Agenda

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

September 17, 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
Rule 8.4 and CLS letter	Tab 2	Steve Johnson, Chair, Simon Cantarero, Rule 8.4 Subcommittee Chair
Supreme Court Standing Order 7 update	Tab 3	Tim Conde (subcommittee chair), Don Winder, Cristie Roach, Padma Veeru-Collings, and Judge James Gardner
Military spouse admissions Rule 14-805	Tab 4	Steve Johnson, Chair, and Phil Lowry, Military Admissions Subcommittee Chair
ADA issue update		Billy Walker
Next meeting		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

August 20, 2018

DRAFT

Committee Members Attending:
Steven G. Johnson, Chair
Dan Brough (by telephone)
Tom Brunker
Joni Jones
Phillip Lowry (by telephone)
Hon. Darold McDade
Hon. Trent Nelson (by telephone) (emeritus)
Amy Oliver
Vanessa Ramos
Austin Riter
Gary Sackett (emeritus)
Padma Veeru-Collings (by telephone)
Katherine Venti
Billy Walker

Guests:
Patricia Owen
Andrew Riggle
Jacey Skinner
Rep. Norm Thurston

Members Excused:
?

Staff:
Nancy Sylvester

Recording Secretary:
Adam Bondy

I. Welcome and Approval of Minutes

Quorum was announced and the meeting commenced at 5:03 p.m. Mr. Johnson welcomed the committee and recognized the new members of the committee. Per Rule 11-101, all members introduced themselves and their areas of practice.

Motion on the Minutes:
Mr. Riter moved to approve the minutes from the June 18, 2018 meeting. Ms. Ramos seconded the motion. The motion passed unanimously.

II. Supreme Court Standing Order 7 Update

This agenda item relates to the possible conversion of Standing Order 7 to a new Rule 14-302. Due to subcommittee member absences, the update will be postponed. It was noted that the committee will need to examine the other rules to ensure that references to Standing Order 7 are updated. It was further noted that a comment should be included to the effect that a judge need not necessarily recuse from a lawyer's cases when the judge has referred that lawyer to the Board authorized by now-Standing Order 7.

III. Rule 8.4(g) and Standards of Professionalism and Civility

Mr. Johnson reported on his meeting with the Utah Supreme Court regarding Rule 8.4. The court had no specific comments but asked the committee to consider the rule's constitutionality.

Mr. Johnson brought the recent California rule to the committee's attention. That rule (8.4.1) includes a Comment 4 that clarifies, "This rule does not apply to conduct protected by the First Amendment to the United States Constitution or by Article I, § 2 of the California Constitution."

The committee discussed adding a similar comment to the proposed rule. The committee suggested not referring specifically to only one article of the Utah Constitution. Mr. Sackett noted that adding this comment as Comment 6 would render our comment numbering out of order.

Motion on Rule 8.4(g) Comment:
Ms. Venti moved to add "This rule does not apply to conduct protected by the United States Constitution or by Article I of the Utah Constitution" as Comment 4(a) to the proposed Rule 8.4. Mr. Walker seconded. The motion passed unanimously.

Mr. Sackett raised a concern that Rule 8.4(g) as proposed states, "irrespective of the number of employees," but does not clarify what employees are meant. The committee considered that the rule meant the lawyer's legal organization. Mr. Johnson noted that the term "firm" is defined broadly in Rule 1.0(d). Ms. Venti suggested changing the language to "irrespective of the number of employees of the lawyer's firm, as defined in Rule 1.0(d)." The committee considered whether the rule should explicitly point the reader to Rule 1.0(d). The committee decided that an explicit reference would be helpful, noting that some of the other rules include "as defined by"

pointers. Ms. Sylvester suggested omitting the reference to (d) and instead referring the reader to Rule 1.0, so as to avoid renumbering problems if another definition is added in the future.

Motion on Rule 8.4(g) Wording:
Ms. Jones moved to amend proposed Rule 8.4(g) to read, "engage in conduct that amounts to unlawful discrimination or harassment under applicable local, state or federal law, irrespective of the number of employees of the lawyer's firm as defined in rule 1.0." Mr. Riter seconded the motion. The motion passed unanimously.

The committee then considered the Standards of Professionalism and Civility in Rule 14-301. Mr. Johnson directed the committee to whether a lawyer should be subject to sanctions under Standard 2 for failing to "advise their clients that civility, courtesy, and fair dealing are expected." Ms. Venti suggested that it might be appropriate if the lawyer repeatedly fails to do so. Some committee members noted that they or their firms include the advice in their engagement letters. Other committee members noted that it was not part of their or their firms' normal practice. Mr. Brunker stated that most clients do not need to be advised of these expectations.

Mr. Johnson indicated that the Utah Supreme Court may be aware of a case where this is an issue. Mr. Johnson suggested splitting Rule 8.4 into two sections: things that are professional misconduct and things that may not be professional misconduct. Mr. Sackett opined that "may" is too vague to reasonably inform lawyers what conduct is expected and appropriate.

The committee floated the idea of moving Standard 2 and the first sentence of Standard 14 to the preamble of the Standards. Ms. Oliver noted that the preamble is phrased as "should" while the affected Standards are phrased as "shall." Ms. Venti asked for clarification of the problem in the current standards the Supreme Court had identified. Mr. Johnson explained that the Supreme Court did not explicitly identify any current problem, but suggested the court was perhaps concerned that an attorney would use the requirements of Standard 2 or Standard 14 to file a complaint against another attorney. Mr. Brunker observed that this would be using the Standards as a sword rather than their intended use as shields. Ms. Venti noted that the Standards are shields in the sense that a lawyer can use them to refuse to engage in uncivil behavior at a client's request. If the affected Standards are moved to the preamble, the lawyer may lose the ability to use them as a shield. Mr. Brunker and Ms. Venti suggested that, until the Supreme Court has a live case concerning possible misuse of the Standards, the Standards as written should stand. Adjusting the language of the Standards before any concrete problem with them has been identified may be more harmful than leaving them alone.

Motion to Table Discussion:
Mr. Brunker moved to keep the recommended language as currently drafted. Ms. Ramos seconded the motion. The motion passed unanimously.

The committee discussed and determined that, because Comment 4(a) is a subset of Comment 4, the committee notes need only refer to changes in Comment 4 without explicitly pointing out the addition of Comment 4(a).

IV. ADA Issue

Rep. Norm Thurston explained that the legislature considered a bill to ameliorate some of the possible abuses of ADA violation suits/demand letters but ran out of time during the legislative session. Rep. Thurston wanted to bring the issue to the committee's attention to determine if there was a professional conduct solution to the perceived abuses. Jacey Skinner explained the legislative and committee history in greater detail.

Rep. Thurston explained that some of the ADA violation litigation is abusive because lawyers seek a settlement amount, attorney fees, and an NDA in exchange for not filing or for dismissing the ADA cases, even though the ADA does not provide for personal damages to the complainant. Rep. Thurston further explained that some attorneys were advertising on Craigslist or similar forums for plaintiffs/investigators to be trained in ADA requirements and then to go looking for violations at businesses they would not otherwise visit. According to Rep. Thurston, the attorneys generally seek smaller amounts to avoid the business owners hiring lawyers (who might advise them that no damages should be paid). Furthermore, because the complainants are hired as investigators, they can get paid as staff (since there are not entitled to damages as plaintiffs under the ADA).

Rep. Thurston explained that this is an ethics problem more than a legal problem and asked whether there is something the committee can recommend or do. The businesses will never prevail because the violations did happen.

It was noted that even a non-attorney could do all these pre-litigation abusive practices (shopping for complainants, visiting businesses only to find violations, sending demand letters, asking for settlement amounts). It was further noted that the ADA is unlikely to be amended to add a cure period because there is opposition to moving the goalposts while businesses are still adjusting to the current goalposts. It was further noted that businesses have already had 28 years to come into compliance.

Mr. Walker wondered if, with regard to specific attorneys and their practices, there might be violations of rule 7.3 (improper solicitation) and rule 8.4(c) (deception). It was noted that rule 11 and 3.1 only apply to non-meritorious cases and these cases appear to have the possibility or even probability of legal merit.

The committee discussed whether there was an education problem and if there is some way for a chamber of commerce or the secretary of state to educate businesses as to ADA requirements and their rights when an ADA violation suit is brought or threatened. Rep. Thurston noted that businesses should be advised to fix the problem immediately and then refuse to sign a settlement/NDA unless advised to do so by their counsel.

Mr. Walker will review materials provided by Rep. Thurston, and will report back to the committee if he believes the current rules already cover this general type of situation.

V. Other Business

Mr. Walker brought up a point for future meetings regarding mechanisms for raising judicial concerns short of formal complaints. Ms. Sylvester suggested that one mechanism might include a letter to Brent Johnson or the Judicial Conduct Committee. The committee wondered if more education about alternatives could be included in the fall forum or bar journal article.

VI. Next Meeting

The next meeting is scheduled for September 17 at 5:00 p.m. The agenda will include bar licensing for military spouses and Supreme Court Standing Rule 7. Mr. Bondy will not be able to attend.

VII. Adjournment

The meeting adjourned at 6:50 p.m.

Tab 2

MEMORANDUM

On or about August 17, 2018, David Nammo, CEO and Executive Director of the Christian Legal Society, submitted a letter to the Supreme Court as an additional comment regarding the Court's consideration of ABA Model Rule 8.4(g). This letter brought to the Court's attention recent free speech cases decided by the U. S. Supreme Court especially *Nat'l Inst. Of Family and Life Advocates v. Becerra*, 138 S. Ct. 2361(U. S. June 26, 2018) ("NIFLA") and *Matal v. Tam*, 137 S. Ct. 1744 (2017).

The NIFLA case held that government restrictions on professional speech are subject to strict scrutiny and must survive a close examination of whether the regulation is narrowly tailored to achieve a compelling government interest. The Court recognized that governments have no power to restrict expression because of its message, its ideas, its subject matter, or its content.

The Court further stated in NIFLA that a state may not, under the guise of prohibiting professional misconduct, ignore constitutional rights.

The Rule 8.4(g) proposed to the Utah Supreme Court by the Advisory Committee on the Rules of Professional Conduct (the "Committee") does not have the possible constitutional issues that ABA Model Rule 8.4(g) may have. The Committee's proposal does not follow the ABA Model Rule. Instead, it provides that it is professional misconduct for a lawyer to engage in conduct that amounts to unlawful discrimination or harassment under applicable laws. The laws which restrict unlawful discrimination or harassment are well-established and have already been subject to constitutional examination.

Further, the proposed Rule includes a comment which provides, "This rule does not apply to conduct protected by the First Amendment to the United States Constitution or by Article I of the Utah Constitution." The proposed rule thus ensures that constitutionally-protected speech and conduct is not prohibited.

Because the Committee's 8.4(g) proposal takes a different approach to preventing discrimination and harassment than the ABA Model Rule, an approach which has already been vetted by constitutional examination, the Committee's proposal does not have the constitutional concerns expressed in Mr. Nammo's letter to the Court.

CHRISTIAN LEGAL SOCIETY

Seeking Justice with the Love of God

August 17, 2018

The Honorable Matthew B. Durrant, Chief Justice
The Honorable Thomas R. Lee, Associate Chief Justice
The Honorable Constandinos Himonas, Associate Justice
The Honorable John A. Pearce, Associate Justice
The Honorable Paige Petersen, Associate Justice
Utah Supreme Court
450 South State
P.O. Box 140210
Salt Lake City, Utah 84114-0210

By UPS Two-Day Delivery

Re: Proposed Rule 8.4(g) and the United States Supreme Court's Recent Decision in *National Institute of Family and Life Advocates v. Becerra*, 138 S. Ct. 2361 (U.S. June 26, 2018)

Dear Chief Justice Durrant, Associate Chief Justice Lee, Justice Himonas, Justice Pearce, and Justice Petersen:

Christian Legal Society (CLS) submitted comments regarding Proposed Rule of Professional Conduct 8.4(g) through the Court's website on July 23, 2017. The purpose of this letter is to supplement those comments by bringing to the Court's attention the United States Supreme Court's recent decision in *Nat'l. Inst. of Family and Life Advocates v. Becerra*, 138 S. Ct. 2361 (U.S. June 26, 2018) ("NIFLA").

In *NIFLA*, the Supreme Court held that government restrictions on professionals' speech – including lawyers' professional speech – are generally subject to strict scrutiny because they are content-based speech restrictions and, therefore, presumptively unconstitutional. That is, a government regulation that targets speech must survive strict scrutiny – a close examination of whether the regulation is narrowly tailored to achieve a compelling government interest.

Under the Supreme Court's analysis in *NIFLA*, ABA Model Rule 8.4(g) is a content-based speech restriction that violates the First Amendment. The Court explained that "[c]ontent-based regulations 'target speech based on its communicative content.'" *NIFLA,* 138 S. Ct. at 2371, quoting *Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2226 (2015). "[S]uch laws 'are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests.'" *Ibid.* As the Court observed, "[t]his stringent standard reflects the fundamental principle that governments have '"no power to restrict expression because of its message, its ideas, its subject matter, or its content."'" *Ibid.*, quoting *Police Dept. of Chicago v. Mosley*, 408 U.S. 92, 95 (1972).

Most importantly to any consideration of ABA Model Rule 8.4(g) or a similar rule, the Court firmly rejected the idea that professional speech is less protected by the First Amendment than other speech. Recently, three federal courts of appeals had ruled that "'professional speech' [w]as a separate category of speech that is subject to different rules" and, therefore, less protected by the First Amendment. *NIFLA,* 138 S. Ct. at 2371.

But in abrogating those decisions, the Court stressed that "*this Court has not recognized 'professional speech' as a separate category of speech. Speech is not unprotected merely because it is uttered by 'professionals.'*" *Id.* at 2371-72 (emphasis added). The Court resolutely rejected the idea that "professional speech" was an exception "from the rule that content-based regulations of speech are subject to strict scrutiny." *Id.* at 2371.

The Court observed that there were "two circumstances" in which it "afforded less protection for professional speech" but "neither [circumstance] turned on the fact that professionals were speaking." *Id.* at 2372. One circumstance in which it "applied more deferential review" involved "laws that require professionals to disclose factual, noncontroversial information in their 'commercial speech.'" *Id.* As the Court explained, professional speech is not commercial speech, except in the "advertising" context, in which the disclosure of "factual, noncontroversial information" may be required by the government. *Id.* Obviously, ABA Model Rule 8.4(g) is not primarily concerned with advertising. The second circumstance arises when States "regulate professional conduct, even though that conduct *incidentally* involves speech." *Id.* at 2372 (emphasis added). But again, ABA Model Rule 8.4(g) targets speech – "verbal conduct" – and is not aimed solely at conduct that incidentally involves speech. As the Court concluded in *NIFLA*, "neither line of precedents is implicated here." *Id.*

Instead, the Court was clear that a State's regulation of attorney speech would be subject to strict scrutiny to ensure that any regulation is narrowly tailored to achieve a compelling interest. The Court reaffirmed that its "precedents have long protected the First Amendment rights of professionals" and "has applied strict scrutiny to content-based laws that regulate the noncommercial speech of lawyers." *Id.* at 2374. Indeed, in a landmark case, the Court ruled that "a State may not, under the guise of prohibiting professional misconduct, ignore constitutional rights," explaining:

> If there is an internal tension between proscription and protection in the statute, we cannot assume that, in its subsequent enforcement, ambiguities will be resolved in favor of adequate protection of First Amendment rights. Broad prophylactic rules in the area of free expression are suspect. Precision of regulation must be the touchstone in an area so closely touching our most precious freedoms.

Nat'l Ass'n for Advancement of Colored People v. Button, 371 U.S. 415, 438-39 (1963). Because it would censor or chill huge swaths of protected speech, ABA Model Rule 8.4(g) fails strict scrutiny.

The *NIFLA* decision is the second major decision handed down by the Supreme Court *after* the ABA adopted Model Rule 8.4(g) that makes clear that the proposed rule violates the First Amendment. In *Matal v. Tam*, 137 S. Ct. 1744 (2017), a unanimous Court held that a federal statute was facially unconstitutional because it allowed government officials to penalize "disparaging" speech. The Court made clear that a government prohibition on disparaging, derogatory, demeaning, or offensive speech is blatant viewpoint discrimination and, therefore, unconstitutional. *Id.* at 1753-1754, 1765; *see also*, *id.* at 1766 (unconstitutional to suppress speech that "demeans or offends") (Kennedy, J., concurring, joined by JJ. Ginsburg, Sotomayor, and Kagan).

All of the Justices agreed in *Matal* that a provision of a longstanding federal law allowing government officials to deny trademarks for terms that may "disparage or bring into contempt or disrepute" living or dead persons, including on racial or ethnic grounds, was unconstitutional because "[i]t offends a bedrock First Amendment principle: Speech may not be banned on the ground that it expresses ideas that offend." *Id.* at 1751 (quotation marks and ellipses omitted). Justice Alito, writing for a plurality of the Court, noted that "[s]peech that demeans on the basis of race, ethnicity, gender, religion, age, disability, or any other similar ground is hateful; but the proudest boast of our free speech jurisprudence is that we protect the freedom to express 'the thought that we hate.'" *Id.* at 1764 (plurality op.), quoting *United States v. Schwimmer*, 279 U.S. 644, 655 (1929) (Holmes,J., dissenting).

In his concurrence, joined by Justice Ginsburg, Justice Sotomayor, and Justice Kagan, Justice Kennedy explained that the federal statute was unconstitutional viewpoint discrimination because the government permitted "a positive or benign mark but not a derogatory one," which "reflects the Government's disapproval of a subset of messages it finds offensive," which is "the essence of viewpoint discrimination." *Id.* at 1766 (Kennedy, J., concurring). And it was viewpoint discriminatory even if it "applies in equal measure to any trademark that demeans or offends." *Id.*

Justice Kennedy stressed that "[t]he danger of viewpoint discrimination is that the government is attempting to remove certain ideas or perspectives from a broader debate," particularly "if the ideas or perspectives are ones a particular audience might think offensive." *Id.* at 1767. Justice Kennedy closed with a sober warning:

> A law that can be directed against speech found offensive to some portion of the public can be turned against minority and dissenting views to the detriment of all. The First Amendment does not entrust that power to the government's benevolence. Instead, our

> reliance must be on the substantial safeguards of free and open discussion in a democratic society.

Id. at 1769 (Kennedy, J., concurring).

Christian Legal Society thanks the Court for considering these supplemental comments.

Respectfully submitted,

/s/ David Nammo

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1 **Rule 8.4. Misconduct.**
2 It is professional misconduct for a lawyer to:
3 (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another
4 to do so, or do so through the acts of another;
5 (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as
6 a lawyer in other respects;
7 (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
8 (d) engage in conduct that is prejudicial to the administration of justice;
9 (e) state or imply an ability to influence improperly a government agency or official or to achieve
10 results by means that violate the Rules of Professional Conduct or other law; ~~or~~
11 (f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial
12 conduct or other law;~~.~~
13 (g) engage in conduct that amounts to unlawful discrimination or harassment under applicable ~~local,~~
14 state or federal law, irrespective of the number of employees of the lawyer's firm~~,~~ as defined in Rule 1.0;
15 or
16 (h) egregiously violate or engage in a pattern of repeated violations of the Standards of
17 Professionalism and Civility.
18 Comment
19 [1] Lawyers are subject to discipline when they violate or attempt to violate the Rules of Professional
20 Conduct or knowingly assist or induce another to do so through the acts of another, as when they request
21 or instruct an agent to do so on the lawyer's behalf. Paragraph (a), however, does not prohibit a lawyer
22 from advising a client concerning action the client is legally entitled to take.
23 [1a] A violation of paragraph (a) based solely on the lawyer's violation of another Rule of Professional
24 Conduct shall not be charged as a separate violation. However, this rule defines professional misconduct
25 as a violation of the Rules of Professional Conduct as the term professional misconduct is used in the
26 Supreme Court Rules of Professional Practice, including the Standards for Imposing Lawyer Sanctions. In
27 this respect, if a lawyer violates any of the Rules of Professional Conduct, the appropriate discipline may
28 be imposed pursuant to Rule 14-605.
29 [2] Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses
30 involving fraud and the offense of willful failure to file an income tax return. However, some kinds of
31 offenses carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving
32 "moral turpitude." That concept can be construed to include offenses concerning some matters of
33 personal morality, such as adultery and comparable offenses, that have no specific connection to fitness
34 for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer
35 should be professionally answerable only for offenses that indicate lack of those characteristics relevant
36 to law practice. Offenses involving violence, dishonesty, breach of trust or serious interference with the

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37 administration of justice are in that category. A pattern of repeated offenses, even ones of minor
38 significance when considered separately, can indicate indifference to legal obligation.
39 [3] A lawyer who, in the course of representing a client, knowingly manifests by words or conduct bias
40 or prejudice based upon race, color, sex, pregnancy, childbirth, or pregnancy-related conditions, age,
41 religion, national origin, ethnicity, disability, ~~age~~, sexual orientation, gender identity, marital status, or
42 socioeconomic status, may violate ~~violates~~ paragraph (d) when such actions are prejudicial to the
43 administration of justice. Legitimate advocacy respecting the foregoing factors does not violate paragraph
44 (d). ~~A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not~~
45 ~~alone establish a violation of this rule.~~
46 ~~[3a] The Standards of Professionalism and Civility approved by the Utah Supreme Court are~~
47 ~~intended to improve the administration of justice. An egregious violation or a pattern of repeated~~
48 ~~violations of the Standards of Professionalism and Civility may support a finding that the lawyer has~~
49 ~~violated paragraph (d).~~
50 [4] The substantive law of antidiscrimination and anti-harassment statutes, ~~ordinances,~~ and case law
51 guides the application of paragraph (g), except that for purposes of determining a violation of paragraph
52 (g), the size of a law firm or number of employees is not a defense. Paragraph (g) does not limit the
53 ability of a lawyer to accept, decline, or in accordance with Rule 1.16 or, withdraw from a representation
54 in accordance with Rule 1.16, nor does paragraph (g) preclude legitimate advice or advocacy consistent
55 with these rules. Discrimination or harassment does not need to be previously proven by a judicial or
56 administrative tribunal or fact-finder in order to allege or prove a violation of this rule. Lawyers may
57 engage in conduct undertaken to discuss diversity and inclusion, including any benefits and challenges,
58 without violating this rule. Implementing initiatives aimed at recruiting, hiring, retaining and advancing
59 employees of diverse backgrounds or from historically underrepresented groups, or sponsoring diverse
60 law student organizations, are not violations of paragraph (g).
61 [4a] This rule does not apply to expression or conduct protected by the First Amendment to the
62 United States Constitution or by Article I of the Utah Constitution.
63 [5] A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does
64 not alone establish a violation of this rule. A lawyer does not violate paragraph (g) by limiting the scope or
65 subject matter of the lawyer's practice or by limiting the lawyer's practice to members of underserved
66 populations in accordance with these Rules and other law. A lawyer may charge and collect reasonable
67 fees and expenses for a representation. Rule 1.5(a). Lawyers also should be mindful of their professional
68 obligations under Rule 6.1 to provide legal services to those who are unable to pay, and their obligation
69 under Rule 6.2 not to avoid appointments from a tribunal except for good cause. See Rule 6.2(a), (b) and
70 (c). A lawyer's representation of a client does not constitute an endorsement by the lawyer of the client's
71 views or activities. See Rule 1.2(b).

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72 [6][4] A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that
73 no valid obligation exists. The provisions of Rule 1.2(d) concerning a good faith challenge to the validity,
74 scope, meaning or application of the law apply to challenges of legal regulation of the practice of law.
75 [7][5] Lawyers holding public office assume legal responsibilities going beyond those of other citizens.
76 A lawyer's abuse of public office can suggest an inability to fulfill the professional role of lawyers. The
77 same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian,
78 agent and officer, director or manager of a corporation or other organization.
79 [8] This rule differs from ABA Model Rule 8.4 to the extent that it changes paragraph (g), adds
80 paragraph (h), and changes comments [3] and [4].
81

Tab 3

Proposed Rule 14-302 of the Supreme Court Rules of Professional Practice

Rule 14-302. Professionalism and Civility Counseling for Utah State Bar Members.

(a) Board Authority. The Utah Supreme Court has established and maintains a board (the "Board") for the purpose of receiving, evaluating, addressing, and resolving complaints made by other lawyers and judges concerning another Utah State Bar member's professionalism and civility. The Board shall have authority to (1) counsel members of the Bar, in response to complaints by other lawyers, referrals from judges, or referrals from counsel in the Office of Professional Conduct ("OPC Counsel"); (2) provide counseling to members of the Bar who request advice on their own obligations under the Standards; (3) provide CLE on the Standards; and (4) publish advice and information relating to the work of the Board.

(b) Composition of the Board. The Board, which shall consist of seven Utah State Bar members who shall act as counselors to counsel and educate members of the Bar concerning the Standards. Appointees shall be appointed by the Utah Supreme Court based upon stature in the legal community and experience in legal professionalism and civility matters and serve on a volunteer basis. A minimum of one of the seven appointees shall have transactional experience, and at least one lawyer shall have small firm or sole practitioner experience. Board members shall serve for staggered terms of no fewer than three years for continuity and so that each Board member has the opportunity to develop expertise on the Standards. The Utah Supreme Court will appoint one of the Board members as chair.

(c) Submission of Complaints and Questions to the Board.

(1) The Board is authorized to consider complaints by lawyers concerning the professionalism and civility of other lawyers, referrals from judges or OPC counsel, and questions about professionalism and civility from practicing lawyers. In the absence of a referral from a judge or OPC Counsel, the Board shall not consider questions or complaints from clients or members of the public.

(2) To submit a complaint with the Board concerning the conduct of another member of the Bar (the "Subject Lawyer"), the complaining lawyer (the "Complainant") shall deliver a letter or email to the Board that contains:

(i) Name of and contact information for the Subject Lawyer and Complainant;
(ii) A description of the conduct about which the complainant is complaining, including the date(s) of the conduct; and
(iii) The Complainant shall affix a signature to the complaint.

(3) The Board shall not consider anonymous complaints about lawyers.

(4) Questions or requests for counseling from a lawyer concerning his or her own conduct need not be in writing but may be made by telephone or a personal visit with members of the Board. Referrals from judges may be directed by telephone.

(5) Lawyers seeking the assistance of the Board shall do so only in good faith and not for the purposes of harassment or to attain a strategic advantage. The Board is authorized

to terminate any proceeding or referral that it believes has been initiated or utilized in bad faith or for an improper purpose.

(d) Procedure.

(1) The Board is authorized to develop its own procedures based upon this Rule, the purposes for which the program is established, and upon the Board's experience. Adherence to formal rules of procedure or evidence is not required. The Board may address a complaint or referral by whatever means it determines is best. In matters where the Board deems it helpful, matters may be addressed by panels of three. The Board should generally notify the Complainant or, in the case of a referral, the judge or OPC Counsel, that the complaint or referral has been received within thirty days of the complaint. The notice should indicate the manner in which the Board intends to address the issue along with the general timing that is anticipated.

(2) Except as authorized in this Standing Order or in Rule 14-515(a)(4) of the Utah Supreme Court Rules Governing the Utah State Bar, the contents of statements, communications or opinions made by any participant shall be kept confidential. Board members may freely communicate with a referring judge or with OPC counsel in connection with any matter that has been referred to the Board. The Board may, in its discretion, inform the Subject Lawyer of relevant factual assertions that the Board may address. This may, at the discretion of the Board, include a copy of the complaint or written referral. The Board may also, in its discretion, investigate underlying facts or counsel lawyers by reference to facts or assertions learned in the process of its efforts. Board members are permitted to communicate directly with lawyers, judges, or clients involved in the dispute concerning the relevant facts and the application or interpretation of the Standards.

(3) Any failure or refusal by the Subject Lawyer to respond to a request or instruction from the Board may result in the Board reporting such failure or refusal to the OPC, which may result in a finding that the Subject Lawyer has violated the Utah Rule of Professional Conduct, including, but not limited to Rule 8.4(h).

(e) Resolution and Written Advisories. The Board may resolve the matter as it deems appropriate, including, but not limited to, by (i) issuing a written advisory to the lawyers involved, (ii) by a face-to-face meeting with the lawyers and the Board, or (iii) through counseling the Board provides by telephone or other means. Should the Board determine to resolve the matter through a written advisory, reference should be made to individual Standards. The Board shall provide a copy of each written advisory (including identifying information) to the lawyers involved in the matter and may, at its discretion, also provide a copy to OPC counsel. Where a matter has come to the Board by means of judicial referral the Board shall, upon resolution of the matter, report to the judge the manner in which the matter was resolved, including, where applicable, a copy of the written advisory that includes identifying information. Further, the Board may in its discretion provide a copy of a written advisory (including identifying information) to supervisors, employers, or agencies whose lawyers have been the subject of a complaint.

(f) Publication and Reporting. The Board is permitted to disclose the general nature of the situation for the benefit of members of the Bar and the public (without identifying names or uniquely identifying facts such as the parties to a proceeding) and a sufficient description of the conduct at issue

to convey the basis for its advice, through publication or other means of public dissemination including CLE presentations or posting to a webpage. In addition, the Board shall report annually to the Utah Supreme Court concerning its operation, the Standards it has interpreted, the advice it has given, and any trends it believes important for the Utah Supreme Court to know about. It should also make suggestions to the Utah Supreme Court as to needed changes to the Standards. The Board shall periodically publish summaries or selected portions of its advisories in the Utah Bar Journal for the benefit of practicing lawyers. Published advisories shall not include the names or uniquely identifying facts such as the parties to a proceeding. The Board shall also maintain a web page under the auspices of the Utah Supreme Court or the Bar that provides a database of the advisories transmitted to the Utah Bar Journal for publication.

Proposed Amendment to Rule 14-510(a)(4) of the Rules of Lawyer Discipline and Disability

Rule 14-510(a)(4). Potential Referral to Professionalism Counseling Board.

In connection with any conduct that comes to their attention, whether by means of an informal complaint, a preliminary investigation, or any other means, OPC counsel may, at its discretion, refer any matter to the Professionalism Counseling Board established pursuant to ~~the Supreme Court's Standing Order No. 7~~ Rule 14-302 of the Supreme Court's Rules of Professional Practice. Such referral may be in addition to or in lieu of any further proceedings related to the subject matter of the referral. Such referral should be in writing and, at the discretion of OPC counsel, may include any or all information included in an informal complaint or additional facts submitted by a complainant.
Board Authority. The Utah Supreme Court has established and maintains a board (the "Board") for the purpose of receiving, evaluating, addressing, and resolving complaints made by other

Utah Supreme Court Standing Order No. 7
(As to establishment of a program of professionalism counseling for members of the Utah State Bar)

Effective April 1, 2008; Amended June 12, 2012

The Court intends to establish a board (hereinafter the "Board") consisting of seven counselors to counsel and educate members of the Bar concerning the Court's Standards of Professionalism and Civility (hereinafter the "Standards"). Specifically, the Board's purposes are: (1) to counsel members of the Bar, in response to complaints by other lawyers, referrals from judges, or referrals from counsel in the Office of Professional Conduct ("OPC counsel"); (2) to provide counseling to members of the Bar who request advice on their own obligations under the Standards; (3) to provide CLE on the Standards; (4) to publish advice and information relating to the work of the Board.

Board Composition

Appointees shall serve on a volunteer basis and will be appointed based upon stature in the legal community and experience in legal professionalism matters. A minimum of one of the seven appointees shall have transactional experience, and at least one attorney shall have small firm or sole practitioner experience. Board members shall serve for staggered terms of no fewer than three years for continuity and so that each Board member has the opportunity to develop expertise on the Standards. The Court will appoint one of the Board members as chair.

Submission of Complaints and Questions to the Board

The Board is authorized to consider complaints by lawyers concerning the professionalism of other lawyers, referrals from judges or OPC counsel, and questions about professionalism from practicing lawyers. In the absence of a referral from a judge or OPC counsel, the Board shall not consider questions or complaints from clients or members of the public.

If a lawyer wishes to lodge a complaint with the Board concerning the conduct of another member of the Bar, the complaint must be in writing (i.e., by letter or email) and signed by the complainant. The Board shall not consider anonymous complaints about lawyers. Questions or requests for counseling from a lawyer concerning his or her own conduct need not be in writing but may be made by telephone or a personal visit with members of the Board. Referrals from judges may be directed by telephone. Referrals from OPC counsel should be in writing.

Procedure

The Board is authorized to develop its own procedures based upon this Standing Order, the purposes for which the program is established, and upon the Board's experience. Adherence to formal rules of procedure or evidence is not required.The Board may address a complaint or referral by whatever means it determines is best. In matters where the Board deems it helpful, matters may be addressed by panels of three.The Board should generally notify the complainant or, in the case of a referral, the judge or OPC counsel,that the complaint or referral has been received within thirty days of the complaint. The notice should indicate the manner in which the Board intends to address the issue along with the general timing that is anticipated.

Confidentiality

Except as authorized in this Standing Order or in Rule 14-515(a)(4) of the Supreme Court Rules Governing the Utah State Bar, the contents of statements, communications or opinions made by any participant in the program shall be kept confidential. Board members may freely communicate with a referring judge or with OPC counsel in connection with any matter that has been referred to the Board. The Board may, in its discretion, inform the lawyer who is subject to a complaint or referral of relevant factual assertions that the Board may address. This may, at the discretion of the Board, include a copy of the complaint or written referral. The Board may also, in its discretion, investigate underlying facts or counsel lawyers by reference to facts or assertions learned in the process of its efforts. Board members are permitted to communicate directly with lawyers, judges, or clients involved in the dispute concerning the relevant facts and the application or interpretation of the Standards.

Resolution and Written Advisories

Resolution may be by written advisory to the lawyers involved, by a face-to-face meeting with the lawyers, or through counsel provided by telephone or other means. Should it determine to resolve the matter through a written advisory, reference should be made to individual Standards. A copy of each written advisory (including identifying information) shall be provided to the lawyers involved in the matter and may, at the discretion of the Board, also be provided to OPC counsel. Where a matter has come to the Board by means of judicial referral the Board shall, upon resolution of the matter, report to the judge the manner in which the matter was resolved, including, where applicable, a copy of the written advisory that includes indentifying information. Further, the Board may in its discretion provide a copy of a written advisory (including identifying information) to supervisors, employers, or agencies whose lawyers have been the subject of a complaint. Also, the panel is permitted to disclose the general nature of the situation for the benefit of members of the Bar and the public (without identifying names or uniquely identifying facts such as the parties to a proceeding) and a sufficient description of the conduct at issue to convey the basis for its advice, through publication or other means of public dissemination including CLE presentations or posting to a web page.

The Duty of Good Faith

Attorneys seeking the assistance of the Board shall do so only in good faith and not for the purposes of harassment or to attain a strategic advantage. The Board is authorized to terminate any proceeding or referral that it believes has been initiated or utilized in bad faith or for an improper purpose.

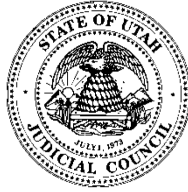
Publication

The Board shall report annually to the Court concerning its operation, the Standards it has interpreted, the advice it has given, and any trends it believes important for the Court to know about. It should also make suggestions to the Court as to needed changes to the Standards.

The Board shall periodically publish summaries or selected portions of its advisories in the Utah Bar Journal for the benefit of practicing lawyers. Published advisories shall not include the names or uniquely identifying facts such as the parties to a proceeding. Also, the Board shall maintain a web page under the auspices of the Court or the Bar that provides a database of the advisories transmitted to the Utah Bar Journal for Publication.

Complaints should be sent to James Ishida, Appellate Court Administrator, Utah Supreme Court, P.O. Box 140210, Salt Lake City, UT 84114-0210; email address jamesi@utcourts.gov

Tab 4



Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

Richard H. Schwermer
State Court Administrator
Raymond H. Wahl
Deputy Court Administrator

MEMORANDUM

To: Advisory Committee on the Utah Rules of Professional Conduct
From: Nancy Sylvester
Date: September 13, 2018
Re: Military spouse admissions Rule 14-805

The attached materials are provided by the Utah State Bar's Admissions Committee. The Admissions Committee reviewed and revised the military admissions subcommittee's rule proposal. This committee will need to determine the final version of this rule.

MILITARY SPOUSE ATTORNEY ADMISSION RULE

Rule 14-805. Admission for spouse of active military stationed in Utah.

(a) Requirements for the provisional admission of spouses of active military ~~with permanent change of station orders to serve~~who have received change of station orders to be stationed in Utah. Absent admission under Rules 14-701 et seq., the spouse of an active member of the military ("Military Spouse Attorney") with permanent change of station orders to be stationed ~~reside~~ in Utah may be admitted to practice law in Utah without taking the Bar Examination. The defined terms set forth in Rule 14-701 are incorporated into this rule. The burden of proof is on the applicant for military spouse admission to establish by clear and convincing evidence that the applicant:

(a)(1) 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 has received military orders for a permanent change of station to be stationed in Utah;

(a)(2) (a)(7) does not qualify for admission by motion under Rule 14-705 or admission based on a UBE score transfer under Rule 14-712;

(a)(3) has ~~paid half the prescribed application fees and~~ filed the required Complete Military Spouse Application and has paid half the prescribed application fees which shall be credited towards Bar dues upon licensure~~.~~; the applicant must satisfy the requirements of this rule as of the date the application is filed and through the date of admission; prior to admission, the applicant must have completed relocation to Utah;

~~(a)(2)~~ (a)(4) has graduated with a First Professional Degree in law from an Approved Law School;

(a)(5~~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)(6~~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 currently admitted;

~~(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 presented any score from the Multistate Bar Examination (MBE) or Uniform Bar Examination (UBE) as defined by Rule 14-701 that applicant may have used to obtain admission to the practice of law in a jurisdiction other than Utah;~~

(a)(7~~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 unauthorized practice of law in Utah;

(a)(8) has presented proof of having achieved a UBE score of 270 or above on the

Comment [1]: Although the Admissions Committee does not object to removing the repeated use of "provisional" when referring to the license, it is important to retain at least one reference to it to call attention to the fact that this is not a typical license. It is provisional based on the spouse's military orders.

Comment [2]: Admissions believes this change is advisable because some active military with orders to be stationed in Utah may not actually be serving in this state but the military spouse will still be residing here.

Comment [3]: This paragraph has simply been moved from (a)(10) because it is a defining requirement of this rule and therefore it is logical to state it up front. Several other requirements in this list have been reordered in a manner that seems to flow more logically (for example, (a)(8) is now (a)(5)). Likewise, internal references within the rule have been altered to reflect this changes.

Comment [4]: This statement was removed by the subcommittee, but it is in fact necessary based on experience. The subcommittee assumed it was a burden of proof requirement, but it is in fact a timing requirement. Without it, applicants will try to file applications explaining that they plan to eventually meet the qualifications, and then they will never do so. For example, if an applicant will not pay the application fees up front, a large amount of time and resources is spent on the application that may never be recompensed if the applicant decides not to pursue admission. Another example would be an applicant who claims they will eventually return to good standing in the jurisdiction where they are licensed but they are not willing to do so right now. When ...

Comment [5]: The Admissions Committee moved the reference to the applicant's relocation and when it must be complete. It has also been reworded it so that it is less stringent: instead of requiring the applicants to have relocated before they can practice, the new wording will allow them to start accepting work as soon as they have a supervisor and have received the Certificate ...

Comment [6]: The Admissions Committee continues to object to the fairness and logic of waiving the standard competency requirement for Military Spouse Attorneys. The rule has been revised to return to Admissions' initial proposal, which explains that the exceptions provided are only for those who have met the same competency requirements of all attorneys who are ...

Uniform Bar Examination (UBE) or, if the applicant has never sat for the UBE, an MBE score of 135 or above on the Multistate Bar Examination (MBE);

(a)(97) 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 currently admitted;

(a)(109) 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 has received military orders for a permanent change of station to reside in Utah;

(a)(11) if intending to practice while the application is pending admission, 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) of this rule, as evidenced by a verification signed by both the Military Spouse Attorney and the supervising attorney; practice may only begin when the Military Spouse Attorney has received a Military Spouse Certificate from the Bar, and the supervision may cease upon the Military Spouse Attorney's admission to the Bar under this rule; and

(a)(12) complies with the provisions of Rule 14-716 concerning licensing and enrollment fees.

(b) Practice Pending Admission CertificateSupervision by local counsel. The Bar will promptly conduct a preliminary character and fitness review of a Ccompleted Aapplication submitted by a Military Spouse Attorney. Upon satisfactory completion of the preliminary review-, the Bar will issue a Practice Pending AdmissionMilitary Spouse Attorney Certificate to the applicant. A- Military Spouse Certificate will not be issued if the applicant has failed to submit a Complete Application to the Bar. The Practice Pending AdmissionMilitary Spouse Attorney Certificate authorizes the Military Spouse Attorney to begin practice in accordance with this rule while the application is pending. The Certificate expires 120 days after issuance, but a new certificate may be issued if the applicant has not been dilatory in supplying required information during the processing of the application. While an application under this rule is pending, a Military Spouse Attorney may practice pending admission upon issuance of a Practice Pending Admission Certificate in accordance with subsection (c) of this rule. While practicing pending admission, the Military Spouse Attorney must be fully supervised by an active member of the Bar in good standing as set forth herein. Required supervision ceases upon the Military Spouse Attorney's admission to the Bar under this rule. For the duration of the supervision, the supervising attorney shall:

(b)(1) assume full responsibility for all matters to be handled by the Military Spouse

Comment [7]: Please note that by permitting the Military Spouse Attorney to submit an MBE score if no UBE score is available is a competency option available to no other type of applicant and is therefore a significant concession.

Comment [8]: Fees has been removed because there is more to enrollment than fees. For example, it also involves taking the oath and signing the court rolls.

Comment [9]: Wherever the phrase "practice pending admission" has been used, it has been altered to read "practice while the application is pending". This is to avoid conflating the Practice Pending Admission Rule and the exception provided to Military Spouse Attorneys allowing them to practice once they file an application. Military Spouse Attorneys will not be practicing under the Practice Pending Admission Rule (14-809), which has more stringent requirements which many Military Spouse Attorneys will not be able to meet (such as five years of practice). Furthermore, the supervisory requirements are more stringent under the Practice Pending Admission Rule.

Attorney; and

(b)(2) be included ~~by name~~ on all pleadings and papers.

(c) ~~Timing and processing of application. An application under this rule may be filed at any time.. The Bar will promptly conduct a preliminary character and fitness review of a completed application submitted by a Military Spouse Attorney. Upon satisfactory completion of the preliminary review and upon confirming that the Military Spouse Attorney is present in Utah, 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. The Certificate expires 120 days after issuance, but a new certificate may be issued if the applicant has not been dilatory in supplying required information during the processing of the application.~~

~~(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)~~(d) Continuing legal education. Applicants admitted under this rule that have two or more years of legal practice shall complete, document and certify no later than six months following admission having attended at least 15 hours of continuing legal education on Utah practice and procedure, and on ethics and civility requirements.

(d~~e~~)(1) The Bar may by regulation specify the number of the required 15 hours that must be in particular areas of practice, procedure, ethics, and civility. Included in this mandatory 15 hours is attendance at the Bar's OPC ethics school.

(d~~e~~)(2) On an ongoing basis, attorneys admitted under this rule must comply with the continuing legal education requirements imposed on lawyers under Article 4.

(d)(3) 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.

~~(f) Mentoring and Supervision. A Military Spouse Attorney with less than two years of Active 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 Attorney with less than two years of Active Practice who has not presented an MBE score above 134 or UBE score above 269 must be affiliated at all times with an active member of the Bar in good standing who has agreed to supervise the Military Spouse Attorney and assume full responsibility for all matters handled by the Military Spouse Attorney. A Military Spouse Attorney subject to this supervision requirement must also enroll in the Bar's approved professional liability insurance program or obtain equivalent insurance coverage.~~

Comment [10]: The information in this paragraph has simply been moved. See (a)(11) and (b).

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Comment [11]: The subcommittee's rule conflates mentoring and supervision. It is important to recognize that these are distinct from each other. Mentoring is governed by its own rules, is related to CLE, and is completed after admission. Not all mentors are willing to be supervisors, and not all supervisors will want or be able to become mentors.

~~(g)~~(e) Annual licensing. An attorney admitted under 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)(1~~8~~), (a)(5), and ~~through~~ (a)(10).

~~(h)~~(f) Mandatory status reporting. An attorney admitted under this rule and any required supervising attorney are each responsible for notifying the Bar in writing within 21 days of any change that may affect the Military Spouse Attorney's license to practice law under this rule.

~~(i)~~(g) Termination of license to practice in Utah. A Military Spouse Attorney's license terminates and a Military Spouse Attorney must cease all activities under this rule:

(g~~i~~)(1) six months after the military service member ~~is permanently transferred~~receives permanent change of station orders outside Utah ~~on military orders~~ with dependents authorized, unless the transfer is a remote follow-on assignment and the Military Spouse Attorney remains in Utah during the service member's remote assignment;

(g~~i~~)(2) ninety days after:

(g~~i~~)(2)(i)the military service member dies, separates, or retires from the United States Uniformed Services;

(g~~i~~)(2)(ii) the Military Spouse Attorney ceases to be a dependent as defined by the United States Department of Defense;

(g~~i~~)(3) thirty days after the Military Spouse Attorney permanently relocates outside Utah for reason other than the military service member's permanent change of station;

(g~~i~~)(4) immediately upon:

(g~~i~~)(4)(i) failure to comply with subsection (e~~g~~);

(g~~i~~)(4)(ii) failure to maintain an active license in at least one other U.S. state, territory, or the District of Columbia;

(g~~i~~)(4)(iii) any termination of sponsorship by a supervising attorney if required by subsection (b), or the failure of a supervising attorney to be an active member of the Bar in good standing;

(g~~i~~)(4)(iv) admission to the Bar under any other rule; or

(g~~i~~)(4)(v) an order of termination by any disciplinary proceeding in Utah or upon disbarment or suspension of any other license of the Military Spouse Attorney from another jurisdiction.

~~(j)~~(h) Required action after termination. Upon termination of a license to practice under this rule, the Military Spouse Attorney must comply with Rule 1.16 of the Utah Rules of

Professional Conduct, including the transfer of pending matters, written notice to clients and notification of courts, as required or necessary under the circumstances.

~~(k)~~(i) Failure to satisfy the notice and termination of practice requirements set forth in subsections (e), (f~~h~~) and (g~~i~~) may subject a Military Spouse Attorney to discipline, including the termination of a license granted under this rule.

~~(l)~~(j) Reinstatement after termination of license. A Military Spouse Attorney whose license was terminated pursuant to subsection (~~i~~d), (e), and (g) shall have the license reinstated if within six months, the Military Spouse Attorney demonstrates compliance with all the requirements of this rule ~~upon termination of the license~~ and that the terminating event has been cured.

~~(m)~~(k) Service Time and Exception to Admission by Motion Rule. Any period of time a Military Spouse Attorney 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, provided that the Military Spouse Attorney never engaged in the unauthorized practice of law in Utah.

MILITARY SPOUSE ATTORNEY ADMISSION RULE

Rule 14-805. Admission for spouse of active military stationed in Utah.

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

(a)(1) 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 has received military orders for a permanent change of station to be stationed in Utah;

(a)(2) (a)(7) does not qualify for admission by motion under Rule 14-705 or admission based on a UBE score transfer under Rule 14-712;

(a)(3) has filed the required Complete Military Spouse Application and has paid half the prescribed application fees which shall be credited towards Bar dues upon licensure; the applicant must satisfy the requirements of this rule as of the date the application is filed and through the date of admission; prior to admission, the applicant must have completed relocation to Utah;

(a)(4) has graduated with a First Professional Degree in law from an Approved Law School;

(a)(5) has been admitted to the practice of law before the highest court of a U.S. state, territory, or the District of Columbia;

(a)(6) 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 currently admitted;

(a)(7) 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 unauthorized practice of law in Utah;

(a)(8) has presented proof of having achieved a UBE score of 270 or above on the Uniform Bar Examination (UBE) or, if the applicant has never sat for the UBE, an MBE score of 135 or above on the Multistate Bar Examination (MBE);

(a)(9) has successfully passed the MPRE in accordance with Rule 14-713;

(a)(10) 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)(11) if intending to practice while the application is pending, 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) of this rule, as evidenced by a verification signed by both the Military Spouse Attorney and the supervising attorney; practice may only begin when the Military Spouse Attorney has received a Military Spouse Certificate from the Bar, and the supervision may cease upon the Military Spouse Attorney's admission to the Bar under this rule; and

(a)(12) complies with the provisions of Rule 14-716 concerning licensing and enrollment.

(b) Supervision by local counsel. The Bar will promptly conduct a preliminary character and fitness review of a Complete Application submitted by a Military Spouse Attorney. Upon satisfactory completion of the preliminary review, the Bar will issue a Military Spouse Attorney Certificate to the applicant. A Military Spouse Certificate will not be issued if the applicant has failed to submit a Complete Application to the Bar. The Military Spouse Attorney Certificate authorizes the Military Spouse Attorney to begin practice in accordance with this rule while the application is pending. The Certificate expires 120 days after issuance, but a new certificate may be issued if the applicant has not been dilatory in supplying required information during the processing of the application. For the duration of the supervision, the supervising attorney shall:

(b)(1) assume full responsibility for all matters to be handled by the Military Spouse Attorney; and

(b)(2) be included on all pleadings and papers.

(c) 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.

(d) Continuing legal education. Applicants admitted under this rule that have two or more years of legal practice shall complete, document and certify no later than six months following admission having attended at least 15 hours of continuing legal education on Utah practice and procedure, and on ethics and civility requirements.

(d)(1) The Bar may by regulation specify the number of the required 15 hours that must be in particular areas of practice, procedure, ethics, and civility. Included in this mandatory 15 hours is attendance at the Bar's OPC ethics school.

(d)(2) On an ongoing basis, attorneys admitted under this rule must comply with the continuing legal education requirements imposed on lawyers under Article 4.

(d)(3) 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) Annual licensing. An attorney admitted under 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)(1), (a)(5), and (a)(10).

(f) Mandatory status reporting. An attorney admitted under this rule and any required supervising attorney are each responsible for notifying the Bar in writing within 21 days of any change that may affect the Military Spouse Attorney's license to practice law under this rule.

(g) Termination of license to practice in Utah. A Military Spouse Attorney's license terminates and a Military Spouse Attorney must cease all activities under this rule:

(g)(1) six months after the military service member receives permanent change of station orders outside Utah with dependents authorized, unless the transfer is a remote follow-on assignment and the Military Spouse Attorney remains in Utah during the service member's remote assignment;

(g)(2) ninety days after:

(g)(2)(i) the military service member dies, separates, or retires from the United States Uniformed Services;

(g)(2)(ii) the Military Spouse Attorney ceases to be a dependent as defined by the United States Department of Defense;

(g)(3) thirty days after the Military Spouse Attorney permanently relocates outside Utah for reason other than the military service member's permanent change of station;

(g)(4) immediately upon:

(g)(4)(i) failure to comply with subsection (e);

(g)(4)(ii) failure to maintain an active license in at least one other U.S. state, territory, or the District of Columbia;

(g)(4)(iii) any termination of sponsorship by a supervising attorney if required by subsection (b), or the failure of a supervising attorney to be an active member of the Bar in good standing;

(g)(4)(iv) admission to the Bar under any other rule; or

(g)(4)(v) an order of termination by any disciplinary proceeding in Utah or upon disbarment or suspension of any other license of the Military Spouse Attorney from another jurisdiction.

(h) Required action after termination. Upon termination of a license to practice under this

rule, the Military Spouse Attorney must comply with Rule 1.16 of the Utah Rules of Professional Conduct, including the transfer of pending matters, written notice to clients and notification of courts, as required or necessary under the circumstances.

(i) Failure to satisfy the notice and termination of practice requirements set forth in subsections (e), (f) and (g) may subject a Military Spouse Attorney to discipline, including the termination of a license granted under this rule.

(j) Reinstatement after termination of license. A Military Spouse Attorney whose license was terminated pursuant to subsection (d), (e), and (g) shall have the license reinstated if within six months, the Military Spouse Attorney demonstrates compliance with all the requirements of this rule and that the terminating event has been cured.

(k) Service Time and Exception to Admission by Motion Rule. Any period of time a Military Spouse Attorney 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, provided that the Military Spouse Attorney never engaged in the unauthorized practice of law in Utah.