutes relating to matters of licensure, laws defining specific

123 obligations of lawyers and substantive and procedural law in general. The Comments are
124 sometimes used to alert lawyers to their responsibilities under such other law.

125 [16] Compliance with the Rules, as with all law in an open society, depends primarily
126 upon understanding and voluntary compliance, secondarily upon reinforcement by peer
127 and public opinion and finally, when necessary, upon enforcement through disciplinary
128 proceedings. The Rules do not, however, exhaust the moral and ethical considerations
129 that should inform a lawyer, for no worthwhile human activity can be completely defined
130 by legal rules. The Rules simply provide a framework for the ethical practice of law.

131 [17] Furthermore, for purposes of determining the lawyer's authority and responsibility,
132 principles of substantive law external to these Rules determine whether a client-lawyer
133 relationship exists. Most of the duties flowing from the client-lawyer relationship attach
134 only after the client has requested the lawyer to render legal services and the lawyer has
135 agreed to do so. But there are some duties, such as that of confidentiality under Rule 1.6,
136 that attach when the lawyer agrees to consider whether a client-lawyer relationship shall
137 be established. See Rule 1.18. Whether a client-lawyer relationship exists for any specific
138 purpose can depend on the circumstances and may be a question of fact.

139 [18] Under various legal provisions, including constitutional, statutory and common law,
140 the responsibilities of government lawyers may include authority concerning legal
141 matters that ordinarily reposes in the client in private client-lawyer relationships. For
142 example, a lawyer for a government agency may have authority on behalf of the
143 government to decide upon settlement or whether to appeal from an adverse judgment.

144 Such authority in various respects is generally vested in the attorney general and the
145 state's attorney in state government, and their federal counterparts, and the same may be
146 true of other government law officers. Also, lawyers under the supervision of these
147 officers may be authorized to represent several government agencies in
148 intragovernmental legal controversies in circumstances where a private lawyer could not
149 represent multiple private clients. These Rules do not abrogate any such authority.

150 [19] Failure to comply with an obligation or prohibition imposed by a Rule is a basis for
151 invoking the disciplinary process. The Rules presuppose that disciplinary assessment of
152 a lawyer's conduct will be made on the basis of the facts and circumstances as they existed
153 at the time of the conduct in question and in recognition of the fact that a lawyer often
154 has to act upon uncertain or incomplete evidence of the situation. Moreover, the Rules
155 presuppose that whether or not discipline should be imposed for a violation, and the
156 severity of a sanction, depend on all the circumstances, such as the willfulness and
157 seriousness of the violation, extenuating factors and whether there have been previous
158 violations.

159 [20] Violation of a rule should not itself give rise to a cause of action against a lawyer nor
160 should it create any presumption in such a case that a legal duty has been breached. In
161 addition, violation of a rule does not necessarily warrant any other nondisciplinary
162 remedy, such as disqualification of a lawyer in pending litigation. The Rules are designed
163 to provide guidance to lawyers and to provide a structure for regulating conduct through
164 disciplinary agencies. They are not designed to be a basis for civil liability. Furthermore,

165 the purpose of the Rules can be subverted when they are invoked by opposing parties as
166 procedural weapons. The fact that a rule is a just basis for a lawyer's self-assessment, or
167 for sanctioning a lawyer under the administration of a disciplinary authority, does not
168 imply that an antagonist in a collateral proceeding or transaction has standing to seek
169 enforcement of the rule. Nevertheless, since the Rules do establish standards of conduct
170 by lawyers, a lawyer's violation of a rule may be evidence of breach of applicable
171 standard of conduct.

172 [21] The comment accompanying each rule explains and illustrates the meaning and
173 purpose of the rule. The Preamble and this note on Scope provide general orientation.
174 The comments are intended as guides to interpretation, but the text of each rule is
175 authoritative.