

# Agenda

## Supreme Court's Advisory Committee on the Rules of Professional Conduct

March 19, 2018  
5:00 to 7:00 p.m.

Administrative Office of the Courts  
Scott M. Matheson Courthouse  
450 South State Street  
Salt Lake City  
Judicial Council Room, Suite N31

Welcome and approval of minutes	Tab 1	Steve Johnson, Chair
Military attorney admissions Rules 14-804, 14-805, 14-806	Tab 2	Phil Lowry (subcommittee chair), Paul Burke, and Tim Conde Admissions: Joni Seko, Steve Waterman, Dan Jensen, and Bryon Benevento
Rule 8.4(g)	Tab 3	Simón Cantarero (subcommittee chair), Billy Walker, Vanessa Ramos, Joni Jones, and Trent Nelson
Supreme Court Standing Order 7 update (deadline for report is April 23 meeting)		Tim Conde (subcommittee chair), Don Winder, Cristie Roach, Padma Veeru-Collings, and Judge James Gardner
Next meeting: April 23, 2018 at 5 p.m.		Steve Johnson

Committee Webpage: <http://www.utcourts.gov/committees/RulesPC/>

# Tab 1

**MINUTES OF THE SUPREME COURT'S  
ADVISORY COMMITTEE ON THE RULES OF PROFESSIONAL CONDUCT**

February 26, 2018

DRAFT

The meeting commenced at 5:02 p.m.

**Committee Members Attending:**

**Steven G. Johnson**, Chair

**Thomas B. Brunker**

**Daniel Brough** – via telephone

**J. Simon Cantarero**

**Tim Conde** – via telephone

**Hon. James Gardner**

**Phil Lowry**

**Hon. Trent D. Nelson** – via telephone

**Vanessa M. Ramos** - via telephone

**Austin Riter**

**Cristie Roach** – via telephone

**Padma Veeru-Collings** - via telephone

**Billy Walker**

**Katherine Venti** (recording secretary)

Guests: None

**Members Excused:**

Gary G. Sackett

Joni Jones

Hon. Darold J. McDade

Timothy Merrill

Donald Winder

**Staff:**

**Nancy Sylvester**

**I. Welcome and Approval of Minutes**

Simon Cantarero moved to approve Minutes of January 22, 2018 Meeting. Billy Walker seconded the motion. The motion to approve carried unanimously.

## **II. Rule 11-101 Creation and Composition of Advisory Committees**

Steve Johnson read and referred to an amendment regarding rules for committee members, including emeritus members and special circumstances members, and emphasized attendance at committee meetings.

The amendment to Paragraph (2) provides: “A committee may also have up to two nonvoting emeritus members. An emeritus member has the same authority and duties as other committee members, except that such members shall have not authority to vote. An emeritus member may serve two terms in addition to the terms served as a member.”

Mr. Johnson also noted that Paragraph (4) provides, in part, “No member may serve more than two full consecutive terms on the committee unless appointed by the Supreme Court as the committee chair or when justified by special circumstances, such as an academician or counsel staff attorney. A member appointed as chair may serve up to four terms as a member and chair. Judges who serve as members of the committees generally shall not be selected as chairs. Committee members shall serve as officers of the court and not as representatives of any client, employer, or other organization or interest group. At the first meeting of a committee in any calendar year, and at every meeting at which a new member of the committee first attends, each committee member shall briefly disclose the general nature of his or her legal practice.” The underscored language is part of the Amendment.

Mr. Johnson also reminded the committee members about attendance requirements of Paragraph (5): “In the event that a committee member fails to attend three committee meetings during a calendar year, the chair may notify the Supreme Court of those absences and may request that the Supreme Court replace that committee member.”

Mr. Johnson identified the following committee members whose terms are expiring this year: Daniel Brough, 1<sup>st</sup> term; Trent Nelson, 2<sup>nd</sup> Term, Gary Sackett; one-year extension term.

Mr. Johnson also called out committee members whose terms expire in 2019.

## **III. Rule 8.4(g) Continued Discussion**

Steve Johnson reported on the February 21, 2018 meeting with the Supreme Court, attended by Mr. Johnson, Mr. Cantarero, and Ms. Sylvester. Mr. Johnson submitted for review the February 21, 2018 draft of Rule 8.4(g) which added the following:

(g) engage in conduct that amounts to unlawful discrimination or harassment under applicable local, state, or federal law; or

(h) egregiously violate or engage in a pattern of repeated violations of the Standards of Professionalism and Civility.

Mr. Johnson reported that the Supreme Court's preferred approach is to simplify the language of paragraph (g) as above. This eliminates the enumerated list of protected classes/groups because the enumerated list changes.

Mr. Johnson also discussed Comment 3(a) being incorporated into Rule itself as paragraph (h). Finally, the Court wanted to include Comment 4 from ABA Model Rules as "Paragraph (g) does not limit the ability of a lawyer to accept, decline, or withdraw from a representation in accordance with Rule 1.16, nor does paragraph (d) preclude legitimate advice or advocacy consistent with these Rules."

Also, the Supreme Court wants this Committee to strengthen the Standards of Professionalism and Civility as per these changes in the Rules. The Committee on Standards of Professionalism and Civility no longer exists and the Court expressed its opinion that this Committee now has such responsibilities.

A discussion was had on the proposed changes, what the rule didn't address, and what it does address.

As to moving Comment 3(a) to a paragraph (h), a non-formal polling of the committee saw no objections. Judge Nelson recommended that portions of Comment 3(a) and second sentence of Comment 4 also be moved to paragraph (h).

A discussion was also had regarding the applicability of Rule 8.4 and the possibility of the Legislature reducing the affected employer size from 15 to 1 with HB-283.

The Subcommittee was assigned to revise language for the next meeting regarding proposed paragraph (g) and (h) and possible changes to proposed paragraph (h), depending on the outcome of HB-283. The Committee will also propose updates to the Standards of Professionalism and Civility accordingly.

#### **IV. Rule 14-802 (Comments) Discussion**

The committee discussed a proposed comment to address in-house counsel that may not fall into one of the exceptions.

Mr. Johnson raised the submission of Gary Sackett regarding Rule 14-802 and whether changes should be made to the Comment. Mr. Johnson submitted a revision to the Advisory Committee Comment to add language regarding legal advice "to the business entity" and to add "A person providing legal advice to a business entity would be required to apply for admission under Rule 14-719." Mr. Johnson also suggested adding a reference to Rule 5.5 to the comment.

The committee discussed the recommended changes and their potential effect. The committee also discussed the threshold for an in-house lawyer to become Utah licensed and whether there was a need for the proposed change given the definitions section of the rule. The definition section "person" as including "entity."

Judge Gardner moved to keep rule the same, without changes. Simon Cantarero and Thomas Brunker seconded the motion. The motion carried unanimously.

#### **V. Supreme Court Standing Order No. 7**

Mr. Johnson raised the issue of Standing Order No. 7 regarding referral to the Professionalism Counseling Board. Billy Walker reported about the Board's meeting with the Supreme Court.

Steve Johnson called for subcommittee member volunteers to analyze Standing Order No. 7 and possibly develop a comment to a rule or a preamble for maintaining the integrity of the profession. Cristie Roach, Padma Veeru-Collings, Tim Conde, and Judge Gardner volunteered. Steve Johnson appointed Don Winder *in absentia*. Tim Conde volunteered to chair the subcommittee, which will report to the committee at the April meeting.

#### **VI. Possible Future Issues**

- a. Attorney wellness
- b. Advertising
- c. Paralegal practice rules

#### **VII. Next Meeting:**

The next meeting is scheduled for Monday, March 19, 2018 at 5:00. The April meeting will be held on Monday, April 23, 2018 at 5:00.

#### **VIII. Adjournment**

The meeting adjourned at 6:23 p.m.

# Tab 2

**MINUTES OF THE SUPREME COURT'S  
ADVISORY COMMITTEE ON THE RULES OF PROFESSIONAL CONDUCT**

*December 4, 2017*

The meeting commenced at 5 p.m.

**Committee Members Attending:**

**Steven G. Johnson (chair)**  
**Daniel Brough (phone)**  
**Thomas B. Brunker**  
**J. Simòn Cantarero**  
**Timothy Conde**  
**Joni Jones**  
**Hon James Gardner (phone)**  
**Phillip Lowry, Jr.**  
**Hon. Trent Nelson**  
**Vanessa Ramos**  
**Austin Riter**  
**Gary G. Sackett**  
**Billy L. Walker**  
**Donald Winder**

**Excused:**

**Judge Darold J. McDade**  
**Timothy Merrill**  
**Cristie Roach**  
**Katherine Venti**  
**Padma Veeru-Collings**

**Staff:**

**Nancy Sylvester**

**Guests:**

**Joni Seko**  
**Dan Jensen**  
**Bryon Benevento**

**Approval of Minutes**

The minutes were approved without comment.

**ADA Lawsuits and Abusive Practices**



Austin Riter, subcommittee chair, provided a report of the subcommittee's work. The subcommittee met and considered the issue and recommended that no specific language be proposed by the committee to address the issue. The subcommittee published a memorandum outlining its reasons for its recommendation. It was included in the distributed agenda materials and presented to the committee for consideration. Mr. Sackett raised whether there is a way for the Office of Professional Conduct to police the matter. Billy Walker opined that it always has that option. The committee voted in favor of adopting the subcommittee's recommendation.

### **Military Attorney Admissions Rules 14-804, 14-805, 14-806**

Phil Lowry provided the committee with an update concerning the status of the issue. Joni Seko, Dan Jensen, and Bryon Benevento represented the Bar's Admissions Committee. The military attorney admission rule is nearly complete (14-804). The subcommittee's proposal mirrors the Virginia rule. The subcommittee is confident it and the Admissions Committee can reconcile the final points. Discussion ensued as to whether to adopt the "gold standard" Virginia rule or the Bar's proposed rule. Mr. Sackett moved to adopt the Admission's proposal. The motion passed.

The military spouse rule (Rule 14-806 for Military Spouses), however, remains in dispute. The subcommittee's proposed rule for bar admission of a military spouse attorney (a "Military Spouse Attorney") is the majority rule nationwide. Before the meeting, there appeared to be two material issues left to resolve: (1) whether passing a bar exam must be a requirement; and (2) whether the Military Spouse Attorney must be supervised by a Utah-based attorney. As to the first issue, the subcommittee ultimately agreed that a Military Spouse must have passed a bar exam. There was disagreement, however, regarding what score the Utah State Bar would accept for the MBE portion of the exam. As to the second issue, there was substantial disagreement regarding how much, if any, supervision a Military Spouse Attorney must have as a condition to being admitted to the Utah State Bar. The committee engaged in substantial discussion. The Admissions Committee favored more supervision, while the subcommittee favored less. The subcommittee, as well as other committee members, was concerned that the Military Spouse Attorney would almost certainly be unknown to Utah-based attorneys and that the applicant would have a difficult time identifying and convincing a Utah-based attorney to accept supervision obligations over him or her. The Admissions Committee representatives, as well as other committee members, emphasized the Bar's responsibility to protect the public and the integrity of the profession, and that more supervision ensures that the Bar is fulfilling that responsibility. Ultimately, the discussion focused on who should carry the burden of associating themselves with a local attorney and how material that burden should be.

After significant discussion, the committee favored two options:

1. The applicant must (i) participate and complete the Bar's New Lawyer Training Program and (ii) have passed a bar exam with an MBE score that satisfies the Utah State Bar's minimum score requirement; or
2. The applicant must (i) participate and complete the Bar's New Lawyer Training Program; (ii) have passed a bar exam; and (iii) be supervised by Utah attorney while admitted under the Military Spouse Attorney rule.

The Admissions Committee agreed to consider the two options and will report back to the subcommittee. In the meantime, Paul Burke agreed to revise the draft of the proposed rules to reflect the committee's discussion.

**Rule 8.4(g)**

The committee discussed briefly whether to make another attempt to reach an agreement on the Rule 8.4 issue. No final action was taken, although the committee confirmed that an available option is to take no action and observe how other states' versions of the ABA model rule are applied and enforced.

**Adjournment**

The meeting adjourned at 7:07 p.m. The next meeting was scheduled for January 22, 2018 at 5 p.m.

## UTAH BAR ADMISSION RULES FOR MILITARY LAWYERS

### **Rule 14-804. Certification Rule for Military Lawyers.**

**(a) Eligibility.** A lawyer admitted to the practice of law in a territory, district, or state of the United States other than Utah, who is serving in or employed by the armed services and is authorized to provide legal assistance by federal statute or military regulation, may obtain a certificate as a Registered Military Legal Assistance Attorney to represent authorized clients before courts and agencies in Utah.

**(b) Application requirements.** An applicant may apply for to the Bar by:

- (1) filing an application in the form and manner prescribed by the Bar and by carrying the burden of proof to establish eligibility under this rule by clear and convincing evidence;
- (2) demonstrating that the applicant is of good moral character;
- (3) presenting proof that the applicant is employed, stationed, or assigned at the military installation in Utah;
- (4) presenting proof of admission to the practice of law and current good standing as a member of the licensing bar in any state, district, or territory of the United States, and certification that the applicant is not currently subject to attorney discipline or the subject of a pending disciplinary matter in any jurisdiction;
- (5) furnishing whatever additional information or proof is required in the course of processing the application;
- (6) certifying the applicant has not been previously denied admission to the Bar;
- (7) submitting an affidavit from the applicant's commanding officer, staff judge advocate or chief legal officer of the military installation in Utah attesting that the applicant will serve as a lawyer exclusively to provide legal services as authorized by the military, and that the applicant's commanding officer, staff judge advocate or chief legal officer will notify the Bar immediately upon the termination of the applicant's military employment or service in Utah.

**(c) Processing of application.** Upon receipt of a completed application, the Bar must expeditiously process the application and may conduct investigations or hearings to ensure the applicant's compliance with the requirements of this rule. Upon a showing that strict compliance with any provision of this rule would cause the military or the applicant undue hardship, the Bar may in its discretion waive or vary the application of such provisions and permit the applicant to furnish other evidence in lieu thereof. The Bar must promptly act upon any application filed under this rule.

### **Potential Alternate Subsection (c)**

**(c) Processing of application.** Upon receipt of a completed application, the Bar must expeditiously process the application.

**(d) Certificate.** Upon determination by the Bar that an applicant has satisfied the requirements of this rule, the applicant will be immediately issued a Registered Military Legal Assistance Attorney Certificate.

**(e) Requirements.** A lawyer practicing under this rule must not hold out to the public or to any person that the lawyer is entitled to practice generally in Utah or to provide legal services except as authorized through military service. The address of record for a military legal assistance lawyer is the military address in Utah of the commanding officer, staff judge advocate or chief legal officer who filed the affidavit on the lawyer's behalf.

**(f) Scope of authorized representation.** A Registered Military Legal Assistance Attorney Certificate authorizes a lawyer to appear before a court or agency in Utah as counsel for authorized clients eligible to receive military legal assistance involving the following subject matters:

- (1) Enforcement of rights under the Servicemembers Civil Relief Act, the Uniformed Services Employment and Reemployment Rights Act, or any other law respecting the military or military members or their dependents;
- (2) Probate and family law, including adoption, guardianship, name or gender changes, divorce, paternity, child custody and visitation, and child and spousal support;
- (3) Consumer advocacy, landlord-tenant disputes, and defense from garnishments; or
- (4) Any other matter upon the authorization of the military legal assistance lawyer's commanding officer, staff judge advocate or chief legal officer and upon the consent of the applicable court or agency.

### **Alternative Subsection (f)**

**(f) Scope of authorized representation.** A Registered Military Legal Assistance Attorney Certificate authorizes a lawyer to appear before a court or agency in Utah as counsel for authorized clients eligible to receive military legal assistance in matters upon the authorization of the military legal assistance lawyer's commanding officer, staff judge advocate or chief legal officer or upon the consent of the applicable court or agency.

**(g) Jurisdiction and authority.** The practice of a lawyer under this rule shall be subject to the Utah Rules of Professional Conduct and Chapter 14, Article 5 (Lawyer Discipline and Disability) of the Rules Governing the Utah State Bar, and to all other applicable laws and rules governing lawyers admitted to the Bar. Jurisdiction shall continue whether or not the lawyer retains the Military Legal Assistance Attorney Certificate and irrespective of the residence or domicile of the lawyer. A lawyer practicing under this rule will also be subject to the laws, rules, and regulations governing the military services.

**(h) Mandatory disclosures.** A lawyer practicing under this rule must report to the Bar within 30 days:

- (1) any event listed in subsection (i) of this rule;
- (2) any change in bar membership status in any state, district, or territory where the attorney has been admitted to the practice of law;
- (3) the imposition of any permanent or temporary professional disciplinary sanction by any territory, district, state or by any territorial, district, state, or federal court or agency; or
- (4) the lawyer's commanding officer, staff judge advocate or chief legal officer of the military installation in Utah must advise the Bar of any change in status of the lawyer that may affect the lawyer's privilege to practice under this rule.

**(i) Termination of certification.** A lawyer's certification under this rule may be terminated upon completion of a disciplinary proceeding in Utah; or shall terminate upon any of the following events:

- (1) the lawyer dies, separates, or retires from the United States Uniformed Services;
- (2) the lawyer is no longer employed, stationed, or assigned at the military installation in Utah from which the affidavit required by this rule was filed;
- (3) the lawyer fails to remain in good standing as a member of a licensing bar of at least one other state, district, or territory of the United States;
- (4) the lawyer resigns, requests termination, or otherwise disclaims certification as a military legal assistance lawyer;
- (5) the lawyer is admitted to the Bar under any other rule.

**(j) Reinstatement of Certificate.** If a lawyer is re-employed or reassigned to the same military installation or to another military installation in Utah within six months after the termination of certification under this rule, the lawyer may submit an updated affidavit as required by this rule and the lawyer's Registered Military Legal Assistance Attorney Certificate will be reinstated upon evidence satisfactory to the Bar that the lawyer remains in full compliance with all requirements of this rule.

**(k) Service Time.** The period of time a lawyer practices using a Registered Military Legal Assistance Attorney Certificate counts under all rules measuring a lawyer's time practicing law, including Rules 14-203 and 14-705.

## UTAH BAR ADMISSION RULES FOR MILITARY SPOUSE LAWYERS

### **Rule 14-801. Definitions.**

(n) “Military Spouse” means a person admitted to the practice of law in a territory, district, or state of the United States other than Utah, whose spouse is a member of the United States Uniformed Services on active service, as defined by the United States Department of Defense, provided that the member-spouse has received orders to serve in Utah or is domiciled or stationed in Utah.

### **Rule 14-806. Admission Rule for Military Spouse Lawyers.**

**(a) Eligibility.** A Military Spouse admitted to the practice of law in a territory, district, or state of the United States other than Utah, whose spouse is a member of the United States Uniformed Services on active service, as defined by the United States Department of Defense, may obtain a license to practice law under the terms of this rule, provided that the member-spouse has received orders to serve in Utah or is domiciled or stationed in Utah.

**(b) Application requirements.** A Military Spouse may apply to the Bar by:

- (1) filing an application in the form and manner prescribed by the Bar and by carrying the burden of proof to establish eligibility under this rule by clear and convincing evidence for admission either to the Bar or to the Bar as House Counsel under Rule 14-719;
- (2) demonstrating that the applicant is of good moral character;
- (3) presenting proof the applicant holds a First Professional Degree in law from an Approved Law School as defined by Rule 14-701;
- (4) submitting proof that the applicant has passed the Multistate Professional Responsibility Examination (MPRE) in accordance with Rule 14-701(bb) and 14-713;
- (5) presenting scores from the Multistate Bar Examination (MBE) or Uniform Bar Examination (UBE) as defined by Rule 14-701 that applicant used to obtain admission to the practice of law in a territory, district, or state of the United States other than Utah;
- (6) presenting proof of admission to the practice of law and current good standing as a member of the licensing bar in any state, district, or territory of the United States, and certification that the Military Spouse is not currently subject to attorney discipline or the subject of a pending disciplinary matter in any jurisdiction;
- (7) furnishing whatever additional information or proof required in the course of processing the application;

- (8) certifying the Military Spouse has not failed the Utah Bar Examination or been previously denied admission to the Bar; and
- (9) paying a processing fee of \$250, which shall be credited towards Bar dues upon licensure.

**(c) Processing of application.** Upon receipt of a completed application, the Bar shall immediately conduct an initial review of the application and may issue a Temporary Practice Certificate to a Military Spouse. The Bar must expeditiously process the application and may conduct investigations or hearings to ensure the Military Spouse's compliance with the requirements of this rule. Upon a showing that strict compliance with any provision of this rule would cause the military or the applicant undue hardship, the Bar may in its discretion waive or vary the application of such provisions and permit the applicant to furnish other evidence in lieu thereof. The Bar must promptly act upon any application filed under this rule.

**(d) License.** Upon determination that a Military Spouse has satisfied the requirements of this rule, the Bar will immediately submit motions to the Supreme Court and the United States District Court of Utah for admission certifying that the Military Spouse has satisfied all qualifications and requirements under this rule for admission to the Bar. After the motion is granted by the Supreme Court and the United States District Court for the District of Utah, the Military Spouse will be eligible to take the required oath and thereafter be enrolled into the Bar and Utah's state and federal courts.

**(e) Requirements and scope of authorized representation.** A Military Spouse licensed under this rule is entitled to all privileges, rights, and benefits and is subject to all duties, obligations, and responsibilities of active members of the Bar, including all ethical, legal, and continuing legal education obligations. A Military Spouse must not retain any new client, begin work on any new matter, or enter an appearance on any new case after any of the events listed in subsection (i).

**(f) Continuing Legal Education, Mentoring, and Supervision.** A Military Spouse licensed under this rule must comply with the continuing legal education requirements for active status lawyers under Rule 14-404. Within six months of admission, a Military Spouse with two or more years of prior legal practice must attend the Bar's OPC ethics school and attend not less than 15 hours of continuing legal education on Utah practice and procedure and ethics requirements. A Military Spouse with less than two years of practice when admitted must obtain a mentor and complete the New Lawyer Training Program (NLTP) as outlined in Rules 14-404 and 14-808. A Military Spouse with less than two years of practice whose MBE score was less than 135 or whose UBE score was less than 270 must be affiliated at all times with an active member of the Bar in good standing who has agreed to supervise the Military Spouse and assume full responsibility for all matters handled by the Military Spouse. A Military Spouse subject to this supervision requirement must also enroll in the Bar's approved professional liability insurance program or obtain equivalent insurance coverage.

**(g) Jurisdiction and authority.** The practice of a lawyer under this rule shall be subject to the Utah Rules of Professional Conduct and Chapter 14, Article 5 (Lawyer Discipline and Disability) of the Rules Governing the Utah State Bar, and to all other applicable laws and rules governing lawyers admitted to the Bar. Jurisdiction shall continue whether or not the Military Spouse

retains the privilege to practice in Utah and irrespective of the residence or domicile of the Military Spouse.

**(h) Mandatory disclosures.** A Military Spouse practicing under this rule must report to the Bar within 20 days any change that may affect the Military Spouse's ability to practice law under this rule, including but not limited to:

- (1) any event listed in subsection (i) of this rule;
- (2) any change in bar membership status in any state, district, or territory where the attorney has been admitted to the practice of law; or
- (3) the imposition of any permanent or temporary professional disciplinary sanction by any territory, district, state or by any territorial, district, state, or federal court or agency.

**(i) Termination of practice and licensure.** A Military Spouse's licensure under this rule may be terminated upon completion of a disciplinary proceeding in Utah; or shall terminate six months after any of the following events, unless the Military Spouse has a pending application for admission to the Bar:

- (1) the member-spouse dies, separates or retires from the United States Uniformed Services; or is permanently transferred outside the State of Utah on military orders with dependents authorized;
- (2) the Military Spouse ceases to be a dependent as defined by the United States Department of Defense;
- (3) the Military Spouse permanently relocates to another state, district, or territory of the United States for reason other than the member-spouse's permanent change of station outside the State of Utah;
- (4) the Military Spouse fails to remain in good standing as a member of a licensing bar of a state, district, or territory of the United States;
- (5) the Military Spouse resigns, requests termination, or fails to meet annual licensing requirements of the Bar; or
- (6) the Military Spouse is admitted to the Bar under any other rule.

**(j) Reinstatement of License.** If within six months after the termination of licensure under this rule, a Military Spouse returns to Utah because the lawyer's member-spouse is again stationed in Utah, the Military Spouse will be reinstated upon submission of evidence satisfactory to the Bar that Military Spouse remains in full compliance with all requirements of this rule.

**(k) Service Time.** The period of time a Military Spouse practices under this rule counts under all rules measuring a lawyer's time practicing law or as a member of the Bar, including Rules 14-203 and 14-705.



**Rule 14-804. ~~Special admission exception~~ Certification for military legal assistance lawyers.**

(a) ~~Exception~~ Certification for military lawyers to practice in Utah. A lawyer admitted to the practice of law in a state or territory of the United States or of the District of Columbia, who is ~~a full-time active-duty military officer serving in or employed by the United States Uniformed Services and authorized to provide legal assistance by federal statute or military regulation~~ (“military lawyer”), may obtain a Registered Military Legal Assistance Certificate to represent clients before courts and agencies in Utah. ~~Office of a Staff Judge Advocate of the United States Army, Air Force, Navy, Marines, or Coast Guard, a Naval Legal Service Office or a Trial Service Office, located in Utah, may, upon application to the Bar and Supreme Court certification, appear as a lawyer and practice law before the courts of Utah in any civil matter or civil litigation, or in a civil administrative proceeding, subject to the conditions and limitations set forth in this Rule.~~

(b) Application requirements. The ~~applicant~~ military lawyer must be of good moral character and shall apply to the Bar by:

(b)(1) filing an application in the form and manner ~~that may be prescribed by the Board of Bar Commissioners;~~

(b)(2) presenting proof that the military lawyer is employed, stationed or assigned at a military installation in Utah;

(b)(3) presenting satisfactory proof of admission to the practice of law and current good standing as a member of the licensing bar before the highest court in any of a state or territory of the United States or the District of Columbia and submitted certification that the military lawyer is in good standing in all jurisdictions where currently admitted and is not currently subject to attorney discipline or the subject of a pending disciplinary matter in any jurisdiction;

(b)(4) certifying the applicant has not been previously denied admission to the Bar;

(b)(5) submitting an affidavit from the military lawyer’s commanding officer, staff judge advocate or chief legal officer of the military installation in Utah attesting that the military lawyer will serve as a lawyer exclusively to provide legal services as authorized by federal statute or military regulation, and that the military lawyer’s commanding officer, staff judge advocate or chief legal officer will notify the Bar within ten days of the termination of the lawyer’s military employment or service in Utah; and

(b)(6) furnishing whatever additional information or proof that may be required in the course of processing the application; ~~and~~

~~(b)(4) paying a \$10 processing fee.~~

(c) Certification. ~~Permission for an applicant to practice law shall become effective upon approval by the Bar and certification by the Supreme Court~~Upon determination by the Bar that a military lawyer has satisfied the requirements of this rule, the military lawyer will be issued a Registered Military Legal Assistance Certificate.

(d) Prohibition on holding forth. Military lawyers admitted to practice pursuant to this Rule are not, and shall not represent themselves to be, members of the Bar nor represent that they are licensed to generally practice law in Utah.

(e) Scope of authorized representation permitted. Military lawyers ~~admitted~~ certified pursuant to this rule ~~may represent active duty military personnel in enlisted grades E-1 through E-4 and their dependents, who are under substantial financial hardship, in non-criminal matters to the extent such representation is permitted by the supervisory Staff Judge Advocate or Commanding Officer of the Naval Legal Service Office or the Commanding Officer of the Trial Service Office. They may also engage in such other preparatory activity as is necessary for any matter in which the military attorney is involved. Other active duty military personnel and their dependents may be represented if expressly approved in writing by the Service Judge Advocate General or his or her designee~~ are authorized to appear before a court or agency in Utah as counsel for clients eligible to receive military legal assistance by federal statute or military regulation in any matter permitted by that federal statute or military regulation and authorized by the military lawyer's commanding officer, staff judge advocate or chief legal officer, or upon the consent of the applicable court or agency.

~~(f) Prohibition on compensation. Military lawyers admitted pursuant to this rule may not demand or receive any compensation from clients in addition to the military pay to which they are already entitled.~~

~~(fg)~~ Jurisdiction and authority. The practice of a lawyer admitted under this rule shall be subject to the Utah Rules of Professional Conduct and Article 5, Lawyer Discipline and Disability, and to all other applicable laws and rules governing lawyers admitted to the Bar. Jurisdiction shall continue whether or not the military lawyer retains the privilege to practice in Utah and irrespective of the residence or domicile of the military lawyer.

(g) Mandatory disclosures. A military lawyer certified under this rule must report to the Bar within 10 days;

(g)(1) any event listed in subsection (h) of this rule;

(g)(2) any change in bar membership status in any jurisdiction where the attorney has been admitted to the practice of law;

(g)(3) the imposition of any permanent or temporary professional disciplinary sanction by any jurisdiction;

(g)(4) any change in status that may affect the lawyer's privilege to practice under this rule.

(h) Termination of ~~privilege and~~ certification.

~~(h)(1)~~ The military lawyer's privilege to practice under this rule may be terminated upon completion of a disciplinary proceeding in Utah or shall terminate upon any of the following events:

(h)(1)(A) the lawyer separates or retires from the United States Uniformed Services;

(h)(2) the lawyer is no longer employed, stationed, and assigned at a military installation in Utah;

(h)(3) the lawyer fails to remain in good standing in any jurisdiction where the lawyer has been admitted to practice law; or

(h)(4) may be terminated by the Supreme Court orders the termination of the certificate at any time, with or without cause; or

~~(h)(1)(B) shall be terminated when the military lawyer ends active duty military service in Utah.~~

~~(h)(2) The lawyer admitted under this rule and his or her supervisory Staff Judge Advocate or his or her Commanding Officer are responsible to advise the Bar and the Supreme Court of any change in status of the lawyer that may affect his or her privilege to practice law under this rule.~~

**Rule 14-805. Temporary admission for spouse of active military stationed in Utah.**

(a) Requirements for provisional admission of spouses of active military with orders in Utah. Absent admission under Rules 14-701 et seq., the spouse of an active member of the military (“Military Spouse Attorney”) with orders to reside in Utah may be provisionally admitted to practice law without taking the Bar Examination. The defined terms set forth in Rule 14-701 are incorporated in this rule. The burden of proof is on the applicant for provisional military spouse admission to establish by clear and convincing evidence that she or he:

(a)(1) has paid the prescribed fee and filed the required Complete Military Spouse Application;

(a)(2) has graduated with a First Professional Degree in law from an Approved Law School;

(a)(3) has been admitted to the practice of law before the highest court of a U.S. state, territory, or the District of Columbia;

(a)(4) does not qualify for admission by motion under Rule 14-705 or admission by the transfer of a UBE score under Rule 14-712;

(a)(5) has achieved a score equivalent to Utah’s passing score as defined in Rule 14-711(d) if the applicant has taken the Uniform ~~on a~~ Bar Examination (UBE) in another U.S. state, territory, or the District of Columbia or, if the applicant has never sat for the UBE, a score of 135 or more on the Multistate Bar Examination~~equivalent to Utah’s passing score as defined in Rule 14-711(d) and has not failed the Utah Bar Examination;~~

(a)(6) is of good moral character, satisfies the requirements of Rule 14-708, and has not previously been denied admission by the Utah State Bar or engaged in the practice of law in Utah without a license while residing in this state;

(a)(7) has successfully passed the MPRE in accordance with Rule 14-713;

(a)(8) is an active member in good standing in at least one state or territory of the U.S. or the District of Columbia and is a member in good standing in all jurisdictions where she or he has been admitted;

(a)(9) has a proven record of ethical, civil and professional behavior and has never been disbarred or resigned with discipline pending, or their equivalent, in any jurisdiction and is not currently subject to lawyer discipline or the subject of a pending disciplinary matter;

(a)(10) is the spouse of an active duty service member of the United States Uniformed Services as defined by the Department of Defense and the service member is on military orders stationed in Utah;

(a)(11) is physically residing in Utah;

(a)(12) has identified an active member of the Bar in good standing who has agreed to actively supervise the Military Spouse Attorney in accordance with the supervisory requirements specified in subsection (b), as evidenced by a verification signed by both the Military Spouse Attorney and the supervising attorney; and

(a)(13) complies with the provisions of Rule 14-716 concerning licensing and enrollment fees.

(b) Supervision by local counsel. While the application is pending, the Military Spouse Attorney must be actively supervised by an active member of the Bar in good standing. The supervision may cease upon the Military Spouse Attorney's admission to the Bar. For the duration of the supervision, the supervising attorney shall:

(b)(1) and assume full responsibility for all matters to be handled by the applicant Military Spouse Attorney as evidenced by a verification signed by both the Military Spouse Attorney and the supervising attorney;

(b)(2) agrees to file actively participate in the filing of any pleadings or papers with Courts within Utah only with the active participation of the supervising attorney and to include the name of the supervising attorney and be included by name on all pleadings and papers; and

(b)(3). Unless excused by the presiding judge, the be in attendance of the supervising attorney is required at all court appearances with the Military Spouse Attorney, until the Supreme Court approves the Military Spouse Attorney's admission to the Bar; and

(a)(14) complies with the provisions of Rule 14-716 concerning licensing and enrollment fees.

(c) Timing and processing of application. An application under this rule may be filed at any time, but the applicant must be able to demonstrate that she or he satisfies the requirements of this rule as of the date the application is filed. Processing of the application typically takes a minimum of three months. However, the Bar will conduct a preliminary character and fitness review of the Military Spouse Application, upon satisfactory completion of which the Bar will issue a Practice Pending Admission Certificate to the applicant. The Practice Pending Admission Certificate authorizes the Military Spouse Attorney to begin practice in accordance with this rule while the application is pending.

(d) Jurisdiction and Authority. The practice of a lawyer admitted under this rule shall be subject to the Utah Rules of Professional Conduct and Article 5, Lawyer Discipline and Disability, and to all other applicable laws and rules governing lawyers admitted to the Bar. Jurisdiction shall continue whether or not the Military Spouse Attorney retains the

privilege to practice in Utah and irrespective of the residence or domicile of the Military Spouse Attorney.

- | ~~(e)~~ Continuing legal education. Applicants admitted under this rule that have two or more years of legal practice shall complete and certify no later than six months following admission that she or he has attended at least 15 hours of continuing legal education on Utah practice and procedure and ethics requirements.
- | ~~(e)~~(1) The Bar may by regulation specify the number of the required 15 hours that must be in particular areas of practice, procedure, and ethics. Included in this mandatory 15 hours is attendance at the Bar's OPC ethics school.
- | ~~(e)~~(2) Those with less than two years of practice when admitted must complete the New Lawyer Training Program (NLTP) as outlined in Rules 14-404 and 14-808.
- | ~~(e)~~(3) On an ongoing basis, attorneys admitted pursuant to this rule must comply with the continuing legal education requirements imposed on active status lawyers under Rule 14-404.
- | ~~(f)~~ Mandatory disclosure of limited licensure. An attorney admitted pursuant to this rule must provide to every client, prior to the commencement of representation, a notice disclosing that the Military Spouse Attorney's is provisionally admitted under this rule and, when applicable, his or her association with thea supervising attorney.
- | ~~(g)~~ Term of temporary license to practice in Utah. An attorney admitted pursuant to this rule has a temporary license for a maximum of three years from the date of admission.
- | ~~(h)~~ Annual licensing. An attorney admitted pursuant to this rule is subject to annual licensing and enrollment fees, and during the annual licensing period must provide to the Bar proof of continuing compliance with (a)(8) through (a)(12).
- | ~~(i)~~ Mandatory status reporting. An attorney admitted pursuant to this rule and the supervising attorney are each responsible for notifying the Bar in writing within 20 days of any change that may affect the Military Spouse Attorney's privilege to practice law under this rule.
- | ~~(j)~~ Termination of temporary license to practice in Utah. The temporary license terminates and the attorney must cease all activities under this rule:
  - | ~~(j)~~(1) ninety days after the military service member receives orders to reside in a place other than Utah;
  - | ~~(j)~~(2) ninety days after the military service member leaves active duty in the military, including both voluntary and involuntary separation and retirement;

- | (j)(3) ninety days after the military service member and the Military Spouse Attorney legally separate or divorce;
- | (j)(4) thirty days after failure to satisfy the continuing legal education requirements listed in subsection (d);
- | (j)(5) thirty days after failure to pay annual licensing fees in accordance with Rule 14-107;
- | (j)(6) thirty days after failure to provide annual proof of continuing compliance as required by subsection (g);
- | (j)(7) immediately upon failure to maintain an active license in at least one U.S. state, territory, or the District of Columbia;
- | (j)(8) immediately upon any termination of sponsorship by the supervising attorney ~~identified pursuant to (a)(12)~~ as required by subsection (b), or the failure of the supervising attorney to be an active member of the Bar in good standing, ~~or the failure to satisfy the requirements of subsections (a)(12) and (a)(13);~~
- | (j)(9) immediately upon receiving a failing score on the Utah Bar Examination;
- | (j)(10) immediately upon receipt of notice by the Utah Supreme Court, with or without cause; or
- | (j)(11) as ordered by any disciplinary proceeding in Utah or upon disbarment or suspension of any other license of the Military Spouse Attorney from another jurisdiction.
- | (k) Required action after termination. Upon termination of authority to practice in Utah, the Military Spouse Attorney must:
  - | (k)(1) transfer all pending matters to the supervising attorney if there is one, or to another attorney in consultation with the client;
  - | (k)(2) provide written notice to all clients in pending matters;
  - | (k)(3) notify any courts and opposing counsel in pending litigation; and
  - | (k)(4) decline to represent any new client, begin work in any new matter, or enter an appearance on any new case.
- | (l) Failure to satisfy the notice and termination of practice requirements set forth in subsections (f), (i) and (j) may subject the Military Spouse Attorney to discipline, including the termination of the license granted under this rule.

(~~m~~) Reinstatement after temporary termination of license. A Military Spouse Attorney whose temporary license was terminated pursuant to subsection (i) shall have his or her license reinstated if within six months from the termination, the Military Spouse Attorney is able to demonstrate that he or she complied with all the requirements of this rule upon termination of the license and the terminating event has been cured.

(~~n~~) Full admission to the Utah State Bar. To become a permanent Active member of the Bar, a Military Spouse Attorney must comply with the provisions of Article 7.

(n)(1) Exception to Admission by Motion rule. Up to 36 months of the time spent practicing from an office in Utah as an admitted Military Spouse attorney may be counted toward the time in practice requirement for Admission by Motion if the Military Spouse Attorney has never committed the unauthorized practice of law in the state of Utah and meets all other requirements under Rule 14-705, including full-time, active practice as defined in Rule 14-701(b), (t), and (ff) for 60 of the last 84 months, and the maintenance of an active license in a reciprocal jurisdiction.



# Tab 3

## MEMORANDUM

FROM: Subcommittee on Rule 8.4(g)

TO: Advisory Committee on Rules of Professional Conduct

DATE: March 16, 2018

SUBJECT: Revised & Proposed Rule 8.4(g) and (h)

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This memorandum arises out of the Utah Supreme Court's request to clarify the proposed language in subparagraphs (g) and (h) to Rule 8.4, and to offer recommendations for amending language to the Utah Standards of Professionalism and Civility for consistency between the Rules of Conduct and the Standards. The recommended changes appear as Exhibits A-E at the end of this memorandum.

### Applicability of Rule 8.4(g)

It has been well-documented by this subcommittee and by others that (i) the stated purpose for adopting subparagraph (g) is to create a new category of professional misconduct, and (ii) the policy reason is to deter and penalize discrimination and harassment committed by licensed lawyers. To achieve that aim, it is suggested to adopt the following language for subparagraph (g): "It is professional misconduct for a lawyer to...engage in conduct that amounts to unlawful discrimination or harassment under applicable local, state, and federal law."

The subcommittee deliberated between using the terms "amounts to" or "tantamount" in describing the prohibited conduct. On the one hand, "conduct that amounts to unlawful discrimination or harassment under applicable...law" suggests a focused and nuanced interpretation of the type of behavior and the setting in which it would be prohibited under the Rules. In other words, discrimination and harassment would constitute professional misconduct in those instances and settings for which there is established law (e.g., employment, wage, age, gender, etc.) and applicable to those attorneys, firms, and companies that employ more than 15 persons. The subcommittee also considered that the phrase "that amounts to unlawful discrimination or harassment" under applicable law may narrow the applicability of the misconduct on a limited number of attorneys, and effectively create two classes of attorneys for whom the rule would apply, exempting solo practitioners, small firm lawyers, or in-house attorneys at companies with less than 15 employees. Existing federal and Utah antidiscrimination and anti-harassment laws generally apply to employers of 15 or more persons, exempting smaller employers.<sup>1</sup>

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<sup>1</sup> A minimum of 15 employees is required to file a claim under the Utah Antidiscrimination Act. See, Utah Code Ann. § 34A-5-101, *et seq.* It is worth noting that a Bill was introduced at the 2018 General Session of the Utah Legislature seeking to amend the Utah Antidiscrimination Act by allowing certain claims involving employers with fewer than 15 employees to proceed to an evidentiary hearing without an investigation by the Utah Division of Antidiscrimination and Labor; and providing additional state remedies for claims involving employers having as few

On the other hand, there was discussion on replacing the phrase “that amounts to” with the word “tantamount,” being defined by Merriam-Webster as “equivalent in value, significance, or effect.” See <https://www.merriam-webster.com/dictionary/tantamount> (last visited March 16, 2018). The reason for the change is to capture the public policy intent of 8.4(g), which is to deter discriminatory and harassing conduct committed by attorneys by making the misbehavior sanctionable professional misconduct. Simply stated, the use of “tantamount” focuses more on the conduct that is being prohibited, and less on whether the relevant or underlying law is technically applicable to the attorney or the employer.

As the preamble to the Utah Rules of Professional Conduct makes clear, “[a] lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer’s business and personal affairs.” Utah R. Prof’l Conduct Preamble ¶ 5. Also, “a lawyer’s professional responsibilities are prescribed in the Rules of Professional Conduct, as well as substantive and procedural law.” *Id.* at ¶ 7. The Rules of Professional Conduct impose on attorneys a professional responsibility broader than, and beyond those of, the legal requirements of statutes or stare decisis. For example, an attorney may violate the Rules and commit professional misconduct under Rules 8.4(b) and 8.4(c), even though the attorney may not have been previously found guilty beyond a reasonable doubt of the applicable criminal statutes. Similarly with respect to the in antidiscrimination and anti-harassment laws, proposed Rule 8.4(g) would impose a professional responsibility on attorneys not to discriminate or harass, even when the relevant laws may not be applicable to the company or law firm that employs the offending attorney.

The subcommittee welcomes deliberations of the Advisory Committee on these distinctions.

The subcommittee also recommends adding a few other conditions and protected classes to Comment 3 to be consistent with the Utah Antidiscrimination Act. The new inclusions and classes are: “color,” “pregnancy,” “childbirth,” and “pregnancy-related conditions.” See, Utah Code Ann. § 34A-5-106.

#### Proposed Rule 8.4(h) and Standards of Professionalism and Civility

It should be noted at the outset that the Utah Supreme Court has asked this Advisory Committee to consider changes to the Standards, as the former Advisory Committee on Professionalism was disbanded and not longer active. Comment 3a to Rule 8.4 currently states that “[a]n egregious violation or a pattern of repeated violations of the Standards of Professionalism and Civility may support a finding that the lawyer has violated paragraph (d).” The Supreme Court seeks the Advisory Committee’s input regarding the incorporation of Comment 3a into the Rules by adding subparagraph (h) to Rule 8.4, thereby deterring and prohibiting discrimination and harassment in contexts beyond “the administration of justice” and expanding the applicability of the Standards.

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as 5 employees. The proposed legislation did not pass. See, H.B. 238 (Workplace Protection Amendments) at <https://le.utah.gov/~2018/bills/static/HB0283.html>.

The subcommittee recommends adopting new paragraph (h) by making egregious violations of the Standards, and patterns of repeated violations, professional misconduct subject to discipline. Doing so would comport with the objective stated at the beginning of the Standards: “To enhance the daily experience of lawyers and the reputation of the Bar.” It would also seek to “achieve the twin goals of civility and professionalism.” Preamble to the Utah Standards of Professionalism and Civility, ¶ 1. The subcommittee also recommends amending the second sentence in Standard #3 from being aspirational to being mandatory, and consistent with the first sentence.

Furthermore, the subcommittee deliberated on the rephrasing language and the applicability of the Standards. The intention of the proposed changes to Standard #3 is to guide conduct by an attorney towards another attorney or legal professional (judges, paralegals, administrative staff, law clerks, court clerks and staff, etc.), and not sanction harassment or discrimination by one attorney in his private affairs with another private citizen – where there may or may not be an applicable law or avenue for relief to the person subject to the harassment or discrimination.

Below are several versions of Standard #3 for the Advisory Committee’s review and consideration.

## EXHIBIT A

### Rule 8.4. Misconduct.

It is professional misconduct for a lawyer to:

...

(g) engage in conduct that amounts to unlawful discrimination or harassment under applicable local, state, or federal law; or

(h) egregiously violate or engage in a pattern of repeated violations of the Standards of Professionalism and Civility.

Comment

...

[3] A lawyer who, in the course of representing a client, knowingly manifests by words or conduct bias or prejudice based upon race, color, sex, pregnancy, childbirth, or pregnancy-related conditions, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status, or socioeconomic status, ~~violates~~ may violate paragraph (d) when such actions are prejudicial to the administration of justice. Legitimate advocacy respecting the foregoing factors does not violate paragraph (d). A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of this rule.

[3a] The Standards of Professionalism and Civility approved by the Utah Supreme Court are intended to improve the administration of justice. ~~An egregious violation or a pattern of repeated violations of the Standards of Professionalism and Civility may support a finding that the lawyer has violated paragraph (d).~~

[4] The substantive law of antidiscrimination and anti-harassment statutes and case law guides the application of paragraph (g). Paragraph (g) does not limit the ability of a lawyer to accept, decline, or withdraw from a representation in accordance with Rule 1.16, nor does paragraph (g) preclude legitimate advice or advocacy consistent with these Rules. For purposes of determining the violation of paragraph (g), the size of a law firm or number of employees is not a defense. Discrimination or harassment does not need to be previously proven by a judicial or administrative tribunal or fact-finder in order to allege or prove a violation of this Rule. Lawyers may engage in conduct undertaken to discuss diversity and inclusion, including any benefits and challenges, without violating this rule. Implementing initiatives aimed at recruiting, hiring, retaining, and advancing employees of diverse backgrounds or from historically underrepresented groups, or sponsoring diverse law student organizations, are not violations of paragraph (g).

[4a] A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not alone establish or rule out a violation of paragraph (g). A lawyer does not violate

paragraph (g) by limiting the scope or subject matter of the lawyer's practice or by limiting the lawyer's practice to members of underserved populations in accordance with these rules and other law.

[5] A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists. The provisions of Rule 1.2(d) concerning a good faith challenge to the validity, scope, meaning or application of the law apply to challenges of legal regulation of the practice of law.

[6] Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of lawyers. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, agent and officer, director or manager of a corporation or other organization.

[7] This rule differs from ABA Model Rule 8.4.

## EXHIBIT B

### Standards of Professionalism and Civility – Version 1

3. Lawyers shall not, without an adequate factual basis, attribute to other counsel or the court improper motives, purpose, or conduct. Lawyers ~~should avoid~~ shall not engage in hostile, demeaning, or humiliating ~~words in written and oral communications~~ conduct with adversaries or other legal professionals. Neither written submissions nor oral presentations should disparage the integrity, intelligence, morals, ethics, or personal behavior of an adversary unless such matters are directly relevant under controlling substantive law.

Comment: Hostile, demeaning, and humiliating communications include all expressions of discrimination on the basis of race, color, religion, gender, pregnancy, childbirth or pregnancy-related conditions, sexual orientation, gender identity, marital status, age, handicap ~~disability~~, veteran status, or national origin, ethnicity, or socioeconomic status, or casting aspersions on physical traits or appearance. Lawyers should refrain from acting upon or manifesting bigotry, discrimination, or prejudice toward any participant in the legal process, even if a client requests it.

Lawyers should refrain from expressing scorn, superiority, or disrespect. Legal process should not be issued merely to annoy, humiliate, intimidate, or harass. Special care should be taken to protect witnesses, especially those who are disabled or under the age of 18, from harassment or undue contention.

Cross-References: R. Prof. Cond. Preamble [5]; R. Prof. Cond. 3.1; R. Prof. Cond. 3.5; R. Prof. Cond. 8.4; R. Civ. P. 10(h); R. Civ. P. 12(f); R. App. P. 24(k); R. Crim. P. 33(a); Fed. R. Civ. P. 12(f).

## EXHIBIT C

### Standards of Professionalism and Civility – Version 2

3. Lawyers shall not, without an adequate factual basis, attribute to other counsel or the court improper motives, purpose, or conduct. Lawyers should avoid hostile, demeaning, or humiliating words in written and oral communications with adversaries. Lawyers shall not engage in conduct with other attorneys and legal professionals that manifests bigotry, discrimination, or prejudice. Neither written submissions nor oral presentations should disparage the integrity, intelligence, morals, ethics, or personal behavior of an adversary unless such matters are directly relevant under controlling substantive law.

Comment: Hostile, demeaning, and humiliating communications include all expressions of discrimination on the basis of race, color, religion, gender, pregnancy, childbirth or pregnancy-related conditions, sexual orientation, gender identity, marital status, age, handicapdisability, veteran status, or national origin, ethnicity, or socioeconomic status, or casting aspersions on physical traits or appearance. ~~Lawyers should refrain~~ The prohibition from acting upon or manifesting bigotry, discrimination, or prejudice toward any participant in the legal process, is applicable even if a client requests it.

Lawyers should refrain from expressing scorn, superiority, or disrespect. Legal process should not be issued merely to annoy, humiliate, intimidate, or harass. Special care should be taken to protect witnesses, especially those who are disabled or under the age of 18, from harassment or undue contention.

Cross-References: R. Prof. Cond. Preamble [5]; R. Prof. Cond. 3.1; R. Prof. Cond. 3.5; R. Prof. Cond. 8.4; R. Civ. P. 10(h); R. Civ. P. 12(f); R. App. P. 24(k); R. Crim. P. 33(a); Fed. R. Civ. P. 12(f).



## EXHIBIT D

### Standards of Professionalism and Civility – Version 3

3. Lawyers shall not, without an adequate factual basis, attribute to other counsel or the court improper motives, purpose, or conduct. Lawyers ~~should~~shall avoid hostile, demeaning, or humiliating words in written and oral communications with adversaries. Neither written submissions nor oral presentations should disparage the integrity, intelligence, morals, ethics, or personal behavior of an adversary unless such matters are directly relevant under controlling substantive law.

Comment: Hostile, demeaning, and humiliating communications include all expressions of discrimination on the basis of race, color, religion, gender, pregnancy, childbirth or pregnancy-related conditions, sexual orientation, gender identity, marital status, age, handicap~~disability~~, veteran status, or national origin, ethnicity, or socioeconomic status, or casting aspersions on physical traits or appearance. Lawyers should refrain from acting upon or manifesting bigotry, discrimination, or prejudice toward any participant in the legal process, even if a client requests it.

Lawyers should refrain from expressing scorn, superiority, or disrespect. Legal process should not be issued merely to annoy, humiliate, intimidate, or harass. Special care should be taken to protect witnesses, especially those who are disabled or under the age of 18, from harassment or undue contention.

Cross-References: R. Prof. Cond. Preamble [5]; R. Prof. Cond. 3.1; R. Prof. Cond. 3.5; R. Prof. Cond. 8.4; R. Civ. P. 10(h); R. Civ. P. 12(f); R. App. P. 24(k); R. Crim. P. 33(a); Fed. R. Civ. P. 12(f).

## EXHIBIT E

### Standards of Professionalism and Civility – Version 4

3. Lawyers shall not, without an adequate factual basis, attribute to other counsel or the court improper motives, purpose, or conduct. Lawyers ~~should~~ shall avoid hostile, demeaning, ~~or~~ humiliating, intimidating, harassing, or discriminatory words in written and oral communications conduct with ~~adversaries~~ other lawyers, paralegals, or administrative staff. Neither written submissions nor oral presentations should disparage the integrity, intelligence, morals, ethics, or personal behavior of ~~an adversary~~ another legal professional unless such matters are directly relevant under controlling substantive law.

Comment: Hostile, demeaning, and humiliating communications include all expressions of discrimination on the basis of race, color, religion, gender, pregnancy, childbirth or pregnancy-related conditions, sexual orientation, gender identity, marital status, age, handicap ~~disability~~, veteran status, or national origin, ethnicity, or socioeconomic status, or casting aspersions on physical traits or appearance. Lawyers should refrain from acting upon or manifesting bigotry, discrimination, or prejudice toward any participant in the legal process, even if a client requests it.

Lawyers should refrain from expressing scorn, superiority, or disrespect. Legal process should not be issued merely to annoy, humiliate, intimidate, or harass. Special care should be taken to protect witnesses, especially those who are disabled or under the age of 18, from harassment or undue contention.

Cross-References: R. Prof. Cond. Preamble [5]; R. Prof. Cond. 3.1; R. Prof. Cond. 3.5; R. Prof. Cond. 8.4; R. Civ. P. 10(h); R. Civ. P. 12(f); R. App. P. 24(k); R. Crim. P. 33(a); Fed. R. Civ. P. 12(f).