

CAUTION: Please be advised that on September 2, 2025, after EAOB Opinion No. 25-02 was published, notice of a new proposed Rule 5.8 of the Utah Rules of Professional Conduct that would prohibit referral fees was published. The comment period expires on October 17, 2025. For more information, see <https://legacy.utcourts.gov/utc/rules-comment/>

**Utah State Bar
Ethics Advisory Opinion Committee
Opinion Number 25-02
Issued August 13, 2025**

ISSUES

1. Can a lawyer (or law firm) pay referral fees to other lawyers and non-lawyers in light of the 2020 amendments to the Utah Rules of Professional Conduct?
2. Would a violation of Utah Code Ann. § 76-10-3201¹ (“Prohibition on Kickbacks”) constitute a violation of Utah Rule of Professional Conduct 8.4 (“Misconduct”)?
3. Should Ethics Opinion 22-02 (issued March 7, 2022) be modified to address Utah Code Ann. § 76-10-3201, which became effective in May 2022?

OPINIONS

4. Lawyers may pay referral fees to both lawyers and non-lawyers, including clients or former clients, provided that such arrangements comply with the general requirements of the Utah Rules of Professional Conduct, including, but not limited to, Rule 1.4 (Communication) and Rule 1.6 (Confidentiality).
5. A determination of whether a violation of Utah Code Ann. §§ 76-17-201 and 76-17-202 constitutes a violation of the Utah Rules of Professional Conduct is a fact-specific determination that the Ethics Advisory Opinion Committee (“EAOB”) cannot address other than to caution practitioners to be aware of the statutes’ existence and govern themselves accordingly.
6. All lawyers² have a responsibility to comply with the substantive and procedural laws of the state of Utah.³ Much like verifying that an appellate case remains good law, lawyers should maintain the knowledge, skills, and preparedness to appropriately adapt or otherwise modify their practice following legislative changes that may impact the validity of a previously issued EAOB opinion.⁴

BACKGROUND

7. Prior to August 2020, the Utah Rules of Professional Conduct expressly forbade referral fees. That changed in 2020 when the Utah Supreme Court created the Utah Office of Legal Innovation, instituted the Utah legal regulatory sandbox (the “Sandbox”), and implemented

¹ Utah Code Ann. § 76-10-3201 was revised and renumbered so that the substance of that statute is now found at Utah Code Ann. §§ 76-17-201 & 76-17-202 (effective May 7, 2025).

² As provided in the Preliminary Note of the Utah Rules of Professional Conduct (“Rules”), the term “lawyer” as used in the Rules, applies to both lawyers and licensed paralegal practitioners. Utah R. Prof’l Cond. Preliminary Note (effective May 1, 2021).

³ See Utah R. Prof’l Cond. Preamble [1] (“Every lawyer is responsible to observe the law . . .”).

⁴ See Utah R. Prof’l Cond. 1.1 (Competence).

substantial changes to the Utah Rules of Professional Conduct.⁵ Among other things, the rule changes removed the express prohibition against referral fees in favor of the more general guidance about professional independence contained in current Rule 5.4.

8. On March 7, 2022, the EAOC issued its Ethics Opinion 22-02, in part to address the launch of the Sandbox given the significant and broad impact that program had on multiple prior ethics opinions. Ethics Opinion 22-02 clarified that “Opinions that disapproved of arrangements because they involved paying for referrals or fee-sharing with nonlawyers should no longer be relied upon, as the proposed arrangements might be permitted by the Utah Supreme Court under Standing Order No. 15. Opinions that disapproved of in-person solicitation should no longer be relied upon as in-person solicitation is no longer prohibited, but coercions, duress and harassment continue to be prohibited.”⁶

9. In 2022, the Utah Legislature passed Utah Code Ann. § 76-10-3201⁷. That statute criminalized the act of soliciting or receiving a “kickback or bribe in return for the referral of a person to another person for the furnishing of a good or service that relates to an insurance claim or a claim for damages...” Utah Code Ann. § 76-10-3201(2)(a). Violation of this statute is a third-degree felony.⁸ Utah Code Ann. § 76-10-3201(3).

10. In light of these changes, the EAOC has received two requests seeking greater clarity on the Rules pertaining to referral fees. The EAOC opts to address both requests in this single opinion.

11. In the first request, a lawyer asks whether a lawyer (or law firm) may pay a non-contingent fee to existing and former clients for referring potential additional clients to the lawyer under the condition that the referred person or entity establishes a formal attorney-client relationship with the lawyer. If the answer to that question is “yes,” the lawyer further inquires: (a) whether it would also be permissible to credit an existing client’s account with a non-contingent referral fee under the same condition; and (b) whether it would be permissible to make such a referral fee to other referring parties in general.

⁵ See Utah Supreme Court Standing Order No. 15 (Aug. 14, 2020).

⁶ Utah Eth. Advis. Op. 22-02, ¶ 3.

⁷ Revised and renumbered as Utah Code Ann. §§ 76-17-201 & 76-17-202 (effective May 7, 2025).

⁸ Utah Code Ann. § 76-17-202 states, in part:

(2) An actor commits unlawful conduct concerning a kickback or bribe if the actor:

(a) solicits or receives a kickback or bribe in return for the referral of a person to another person for the furnishing of a good or service that relates to an insurance claim or a claim for damages; or

(b) offers or pays a kickback or bribe to induce the referral of a person to another person for the furnishing of a good or service that relates to an insurance claim or a claim for damages.

(3) A violation of Subsection (2) is a third degree felony.

12. In the second request, a lawyer draws the EAOC's attention to Utah Code Ann. § 76-17-202. The lawyer asks whether, given the existence of this statute, it would violate Utah Rule of Professional Conduct 8.4 to pay or offer to pay for a referral in a personal injury case. This inquirer also asks us to revisit our Ethics Opinion No. 22-02 in light of this issue.

ANALYSIS

13. The EAOC first addresses the general question of whether referral fees are allowed under the current Utah Rules of Professional Conduct. The EAOC then addresses the implications of Utah Code Ann. §§ 76-17-201 and 76-17-202.

Referral Fees under the Current Rules of Professional Conduct

14. The traditional rule governing referral fees under the former Utah Rules of Professional Conduct prohibited referral fees. Utah's former Rule 7.2(f) expressly provided, "A lawyer shall not give anything of value to a person for recommending the lawyer's services," with certain limited exceptions.⁹

15. The Utah Supreme Court repealed Rule 7.2(f) in 2020. The Supreme Court repealed and amended several other rules at the same time in connection with its formation of the Office of Legal Services Innovation and the Sandbox.¹⁰

16. On its face, the Utah Supreme Court's elimination of Rule 7.2(f) with no other official explanation or comment regarding the payment of referral fees suggests that the general prohibition against the payment of referral fees has been eliminated. This means that payment of a referral fee to former clients and others is not a *per se* violation of the Utah Rules of Professional Conduct.

17. The EAOC has also considered Rule 5.4(c), which provides:

A lawyer or law firm may share legal fees with a nonlawyer if:

- (1) the fee to be shared is reasonable and the fee-sharing arrangement has been authorized as required by Utah Supreme Court Standing Order No. 15;
- (2) the lawyer or law firm provides written notice to the affected client and, if applicable, to any other person paying the legal fees;
- (3) the written notice describes the relationship with the nonlawyer, including the fact of the fee-sharing arrangement; and
- (4) the lawyer or law firm provides the written notice before accepting representation or before sharing fees from an existing client.

18. The EAOC does not believe Rule 5.4(c) provides a blanket prohibition on referral fees to non-lawyers. Rule 5.4(c) addresses sharing "fees" with non-lawyers. Under Rule 5.4(c), when a client pays a fee for legal services to the lawyer, the lawyer cannot share *those fees* with a non-lawyer, unless the lawyer complies with all the conditions set out in the rule. However, the request in this instance does not contemplate the sharing of any particular fee from a client with

⁹ Utah R. Prof'l Cond. 7.2(f) (as amended May 1, 2015, repealed Aug. 14, 2020).

¹⁰ See Utah Supreme Court Standing Order No. 15 (Aug. 14, 2020).

non-lawyers. Rather, it contemplates the payment of a referral fee from the lawyer's general funds. The EAOOC sees nothing in Rule 5.4(c) that proscribes this type of payment. Indeed, if the Utah Supreme Court intended to prohibit the payment of a traditional fee, the EAOOC is confident the Supreme Court knows how to implement such a prohibition, as exhibited by the former Rule 7.2(f) that the Supreme Court repealed.

19. In addition, Comment 3 to Rule 5.4 states:

Paragraph (c) permits individual lawyers or law firms to pay for client referrals, share fees with nonlawyers, or allow third party retention. In each of these instances, the financial arrangement must be reasonable, authorized as required under Supreme Court Standing Order No. 15, and disclosed in writing to the client before engagement and before fees are shared. Whether in accepting or paying for referrals, or fee-sharing, the lawyer must protect the lawyer's professional judgment, ensure the lawyer's loyalty to the client, and protect client confidences.¹¹

20. The reference in Comment 3 to "pay[ing] for client referrals" reaches beyond Rule 5.4(c), which is silent on the subject. As discussed, Rule 5.4(c) only addresses the sharing of "legal fees." It does not address referral fees.

21. The Preamble to the Rules states, "The comment accompanying each rule explains and illustrates the meaning and purpose of the rule. . . . The comments are intended as guides to interpretation, but the text of each rule is authoritative."¹² In other words, the comments are not controlling—the rule is. Comment 3 exceeds the scope of Rule 5.4(c) by referencing client referrals. The EAOOC's position is further supported by the Utah Supreme Court's ruling in *Steffensen v. Office of Prof'l Conduct (In re Steffensen)*, 2018 UT 53, ¶¶ 50-52, 428 P.3d 1104, which found that a comment to one of the Utah Rules of Professional Conduct was confusing and, as read, was too broad in scope. The Supreme Court adopted a more limited reading of the comment based on the text of the rule.

22. For these reasons, the EAOOC concludes that Comment 3, if taken literally, would improperly expand Rule 5.4(c) by its reference to payment for client referrals. Rule 5.4(c) governs the sharing of legal fees. It does not address referral fees or other payments for client referrals.

23. Based on this same reasoning, the EAOOC further concludes that crediting an existing client's account with a referral fee is permissible. Crediting the client's account is economically equivalent to a cash benefit and therefore qualifies as a "referral fee" under this opinion.

24. Lawyers should be mindful that the payment of a referral fee may implicate other rules or statutes. For example, Rule 1.4 requires attorneys to effectively communicate with their clients, ensuring informed consent for all material aspects of their representation. This includes providing complete and transparent disclosures about referral fee arrangements. Rule 1.6

¹¹ Utah R. Prof'l Cond. 5.4 cmt. [3].

¹² Utah R. Prof'l Cond. Preamble [21].

reinforces an attorney's duty to safeguard client information. Under this rule, attorneys must ensure that no confidential client information is disclosed without client consent. Payment of a referral fee, while not expressly prohibited, may still result in a violation of Rules 1.4, 1.6, or any other rule applicable under the circumstances if not followed in connection with the payment.

25. The EAOC also calls attention to Utah Code Ann. § 78B-3-111. In 2021, the Utah Legislature created a new cause of action in favor of clients who are unaware that their lawyer paid a referral fee for their case. Utah Code Ann. § 78B-3-111, which became effective on May 5, 2021, provides, in part:

- (2) A client may bring a cause of action against an attorney or a law firm to recover a client referral fee if:
 - (a) the attorney or the law firm pays a client referral fee; and
 - (b) the client referral fee was not disclosed to the client before the client paid for, or was obligated to pay for, legal services from the attorney or the law firm.¹³

Certain exceptions not enumerated here are included in the statute.

26. While it is beyond the scope of the EAOC's authority to opine on what may or may not be permitted under a state statute, lawyers should be aware of this statute and the potential ramifications of non-compliance.

Referral Fees under Utah Code Ann. §§ 76-17-201 and 76-17-202

27. Utah Code Ann. § 76-17-202 make it a third-degree felony to solicit or receive certain types of "kickbacks" or "bribes." Utah Code Ann. § 76-17-202(2)-(3). Utah Code Ann. § 76-17-201(2) provides that a "kickback or bribe" does *not* include a fee that is "shared between two or more individuals, each of whom is licensed to practice law; and [] charged for services provided in the individual's capacity as a licensee described in" in this subsection. Utah Code Ann. § 76-17-201(2)(a).

28. Thus, Utah Code Ann. § 76-17-201 carves out an exception for those licensed to practice law. However, by the plain language of the provision, the same exception is not afforded to individuals who are *not* licensed to practice law or who are otherwise *not* governed by the Utah Rules of Professional Conduct.¹⁴

¹³ Utah Code Ann. § 78B-3-111(2).

¹⁴ In a March 28, 2023, letter to the Utah State Bar President, the Utah Supreme Court addressed various stakeholders' concerns related to the lack of fiduciary and professional responsibilities of those Sandbox participants who are not bound by the Utah Rules of Professional Conduct. The Supreme Court wrote in part that it "will require all financing and controlling persons to adhere to the same core fiduciary duties that lawyers owe to their clients: loyalty, confidentiality, diligence, and candor. In addition, all licensing or controlling persons must also agree not to interfere with the lawyer's professional judgment as a condition of authorization." Letter dated March 28, 2023, from Utah Supreme Court to Kristen K. Woods, Utah State Bar President, p. 15.

29. While practitioners are always advised to comply with all applicable laws, whether alleged violations of Utah Code Ann. § 76-17-202 would also constitute a violation of Rule 8.4 of the Utah Rules of Professional Conduct will depend on the specific facts. “Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice.”¹⁵

30. Finally, the EAOC declines the invitation to revisit Ethics Opinion 22-02 in light of Section 76-17-202. Ethics Opinion 22-02 was the EAOC’s attempt to provide guidance in light of a major shift in the Rules resulting from Standing Order No. 15 and accompanying major changes in the Utah Rules of Professional Conduct. It is beyond the EAOC’s mandate (or resources) to revisit all of its prior ethics opinions every time the Utah Legislature or Utah Supreme Court makes any change to the broad landscape of legal ethics.

31. Instead, practitioners should comply with their obligations under Rule 1.1 to maintain the necessary knowledge, thoroughness, and preparation reasonably necessary to represent their clients. This includes keeping abreast of changes in the law and its practice.¹⁶ While the EAOC undertook to clarify the status of several opinions in Ethics Opinion 22-02 in light of a major shift in the Rules, the EAOC declines to do that in every instance, including this one.

CONCLUSION

32. The Utah Rules of Professional Conduct do not include a *per se* prohibition on the payment of referral fees. Payment or receipt of a referral fee is permissible under the Rules, provided the lawyer complies with other ancillary rules, such as Rules 1.4 (Communication) and 1.6 (Confidentiality).

33. Whether a violation of Utah Code Ann. § 76-17-202 will constitute a violation of Utah Rule of Professional Conduct 8.4 will depend on the specific facts of each situation.

34. Ethics Opinion 22-02 reflects the EAOC’s efforts to provide a comprehensive review and clarification of prior opinions due to the major changes implemented by Utah Supreme Court Standing Order No. 15. However, practitioners should exercise due diligence in ascertaining whether any ethics opinions (including but not limited to Ethics Opinion 22-02) have been affected by subsequent legislation because the EAOC may not be made aware of those changes in a manner that provides an opportunity for an updated opinion to be issued.

¹⁵ Utah R. Prof’l Cond. 8.4 cmt. [2].

¹⁶ Utah R. Prof’l Cond. 1.1 cmt. [8].