

NEW LAWYER TRAINING PROGRAM



CONFIDENTIALITY AND CONFLICTS IN OUTSIDE MENTORING

Unique issues arise when a new lawyer is being mentored outside his/her law firm or office. This mentoring relationship is referred to as “outside mentoring.”

The most significant issues in outside mentoring relationships involve confidentiality and conflicts. Thus, the Utah Supreme Court amended Supreme Court Rule 14-808, the rule governing the New Lawyer Training Program to address conflict and confidentiality in the outside mentoring relationship.

Rule 14-808(h)

(h) Conflicts and confidentiality in outside mentoring.

(h)(1) The outside mentor may provide or the new lawyer may seek short-term limited guidance or counsel, within the mentoring relationship, without expectation by either lawyer or the new lawyer’s client(s) that a lawyer-client relationship has been formed or that representation is being provided in the matter by the mentoring attorney.

(h)(2) Where practical the new lawyer and the mentor shall discuss new lawyer client specific issues in hypothetical terms. If hypothetical terms are not practical under the circumstances as determined by the lawyers, a lawyer providing or seeking short-term limited guidance or counsel within the mentoring relationship is not subject to the Utah Rules of Professional Conduct regarding Confidentiality of Information because the disclosure is impliedly authorized under the circumstance and is necessary to carry out the purposes of the NLTP.

(h)(3) To facilitate the goals and purposes of the NLTP, the mentoring lawyer is not required to run a conflict check when guidance or counsel is being provided on a short-term limited basis to a new lawyer regarding a new lawyer’s client. In this respect, the mentoring lawyer’s guidance or counsel, provided on a short-term limited basis to a new lawyer regarding a new lawyer’s client, is not subject to Utah Rules of Professional Conduct regarding Conflict of Interest: Current Clients; Conflict of Interest: Current Clients: Specific Rules; Duties to Former Clients; Imputation of Conflicts of Interest: General Rule; and Special Conflicts of Interest for Former and Current Government Employees. However, the mentor may exercise his or her judgment as to whether a conflict check is advisable.

(h)(4) Subsections (h)(1)-(3) do not apply to lawyers who are outside mentors providing, or new lawyers seeking, counsel or guidance on an on-going or regular basis relating to the needs of or litigation regarding a specific client, within the context of the mentoring relationship. If the lawyers are engaged in on-going or regular guidance or counsel related to a specific client or clients, then the mentoring lawyer must comply with the relevant Utah Rules of Professional Conduct, which may require the lawyers to obtain informed consent from the client and/or to formally enter into a lawyer-client relationship through the execution of an appropriate engagement letter and fee agreement.