

**PARALEGAL PRACTITIONER  
STEERING COMMITTEE  
MEETING**

**Minutes  
Thursday, December 15, 2016  
Executive Dining Room  
Matheson Courthouse  
Salt Lake City, Utah**

**Justice Deno Himonas, Presiding**

**ATTENDEES:**

Justice Deno Himonas  
Dean Robert W. Adler  
John Baldwin  
Adam Caldwell  
Terry Conaway  
Sue Crismon  
James Deans  
Julie Emery  
Judge Royal Hansen  
Dixie Jackson  
Jim Jardine  
Steven Johnson  
Ellen Maycock  
Rob Rice  
Monte Sleight  
Judge Kate Toomey  
Elizabeth Wright

**STAFF:**

James Ishida  
Jody Gonzales

**EXCUSED:**

Dean Allison Belnap  
Thomas Clarke  
Scott Jensen  
Comm. Kim Luhn  
Daniel O'Bannon  
Senator Stephen Urquhart

**GUESTS:**

Jacqueline Morrison  
Amy Cordano

**1. WELCOME AND APPROVAL OF MINUTES: (Justice Deno Himonas)**

Justice Himonas welcomed everyone to the meeting.

**Motion:** Judge Toomey moved to approve the October 20 committee minutes. Mr. Rice seconded the motion, and it passed unanimously.

**2. SUBCOMMITTEE UPDATES:**

**Admissions and Administration Subcommittee:**

Mr. Rice reported that the first draft of the admissions rules is nearing completion. The draft admissions rules will be distributed at the next subcommittee meeting for review.

Discussion on development of a survey to be given to paralegals and students enrolled in paralegal programs, statewide, will take place at the next subcommittee meeting. Survey questions would focus on addressing questions to determine the level of interest of paralegals in the Licensed Paralegal Practitioner Program, in general, and if they find the program would provide an interesting career opportunity for them. Mr. Rice will provide an update on this discussion topic at the February steering committee meeting.

Survey questions would address the following:

- Interest level of the three practice areas
- Paralegal education level, did they received their education at an ABA approved school, or did they receive their education prior to 2001 and they have been working for 20 years as a paralegal
- Requirements to qualify for the licensed paralegal practitioner exam
- Determine the interest level of the paralegals and if they are already qualified or what needs to be completed to become qualified
- Assessing where paralegals fit in the current model, regardless of level of interest, as it relates to the grandfathering requirements
- Does the paralegal have a national voluntary certification
- How many hours of experience does the paralegal have in the three practice areas

Ways to provide program information to interested paralegals, as well as, to distribute the survey include:

- Available email addresses for paralegals who are members of the Utah State Bar through the Paralegal Division and from the Utah Paralegal Association (UPA)
- Assistance from members of the American Legal Administrators Association to facilitate getting the word out
- Work with school faculty on providing information to paralegal students
- Use of social media to disseminate information on the survey and the program
- Distribute information to members of the Utah State Bar requesting lawyers to share the information with their paralegals

Mr. Rice mentioned that Ms. Emery and Mr. Baldwin are involved with drafting of the exams—what to be included on the exams and how the exams will be administered will be addressed.

Mr. Rice provided an update relative to the request made to the MBA Department at the University of Utah regarding market research to be conducted, on behalf of the Utah State Bar, with regard to the Licensed Paralegal Practitioner Program. The MBA Department has committed to providing student teams to conduct the requested market research. To date, student teams have not yet been assigned to this project.

Discussion took place.

Dean Adler mentioned that he, Ms. Conaway, and Mr. Sleight have reviewed the national licensing exams currently available to paralegals. They are available to answer any exam-related questions.

It was noted that a new Committee on Court Forms is being recommended for approval by the Judicial Council at their December meeting.

### **Education Subcommittee:**

Dean Adler mentioned that Dean Belnap asked to be excused from today's meeting. Dean Belnap noted that Dean Belnap is supervising the efforts regarding development of the subject-specific competencies. It is anticipated that these competencies will be completed in January, and they will be reviewed by members of the Education Subcommittee at their January meeting.

The general core competencies have been drafted. The ethics and professionalism competencies will be addressed next. Dean Adler hopes to have a draft of these competencies completed and available for review by members of the Education Subcommittee at their January meeting.

The admissions and scope of practice issues will be addressed once the Admissions Subcommittee has completed their work and has provided the necessary information to the Education Subcommittee so they can determine whether or not any additional information relative to the admissions and scope of practice areas should be added to the core competencies and learning objectives.

### **Ethics and Discipline Subcommittee:**

Judge Toomey reported that the Ethics and Discipline Subcommittee have been meeting monthly. She highlighted the approach taken by the Ethics and Discipline Subcommittee since formation of the steering committee in 2016 in determining the appropriate rules to be used relative to ethics and discipline by the licensed paralegal practitioner to include:

- First addressed general policy questions
- Reviewed the rules used by the Washington State's Limited Legal Licensing Technician Program and determined that Washington State's rules were not appropriate for application with Utah's Licensed Paralegal Practitioner Program
- Began line editing the appropriate rules
- Reviewed sections of the Immigration Consultants Act
- Reviewed ABA Resolution 105
- Reviewed major sections of various Utah licensing statutes
- Reviewed Utah's rules governing lawyer ethics and discipline and all related subjects

Ultimately, the Ethics and Discipline Subcommittee determined to use the lawyer-related rules as the model for the Licensed Paralegal Practitioner rules.

#### **Basic Assumptions:**

- The Utah State Bar will administer all aspects of the Licensed Paralegal Practitioner Program
- The licensed paralegal practitioner will be considered officers of the court and will practice law, but they will not be admitted to the Bar
- All Utah State Bar programs available to lawyers will be available to the licensed paralegal practitioner
- The licensed paralegal practitioners will not be required to sign or acknowledge the forms they prepare

- The licensed paralegal practitioner will be authorized to represent clients in non-mediated negotiations, but limited to matters raised directly related to or included in the forms
- The licensed paralegal practitioner will be able to communicate on behalf of the client with the other party
- The licensed paralegal practitioner will be permitted to e-file
- The licensed paralegal practitioner will be allowed to own Licensed Paralegal Practitioner firms
- The licensed paralegal practitioner will be allowed to own equity interest in a law firm, but they cannot be a controlling interest and they cannot have supervisory responsibility over lawyers

Judge Toomey noted that policy recommendations would be made throughout the appropriate rules and will be adapted to the licensed paralegal practitioner context and incorporating the licensed paralegal practitioner program into an existing body of rules.

The committee is recommending a standalone set of rules, as a single body which would combine all rules, as its own chapter (Chapter 15) adapted to the licensed paralegal practitioner program, following the Chapter 14 format which pertains to lawyers. The newly created chapter would include the Rules of Professional Conduct. Judge Toomey noted that the Rules of Professional Conduct for lawyers is a standalone chapter.

Additional recommendations and considerations:

- The licensed paralegal practitioner will not be allowed to charge contingency fees
- The pro bono requirement for the licensed paralegal practitioner will be 30 hours instead of the 50 hours required for lawyers
- The Ethics and Discipline Subcommittee recommended against allowing “pro hac vice” admissions privileges
- Will not provide for reciprocal licensing, but will provide for reciprocal discipline
- The licensed paralegal practitioner will be required to have trust accounts
- A trust account related rule has been drafted
- The Ethics and Discipline Subcommittee has eliminated all references to liens
- The Ethics and Discipline Subcommittee anticipates additional recommendations when the Admissions Subcommittee completes their work, i.e., a mandatory continuing education requirement placement

Judge Toomey highlighted the recommendations as they related to revisions made to the following chapters:

- Chapter 3 – Standards of Professionalism and Civility, the chapter was amended to shorten cross reference citations and eliminate the standards that did not apply.
- Chapter 5 – Discipline and Disability Rules – the rules currently are drafted for lawyers and non-lawyers. It was determined that it was too soon in the process to add an appropriate notation for the licensed paralegal practitioner, and it would be included after the program is in place and a determination of the appropriate rule to be included.
- Chapter 6 – The Standards for Imposing Sanctions – there were no substantive changes made to the rules. Discussion on the appropriate term to be used when imposing sanctions to the licensed paralegal practitioner.

- Chapter 9 – The Fund for Client Protection – there were no substantive changes to the rule, but it was determined the need to set amounts the licensed paralegal practitioner can contribute to.
- Chapter 10 – The Interest and Licensed Paralegal Practitioner Trust Accounts, it was determined that the IOLTA could not be used, but they would have to be set up as an interest on licensed practitioners account.
- Chapter 11 – Fee Dispute Resolution – it was determined to use the existing structure as referenced as a lawyer member instead of the licensed paralegal practitioner
- Chapter 12 – Rules of Professional Conduct.

Questions and items of information to consider:

- Will disbarred lawyers be allowed to apply to become a licensed paralegal practitioner
- Determine whether to refer to law firms or firms owned by the licensed paralegal practitioner or refer to them as licensed paralegal practitioner firms
- Rule 5.4 of the Rules of Professional Conduct for lawyers will need revision to permit licensed paralegal practitioner ownership interest in law firms
- Evidentiary and statutory privileges should be addressed by the appropriate subcommittee. It was noted that Rule 504 will be redrafted at the appropriate time.
- Inclusion of the definition for the practice of law to be included, at the appropriate time
- The question was raised as whether there will be a new division of the Utah State Bar created for the licensed paralegal practitioner or will they be required to become part of the Paralegal Division

Judge Toomey expressed her appreciation to Mr. Miles Pope for his help in reviewing the rules and providing the appropriate cross references.

Justice Himonas noted that all the rules will be sent out for public comment.

Discussion took place throughout.

**Motion:** Ms. Crismon moved to approve the rules as proposed by the Ethics and Discipline Subcommittee and send out for public comment. Mr. Adler seconded the motion, and it passed unanimously.

#### **Executive Subcommittee:**

All items to be discussed were raised during the meeting.

### **3. OTHER BUSINESS**

No new business was brought up at this time.

### **4. ADJOURN**

The meeting was adjourned.