AGENDA
Paralegal Practitioner Steering Subcommittee

April 20, 2017
12:00pm
Scott M. Matheson Courthouse
Executive Dining Room
450 South State Street, Salt Lake City, UT

Welcome ● **ACTION** - Approval of draft minutes	Tab 1	Justice Deno Himonas
Admissions and Administration Subcommittee ● **ACTION** - Proposed Admission Rules	Tab 2	Judge Royal Hansen Mr. Robert Rice
Ethics and Discipline Subcommittee ● **ACTION** - Proposed Ethics Rules	Tab 3	Judge Kate Toomey
Education Subcommittee		Dean Robert Adler
Executive Subcommittee	Tab 4	Justice Deno Himonas
Other Business ● **INFORMATION** - Preliminary Report on Washington State's LLLT Program	Tab 5	

Members
Justice Deno G. Himonas, Chair
Dean Robert W. Adler
John Baldwin
Adam Caldwell
Dr. Thomas Clarke
Terry Conaway
Sue Crismon
Dean Benson Dastrup
James Dean
Julie Emery
Judge Royal Hansen
Dixie Jackson
James S. Jardine
Scott Jensen
Steven Johnson
Comm. Kim Luhn
Ellen Maycock
Daniel O'Bannon
Robert Rice
Monte Sleight
Judge Kate A. Toomey
Stephen Urquhart
Elizabeth Wright

Staff
James N. Ishida
Jody Gonzales

Meeting Schedule
June 15, 2017 (Education Room, AOC)

Tab 1

PARALEGAL PRACTITIONER
STEERING COMMITTEE
MEETING

Minutes
Thursday, February 16, 2017
Executive Dining Room
Matheson Courthouse
Salt Lake City, Utah

Justice Deno Himonas, Presiding

ATTENDEES:
Justice Deno Himonas
Dean Robert W. Adler
John Baldwin
Terry Conaway
Sue Crismon
James Deans
Judge Royal Hansen
Dixie Jackson
Ellen Maycock
Daniel O'Bannon
Judge Kate Toomey
Elizabeth Wright

GUESTS:
Miles Pope

STAFF:
James Ishida
Jody Gonzales

EXCUSED:
Adam Caldwell
Dr. Thomas Clarke
Dean Benson Dastrup
Julie Emery
Jim Jardine
Scott Jensen
Steven Johnson
Comm. Kim Luhn
Rob Rice
Monte Sleight
Senator Stephen Urquhart

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

Justice Himonas welcomed everyone to the meeting. He reported that Dean Allison Belnap has resigned as a member of the steering committee due to personal reasons. He acknowledged Dean Belnap's efforts and contributions made on behalf of the steering committee. Dean Benson Dastrup has agreed to step in and fill the vacancy.

Motion: Judge Toomey moved to approve the December 15 committee minutes. Dean Adler seconded the motion, and it passed unanimously.

2. SUBCOMMITTEE UPDATES:

Admissions and Administration Subcommittee:

Ms. Elizabeth Wright and Mr. John Baldwin highlighted the following regarding the work of the Admissions and Administration Subcommittee:

- The draft rules are almost ready to launch, they need one more review by the subcommittee. The intent of the subcommittee is to distribute the draft rules to members of the steering committee prior to the next meeting scheduled in April.

- Discussion has taken place between the Admissions and Administration and the Education Subcommittees and the appropriate staff from Washington State regarding the testing relative to their Limited Legal Licensing Technician Program. Mr. Baldwin noted that Washington State contracts with a local group to write their examinations. A request has been made for a copy of the examinations used by Washington State. Washington State tests in three areas similar to what is being considered by the Admissions and Administration Subcommittee to include: 1) a basic core competency examination, 2) specific area examinations and 3) an ethics examination.

- Proposals on administration of the licensing exams, more specifically, the national examination, the specific area examinations and the ethics examination are forthcoming.

Discussion took place.

Justice Himonas suggested that members of the current subcommittees provide names for consideration to staff a Licensing Exam Subcommittee and an MCLE Subcommittee at the April steering committee meeting. Structure of these two new subcommittees will be developed at the next Executive Subcommittee meeting.

A determination on whether a dollar amount limit for debt collection cases should be made. Discussion took place. Everyone was in agreement to set the amount for debt collection cases similar to what is set for small claims cases.

Ethics and Discipline Subcommittee:

Judge Toomey reported that the rules developed by the Ethics and Discipline Subcommittee are undergoing extensive proofreading efforts by its members. She sought feedback on the type of improvements that should be made to the draft rules. It was suggested to make grammatical improvements as necessary.

Education Subcommittee:

Dean Adler reported that the final proposed learning outcomes have been circulated. The goal of the Education Subcommittee was to make them complete, but general and not prescriptive.

A meeting with a representative from Utah Valley University's (UVU) Continuing Education Department will be held to discuss development of a training program they would like to see made available online.

Dean Adler suggested that the entire group take the next 3-4 weeks to review the proposed learning outcomes and provide any feedback, in writing, to him or Mr. Ishida by that time.

Forms analysis work to determine the appropriate forms to be used by the licensed paralegal practitioner will be addressed at the subcommittee's March meeting. Information will be shared with the steering committee at the April meeting regarding the best use of forms as proposed by the Education Subcommittee.

Executive Subcommittee:

Justice Himonas reported that all action items needing to be addressed were discussed during today's meeting.

3. OTHER BUSINESS

Members of the steering committee agreed to schedule future meetings for April 20 and June 15.

It was noted that the new Forms Committee has been approved by the Judicial Council, and the membership has been approved by the Management Committee at their February meeting and will be placed on the February Judicial Council consent calendar for final approval.

4. ADJOURN

The meeting was adjourned.

Tab 2

LPP Admissions Rules

Rule 15-701. Definitions.

As used in this article:

(a) "ABA" means the American Bar Association.

(b) “Accredited school” means a school officially recognized as meeting the standards and requirements of a recognized regional or national accrediting organization.

(c) "Applicant" means each person requesting licensure as a Licensed Paralegal Practitioner.

(d) "Approved Law School" means a law school which is fully or provisionally approved by the ABA pursuant to its Standards and Rules of Procedure for Approval of Law Schools. To qualify as approved, the law school must have been fully or provisionally approved at the time of the Applicant's graduation, or at the time of the Applicant's enrollment, provided that the Applicant graduated within a typical and reasonable period of time.

(e) “Associate Degree” means an undergraduate academic degree conferred by a college upon completion of the curriculum required for an associate degree.

(f) “Bachelor’s Degree” means an academic degree conferred by a college or university upon completion of the undergraduate curriculum.

(g) "Bar" means the Utah State Bar, including its employees, committees and the Board.

(h) "Board" means the Board of Bar Commissioners.

(i) "Complete Application" means an application that includes all fees and necessary application forms, along with any required supporting documentation, character references, a criminal background check, a photo, an official certificate of graduation and if applicable, and a test accommodation request with supporting medical documentation.

(j) "Confidential Information" is defined in Rule 15-720(a).

(k) “Disbarred Lawyer” means an individual who was once a licensed lawyer and is no longer permitted to practice law.

(l) "Executive Director" means the executive director of the Utah State Bar or her or his designee.

(m)“First Professional Degree” means a degree that prepares the holder for admission to the practice of law (e.g. juris doctorate) by emphasizing competency skills along with

theory and analysis. An advanced, focused, or honorary degree in law is not recognized as a First Professional Degree (e.g. master of laws or doctor of laws).

(n) "General Counsel" means the General Counsel of the Utah State Bar or her or his designee.

(o) “Licensed Paralegal Practitioner” means an individual licensed by the Utah Supreme Court to provide limited legal representation in the areas of (1) temporary separation, divorce, parentage, cohabitant abuse, civil stalking, custody and support, and name change; (2) forcible entry and detainer; or (3) debt collection.

(p) “LPP” means Licensed Paralegal Practitioner.

(q) “LPP Administrator” means the Bar employee in charge of LPP licensure or his or her designee.

(r) "LPP Admissions Committee" means those Utah State Bar members or others appointed by the Board or president of the Bar who are charged with recommending standards and procedures for licensure of LPPs and with implementation of this article. The LPP Admissions Committee is responsible for supervising the work of the LPP Examinations Committee, the LPP Test Accommodations Committee, and the LPP Character and Fitness Committee, handling requests for review as provided herein and performing other work relating to the licensure of Applicants.

(s) "LPP Character and Fitness Committee" means those Bar members or others appointed by the Board or president of the Bar who are charged with assessing the character and fitness of Applicants and making determinations thereon.

(t) “LPP Test Accommodations Committee” means those Bar members or others appointed by the Board or president of the Bar who are charged with the review of requests from Applicants seeking to take a LPP Licensure Examination with test accommodations and who make determinations thereon.

(u) “NALA” means the National Association of Legal Assistants.

(v) “NALS” means The Association for Legal Professionals.

(w) "OPC" means the Bar’s Office of Professional Conduct.

(x) “Paralegal” means a person qualified through education, training, or work experience, who is employed or retained by a lawyer, law office, governmental agency, or the entity in the capacity or function which involves the performance, under the ultimate direction and supervision of an attorney, of specifically delegated substantive legal work, which work, for the most part, requires a sufficient knowledge of legal concepts that absent such assistance, the attorney would perform.

(y) “Paralegal Certificate” means verification that an individual has successfully completed an accredited paralegal education program.

(z) “Paralegal Studies Degree” means course work that prepares a holder to work as a paralegal.

(aa) “Practice of Law” means employment available only to licensed attorneys where the primary duty of the position is to provide legal service representation. The Practice of Law includes such activities as furnishing legal counsel, drafting documents and pleadings, interpreting and giving advice with respect to the law, and preparing, trying or presenting cases before courts or administrative agencies. The Practice of Law is a term of art and though no broad rule can precisely define the Practice of Law, it constitutes more than merely working with legally-related matters.

(bb) "Privileged Information" in this article includes: information subject to the attorney-client privilege, attorney work product, test materials and applications of examinees; correspondence and written decisions of the Board, LPP Admissions Committee, LPP Examination Committee, LPP Character and Fitness Committee, and LPP Test Accommodations Committee; and the identity of individuals participating in the drafting, reviewing, grading and scoring of the LPP Licensure Examination.

(cc) “Reapplication for Licensure” means that for two years after the filing of an original application, an Applicant may reapply by completing a Reapplication for Licensure form updating any information that has changed since the prior application was filed and submitting a new criminal background check.

(dd) “Substantive law-related experience” means the provision of legal services as a Paralegal, paralegal student or law student including, but not limited to, drafting pleadings, legal documents or correspondence, completing forms, preparing reports or charts, legal research, and interviewing clients or witnesses. Substantive law-related experience does not include routine clerical or administrative duties. Substantive law-related experience for licensure in landlord-tenant and debt collection includes, but is not limited to, the provision of legal services as a Paralegal supervised by a licensed attorney, paralegal student or law student in the areas of bankruptcy, real estate, mortgage and/or banking law.

(ee) "Supreme Court" means the Utah Supreme Court.

(ff) “Unapproved Law School” means a law school that is not fully or provisionally approved by the ABA.

(gg) "Updated Application" means that an Applicant is required to amend and update her or his application on an ongoing basis and correct any information that has changed since the application was filed.

Rule 15-702. Board - general powers.

(a) LPP Licensure. The Board shall recommend and certify to the Supreme Court for licensure as a LPP persons who possess the necessary qualifications of learning, ability and character which are a prerequisite to the privilege of licensure as a LPP, and who fulfill the requirements for licensure as provided by this article.

(b) Subpoena power. The Executive Director and the General Counsel shall have power to issue subpoenas for the attendance of witnesses or for the production of documentary evidence before the Board or before anyone authorized to act on its behalf.

(c) Administration of oaths. Members of the Board, the Executive Director and their designees shall have power to administer oaths in furtherance of this article.

(d) Taking of testimony. Members of the Board, the Executive Director and their designees shall have the power to take testimony in furtherance of this article.

(e) Regulations. The Board is empowered to appoint committees or persons who may adopt and enforce reasonable regulations and policies in furtherance of this article.

(f) Waiver of rules. Neither the Bar nor its representatives has authority to waive any rule. Waiver of any rule may only be obtained by petitioning the Supreme Court.

Rule 15-703.
Qualifications for Licensure as a Licensed Paralegal Practitioner.

(a) Requirements of Licensed Paralegal Practitioner Applicants. The burden of proof is on the Applicant to establish by clear and convincing evidence that she or he:

(a)(1) has paid the prescribed application fees;

(a)(2) has either been granted a Limited Time Waiver under Rule 15-705 or has timely filed the required Complete Application for a Licensed Paralegal Practitioner Applicant in accordance with Rule15-707;

(a)(3) is at least 21 years old;

(a)(4) has graduated with either:

(a)(4)(A) a first professional degree in law from an Approved Law School; or,

(a)(4)(B) an Associates Degree in paralegal studies from a regionally or nationally accredited school; or

(a)(4)(C) a Bachelor's Degree in paralegal studies from a regionally or nationally accredited school; or

(a)(4)(D) a Bachelors Degree in any field from a regionally or nationally accredited school, plus a paralegal certificate or 15 credit hours of paralegal studies/paralegal training;

(a)(5) has either 1500 hours of Substantive Law-Related experience within the last 3 years, including 500 hours of Substantive Law-Related experience in family law if the Applicant is to be licensed in that area, or 100 hours of Substantive Law Related Experience in either landlord-tenant or debt collection law if the Applicant is to be licensed in those areas.

(a)(6) has successfully passed the Licensed Paralegal Practitioner Ethics Examination approved by the Board;

(a)(7) has successfully passed the Licensed Paralegal Practitioner Examination(s) for the practice area(s) in which the Applicant seeks licensure;

(a)(8) is of good moral character and satisfies the requirements of Rule 15-708;

(a)(9) has a proven record of ethical, civil and professional behavior; and

(a)(10) complies with the provisions of Rule 15-716 concerning licensing and enrollment fees.

(b) If the Applicant has not graduated with a first professional degree in law from an approved law school, the Applicant must:

(b)(1) have taken three credit hours in professional ethics for Licensed Paralegal Practitioners;

(b)(2) have taken a specialized course of instruction approved by the Board in each specialty area in which the applicant to be licensed; and

(b)(3) have passed either the National Association of Legal Assistants or NALS certification examination.

(c) An individual who has been disbarred in any jurisdiction may not apply for licensure as a Paralegal Practitioner.

1 Rule 15-704 (Reserved)

Rule 15-705. Limited Time Waiver

(a) Limited Time Waiver. For the limited time of three years from the date the Bar initially begins to accept LPP applications for licensure, the Bar may grant a waiver of the minimum educational requirements set forth in Rule 15-703 if, within two years from the time the waiver request is submitted, an applicant has established by clear and convincing evidence that the applicant:

(a)(1) has paid the prescribed fees and filed the required Application for a Limited Time Waiver;

(a)(2) is at least 21 years old;

(a)(3) has completed 7 years of Substantive Law-Related Experience as a paralegal within the 10 years preceding the application for the waiver, including relevant experience for the practice area in which the Applicant seeks licensure, including 500 hours of substantive Law-Related Experience in family law, if the Applicant is to be licensed in that area, or 100 hours of Substantive Law-Related Experience in landlord-tenant or debt collection law, if the Applicant is to be licensed in those areas. Proof of 7 years of Substantive Law-Related experience in the practice area in which the Applicant seeks licensure shall be certified by the supervising lawyer(s) and shall include the following:

(a)(3)(A) the name and Bar number of the supervising lawyer(s);

(a)(3)(B) certification by the lawyer that the work experience meets the definition of Substantive Law-Related Experience in the practice area in which Applicant will be licensed as defined in Rule15-701; and

(a)(3)(C) the dates of the applicant's employment by or service with the lawyer(s);

(a)(4) has successfully passed the Licensed Paralegal Practitioner Ethics Examination approved by the Board;

(a)(5) has successfully passed the Licensed Paralegal Practitioner Examination(s) for the practice area(s) in which the Applicant will be licensed;

(a)(6) is of good moral character and satisfies the requirements of Rule 15-708; and

(a)(7) has a proven record of ethical, civil and professional behavior.

(b) Upon approval, the Applicant must comply with the provisions of Rule 15-716 concerning licensing and enrollment fees.

(c) Review of Denial. An applicant whose application for waiver has been denied by the Board may request review in accordance with Rule 15-715.

Rule 15-706.

Test accommodations.

(a) Disabilities and impairments. An Applicant who has mental, physical, or cognitive disabilities as defined by the Americans with Disabilities Act ("ADA") may request test accommodations. The request, including all supporting medical documentation, shall be made in writing at the time of application in the format prescribed by the Bar. The decision on such requests shall be made by the LPP Test Accommodations Committee. Test accommodation requests received after the application filing deadline shall not be considered until the review period prior to the immediately following examination. An Applicant requesting test accommodations who withdraws within 60 days prior to the examination date may be charged a fee equivalent to any nonrefundable expenses the Bar has incurred responding to the accommodation request. The Applicant must demonstrate that:

(a)(1) she or he is disabled as defined by the ADA; and

(a)(2) the disability impacts her or his ability to take the Paralegal Practitioner Examination(s); and

(a)(3) the accommodation requested is necessary to meet the limitation caused by the disability.

(b) English as a second language. English as a second language is not a cognitive disability or impairment.

(c) Review. An Applicant may request a review of the decision. The review will be conducted in accordance with Rule15-715.

(c)(1) The review will only reexamine the documentation the Applicant submitted at the time she or he requested accommodation, the written opinion of the Committee's psychologist, the written recommendation of the LPP Test Accommodations Committee and the Bar's written decision.

(c)(2) Any attempt to change the original accommodations request or submit new medical documentation will be considered a new request for accommodation. The new request must be resubmitted to the LPP Test Accommodations Committee for review and is subject to the deadlines set forth in Rule 15-706(a).

Rule 15-707. Application; deadlines; withdrawals; postponements and fees.

(a) Form. Each Applicant must submit a Complete Application for licensure in accordance with the instructions prescribed by the Bar. Such application shall include an authorization and release enabling the Bar to obtain information concerning the Applicant.

(b) Filing deadlines generally. Except as otherwise provided herein, the Bar shall receive Complete Applications by _____. A Complete Application will be accepted up to 15 calendar days after the filing deadline if accompanied by the prescribed 15-day late fee. A Complete Application will be accepted up to _____. In accordance with the filing instructions and information for the application, late or incomplete applications will not be accepted with the following exceptions:

(b)(1) An Applicant who will complete all academic requirements prior to the licensing exam(s), but whose degree or certification will not be conferred until after the application filing deadline, may file the certificate of graduation or certification after the application has been submitted. Proof of graduation or certification must be received by the Bar no later than thirty (30) calendar days prior to the licensing exam(s). In the event that proof of graduation or certification is not timely received by the Bar, an Applicant will not be permitted to take the licensing examination(s).

(b)(2) An Applicant who has not received the criminal background report may submit the application without a criminal background report provided the Applicant provides proof that a criminal background request has been filed prior to submission of the application. Sufficient proof of submission of the criminal background request shall be by declaration in the form prescribed by the Bar. In order for the Applicant's name to be included on a motion for licensure the criminal background report must be submitted to the Bar no later than fourteen (14) calendar days prior to the date the motion is submitted to the Court. The LPP Character and Fitness Committee may withdraw or modify its approval based upon information contained in the criminal background report. In the event the criminal background report is not timely received by the Bar, an Applicant will not be included on the motion for licensure.

(c) Withdrawal of applications and refunds. To withdraw an application, written notice must be provided. If written notice of withdrawal is received by the LPP Admissions Office 30 calendar days or more before the examination date, one-half of the filing fee shall be refunded, unless the Applicant withdraws after appearing before the LPP Character and Fitness Committee or after the Bar has incurred nonrefundable expenses related to a test accommodation request. Late fees, computer fees, and the application fees of Applicants not taking the licensing exam(s) are nonrefundable.

(d) Postponement of application. An Applicant may only postpone or transfer her or his application due to emergency circumstances or pursuant to Rule 15-708(b)(4)(A). Emergency transfers are subject to the following restrictions:

(d)(1) The Applicant must provide a written request, including payment of the prescribed transfer fee, prior to the conclusion of the licensing exam(s).

(d)(2) Proof of the emergency must be provided. The reasons for the transfer are limited to two circumstances:

(d)(2)(A) a personal medical emergency, or

(d)(2)(B) a death in the immediate family.

(d)(3) The transferring Applicant must specify which future licensing exam(s) she or he plans to take. The exam(s) must be taken within the next two scheduled licensing exam(s).

(d)(4) The Applicant must provide an Updated Application by filing a Reapplication for Licensure form, updating any information that has changed since the prior application was filed, and a new criminal background check. The Reapplication for Licensure form should be submitted by the initial application deadline of_____. A Reapplication for Licensure will be accepted up to 15 calendar days after the filing deadline if accompanied by the prescribed 15-day late fee. A Reapplication for Licensure form will be accepted up to _____ if accompanied by the prescribed 30-day late fee.

(d)(5) An Applicant is entitled to one transfer only.

(e) Retaking Licensure Exam(s). An Applicant failing a licensure exam(s) who wishes to retake the examination(s) must file a written request, including payment of the prescribed fee, by the retake deadline. Late applications will not be accepted.

(e)(1) The Applicant must provide an Updated Application by filing a Reapplication for Licensure form, updating any information that has changed since the application was filed, and a new criminal background check.

(e)(2) An Applicant who fails to achieve a passing score after six Licensure Examination(s) may only take additional examination(s) with the permission of the LPP Admissions Committee. A petition providing good cause as to why the LPP Admissions Committee should grant such a request must be filed with the LPP Administrator by the retake deadline. Late applications will not be accepted.

Rule 15-708. Character and fitness.

(a) Standard of character and fitness. A Licensed Paralegal Practitioner's conduct should conform to the requirements of the law, both in professional service to clients and in the Licensed Paralegal Practitioner's business and personal affairs. A Licensed Paralegal Practitioner should be one whose record of conduct justifies the trust of clients, adversaries, courts, and others with respect to the professional duties owed to them. An Applicant whose record manifests a significant deficiency in honesty, trustworthiness, diligence, or reliability shall be denied licensure. The Applicant has the burden of proof to establish by clear and convincing evidence her or his fitness to be licensed as a Paralegal Practitioner. Applicants must be approved by the LPP Character and Fitness Committee prior to sitting for the Paralegal Practitioner Examinations. At any time before being licensed as a Paralegal Practitioner, the LPP Character and Fitness Committee may withdraw or modify its approval.

(b) Investigative process; investigative interview. Investigations into the character and fitness of Applicants may be informal, but shall be thorough, with the object of ascertaining the truth.

(b)(1) The LPP Character and Fitness Committee may conduct an investigation and may act with or without requiring a personal appearance by an Applicant.

(b)(2) At the discretion of the LPP Character and Fitness Committee, an Applicant may be required to attend an investigative interview conducted by one or more members of the Committee. The investigative interview shall be informal but the Applicant shall have the right to counsel and shall be notified in writing of the general factual areas of inquiry. Documentary evidence may be provided as part of the investigation, but no witnesses will be permitted to appear during the interview. The interview shall be a closed proceeding.

(b)(3) After an investigative interview has been conducted, the Applicant shall be notified regarding whether or not she or he has been approved to sit for the Paralegal Practitioner Examination(s). Applicants who are not approved will be notified regarding those areas that are of concern to the Committee. An Applicant seeking review of the decision must request a formal hearing within ten calendar days of notice of the Committee's decision. The request must be made in writing and provided to the LPP Administrator. The hearing will be conducted in accordance with Rule 15-708(c).

(b)(4) The Committee may determine that an Applicant must take corrective action before approval of her or his application can be granted. The Applicant shall be notified in writing of the action required. No later than 30 days prior to the date of the Paralegal Practitioner's Examination(s), the Applicant must provide written documentation to the LPP Administrator proving that the required corrective action has been completed.

(b)(4)(A) If the documentation is not provided as required within 30 days prior to the Paralegal Practitioner's Examination(s), the Applicant must, instead, submit to the LPP Administrator, a written request to transfer to a future exam date, including the payment

of the prescribed transfer fee. The request must specify when the corrective action will be completed and which future examination(s) the Applicant intends to take.

(b)(4)(B) The exam must be taken within the next two scheduled Paralegal Practitioner Examination(s). An Applicant is entitled to one transfer only.

(b)(4)(C) The application of an Applicant who neither takes corrective action nor requests a transfer shall be considered withdrawn.

(c) Formal hearing. In matters where the LPP Character and Fitness Committee decides to convene or an Applicant so requests, the LPP Character and Fitness Committee shall hold a formal hearing. The formal hearing shall be a closed proceeding and may be scheduled whether or not preceded by an investigative interview.

(c)(1) A formal hearing shall be attended by no fewer than three LPP Character and Fitness Committee members. Five calendar days before the hearing, the Applicant and the Committee must provide a list of witnesses and a copy of any exhibits to be offered into evidence. If an Applicant chooses to submit a written statement, it must also be filed five calendar days before the hearing.

(c)(2) Written notice of the formal hearing shall be given at least ten calendar days before the hearing. Notice shall be sent to the Applicant at the address in the application. The notice shall include a statement of the preliminary factual matters of concern. The matters inquired into at the hearing are not limited to those identified in the notice, but may include any concerns relevant to making a determination regarding the Applicant's character and fitness.

(c)(3) The formal hearing will have a complete stenographic record made by a certified court reporter or an electronic record made by means acceptable in the courts of Utah. All testimony shall be taken under oath. Although no formal rules of evidence or civil procedure will apply, an Applicant has the right to counsel, the right to cross-examine witnesses, the right to examine the evidence and the right to present witnesses and documentary evidence. An Applicant is entitled to make reasonable use of the Bar's subpoena powers to compel attendance of witnesses and to adduce relevant evidence relating to matters adverse to the applicant.

(c)(4) Written findings of fact and conclusions of law shall be issued no later than 45 calendar days after the formal hearing and any subsequent inquiries have been concluded. In computing the period of time, the last day of the period shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period extends until the end of the next day that is not a Saturday, Sunday, or a legal holiday. “Legal holiday” includes days designated as holidays by the state or federal governments.

(d) Factors related to character and fitness. In addition to the standards set forth in Rules 15-708(a), and 15-708(f) and Rule 15-717 if applicable, the LPP Character and Fitness

Committee may use the following factors to decide whether an Applicant possesses the requisite character and fitness to be licensed as a Paralegal Practitioner:

(d)(1) the Applicant's lack of candor;

(d)(2) unlawful conduct;

(d)(3) academic misconduct;

(d)(4) making of false or misleading statements, including omissions;

(d)(5) misconduct in employment;

(d)(6) acts involving dishonesty, fraud, deceit or misrepresentation;

(d)(7) abuse of legal process;

(d)(8) neglect of financial responsibilities;

(d)(9) neglect of professional obligations;

(d)(10) violation of a court order;

(d)(11) evidence of mental or emotional instability;

(d)(12) evidence of drug or alcohol dependency;

(d)(13) lack of diligence or reliability;

(d)(14) lack of civility;

(d)(15) denial of admission to the bar in another jurisdiction on character and fitness grounds;

(d)(16) past or pending disciplinary action by a lawyer disciplinary agency or other professional disciplinary agency of any jurisdiction; and

(d)(17) other conduct bearing upon character or fitness to be licensed as a Paralegal Practitioner.

(e) Assigning weight and significance to prior conduct. In making a determination as to the requisite character and fitness, the following factors should be considered in assigning weight and significance to prior conduct:

(e)(1) age at the time of conduct;

(e)(2) recency of the conduct;

(e)(3) reliability of the information concerning the conduct;

(e)(4) seriousness of the conduct;

(e)(5) factors underlying the conduct;

(e)(6) cumulative effect of conduct or information;

(e)(7) evidence of rehabilitation;

(e)(8) positive social contributions since the conduct;

(e)(9) candor in the admissions process;

(e)(10) materiality of any omission or misrepresentations; and

(e)(11) acceptance of responsibility for past conduct.

(f) Civil, criminal, or disciplinary charges.

(f)(1) Where bar complaints, civil cases, or criminal charges are pending, an Applicant's character and fitness review may be held in abeyance until the matter has been resolved by the authority in question.

(f)(2) An Applicant convicted of a misdemeanor offense or who has entered a plea in abeyance to any criminal offense may be asked to appear before members of the LPP Character and Fitness Committee for an investigation interview or a formal hearing. In determining whether the Applicant is of good character, the Committee will consider the nature and seriousness of the criminal conduct resulting in the conviction(s), mitigating and aggravating factors including completion of terms and conditions of any sentence imposed, payment of restitution if applicable, and demonstration of clearly proven rehabilitation.

(f)(3) A rebuttable presumption exists against licensing of an Applicant convicted of a felony offense. For purposes of this rule, a conviction includes entry of a nolo contendre (no contest) plea. An Applicant who has been convicted of a felony offense is not eligible to apply for licensure until after the date of completion of any sentence, term of probation or term of parole or supervised release, whichever occurred last. Upon an Applicant's eligibility, a formal hearing may be held as set forth in Rule 15-708(c). Factors to be considered by the Committee include, but are not limited to, the nature and seriousness of the criminal conduct resulting in the conviction(s), mitigating and aggravating factors including completion of terms and conditions of a sentence imposed and demonstration of clearly proven rehabilitation.

(g) Review. An Applicant may request a review of a formal hearing decision. The review will be conducted in accordance with Rule 15-715.

(h) Reapplication. Reapplication after denial in a character and fitness determination may not be made prior to one year from the date of the final decision (including the appellate decision, if applicable), unless a different time period is specified in the final decision. If just cause exists, the LPP Character and Fitness Committee may require an Applicant to wait up to three years from the date of the final decision to reapply. If a reapplication period longer than one year is set for a de-licensed Paralegal Practitioner, then the time period is subject to approval by the District Court hearing the petition for reinstatement.

Rule 15-709. Application denial.

(a) Notice from Bar. An Applicant whose application is denied because it is determined that the Applicant does not meet the qualifications for licensure under this article will receive written notice from the Bar that her or his application has been denied along with a statement explaining the deficiency and reason(s) for denial.

(b) Review. An Applicant may request a review of a denial under subsection (a). The review will be conducted in accordance with Rule 15-715.

Rule 15-710. Administration of the Paralegal Practitioner Examination(s).

(a) Paralegal Practitioner Examination(s). The Paralegal Practitioner Examination(s) consists of a multiple choice section on substantive law and a practical application specific to the area(s) of practice selected by the applicant. Areas of practice include temporary separation, divorce, paternity, cohabitant abuse and civil stalking, custody and support, and name change; (2) forcible entry and detainer or; (3) debt collection.

(b) All components of the Paralegal Practitioner Examination(s) for an area of practice must be taken in the same examination administration.

(c) The Paralegal Practitioner Examination(s) are administered only for the purpose of licensure as a Paralegal Practitioner.

LPP Admissions Rules

Rule 15-711. Grading and passing the Paralegal Practitioner Examination.

(a) Grading the written component of the Paralegal Practitioner Examination. Essay answers shall be uniformly graded on a scale from zero to _____ points. In order to assure maximum fairness and uniformity in grading, the Board or its designees shall prescribe procedures and standards for grading to be used by all graders.

(b) Scoring the written component of the Paralegal Practitioner Examination. The essay scores added together constitute the raw written component score. The raw written component score is scaled to the multiple choice portion of the examination using the standard deviation method.

(c) Weighting of exam components. The multiple choice score is weighted _____%, the essay score is weighted _____% in calculating the Applicant's total score.

(d) Passing grade. The Applicant's total score is the sum of the scaled multiple choice score and the scaled written component score. The total score is based on a _____ point scale. A total score of _____ or above is required to pass the Paralegal Practitioner Examination.

(e) Paralegal Practitioner Examination results are final. Examination answers will not be reread, reevaluated or regraded by the Bar or its designees.

Rule 15-712. (Reserved)

Rule 15-713. Ethics Exam

(a) An Applicant must receive a passing score on the Ethics Exam prior to licensure as a LPP. A scaled score of ____is passing. It is the Applicant's responsibility to ensure that a passing (Ethics Score) score is reported to the Bar.

(b) Administration of the (Ethics Exam).

Rule 15-714. Unsuccessful Applicants: disclosure and right of inspection.

(a) Inspection of the Written Component. The written component of the Paralegal Practitioner Examination shall be retained for no fewer than six months after the date that examination's results have been announced. An unsuccessful Applicant shall be entitled to a reasonable inspection of the Applicant's answers to the examination.

(b) Privileged Information is not subject to disclosure.

(c) All disclosure under this rule is governed by Rule 15-720.

Rule 15-715. Requests for Review.

(a) Request for Review. A request for review of a final decision, along with the prescribed filing fee, must be filed with the Bar in writing within 10 calendar days of the date on the written notice of the decision. The request for review shall be addressed to the LPP Admissions Committee and contain a short and plain statement of the reasons that the Applicant is entitled to relief. Any of the following decisions qualify as final and are therefore subject to appeal:

(a)(1) a decision issued by the LPP Test Accommodations Committee in accordance with Rule 5-706(a);

(a)(2) a decision issued by the LPP Character and Fitness Committee after a formal hearing in accordance with Rule 15-708(c)(4);

(a)(3) a decision denying an application in accordance with Rule 15-709(a).

(b) Rule waivers. The review panel does not have authority to waive admission rules.

(c) Burden of Proof. The Applicant bears the burden of proof by clear and convincing evidence. Harmless error does not constitute a basis to set aside the decision. On appeal, the decision may be affirmed, modified, or reversed. The decision, whether based on testimony or documentary evidence, shall not be set aside unless clearly erroneous, and deference shall be given to those making the decision to judge the credibility of witnesses.

(d) Review process. An Applicant's appearance at the review will only be permitted if deemed necessary. The review will be a closed proceeding and will be limited to consideration of the record, the Applicant's memorandum, and the Bar's responsive memorandum, if any. Requests for review setting forth common issues may be consolidated in whole or in part. After the completion of the review, a written decision shall be issued.

(d)(1) Payment of Transcript. An Applicant appealing a decision of the LPP Character and Fitness Committee issued after a formal hearing is responsible for paying for and submitting a duly certified copy of the transcript of the formal hearing proceedings or other electronic record copy made by means acceptable in the courts of Utah.

(d)(2) Memoranda. After filing a written request for review, an Applicant must file a written memorandum citing to the record to show that the evidence does not support the decision. The issues in the memorandum must be limited to matters contained in the record. The review panel will not consider issues raised for the first time in the request for review. The memorandum must be filed within 30 calendar days of the filing of the request for review. The Bar may file a response, but no reply memorandum will be permitted.

(e) Supreme Court appeal. Within 30 calendar days of the date on the panel's written decision, the Applicant may appeal to the Supreme Court by filing a notice of appeal with the clerk of the Supreme Court and serving a copy upon the General Counsel for the Bar. At the time of filing the notice of appeal, the Applicant shall pay the prescribed filing fee to the clerk of the Supreme Court. The clerk will not accept a notice of appeal unless the filing fee is paid.

(e)(1) Record of proceedings. A record of the proceedings shall be prepared by the Bar and shall be filed with the clerk of the Supreme Court within 21 calendar days following the filing of the notice of appeal.

(e)(2) Appeal petition. An appeal petition shall be filed with the Supreme Court 30 calendar days after a record of the proceedings has been filed with the Supreme Court. The appeal petition shall state the name of the petitioner and shall designate the Bar as respondent. The appeal petition must contain the following:

(e)(2)(A) a statement of the issues presented and the relief sought;

(e)(2)(B) a statement of the facts necessary to an understanding of the issues presented by the appeal;

(e)(2)(C) the legal argument supporting the petitioner's request; and

(e)(2)(D) a certificate reflecting service of the appeal petition upon the General Counsel.

(e)(3) Format of appeal and response petitions. Except by permission of the Court, the appeal petition and the Bar's response shall contain no more than 14,000 words or, if it uses a monospaced face, it shall contain no more than 1,300 lines of text.

(e)(4) Response petition. Within 30 calendar days after service of the appeal petition on the Bar, the Bar, as respondent, shall file its response with the clerk of the Supreme Court. At the time of filing, a copy of the response shall be served upon the petitioner. No reply memorandum will be permitted.

(e)(5) The clerk of the Supreme Court will notify the parties if any additional briefing or oral argument is permitted. Upon entry of the Supreme Court's decision, the clerk shall give notice of the decision.

Rule 15-716. License fees; enrollment fees; oath and admission.

(a) Court enrollment fees and Bar license fee. After notification that the Board has approved the Applicant for licensure, the Applicant must pay to the Bar the applicable Bar license fee.

(b) Motion for licensure and enrollment. Upon satisfaction of the requirements of Rule 15-716(a), the Board will submit motions to the Supreme Court for licensure certifying that the Applicants have satisfied all qualifications and requirements for licensure as a Paralegal Practitioner. The Board will submit _____motions for licensure per year: ____, ___, ___. After the motions are submitted and upon approval by the Supreme Court and upon taking the required oath, an Applicant is eligible to be licensed as a Paralegal Practitioner.

(c) Oath and certificate of licensure. Every Applicant must take an oath. The oath must be administered by the clerk of the Supreme Court or a Utah state judge of district or juvenile court level or higher.

(d) Time limit for licensure. An Applicant must resolve all application deficiencies and gain character and fitness approval within one year of filing the application or the application is closed. After receiving notice of character and fitness approval, an Applicant must pay the prescribed license and enrollment fees and take the oath as required by Rule 15-716(c) within six months or approval for licensure is automatically withdrawn.

Rule 15-717. Relicensure after resignation or delicensure of Utah Licensed Paralegal Practitioners.

(a) Relicensure after resignation without discipline pending. A Licensed Paralegal Practitioner who seeks relicensure subsequent to resignation without discipline pending must submit a new application, payment of fees, and undergo a character and fitness investigation. An Applicant is not required to retake the LPP Examination(s), but must fully comply with the requirements of Rule 15-716 (fees and oath).

(b) Relicensure of delicensed Licensed Paralegal Practitioners. A Licensed Paralegal Practitioner who seeks relicensure after delicensure shall satisfy all requirements of this article, including Rules 15-703, 15-708 and 15-716, and shall satisfy all other requirements imposed by Rule 15-525, the OPC, and Utah courts. A report and recommendation shall be filed by the LPP Character and Fitness Committee in the District Court in which the Applicant has filed his or her petition for relicensure. The District Court must approve the Applicant's petition for relicensure under Rule 15-525 before an Applicant can be admitted and licensed under Rule 15-716.

(c) A delicensed Licensed Paralegal Practitioner Applicant must undergo a formal hearing as set forth in Rule 15-708(c). A delicensed Licensed Paralegal Practitioner Applicant has the burden of proving rehabilitation by clear and convincing evidence. No delicensed Licensed Paralegal Practitioner Applicant may take the LPP Examination(s) prior to being approved by the Character and Fitness Committee as provided in Rule 15-708(a). In addition to the requirements set forth in this rule and in conjunction with the application, an Applicant under this rule must:

(c)(1) file an application for licensure in accordance with the requirements and deadlines set forth in Rule 15-707(c);

(c)(2) provide a comprehensive written explanation of the circumstances surrounding her or his delicensure or resignation;

(c)(3) provide copies of all relevant documents including, but not limited to, orders containing findings of fact and conclusions of law relating to delicensure or resignation; and

(c)(4) provide a comprehensive written account of conduct evidencing rehabilitation.

(c)(5) To prove rehabilitation, the Applicant must demonstrate and provide evidence of the following:

(c)(5)(A) strict compliance with all disciplinary and judicial orders;

(c)(5)(B) full restitution of funds or property where applicable;

(c)(5)(C) a lack of malice toward those who instituted the original proceeding against the Applicant;

(c)(5)(D) unimpeachable character and moral standing in the community;

(c)(5)(E) acceptance of responsibility for the conduct leading to the discipline;

(c)(5)(F) a desire and intent to conduct one's self in an exemplary fashion in the future;

(c)(5)(G) treatment for and current control of any substance abuse problem and/or psychological condition, if such were factors contributing to the delicensure or resignation; and

(c)(5)(H) positive action showing rehabilitation by such things as a person's occupation, religion, or community or civic service. Merely showing that the Applicant is now living as and doing those things she or he should have done throughout life, although necessary to prove rehabilitation, does not prove that the individual has undertaken a useful and constructive place in society

Rule 15-718. Reserved.

Rule 15-719. Reserved.

Rule 15-720. Confidentiality.

(a) Confidentiality. Confidential Information relating to LPP Licensure shall not be disclosed other than as permitted by this article. Confidential Information includes but is not limited to all records, documents, reports, letters and sources whether or not from other agencies or associations, relating to licensure and the examination and grading process.

(b) Disclosure of Confidential Information in licensure process. Nothing in this article limits disclosure of Confidential Information to the Board and the Bar's employees, committees and their agents in connection with the performance of and within the scope of their duties. The Bar is authorized to disclose information relating to Applicants as follows:

(b)(1) records pertaining to an Applicant as authorized by the Applicant in writing for release to others;

(b)(2) the names of Applicants and the names of Applicants who are eligible for LPP licensure; and

(b)(3) the Applicant’s exam results to the paralegal program from which the Applicant graduated or completed study.

(c) Disclosure of Confidential Information to Applicant. An Applicant and an Applicant's attorney are entitled to Confidential Information directly related to the Applicant:

(c)(1) which is to be considered by the LPP Character and Fitness Committee in conjunction with a formal hearing in accordance with Rule 15-708(c); and

(c)(2) as permitted by Rule 15-714.

(d) Privileged Information. Neither an Applicant nor an Applicant's attorney nor any person is entitled to Privileged Information.

(e) Communications relating to applications. Letters or information relating to an Applicant in which the writer requests confidentiality shall not be placed into evidence or otherwise made available to the decision-making body or anyone else involved in a decision-making capacity with respect to the admission of the Applicant. Such material will be destroyed by the admissions office. Any person having knowledge of the content of the information shall withdraw from participation in the matter, and if necessary persons shall be appointed to replace those required to withdraw from the decision-making process.

(f) Release of information. Except as otherwise authorized by order of the Supreme Court, the Bar shall deny requests for Confidential Information but may grant the request if made by one of the following entities:

(f)(1) an entity authorized to investigate the qualifications of persons for licensure as an LPP;

(f)(2) an agency or entity authorized to investigate the qualifications of persons for government employment; or

(f)(3) a lawyer or LPP discipline enforcement agency.

(g) Release of Confidential Information. If the request for Confidential Information is granted, it shall be released only upon certification by the requesting agency or entity that the Confidential Information shall be used solely for authorized purposes. If one of the above-enumerated entities requests Confidential Information, the Bar shall give written notice to the Applicant that the Confidential Information will be disclosed within ten calendar days unless the Applicant obtains an order from the Supreme Court restraining such disclosure.

(h) Immunity from civil suits. Participants in proceedings conducted under this article shall be entitled to the same protections for statements made in the course of the proceedings as participants in judicial proceedings. The licensure-related committee members, the General Counsel and the LPP admissions staff shall be immune from suit for any conduct committed in the course of their official duties, including the investigatory stage. There is no immunity from civil suit for intentional misconduct.

(i) Persons providing information to the LPP admissions office or admissions or licensure-related committees. Every person or entity shall be immune from civil liability for providing, in good faith, documents, statements of opinion, records or other information regarding an Applicant or potential Applicant for LPP licensure to the admissions office or to those members of the admissions or licensure related committees.

Tab 3

Chapter 15. Rules Governing Licensed Paralegal Practitioners

Transactions with Persons Other Than Clients

Firms and Associations

Public Service

Information About Legal Services

Maintaining the Integrity of the Profession

CHAPTER 15. RULES GOVERNING LICENSED PARALEGAL PRACTITIONERS

ARTICLE 1. RESERVED.

ARTICLE 2. RESERVED.

ARTICLE 3. STANDARDS OF LICENSED PARALEGAL PRACTITIONER PROFESSIONALISM AND CIVILITY

Rule 15-301. Standards of Licensed Paralegal Practitioner Professionalism and Civility.

Preamble

A licensed paralegal practitioner's conduct should be characterized at all times by personal courtesy and professional integrity in the fullest sense of those terms. In fulfilling a duty to represent a client, we must be mindful of our obligations to the administration of justice, which is a truth-seeking process designed to resolve human and societal problems in a rational, peaceful, and efficient manner. We must remain committed to the rule of law as the foundation for a just and peaceful society.

Conduct that may be characterized as uncivil, abrasive, abusive, hostile, or obstructive impedes the fundamental goal of resolving disputes rationally, peacefully, and efficiently. Such conduct tends to delay and often to deny justice.

Licensed paralegal practitioners should exhibit courtesy, candor and cooperation in dealing with the public and participating in the legal system. The following standards are designed to encourage licensed paralegal practitioners to meet their obligations to each other, to litigants and to the system of justice, and thereby achieve the twin goals of civility and professionalism, both of which are hallmarks of a learned profession dedicated to public service.

Licensed paralegal practitioners should educate themselves on the potential impact of using digital communications and social media, including the possibility that communications intended to be private may be republished or misused. Licensed paralegal practitioners should understand that digital communications in some circumstances may have a widespread and lasting impact on their clients, themselves, lawyers, other licensed paralegal practitioners, and the judicial system.

Licensed paralegal practitioners are expected to make mutual and firm commitments to these standards. Adherence is expected as part of a commitment by all participants to improve the administration of justice throughout this State. We further expect licensed paralegal practitioners to educate their clients regarding these standards.

These standards should be followed by licensed paralegal practitioners in all interactions with each other, lawyers, and judges, and in any proceedings in this State. Copies may be made available to clients to reinforce our obligation to maintain and foster these standards. Nothing in these standards supersedes or detracts from existing disciplinary codes or standards of conduct.

Cross-References: L.P.P. R. Prof. Cond. Preamble [1], [13]; R. Civ. P. 1.

1. Licensed paralegal practitioners shall advance the legitimate interests of their clients, without reflecting any ill-will that clients may have for their adversaries, even if called upon to do so by another. Instead, licensed paralegal practitioners shall treat all other licensed paralegal practitioners, lawyers, parties, judges, and other participants in all proceedings in a courteous and dignified manner.

Comment: Licensed paralegal practitioners should maintain the dignity and decorum of judicial and administrative proceedings, as well as the esteem of the legal profession.

Licensed paralegal practitioners are expected to refrain from inappropriate language, maliciousness, or insulting behavior in meetings with opposing licensed paralegal practitioners, lawyers, and clients, telephone calls, email, and other exchanges. They should use their best efforts to instruct their clients to do the same.

Cross-References: L.P.P. R. Prof. Cond. 1.4, 1.16(a)(1), 2.1, 3.1, 3.2, 3.3(a)(1), 3.4, 3.5(d), 3.8, 3.9, 4.1(a), 4.4(a), 8.4(d); R. Civ. P. 10(h), 12(f).

2. Licensed paralegal practitioners shall advise their clients that civility, courtesy, and fair dealing are expected. They are tools for effective advocacy and not signs of weakness. Clients have no right to demand that licensed paralegal practitioners abuse anyone or engage in any offensive or improper conduct.

Cross-References: L.P.P. R. Prof. Cond. Preamble [5], 1.2(a), 1.2(d), 1.4(a)(5).

3. Licensed paralegal practitioners shall not, without an adequate factual basis, attribute to other licensed paralegal practitioners, lawyers, or the court improper motives, purpose, or conduct. Licensed paralegal practitioners should avoid hostile, demeaning, or humiliating words in written and oral communications with adversaries. Written submissions should not 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, religion, gender, sexual orientation, age, handicap, veteran status, or national origin, or casting aspersions on physical traits or appearance. Licensed paralegal practitioners should refrain from acting upon or manifesting bigotry, discrimination, or prejudice toward any participant in the legal process, even if a client requests it.

Licensed paralegal practitioners should refrain from expressing scorn, superiority, or disrespect. Legal process should not be issued merely to annoy, humiliate, intimidate, or harass.

Cross-References: L.P.P. R. Prof. Cond. Preamble [5], 3.1, 3.5, 8.4; R. Civ. P. 10(h).

4. Licensed paralegal practitioners shall never knowingly attribute to other licensed paralegal practitioners, or to lawyers, a position or claim that the other professional has not taken or seek to create such an unjustified inference or otherwise seek to create a "record" that has not occurred.

Cross-References: L.P.P. R. Prof. Cond. 3.1, 3.3(a)(1), 3.5(a), 8.4(c), (d).

5. Reserved.

6. Licensed paralegal practitioners shall adhere to their express promises and agreements, oral or written, and to all commitments reasonably implied by the circumstances or by local custom.

Cross-References: L.P.P. R. Prof. Cond. 1.1, 1.3, 1.4(a), (b), 1.6(a), 1.9, 1.13(a), (b), 1.14, 1.15, 1.16(d), 1.18(b), (c), 2.1, 3.2, 3.3, 3.4(c), 3.8, 5.1, 5.3, 8.3(a), (b), 8.4(c), (d).

7. When committing oral understandings to writing, licensed paralegal practitioners shall do so accurately and completely. They shall provide other licensed paralegal practitioners or lawyers a copy for review, and never include substantive matters upon which there has been no agreement, without explicitly advising the other licensed paralegal practitioner or lawyer. As drafts are exchanged, licensed paralegal practitioners shall bring to the attention of other licensed paralegal practitioners or lawyers changes from prior drafts.

Comment: When providing the opposing party with a copy of any negotiated document for review, a licensed paralegal practitioner should not make changes to the written document in a manner calculated to cause the opposing party or that party's representative to overlook or fail to appreciate the changes. Changes should be clearly and accurately identified in the draft or otherwise explicitly brought to the attention of the opposing party. Licensed paralegal practitioners should be sensitive to, and

accommodating of, other professionals' inability to make full use of technology and should provide hard copy drafts when requested and a redline copy, if available.

Cross-References: L.P.P. R. Prof. Cond. 3.4(a), 4.1(a), 8.4(c), (d).

8. Reserved.

9. Reserved.

10. Reserved.

11. Licensed paralegal practitioners shall avoid impermissible ex parte communications.

Cross-References: L.P.P. R. Prof. Cond. 1.2, 2.2, 2.9, 3.5, 5.1, 5.3, 8.4(a), (d).

12. Reserved.

13. Reserved.

14. Licensed paralegal practitioners shall advise their clients that they reserve the right to determine whether to grant accommodations to other licensed paralegal practitioners or lawyers in all matters not directly affecting the merits of the cause or prejudicing the client's rights, such as extensions of time. Licensed paralegal practitioners shall agree to reasonable requests for extension of time when doing so will not adversely affect their clients' legitimate rights. Licensed paralegal practitioners shall never request an extension of time solely for the purpose of delay or to obtain a tactical advantage.

Comment: Licensed paralegal practitioners should not evade communication with other professionals, should promptly acknowledge receipt of any communication, and should respond as soon as reasonably possible. Licensed paralegal practitioners should only use data-transmission technologies as an efficient means of communication and not to obtain an unfair tactical advantage. Licensed paralegal practitioners should be willing to grant accommodations where the use of technology is concerned, including honoring reasonable requests to retransmit materials or to provide hard copies.

Licensed paralegal practitioners should not request inappropriate extensions of time or serve papers at times or places calculated to embarrass or take advantage of an adversary.

Cross-References: L.P.P. R. Prof. Cond. 1.2(a), 2.1, 3.2, 8.4.

15. Reserved.

16. Licensed paralegal practitioners shall not cause the entry of a default without first notifying the other party's lawyer or licensed paralegal practitioner whose identity is known, unless their clients' legitimate rights could be adversely affected.

Cross-References: L.P.P. R. Prof. Cond. 8.4; R. Civ. P. 55(a).

17. Reserved.

18. Reserved.

19. Reserved.

20. Licensed paralegal practitioners shall not authorize or encourage their clients or anyone under their direction or supervision to engage in conduct proscribed by these Standards.

ARTICLE 4. MANDATORY CONTINUING LICENSED PARALEGAL PRACTITIONER EDUCATION

ARTICLE 5. LICENSED PARALEGAL PRACTITIONER DISCIPLINE AND DISABILITY

Rule 15-501. Purpose, authority, scope and structure of licensed paralegal practitioner disciplinary and disability proceedings.

(a) The purpose of licensed paralegal practitioner disciplinary and disability proceedings is to ensure and maintain the high standard of professional conduct required of those who undertake the discharge of professional responsibilities as licensed paralegal practitioners and to protect the public and the administration of

justice from those who have demonstrated by their conduct that they are unable or unlikely to properly discharge their professional responsibilities.

(b) Under Article VIII, Section 4 of the Constitution of Utah, the Utah Supreme Court has exclusive authority within Utah to adopt and enforce rules governing the practice of law.

(c) All disciplinary proceedings shall be conducted in accordance with this article and Article 6, Standards for Imposing Licensed Paralegal Practitioner Sanctions. Formal disciplinary and disability proceedings are civil in nature. These rules shall be construed so as to achieve substantial justice and fairness in disciplinary matters with dispatch and at the least expense to all concerned parties.

(d) The interests of the public, the courts, and the legal profession all require that disciplinary proceedings at all levels be undertaken and construed to secure the just and speedy resolution of every complaint.

Rule 15-502. Definitions.

As used in this article:

(a) "Bar" means the Utah State Bar;

(b) "Board " means the Board of Commissioners of the Utah State Bar;

(c) "Committee" means the Ethics and Discipline Committee of the Utah Supreme Court;

(d) "complainant" means the person who files an informal complaint or the OPC when the OPC determines to open an investigation based on information it has received;

(e) "formal complaint" means a complaint filed in the district court alleging misconduct by a licensed paralegal practitioner or seeking the transfer of a licensed paralegal practitioner to disability status;

(f) "informal complaint" means any written, notarized allegation of misconduct by or incapacity of a licensed paralegal practitioner which also contains a verification attesting to the accuracy of the information provided;

(g) “Lawyer Rule” or “Lawyer Rules” means the rules of Lawyer Discipline and Disability in Chapter 14, Article 5 of the Rules of Professional Practice of the Supreme Court.

(h) "NOIC" means Notice of Informal Complaint sent to the respondent after a preliminary investigation;

(i) "OPC" means the Bar's Office of Professional Conduct;

(j) "OPC counsel" means senior counsel and any assistant counsel employed to assist senior counsel;

(k) "respondent" means a licensed paralegal practitioner subject to the disciplinary jurisdiction of the Utah Supreme Court against whom an informal or formal complaint has been filed;

(l) "Licensed Paralegal Practitioner Rules of Professional Conduct" means the rules in Article 12, Licensed Paralegal Practitioner Rules of Professional Conduct;

(m) “Rule” means, except where indicated otherwise, one of the rules of Licensed Paralegal Practitioner Discipline and Disability;

(n) "screening panel" means members of the Committee who participate in hearings and make determinations under Rule 15-503;

(o) "senior counsel" means the lawyer appointed by the Board to manage the OPC; and

(p) "Supreme Court" means the Utah Supreme Court.

Rule 15-503. Ethics and Discipline Committee.

(a) Rule 14-503 of the Lawyer Rules is incorporated with regard to licensed paralegal practitioners as Rule 15-503 and shall apply to complaints involving licensed paralegal practitioners.

(b) Whenever a screening panel is assigned a complaint involving a licensed paralegal practitioner, the Committee chair may appoint up to two licensed paralegal practitioners to the screening panel. A licensed paralegal practitioner member shall be a voting member, and shall have all of the responsibilities and duties of other members of the screening panel.

Rule 15-504. OPC counsel.

Lawyer Rule 14-504 is incorporated with regard to licensed paralegal practitioners as Rule 15-504. All provisions of Lawyer Rule 14-504 shall apply to licensed paralegal practitioners as they do to lawyers.

Rule 15-506. Jurisdiction.

(a) Persons practicing as a licensed paralegal practitioner. The persons subject to the disciplinary jurisdiction of the Supreme Court and the OPC include any licensed paralegal practitioner , and any formerly licensed paralegal practitioner with respect to acts committed while licensed to practice in Utah or with respect to acts subsequent thereto which amount to the practice of law or constitute a violation of any rule promulgated, adopted, or approved by the Supreme Court or any other disciplinary authority where the licensed paralegal practitioner was licensed to practice or was practicing law at the time of the alleged violation, and any other person not licensed in Utah who practices law as a licensed paralegal practitioner or who renders or offers to render any legal services as a licensed paralegal practitioner in Utah.

(b) Reserved.

(c) Reserved.

(d) Reserved.

Rule 15-508. Periodic assessment of licensed paralegal practitioners.

(a) Annual licensing fee. Every licensed paralegal practitioner licensed to practice in Utah shall pay to the Bar on or before July 1 of each year an annual license fee for each fiscal year to be fixed by the Board from time to time and approved by the Supreme Court. The fee shall be sufficient to pay the costs of disciplinary administration and enforcement under this article.

(b) Failure to renew annual license. Failure to pay the annual licensing fee or provide the required annual licensing information shall result in administrative suspension. Any licensed paralegal practitioner who practices law after failure to renew his or her license violates the Licensed Paralegal Practitioner Rules of Professional Conduct and may be disciplined. The executive director or his or her designee shall give notice of such removal from the rolls to such non-complying member at the designated mailing address on record at the Bar and to the state courts in Utah. The non-complying member may apply in writing for re-enrollment by tendering the license fees and/or the required information and an additional $___ reinstatement fee. Upon receiving the same, the Bar shall order re-enrollment and so notify the courts. Re-enrollment based on failure to renew does not negate any orders of discipline.

Rule 15-509. Grounds for discipline.

It shall be a ground for discipline for a licensed paralegal practitioner to:

(a) violate the Licensed Paralegal Practitioner Rules of Professional Conduct;

(b) willfully violate a valid order of a court or a screening panel imposing discipline;

(c) be publicly disciplined in another jurisdiction;

(d) fail to comply with the requirements of Rule 15-526(d); or

(e) fail to notify the OPC of public discipline in another jurisdiction in accordance with Rule 15-522(a).

Rule 15-510. Prosecution and appeals.

(a) Informal complaint of unprofessional conduct.

(a)(1) Filing. A disciplinary proceeding may be initiated against any licensed paralegal practitioner by any person, OPC counsel or the Committee, by filing with the Bar, in writing, an informal complaint in ordinary, plain and concise language setting forth the acts or omissions claimed to constitute unprofessional conduct. Upon filing, an informal complaint shall be processed in accordance with this article.

(a)(2) Form of informal complaint. The informal complaint need not be in any particular form or style and may be by letter or other informal writing, although a form may be provided by the OPC to standardize the informal complaint format. It is unnecessary that the informal complaint recite disciplinary rules, ethical canons or a prayer requesting specific disciplinary action. The informal complaint shall be signed by the complainant and shall set forth the complainant's address, and may list the names and addresses of other witnesses. The informal complaint shall be notarized and contain a verification attesting to the accuracy of the information contained in the complaint. In accordance with Rule 15-504(b), complaints filed by OPC are not required

to contain a verification. The substance of the informal complaint shall prevail over the form.

(a)(3) Initial investigation. Upon the filing of an informal complaint, OPC counsel shall conduct a preliminary investigation to ascertain whether the informal complaint is sufficiently clear as to its allegations. If it is not, OPC counsel shall seek additional facts from the complainant; additional facts shall also be submitted in writing and signed by the complainant.

(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. 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.

(a)(5) Notice of informal complaint. Upon completion of the preliminary investigation, OPC counsel shall determine whether the informal complaint can be resolved in the public interest, the respondent's interest and the complainant's interest. OPC counsel and/or the screening panel may use their efforts to resolve the informal complaint. If the informal complaint cannot be so resolved or if it sets forth facts which, by their very nature, should be brought before the screening panel, or if good cause otherwise exists to bring the matter before the screening panel, OPC counsel shall cause to be served a NOIC by regular mail upon the respondent at the address reflected in the records of the Bar. The NOIC shall have attached a true copy of the signed informal complaint against the respondent and shall identify with particularity the possible violation(s) of the Licensed Paralegal Practitioner Rules of Professional Conduct raised by the informal complaint as preliminarily determined by OPC counsel.

(a)(6) Answer to informal complaint. Within 20 days after service of the NOIC on the respondent, the respondent shall file with OPC counsel a written and signed answer setting forth in full an explanation of the facts surrounding the informal complaint, together with all defenses and responses to the claims of possible misconduct. For good cause shown, OPC counsel may extend the time for the filing of an answer by the respondent not to exceed an additional 30 days. Upon the answer having been filed or if the respondent fails to respond, OPC counsel shall refer the case to a screening panel for investigation, consideration and determination or recommendation. OPC counsel shall forward a copy of the answer to the complainant.

(a)(7) Dismissal of informal complaint. An informal complaint which, upon consideration of all factors, is determined by OPC counsel to be frivolous, unintelligible, barred by the statute of limitations, more adequately addressed in another forum, unsupported by fact or which does not raise probable cause of any unprofessional conduct, or which OPC declines to prosecute may be dismissed by OPC counsel without hearing by a screening panel. OPC counsel shall notify the complainant of such dismissal stating the reasons therefor. The complainant may appeal a dismissal by OPC

counsel by filing written notice with the Clerk of the Committee within 15 days after notification of the dismissal is mailed. Upon appeal, the Committee chair shall conduct a de novo review of the file, either affirm the dismissal or require OPC counsel to prepare a NOIC, and set the matter for hearing by a screening panel. In the event of the chair's recusal, the chair shall appoint the vice chair or one of the screening panel chairs to review and determine the appeal.

(b) Proceedings before Committee and screening panels.

(b)(1) Review and investigation. In their role as fact finders and investigators, screening panels shall review all informal complaints referred to them by OPC counsel, including all the facts developed by the informal complaint, answer, investigation and hearing, and the recommendations of OPC counsel. Prior to any hearing OPC may file with the clerk and serve on the respondent a summary of its investigation. If filed, the summary shall identify with particularity any additional violations of the Licensed Paralegal Practitioner Rules of Professional Conduct as subsequently determined by OPC after service of the NOIC. If provided to the screening panel, the summary shall also be provided to the respondent and shall serve as notice of any additional violations not previously charged by OPC in the NOIC. If additional rule violations are alleged in the summary, the summary shall be served on the respondent no less than seven days prior to the hearing. In cases where a judicial officer has not addressed or reported a respondent’s alleged misconduct, the screening panel should not consider this inaction to be evidence either that misconduct has occurred or has not occurred.

(b)(2) Respondent's appearance. Before any action is taken that may result in the recommendation of an admonition or public reprimand or the filing of a formal complaint, the screening panel shall, upon at least 30 days’ notice, afford the respondent an opportunity to appear before the screening panel. Respondent and any witnesses called by the respondent may testify, and respondent may present oral argument with respect to the informal complaint. Respondent may also submit a written brief to the screening panel at least 10 days prior to the hearing, which shall not exceed 10 pages in length unless permission for enlargement is extended by the panel chair or vice-chair for good cause shown. A copy of the brief shall be forwarded by OPC counsel to the complainant. If OPC identifies additional rule violations in the summary referenced in (b)(1), the respondent may file an additional written response addressing those alleged violations prior to the hearing.

(b)(3) Complainant's appearance. A complainant shall have the right to appear before the screening panel personally and, together with any witnesses called by the complainant, may testify.

(b)(4) Right to hear evidence; cross-examination. The complainant and the respondent shall have the right to be present during the presentation of the evidence unless excluded by the screening panel chair for good cause shown. Respondent may be represented by counsel, and complainant may be represented by counsel or some other representative. Either complainant or respondent may seek responses from the other party at the hearing by posing questions or areas of inquiry to be asked by the panel chair. Direct cross-examination will ordinarily not be permitted except, upon

request, when the panel chair deems that it would materially assist the panel in its deliberations.

(b)(5) Rule Violations Not Charged by OPC. During the screening panel hearing, but not after, the panel may find that rule violations not previously charged by OPC in the NOIC or summary memorandum have occurred. If so, the screening panel shall give the respondent a reasonable opportunity to respond during the hearing. The respondent may address the additional charges at the hearing and also file with the Clerk and serve on OPC within two business days of the hearing a written response to the new charges along with supplemental materials related to the new charges. Prior to making a determination or recommendation, the response and any supplemental materials shall be reviewed and considered by at least a quorum of the panel members present at the original hearing.

(b)(6) Hearing Record. The proceedings of any hearing before a screening panel under this subsection (b) shall be recorded at a level of audio quality that permits an accurate transcription of the proceedings. The Clerk shall assemble a complete record of the proceedings and deliver it to the chair of the Committee upon the rendering of the panel's determination or recommendation to the Committee chair. The record of the proceedings before the panel shall be preserved for not less than one year following delivery of the panel's determination or recommendation to the chair of the Committee and for such additional period as any further proceedings on the matter are pending or might be instituted under this section.

(b)(7) Screening panel determination or recommendation. Upon review of all the facts developed by the informal complaint, answer, investigation and hearing, the screening panel shall make one of the following determinations or recommendations:

(b)(7)(A) The preponderance of evidence presented does not establish that the respondent was engaged in misconduct, in which case the informal complaint shall be dismissed. A letter of caution may also be issued with the dismissal. The letter shall be signed by OPC counsel or the screening panel chair and shall serve as a guide for the future conduct of the respondent. The complainant shall also be confidentially notified of the caution;

(b)(7)(B) The informal complaint shall be referred to the Diversion Committee for diversion. In this case, the specific material terms of the Diversion Contract agreed to by the respondent are to be recorded as a part of the screening panel record, along with any comments by the complainant. The screening panel shall have no further involvement in processing the diversion. The Diversion Committee shall process the diversion in accordance with Rule 15-533.

(b)(7)(C) The informal complaint shall be referred to the Professionalism Counseling Board established pursuant to the Supreme Court's Standing Order No. 7;

(b)(7)(D) The informal complaint shall be referred to the Committee chair with an accompanying screening panel recommendation that the respondent be admonished;

(b)(7)(E) The informal complaint shall be referred to the Committee chair with an accompanying screening panel recommendation that the respondent receive a public reprimand; or

(b)(7)(F) A formal complaint shall be filed against the respondent if the panel finds there is probable cause to believe there are grounds for public discipline and that a formal complaint is merited. A formal complaint shall also be filed if the panel finds there was misconduct and the misconduct is similar to the misconduct alleged in a formal complaint against the respondent that has been recommended by a screening panel or is pending in district court at the time of the hearing.

(b)(8) Aggravation and Mitigation. The respondent and OPC may present evidence and argument as to mitigating and aggravating circumstances during the screening panel hearing, but this evidence shall not be considered until after the panel has determined the respondent engaged in misconduct.

(b)(9) Multiple cases involving the same respondent. More than one case involving the same respondent may be scheduled before the same panel. In determining whether a rule has been violated in one case, a screening panel shall not consider the fact it may be hearing multiple cases against the same respondent.

(b)(10) Recommendation of admonition or public reprimand. A screening panel recommendation that the respondent should be disciplined under subsection (b)(7)(D) or (b)(7)(E) shall be in writing and shall state the substance and nature of the informal complaint and defenses and the basis upon which the screening panel has concluded, by a preponderance of the evidence, that the respondent should be admonished or publicly reprimanded. A copy of the recommendation shall be delivered to the Committee chair and a copy served upon the respondent and OPC.

(c) Exceptions to screening panel determinations and recommendations. Within 30 days after the date of service of the determination of the screening panel of a dismissal, dismissal with letter of caution, a referral to the Diversion Committee, a referral to the Professionalism Counseling Board, or the recommendation of an admonition, or the recommendation of a public reprimand, OPC may file with the Clerk of the Committee exceptions to the determination or recommendation and may request a hearing. The respondent shall then have 30 days within which to make a response, and the response shall include respondent's exceptions, if any, to a recommendation of an admonition or reprimand. Within 30 days after service of the recommendation of an admonition or public reprimand on respondent, the respondent may file with the Clerk of the Committee exceptions to the recommendation and may request a hearing, and OPC shall have 30 days within which to file a response. The Committee chair may allow a reply to any response. No exception may be filed to a screening panel determination that a formal complaint shall be filed against a respondent pursuant to Rule 15-511. All exceptions shall include a memorandum, not to exceed 20 pages, stating the grounds for review, the relief requested and the bases in law or in fact for the exceptions.

(d) Procedure on exceptions.

(d)(1) Hearing not requested. If no hearing is requested, the Committee chair will review the record compiled before the screening panel.

(d)(2) Hearing requested. If a request for a hearing is made, the Committee chair or a screening panel chair designated by the Committee chair shall serve as the Exceptions Officer and hear the matter in an expeditious manner, with OPC counsel

and the respondent having the opportunity to be present and give an oral presentation. The complainant need not appear personally.

(d)(3) Transcript Request. Upon request the Committee chair shall extend the deadlines for filing exceptions or responses in order to allow a party time to obtain a transcript of the screening panel proceedings. The cost of such transcript shall be borne by the requesting party. The party obtaining the transcript shall file it with the Clerk, together with an affidavit establishing the chain of custody of the record.

(d)(4) Burden of proof. The party who files exceptions under subsection (c) shall have the burden of showing that the determination or recommendation of the screening panel is unsupported by substantial evidence or is arbitrary, capricious, legally insufficient or otherwise clearly erroneous.

(d)(5) Record on exceptions. The proceedings of any hearing on exceptions under this subsection (d) shall be recorded at a level of audio quality that permits an accurate transcription of the proceedings.

(e) Final Committee disposition. Either upon the completion of the exceptions procedure under subsection (d) or if no exceptions have been filed under subsection (c), the Committee chair shall issue a final, written determination that either sustains, dismisses, or modifies the determination or recommendation of the screening panel. No final written determination is needed by the Committee chair to a screening panel determination to a dismissal, a dismissal with a letter of caution, or a referral to the Diversion Committee if no exception is filed.

(f) Appeal of a final Committee determination.

(f)(1) Within 30 days after service of a final, written determination of the Committee chair under subsection (e), the respondent or OPC may file a request for review by the Supreme Court seeking reversal or modification of the final determination of the Committee. A request for review under this subsection shall only be available in cases where exceptions have been filed under subsection (c). Dissemination of disciplinary information pursuant to Rules 15-504(b)(12) or 15-516 shall be automatically stayed during the period within which a request for review may be filed under this subsection. If a timely request for review is filed, the stay shall remain in place pending resolution by the Supreme Court unless the Court otherwise orders.

(f)(2) A request for review under this subsection (f) will be subject to the procedures set forth in Title III of the Utah Rules of Appellate Procedure. Documents submitted under this Rule shall conform to the requirements of Rules 27(a) and 27(b) of the Utah Rules of Appellate Procedure.

(f)(3) A party requesting a transcription of the record below shall bear the costs. The party obtaining the transcript shall file it with the Clerk of the Court, together with an affidavit establishing the chain of custody of the record.

(f)(4) The Supreme Court shall conduct a review of the matter on the record.

(f)(5) The party requesting review shall have the burden of demonstrating that the Committee action was:

(f)(5)(A) Based on a determination of fact that is not supported by substantial evidence when viewed in light of the whole record before the Court;

(f)(5)(B) An abuse of discretion;

(f)(5)(C) Arbitrary or capricious; or

(f)(5)(D) Contrary to Articles 5 and 6 of Chapter 15, Rules Governing Licensed Paralegal Practitioners.

(g) General procedures.

(g)(1) Testimony. All testimony given before a screening panel or the Exceptions Officer shall be under oath.

(g)(2) Service. To the extent applicable, service or filing of documents under this Rule is to be made in accordance with Utah Rules of Civil Procedure 5(b)(1), 5(d) and 6(a).

(g)(3) Continuance of disciplinary proceedings. A disciplinary proceeding may be held in abeyance by the Committee chair prior to the filing of a formal complaint when the allegations or the informal complaint contain matters of substantial similarity to the material allegations of pending criminal or civil litigation in which the respondent is involved.

Rule 15-511. Proceedings subsequent to finding of probable cause.

(a) Commencement of action. If the screening panel finds probable cause to believe that there are grounds for public discipline and that a formal complaint is merited, OPC counsel shall prepare and file with the district court a formal complaint setting forth in plain and concise language the facts upon which the charge of unprofessional conduct is based and the applicable provisions of the Licensed Paralegal Practitioner Rules of Professional Conduct. The formal complaint shall be signed by the Committee chair or, in the chair's absence, by the Committee vice chair or a screening panel chair designated by the Committee chair.

(b) Venue. The action shall be brought and the trial shall be held in the county in which an alleged offense occurred or in the county where the respondent resides or practices law as a licensed paralegal practitioner or last practiced law as a licensed paralegal practitioner in Utah; provided, however, that if the respondent is not a resident of Utah and the alleged offense is not committed in Utah, the trial shall be held in a county designated by the Chief Justice of the Supreme Court. The parties may stipulate to a change of venue in accordance with applicable law.

(c) Style of proceedings. All proceedings instituted by the OPC shall be styled "In the Matter of the Discipline of (name of respondent and respondent's license number), Respondent."

(d) Change of judge as a matter of right.

(d)(1) Notice of change. The respondent or OPC counsel may, by filing a notice indicating the name of the assigned judge, the date on which the formal complaint was filed, and that a good faith effort has been made to serve all parties, change the judge assigned to the case. The notice shall not specify any reason for the change of judge. The party filing the notice shall send a copy of the notice to the assigned judge and to the presiding judge. The party filing the notice may request reassignment to another district court judge from the same district, which request shall

be granted. Under no circumstances shall more than one change of judge be allowed to each party under this rule.

(d)(2) Time. Unless extended by the court upon a showing of good cause, the notice must be filed within 30 days after commencement of the action or prior to the notice of trial setting, whichever occurs first. Failure to file a timely notice precludes any change of judge under this rule.

(d)(3) Assignment of action. Upon the filing of a notice of change, the assigned judge shall take no further action in the case. The presiding judge shall promptly determine whether the notice is proper and, if so, shall reassign the action. If the presiding judge is also the assigned judge, the clerk shall promptly send the notice to the Chief Justice of the Supreme Court, who shall determine whether the notice is proper and, if so, shall reassign the action.

(d)(4) Rule 63 and Rule 63A unaffected. This rule does not affect any rights a party may have pursuant to Rule 63 or Rule 63A of the Utah Rules of Civil Procedure.

(e) Actions tried to the bench; findings and conclusions. All actions tried according to this article shall be tried to the bench, and the district court shall enter findings of fact and conclusions of law. Neither masters nor commissioners shall be utilized.

(f) Sanctions hearing. Upon a finding of misconduct and as soon as reasonably practicable, within a target date of not more than 30 days after the district court enters its findings of fact and conclusions of law, it shall hold a hearing to receive relevant evidence in aggravation and mitigation, and shall within five days thereafter, enter an order sanctioning the respondent. Upon reasonable notice to the parties, the court, at its discretion, may hold the sanctions hearing immediately after the misconduct proceeding.

(g) Review. Any discipline order by the district court may be reviewed by the Supreme Court through a petition for review pursuant to the Utah Rules of Appellate Procedure.

Rule 15-512. Sanctions.

The imposition of sanctions against a respondent who has been found to have engaged in misconduct shall be governed by Chapter 6, Article 15, Standards for Imposing Licensed Paralegal Practitioner Sanctions.

Rule 15-513. Immunity from civil suits.

Participants in proceedings conducted under this article shall be entitled to the same protections for statements made in the course of the proceedings as participants in judicial proceedings. The district courts, Committee members, supervising attorneys engaged in pro bono assistance, trustees appointed pursuant to Rule 15-527, and OPC counsel and staff shall be immune from suit, except as provided in Utah Rules of Civil Procedure 65A and 65B, for any conduct committed in the course of their official duties, including the investigatory stage. There is no immunity from civil suit for intentional misconduct.

Rule 15-514. Service.

(a) Service of formal complaint or other petition. Service of the formal complaint upon the respondent in any disciplinary proceeding or the petition in any disability proceeding shall be made in accordance with the Utah Rules of Civil Procedure.

(b) Service of other papers. Service of any other papers or notices required by this article shall be made in accordance with the Utah Rules of Civil Procedure.

Rule 15-515. Access to disciplinary information.

(a) Confidentiality. Prior to the filing of a formal complaint or the issuance of a public reprimand pursuant to Rule 15-510 in a discipline matter, the proceeding is confidential, except that the pendency, subject matter, and status of an investigation may be disclosed by OPC counsel if the proceeding is based upon allegations that have been disseminated through the mass media, or include either the conviction of a crime or reciprocal public discipline. The proceeding shall not be deemed confidential to the extent:

(a)(1) the respondent has given an express written waiver of confidentiality;

(a)(2) there is a need to notify another person or organization, including the Bar's Licensed Paralegal Practitioners' Fund for Client Protection, in order to protect the public, the administration of justice, or the legal profession; or

(a)(3) the information is required in a subsequent licensed paralegal practitioner sanctions hearing;

(a)(4) a referral is made to the Professionalism Counseling Board pursuant to Rule 15-510 (a)(4) or (b)(7)(C). In the event of such a referral, OPC counsel, members of the Committee and of any screening panel, and members of the Professionalism Counseling Board may share all information between and among them with the expectation that such information will in all other respects be subject to applicable confidentiality rules or exceptions.

(b) Public proceedings. Upon the filing of a formal complaint in a discipline matter, the filing of a petition for reinstatement, or the filing of a motion or petition for interim suspension, the proceeding is public, except as provided in paragraph (d) below.

(c) Proceedings alleging disability. Proceedings for transfer to or from disability status are confidential. All orders transferring a respondent to or from disability status are public.

(d) Protective order. In order to protect the interest of a complainant, witness, third party, or respondent, the district court may, upon application of any person and for good cause shown, issue a protective order prohibiting the disclosure of specific information and direct that the proceedings be conducted so as to implement the order, including requiring that the hearing be conducted in such a way as to preserve the confidentiality of the information that is the subject of the application.

(e) Request for nonpublic information. Nonpublic information shall be confidential, other than as authorized for disclosure under paragraph (a), unless:

(e)(1) the request for information is made by the Board, any Bar committee, a committee or consultant appointed by the Supreme Court or the Board to review OPC operations, or the executive director, and is required in the furtherance of their duties; or

(e)(2) the request for information is approved by OPC counsel and there is compliance with the provisions of paragraphs (f) and (g) of this rule.

(f) Notice to the respondent. Except as provided in paragraph (g), if the Committee decides to provide nonpublic information requested pursuant to paragraph (e), and if the respondent has not signed an express written waiver permitting the party requesting the information to obtain the nonpublic information, the respondent shall be notified in writing at the respondent's last known designated mailing address as shown by Bar records of that information which has been requested and by whom, together with a copy of the information proposed to be released. The notice shall advise the respondent that the information shall be released at the end of 21 days following mailing of the notice unless the respondent objects to the disclosure. If the respondent timely objects to the disclosure, the information shall remain confidential unless the requesting party obtains a court order authorizing its release.

(g) Release without notice. If a requesting party as outlined in paragraph (e)(2) has not obtained an express written waiver from the respondent to obtain nonpublic information, and requests that the information be released without giving notice to the respondent, the requesting party shall certify that:

(g)(1) the request is made in furtherance of an ongoing investigation into misconduct by the respondent;

(g)(2) the information is essential to that investigation; and

(g)(3) disclosure of the existence of the investigation to the respondent would seriously prejudice that investigation.

(h) OPC counsel can disclose nonpublic information without notice to the respondent if:

(h)(1) disclosure is made in furtherance of an ongoing OPC investigation into misconduct by the respondent; and

(h)(2) the information that is sought through disclosure is essential to that investigation.

(i) Duty of participants. All participants in a proceeding under these rules shall conduct themselves so as to maintain confidentiality. Except as authorized by other statutes or rules, persons receiving private records under paragraph (e) will not provide access to the records to anyone else.

Rule 15-516. Dissemination of disciplinary information.

(a) Notice to disciplinary agencies. The OPC shall transmit notice of public discipline, resignation with discipline pending, transfers to or from disability status, reinstatements, relicensures, and certified copies of judgments of conviction to the disciplinary enforcement agency of every other jurisdiction in which the respondent is admitted or licensed.

(b) Notice to the public. The executive director shall cause notices of admonition, public reprimand, suspension, delicensure, resignation with discipline pending, transfer

to disability status and petitions for reinstatement or relicensure to be published in the Utah Bar Journal. The executive director also shall cause notices of suspension, delicensure, resignation with discipline pending, transfer to disability status and petitions for reinstatement or relicensure to be published in a newspaper of general circulation in each judicial district within Utah in which the respondent maintained an office for the practice of law as a licensed paralegal practitioner.

(c) Notice to the courts. The executive director shall promptly cause transmittal of notices of suspension, delicensure, resignation with discipline pending, transfer to or from disability status, reinstatement or relicensure to all state courts in Utah.

Rule 15-517. Additional rules of procedure.

(a) Governing rules. Except as otherwise provided in this article, the Utah Rules of Civil Procedure, the Utah Rules of Appellate Procedure governing civil appeals, and the Utah Rules of Evidence apply in formal discipline actions and disability actions.

(b) Standard of proof. Formal complaints of misconduct, petitions for reinstatement and relicensure, and petitions for transfer to and from disability status shall be established by a preponderance of the evidence. Motions for interim suspension pursuant to Rule 15-518 shall be established by clear and convincing evidence.

(c) Burden of proof. The burden of proof in proceedings seeking discipline or transfer to disability status is on the OPC. The burden of proof in proceedings seeking a reversal of a screening panel recommendation of discipline, or seeking reinstatement, relicensure, or transfer from disability status is on the respondent.

(d) Related pending litigation. Upon a showing of good cause, a formal action or a disability proceeding may be stayed because of substantial similarity to the material allegations of a pending criminal, civil, or disciplinary action.

(e) The complainant's actions. Neither unwillingness of the complainant to prosecute an informal or formal complaint, nor settlement or compromise between the complainant and the respondent, nor restitution by the respondent shall, in and of itself, justify abatement of disciplinary proceedings.

Rule 15-518. Interim suspension for threat of harm.

(a) Transmittal of evidence. Upon receipt of sufficient evidence demonstrating that a licensed paralegal practitioner subject to the disciplinary jurisdiction of the Supreme Court poses a substantial threat of irreparable harm to the public and has either committed a violation of the Rules of Professional Conduct or is under a disability as herein defined, OPC counsel shall file a petition for interim suspension in the district court and give notice in accordance with Utah Rule of Civil Procedure 65A. An action is commenced under this rule when the petition for interim suspension is filed.

(b) Immediate interim suspension. After conducting a hearing on the petition, the district court may enter an order immediately suspending the respondent pending final

disposition of a disciplinary proceeding predicated upon the conduct causing the harm, or may order such other action as deemed appropriate. If an order is entered:

(b)(1) the district court may appoint a trustee, pursuant to Rule 15-527, to protect the interests of the respondent's clients; and

(b)(2) the OPC may file a formal complaint in the district court without presenting the matter to a screening panel.

(c) Notice to clients. A respondent suspended pursuant to paragraph (b) shall comply with the notice requirements in Rule 15-526 as ordered by the district court.

(d) Motion for dissolution of interim suspension. On two days' notice to OPC counsel, a respondent suspended pursuant to paragraph (b) may appear and move for dissolution or modification of the order of suspension, and in that event, the motion shall be heard and determined as expeditiously as the ends of justice require.

Rule 15-519. Licensed Paralegal Practitioners convicted of a crime.

(a) Transmittal of judgment of conviction. The court in which a licensed paralegal practitioner is convicted of any felony or any misdemeanor which reflects adversely on the licensed paralegal practitioner's honesty, trustworthiness or fitness as a licensed paralegal practitioner shall, within 30 days after the conviction, transmit a certified copy of the judgment of conviction to OPC counsel.

(b) Motion for interim suspension. Upon being advised that a licensed paralegal practitioner has been convicted of a crime which reflects adversely on the licensed paralegal practitioner's honesty, trustworthiness or fitness as a licensed paralegal practitioner, OPC counsel shall determine whether the crime warrants interim suspension. Upon a determination that the crime warrants interim suspension, OPC counsel shall file a formal complaint, accompanied by the certified copy of the judgment of conviction, and concurrently file a motion for immediate interim suspension. An action is commenced under this rule when both the petition for interim suspension and the formal complaint are filed. The respondent may assert any jurisdictional deficiency which establishes that the interim suspension may not properly be ordered, such as that the crime does not reflect adversely on the respondent's honesty, trustworthiness or fitness as a licensed paralegal practitioner, or that the respondent is not the individual convicted. The respondent is not entitled to an evidentiary hearing but may request an informal hearing. If an order for interim suspension is not obtained, the formal complaint shall be dismissed and OPC counsel shall process the matter as it does any other information coming to the attention of the OPC.

(c) Imposition. The district court shall place a respondent on interim suspension upon proof that the respondent has been convicted of a crime which reflects adversely on the respondent's honesty, trustworthiness or fitness as a licensed paralegal practitioner regardless of the pendency of any appeal.

(d) Dissolution of interim suspension. Interim suspension may be dissolved as provided in Rule 15-518(d).

(e) Conviction as conclusive evidence. Except as provided in paragraph (b), a certified copy of a judgment of conviction constitutes conclusive evidence that the respondent committed the crime.

(f) Automatic reinstatement from interim suspension upon reversal of conviction. If a respondent suspended solely under the provisions of paragraph (c) demonstrates that the underlying conviction has been reversed or vacated, the order for interim suspension shall be vacated and the respondent placed on active status. The vacating of the interim suspension shall not automatically terminate any disciplinary proceeding then pending against the respondent, the disposition of which shall be determined on the basis of the available evidence other than conviction.

(g) Notice to clients and other of interim suspension. An interim suspension under this rule shall constitute a suspension of the respondent for the purpose of Rule 15-526.

Rule 15-520. Discipline by consent.

(a) Discipline by consent prior to filing of formal complaint. A respondent against whom an informal complaint has been filed may, prior to the filing of a formal complaint, tender a proposal for discipline by consent, including a conditional admission to the informal complaint or portions thereof in exchange for a disciplinary sanction and final disposition of the informal complaint. The proposal shall include a waiver of right to a screening panel hearing. The proposal shall be submitted to OPC counsel who shall forward the proposal to the Committee chair with a recommendation in favor of or opposed to the proposal and a statement of the basis for such recommendation. If the proposal is approved by the Committee chair, the sanction shall be imposed as provided in this rule. If the proposal is rejected by the Committee chair, the proposal and admission shall be withdrawn and cannot be used against the respondent in subsequent proceedings.

(b) Discipline by consent after filing of formal complaint. A respondent against whom a formal complaint has been filed may tender a conditional admission to the formal complaint or to a particular count thereof in exchange for a stated form of discipline and final disposition of the formal complaint. The proposal shall be submitted to OPC counsel, who shall then forward the proposal to the district court with a recommendation favoring or opposing the proposal and a statement of the basis for such recommendation. The district court shall either approve or reject the proposal. If the district court approves the proposal and the stated form of discipline includes public discipline, it shall enter the appropriate disciplinary order as provided in paragraph (d). If the district court rejects the proposal, the proposal and conditional admission shall be withdrawn and cannot be used against the respondent in subsequent proceedings.

(c) Order of discipline by consent. The final order of discipline by consent shall be predicated upon:

(c)(1) the informal complaint and any NOIC if no formal complaint has been filed;

(c)(2) the formal complaint, if filed;

(c)(3) the approved proposal for discipline by consent; and

(c)(4) an affidavit of consent by the respondent to be disciplined.

(d) Affidavit of consent. A respondent whose proposal for discipline by consent has been approved as provided in this rule, shall submit an affidavit to the Committee chair or the district court as appropriate, consenting to the imposition of the approved disciplinary sanction and affirming that:

(d)(1) the consent is freely and voluntarily entered;

(d)(2) the respondent is not acting under coercion or duress;

(d)(3) the respondent is fully aware of the implications of submitting the consent;

(d)(4) the respondent is aware that there is presently pending an investigation into, or proceeding involving, allegations that there exist grounds for discipline, the nature of which shall be specifically set forth;

(d)(5) for purposes of disciplinary proceedings, the respondent acknowledges that the material facts so alleged are true; and

(d)(6) the respondent submits consent because the respondent knows that if an informal or formal complaint were predicated upon the matters under investigation were filed, or the pending formal charges were prosecuted, the respondent could not successfully defend against the charges upon which the discipline is based.

Rule 15-522. Reciprocal discipline.

(a) Duty to notify OPC counsel of discipline. Upon being publicly disciplined by another court, another jurisdiction, or a regulatory body having disciplinary jurisdiction, a licensed paralegal practitioner licensed to practice in Utah shall within 30 days inform the OPC of the discipline. Upon notification from any source that a licensed paralegal practitioner within the jurisdiction of the Supreme Court has been publicly disciplined by another court, another jurisdiction, or a regulatory body having disciplinary jurisdiction, OPC counsel shall obtain a certified copy of the disciplinary order.

(b) Notice served upon licensed paralegal practitioner. Upon receipt of a certified copy of an order demonstrating that a licensed paralegal practitioner licensed to practice in Utah has been publicly disciplined by another court, another jurisdiction, or a regulatory body having disciplinary jurisdiction, OPC counsel shall issue a notice directed to the licensed paralegal practitioner containing:

(b)(1) a copy of the order from the other court, jurisdiction or regulatory body; and

(b)(2) a notice giving the licensed paralegal practitioner the right to inform OPC counsel, within 30 days from service of the notice, of any claim by the licensed paralegal practitioner predicated upon the grounds set forth in paragraph (d), that the imposition of the equivalent discipline in Utah would be unwarranted, and stating the reasons for that claim.

(c) Effect of stay of discipline in other jurisdiction. If the discipline imposed in the other court, jurisdiction or regulatory body has been stayed, any reciprocal discipline imposed in Utah shall be deferred until the stay expires.

(d) Discipline to be imposed. Upon the expiration of 30 days from service of the notice pursuant to paragraph (b), the district court shall take such action as may be appropriate to cause the equivalent discipline to be imposed in this jurisdiction, unless it clearly appears upon the face of the record from which the discipline is predicated that:

(d)(1) the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;

(d)(2) the imposition of equivalent discipline would result in grave injustice; or

(d)(3) the misconduct established warrants substantially different discipline in Utah or is not misconduct in this jurisdiction.

If the district court determines that any of these elements exist, it shall enter such other order as it deems appropriate. The burden is on the respondent to demonstrate that the imposition of equivalent discipline is not appropriate.

(e) Conclusiveness of adjudication in other jurisdictions. Except as provided in paragraphs (c) and (d) above, a final adjudication of the other court, jurisdiction or regulatory body that a respondent has been guilty of misconduct shall establish conclusively the misconduct for purposes of a disciplinary proceeding in Utah.

Rule 15-523. Proceedings in which licensed paralegal practitioner is declared to be incompetent or alleged to be incapacitated.

(a) Involuntary commitment or adjudication of incompetency. If a licensed paralegal practitioner has been judicially declared incompetent or is involuntarily committed on the grounds of incompetency, OPC counsel, upon proper proof of the fact, shall file a petition with the district court for the immediate transfer of the licensed paralegal practitioner to disability status for an indefinite period until further order of the district court. A copy of the order shall be served by OPC counsel upon the licensed paralegal practitioner or the licensed paralegal practitioner's guardian or, if no guardian or legal representative has been appointed, upon the director of the institution to which the licensed paralegal practitioner has been committed.

(b) Inability to properly defend. If a licensed paralegal practitioner alleges in the course of a disciplinary proceeding an inability to assist in the defense due to mental or physical incapacity, the district court shall immediately transfer the licensed paralegal practitioner to disability status pending determination of the incapacity.

(b)(1) If the district court determines the claim of inability to defend is valid, the disciplinary proceeding shall be deferred and the licensed paralegal practitioner retained on disability status until the district court subsequently considers a petition for transfer of the licensed paralegal practitioner to active status. If the district court considering the petition for transfer to active status determines the petition should be granted, the interrupted disciplinary proceedings may resume.

(b)(2) If the district court determines the claim of incapacity to defend to be invalid, the disciplinary proceeding shall resume.

(c) Proceedings to determine incapacity. Information relating to a licensed paralegal practitioner's physical or mental condition which adversely affects the licensed paralegal practitioner's ability to practice law as a licensed paralegal practitioner shall be investigated, and if warranted, shall be the subject of formal proceedings to determine whether the licensed paralegal practitioner shall be transferred to disability status. Hearings shall be conducted in the same manner as disciplinary proceedings, except that all of the proceedings shall be confidential. The district court shall provide for such notice to the licensed paralegal practitioner of proceedings in the matter as it deems proper and advisable and may appoint counsel to represent the licensed paralegal practitioner if the licensed paralegal practitioner is without adequate representation. The district court may take or direct whatever action it deems necessary or proper to determine whether the licensed paralegal practitioner is so incapacitated, including the examination of the licensed paralegal practitioner by qualified experts designated by the

district court. If, upon due consideration of the matter, the district court concludes that the licensed paralegal practitioner is incapacitated from continuing to practice law as a licensed paralegal practitioner, it shall enter an order transferring the licensed paralegal practitioner to disability status for an indefinite period and until the further order of the district court. Any pending disciplinary proceedings against the licensed paralegal practitioner shall be held in abeyance.

(d) Reinstatement from disability status.

(d)(1) Court order. No licensed paralegal practitioner transferred to disability status may resume active status except by order of the district court.

(d)(2) Petition. Any licensed paralegal practitioner transferred to disability status shall be entitled to petition for transfer to active status once a year, or at whatever shorter intervals the district court may direct in the order transferring the licensed paralegal practitioner to disability status or any modifications thereof.

(d)(3) Examination. Upon the filing of a petition for transfer to active status, the district court may take or direct whatever action it deems necessary or proper to determine whether the disability has been removed, including a direction for an examination of the licensed paralegal practitioner by qualified experts designated by the district court. In its discretion, the district court may direct that the expense of the examination be paid by the licensed paralegal practitioner.

(d)(4) Waiver of privilege. With the filing of a petition for reinstatement to active status, the licensed paralegal practitioner shall be required to disclose the name of each psychiatrist, psychologist, physician or other health care provider and hospital or other institution by whom or in which the licensed paralegal practitioner has been examined or treated related to the disability since the transfer to disability status. The licensed paralegal practitioner shall furnish written consent to each listed provider to divulge information and records relating to the disability if requested by the district court or district court's appointed experts.

(d)(5) Learning in law; Licensed Paralegal Practitioner Examination. The district court may also direct that the licensed paralegal practitioner establish proof of competence and learning in law, which proof may include certification by the Bar of successful completion of an examination for licensure to practice as a licensed paralegal practitioner.

(d)(6) Granting petition for transfer to active status. The district court shall grant the petition for transfer to active status upon a showing by clear and convincing evidence that the disability has been removed.

(d)(7) Judicial declaration of competence. If a licensed paralegal practitioner transferred to disability status on the basis of a judicial determination of incompetence is subsequently judicially declared to be competent, the district court may dispense with further evidence that the licensed paralegal practitioner’s disability has been removed and may immediately order the licensed paralegal practitioner’s reinstatement to active status upon terms as are deemed proper and advisable.

Rule 15-524. Reinstatement following a suspension of six months or less.

A respondent who has been suspended for six months or less pursuant to disciplinary proceedings shall be reinstated at the end of the period of suspension upon filing with the district court and serving upon OPC counsel an affidavit stating that the respondent has fully complied with the requirements of the suspension order and that the respondent has fully reimbursed the Bar's Licensed Paralegal Practitioners' Fund for Client Protection for any amounts paid on account of the respondent's conduct. Within ten days, OPC counsel may file an objection and thereafter the district court shall conduct a hearing.

Rule 15-525. Reinstatement following a suspension of more than six months; relicensure.

(a) Generally. A respondent suspended for more than six months or a delicensed respondent shall be reinstated or relicensed only upon order of the district court. No respondent may petition for reinstatement until three months before the period for suspension has expired. No respondent may petition for relicensure until five years after the effective date of delicensure. A respondent who has been placed on interim suspension and is then delicensed for the same misconduct that was the ground for the interim suspension may petition for relicensure at the expiration of five years from the effective date of the interim suspension.

(b) Petition. A petition for reinstatement or relicensure shall be verified, filed with the district court, and shall specify with particularity the manner in which the respondent meets each of the criteria specified in paragraph (e) or, if not, why there is otherwise good and sufficient reason for reinstatement or relicensure. With specific reference to paragraph (e)(4), prior to the filing of a petition for relicensure, the respondent must receive a report and recommendation from the Bar's Character and Fitness Committee. In addition to receiving the report and recommendation from the Character and Fitness Committee, the respondent must satisfy all other requirements as set forth in Article 7, Admissions. Prior to or as part of the respondent's petition, the respondent may request modification or abatement of conditions of discipline, reinstatement or relicensure.

(c) Service of petition. The respondent shall serve a copy of the petition upon OPC counsel.

(d) Publication of notice of petition. At the time a respondent files a petition for reinstatement or relicensure, OPC counsel shall publish a notice of the petition in the Utah Bar Journal. The notice shall inform members of the Bar about the application for reinstatement or relicensure, and shall request that any individuals file notice of their opposition or concurrence with the district court within 30 days of the date of publication. In addition, OPC counsel shall notify each complainant in the disciplinary proceeding that led to the respondent's suspension or delicensure that the respondent is applying for reinstatement or relicensure, and shall inform each complainant that the complainant has 30 days from the date of mailing to raise objections to or to support the respondent's petition. Notice shall be mailed to the last known address of each complainant in OPC counsel's records.

(e) Criteria for reinstatement and relicensure. A respondent may be reinstated or relicensed only if the respondent meets each of the following criteria, or, if not, presents

good and sufficient reason why the respondent should nevertheless be reinstated or relicensed.

(e)(1) The respondent has fully complied with the terms and conditions of all prior disciplinary orders except to the extent they are abated by the district court.

(e)(2) The respondent has not engaged nor attempted to engage in the unauthorized practice of law during the period of suspension or delicensure.

(e)(3) If the respondent was suffering from a physical or mental disability or impairment which was a causative factor of the respondent's misconduct, including substance abuse, the disability or impairment has been removed. Where substance abuse was a causative factor in the respondent's misconduct, the respondent shall not be reinstated or relicensed unless:

(e)(3)(A) the respondent has recovered from the substance abuse as demonstrated by a meaningful and sustained period of successful rehabilitation;

(e)(3)(B) the respondent has abstained from the use of the abused substance and the unlawful use of controlled substances for the preceding six months; and

(e)(3)(C) the respondent is likely to continue to abstain from the substance abused and the unlawful use of controlled substances.

(e)(4) Notwithstanding the conduct for which the respondent was disciplined, the respondent has the requisite honesty and integrity to practice law as a licensed paralegal practitioner. In relicensure cases, the respondent must appear before the Bar's Character and Fitness Committee and cooperate in its investigation of the respondent. A copy of the Character and Fitness Committee's report and recommendation shall be provided to the OPC and forwarded to the district court assigned to the petition after the respondent files a petition.

(e)(5) The respondent has kept informed about recent developments in the law and is competent to practice as a licensed paralegal practitioner.

(e)(6) In cases of suspensions for one year or more, the respondent shall be required to pass the Licensed Paralegal Practitioner Professional Responsibility Exam.

(e)(7) In all cases of delicensure, the respondent shall be required to pass the student applicant Licensed Paralegal Practitioner Licensing Exam.

(e)(8) The respondent has fully reimbursed the Bar's Licensed Paralegal Practitioners' Fund for Client Protection for any amounts paid on account of the respondent's conduct.

(f) Review of petition. Within 60 days after receiving a respondent's petition for reinstatement or relicensure, OPC counsel shall either:

(f)(1) advise the respondent and the district court that OPC counsel will not object to the respondent's reinstatement or relicensure; or

(f)(2) file a written objection to the petition.

(g) Hearing; report. If an objection is filed by OPC counsel, the district court, as soon as reasonably practicable and within a target date of 90 days of the filing of the petition, shall conduct a hearing at which the respondent shall have the burden of demonstrating by a preponderance of the evidence that the respondent has met each of the criteria in paragraph (e) or, if not, that there is good and sufficient reason why the respondent should nevertheless be reinstated or relicensed. The district court shall enter its findings and order. If no objection is filed by OPC counsel, the district court shall review the petition without a hearing and enter its findings and order.

(h) Successive petitions. Unless otherwise ordered by the district court, no respondent shall apply for reinstatement or relicensure within one year following an adverse judgment upon a petition for reinstatement or relicensure.

(i) Conditions of reinstatement or relicensure. The district court may impose conditions on a respondent's reinstatement or relicensure if the respondent has met the burden of proof justifying reinstatement or relicensure, but the district court reasonably believes that further precautions should be taken to ensure that the public will be protected upon the respondent's return to practice.

(j) Reciprocal reinstatement or relicensure. If a respondent has been suspended or delicensed solely on the basis of discipline imposed by another court, another jurisdiction, or a regulatory body having disciplinary jurisdiction, and if the respondent is later reinstated or relicensed by that court, jurisdiction or regulatory body, the respondent may petition for reciprocal reinstatement or relicensure in Utah. The respondent shall file with the district court and serve upon OPC counsel a petition for reciprocal reinstatement or relicensure, as the case may be. The petition shall include a certified or otherwise authenticated copy of the order of reinstatement or relicensure from the other court, jurisdiction or regulatory body. Within 20 days of service of the petition, OPC counsel may file an objection thereto based solely upon substantial procedural irregularities. If an objection is filed, the district court shall hold a hearing and enter its finding and order. If no objection is filed, the district court shall enter its order based upon the petition.

Rule 15-526. Notice of disability or suspension; return of clients' property; refund of unearned fees.

(a) Effective date of order; winding up affairs. Each order that imposes delicensure or suspension is effective 30 days after the date of the order, or at such other time as the order provides. Each order that transfers a respondent to disability status is effective immediately upon the date of the order, unless the order otherwise provides. After the entry of any order of delicensure, suspension, or transfer to disability status, the respondent shall not accept any new retainer or employment as a licensed paralegal practitioner in any new case or legal matter; provided, however, that during any period between the date of entry of an order and its effective date, the respondent may, with the consent of the client after full disclosure, wind up or complete any matters pending on the date of entry of the order.

(b) Notice to clients and others. In every case in which a respondent is delicensed or suspended for more than six months, the respondent shall, within 20 days of the entry of the order, accomplish the following acts:

(b)(1) notify each client (and any other licensed paralegal practitioner or lawyer assisting the client) in every pending legal matter, litigation and non-litigation, that the respondent has been delicensed or suspended from the practice of law and is disqualified from further participation in the matter;

(b)(2) notify each client that, in the absence of co-counsel, the client should obtain a new licensed paralegal practitioner or lawyer, calling attention to the urgency to seek new assistance, particularly in pending litigation;

(b)(3) deliver to every client any papers or other property to which the client is entitled or, if delivery cannot reasonably be made, make arrangements satisfactory to the client of a reasonable time and place where papers and other property may be obtained, calling attention to any urgency to obtain the same;

(b)(4) refund any part of any fee paid in advance that has not been earned as of the effective date of the discipline;

(b)(5) in each matter pending before a court, agency or tribunal, notify opposing counsel or, in the absence of counsel, the adverse party, of the respondent's delicensure or suspension and consequent disqualification to further participate as a licensed paralegal practitioner in the matter;

(b)(6) file with the court, agency or tribunal before which any matter is pending a copy of the notice given to opposing counsel or to an adverse party; and

(b)(7) within ten days after the effective date of delicensure or suspension, file an affidavit with OPC counsel showing complete performance of the foregoing requirements of this rule. The respondent shall keep and maintain for inspection by OPC counsel all records of the steps taken to accomplish the requirements of this rule.

(c) Other notice. If a respondent is suspended for six months or less, the district court may impose conditions similar to those set out in paragraph (b). In any public disciplinary matter, the district court may also require the issuance of notice to others as it deems necessary to protect the interests of clients or the public.

(d) Compliance. Substantial compliance with the provisions of paragraphs (a), (b) and (c) shall be a precondition for reinstatement or relicensure. Willful failure to comply with paragraphs (a), (b) and (c) shall constitute contempt of court and may be punished as such or by further disciplinary action.

Rule 15-527. Appointment of trustee to protect clients' interest when a licensed paralegal practitioner disappears, dies, is suspended or delicensed, or is transferred to disability status.

(a) Protective appointment of trustee. If a licensed paralegal practitioner has disappeared or died, or if a respondent has been suspended or delicensed or transferred to disability status, and if there is evidence that the licensed paralegal practitioner or respondent has not complied with the provisions of Rule 15-526 and no partner, executor, or other responsible party capable of conducting the licensed paralegal practitioner’s or respondent's affairs is known to exist, a district judge of the judicial district in which the licensed paralegal practitioner or respondent maintained a principal office, upon the request of OPC counsel, may appoint a trustee to inventory the licensed paralegal practitioner’s or respondent's files, notify the licensed paralegal practitioner’s or respondent's clients, distribute the files to the clients, return unearned fees and other funds, and take any additional action authorized by the judge making the appointment.

(b) Confidentiality. No attorney-client relationship exists between the client and the trustee except to the extent necessary to maintain and preserve the confidentiality of the client. The trustee shall not disclose any information contained in the files so inventoried

without the consent of the client to whom such files relate, except as necessary to carry out the order of the court making the appointment.

(c) Immunity. Any person appointed as a trustee shall have the immunity granted by Rule 15-513.

Rule 15-528. Appeal by complainant.

The complainant shall not have a right of appeal, except as provided in Rule 15-510(a)(7) to appeal a dismissal of an informal complaint.

Rule 15-529. Statute of limitations.

Proceedings under this article shall be commenced within four years of the discovery of the acts allegedly constituting a violation of the Licensed Paralegal Practitioner Rules of Professional Conduct.

Rule 15-530. Costs.

(a) Assessment. The prevailing party in a proceeding on a formal complaint may be awarded judgment for costs in accordance with Rule 54(d) of the Utah Rules of Civil Procedure.

(b) Offer of discipline by consent. OPC counsel shall not be deemed to have prevailed on any count in the formal complaint unless the sanction imposed exceeds any sanction to which the respondent conditionally consented under Rule 15-520(b) prior to the hearing.

(c) Disability cases. Costs shall not be awarded in disability cases except pursuant to paragraph (d).

(d) Trusteeship. Court-appointed trustees, including cases in which OPC is appointed the trustee, may collect costs for notification to the respondent's clients, including charges for copying, postage, publication and fees from money collected.

Rule 15-531. Noncompliance with child support order, child visitation order, subpoena or order relating to paternity or child support proceeding.

(a) Upon entry of an order holding a licensed paralegal practitioner in contempt for the licensed paralegal practitioner’s noncompliance with a child support order, child visitation order, or a subpoena or order relating to a paternity or child support proceeding, a district court may suspend the licensed paralegal practitioner’s license to engage in the practice of law consistent with applicable law and, if suspended, shall also impose conditions of reinstatement.

(b) If a district court suspends a licensed paralegal practitioner's license to engage in the practice of law, the court shall provide a copy of the order to the OPC.

Rule 15-532. Failure to answer charges.

(a) Failure to answer. If having received actual notice of the charges filed, the respondent fails to answer the charges within 20 days, the respondent shall be deemed to have admitted the factual allegations.

(b) Failure to appear. If the respondent, having been ordered by the Committee to appear and having received actual notice of that order, fails to appear, the respondent shall have been deemed to have admitted the factual allegations which were the subject of such appearance. The Committee shall not, absent good cause, continue or delay proceedings because of the respondent's failure to appear.

(c) Notice of consequences. Any notice within the scope of paragraph (a) or (b) above shall expressly state the consequences, as specified above, of the respondent's failure to answer or appear.

Rule 15-533. Diversion.

(a) Referral to diversion. In a matter involving less serious misconduct as outlined in subsection (c), upon receipt of an informal complaint and before filing a formal complaint, the respondent may have the option of electing to have the matter referred to diversion, the appropriateness of which will be determined by the chair of the Diversion Committee after consultation with OPC. The option for diversion also may be initiated by OPC or the Ethics and Discipline Committee screening panel. Diversion may require the participation of the respondent in one or more of the following:

(a)(1) fee arbitration;

(a)(2) mediation;

(a)(3) law office management assistance;

(a)(4) lawyer or licensed paralegal practitioner assistance programs;

(a)(3) law office management assistance;

(a)(4) licensed paralegal practitioner assistance programs;

(a)(5) psychological and behavioral counseling;

(a)(6) monitoring;

(a)(7) restitution;

(a)(8) continuing legal education programs including, but not limited to, ethics school; or

(a)(9) any other program or corrective course of action to address the respondent's conduct.

(b) Diversion Committee.

(b)(1) With regard to a licensed paralegal practitioner, the Diversion Committee in Lawyer Rule 15-533 shall operate under the provisions of this Rule.

(b)(2) Authority and responsibility. The Diversion Committee may negotiate and execute diversion contracts, assign monitoring to a lawyer or limited paralegal practitioner assistance program, determine compliance with the terms of diversion contracts, and determine fulfillment or any material breach of diversion contracts, subject to review under subsection (j)(3) of this rule, and adopt such policies and procedures as may be appropriate to accomplish its duties under this rule. The Diversion Committee shall have authority to establish subcommittees of volunteer attorneys and other professionals for the specific purpose of monitoring the compliance of any limited paralegal practitioner under diversion and reporting compliance to OPC and the Diversion Committee on a regular basis.

(c) Less serious misconduct. Conduct which would result in a suspension or delicensure is not considered to be less serious misconduct. Conduct is not ordinarily considered less serious misconduct if any of the following considerations apply:

(c)(1) the misconduct involves the misappropriation of client funds;

(c)(2) the misconduct results in or is likely to result in substantial prejudice to a client or other person, absent adequate provisions for restitution;

(c)(3) the respondent has been sanctioned in the last three years;

(c)(4) the misconduct is of the same nature as misconduct for which the respondent has been sanctioned in the last three years;

(c)(5) the misconduct involves dishonesty, deceit, fraud, or misrepresentation;

(c)(6) the misconduct constitutes a substantial threat of irreparable harm to the public; a felony; or a misdemeanor which reflects adversely on the respondent's honesty, trustworthiness or fitness as a limited paralegal practitioner; or

(c)(7) the misconduct is part of a pattern of similar misconduct.

(d) Factors for consideration. The Diversion Committee considers the following factors in negotiating and executing the diversion contract:

(d)(1) whether the presumptive sanction that would be imposed, in the opinion of OPC or the Diversion Committee, is likely to be no more severe than a public reprimand or private admonition;

(d)(2) whether participation in diversion is likely to improve the respondent's future professional conduct and accomplish the goals of legal paralegal practitioner discipline;

(d)(3) whether aggravating or mitigating factors exist; and

(d)(4) whether diversion was already tried.

(e) Notice to complainant. The OPC will notify the complainant, if any, of the proposed decision to refer the respondent to diversion, and the complainant may submit written comments. The complainant will be notified when the complaint is diverted and when the complaint is dismissed. All notices will be sent to the complainant's address of record on file with the OPC. Such decision to divert or dismiss is not appealable.

(f) Diversion contract.

(f)(1) If the respondent agrees or elects to participate in diversion as provided by this rule, the terms of the diversion shall be set forth in a written contract. If the contract is entered prior to a hearing of a screening panel of the Ethics and Discipline Committee pursuant to Rule 15-510(b), the contract shall be between the respondent and OPC. If diversion is agreed to and entered after a screening panel of the Ethics and Discipline Committee has convened pursuant to Rule 15-510(b), the contract shall be made as part of the decision of that screening panel. OPC will memorialize the contract and

decision. If diversion is agreed to and entered after a complaint has been filed pursuant to Rule 15-512, the diversion contract shall be made as part of the ruling and order of the Court. Except as otherwise part of an order of a court, the Diversion Committee shall monitor and supervise the conditions of diversion and the terms of the diversion contract. The contract shall specify the program(s) to which the legal paralegal practitioner shall be diverted, the general purpose of the diversion, the manner in which compliance is to be monitored, and any requirement for payment of restitution or cost. The respondent licensed paralegal practitioner shall bear the burden of drafting and submitting the proposed diversion contract. Respondent may utilize counsel to assist in the negotiation phase of diversion. Respondent may also utilize Bar benefits programs provided by the Bar, such as a lawyer or licensed paralegal practitioner assistance program to assist in developing terms and conditions for the diversion contract appropriate to that respondent's particular situation. Use of a lawyer or licensed paralegal practitioner assistance program to assess appropriate conditions for diversion shall not conflict that entity from providing services under the contract. The terms of each contract shall be specifically tailored to the respondent's individual circumstances. The contract is confidential and its terms shall not be disclosed to other than the parties to the contract.

(f)(2) All diversion contracts must contain at least all the following:

(f)(2)(A) the signatures of respondent, his or her counsel if any, and the chair of the Diversion Committee;

(f)(2)(B) the terms and conditions of the plan for respondent and, the identity, if appropriate, of any service provider, mentor, monitor and/or supervisor and that individual's specific responsibilities. If a professional or service is utilized, and it is necessary to disclose confidential information, respondent must sign a limited conditional waiver of confidentiality permitting the professional or service to make the necessary disclosures in order for the respondent to fulfill his or her duties under the contract;

(f)(2)(C) the necessary terms providing for oversight of fulfillment of the contract terms, including provisions for those involved to report any alleged breach of the contract to OPC;

(f)(2)(D) the necessary terms providing that respondent will pay all costs incurred in connection with the contract and those costs further specified pursuant to subsection (k) and any costs associated with the complaints to be deferred; and

(f)(2)(E) a specific acknowledgement that a material violation of a contract term renders the respondent's participation in diversion voidable by the chair of the Diversion Committee or his or her designee;

(f)(3) The contract may be amended on subsequent agreement of respondent and OPC.

(f)(4) The chair of the Ethics and Discipline Committee and OPC shall be given copies of every diversion contract entered and signed by the respondent and the Diversion Committee chair.

(g) Affidavit supporting diversion. A diversion contract must be supported by the respondent's or the respondent's lawyer's affidavit or declaration as approved by the Diversion Committee setting forth the purpose for diversion and how the specific terms of the diversion contract will address the allegations raised by the complaint. The

respondent is not required to admit to the allegations in the complaint upon entering diversion. However, an admission and/or acknowledgement may be relevant and necessary as part of treatment in diversion. Such an admission shall be confidential for treatment purposes, shall not be released to any third party, and shall not be treated as an admission against interest nor used for future prosecution should diversion fail.

(h) Status of complaint. After a diversion contract is executed by the respondent, the disciplinary complaint is deferred pending successful completion of the contract.

(i) Effect of non-participation in diversion. The respondent has the right to decline to participate in diversion. If the respondent chooses not to participate in diversion, the matter proceeds pursuant to the Rules of Limited Paralegal Practitioner Discipline and Disability.

(j) Termination of diversion.

(j)(1) Fulfillment of the contract. The contract terminates when the respondent has fulfilled the terms of the contract and gives the Diversion Committee and OPC an affidavit or declaration demonstrating fulfillment. Upon receipt of this affidavit or declaration, the Diversion Committee and OPC must acknowledge receipt and request that the chair of the Ethics and Discipline Committee or his or her designee dismiss any complaint(s) deferred pending successful completion of the contract or notify the respondent that fulfillment of the contract is disputed based on an OPC claim of material breach. The complainant cannot appeal the dismissal. Successful completion of the contract is a bar to any further disciplinary proceedings based on the same allegations and successful completion of diversion shall not constitute a form of discipline.

(j)(2) Material breach. A material breach of the contract is cause for termination of the contract. After a material breach, OPC must notify the respondent of the alleged breach and intent to terminate the diversion. Thereafter, disciplinary proceedings may be instituted, resumed or reinstated.

(j)(3) Review by the chair. The Diversion Committee may review disputes regarding the alleged material breach of any term of the contract on the request of the respondent or OPC. The request must be filed with the Diversion Committee chair within 15 days of notice to the respondent of the determination for which review is sought. The respondent is entitled to a hearing before the Diversion Committee on any alleged breach to the diversion contract. Determinations under this section are not subject to further review and are not reviewable in any proceeding.

(k) Costs. Upon entering diversion, respondent shall pay an initial fee of $250. During diversion, respondent shall pay a fee of $50 per month. All such fees are payable to the Bar's general fund. These fees may be waived upon a hardship request, the validity or appropriateness of which shall be determined by the chair of the Diversion Committee or his or her designee.

ARTICLE 6. STANDARDS FOR IMPOSING LICENSED PARALEGAL PRACTITIONER SANCTIONS

Rule 15-601. Definitions.

As used in this article:

(a) "complainant" means the person who files an informal complaint or the OPC when the OPC determines to open an investigation based on information it has received;

(b) "formal complaint" means a complaint filed in the district court alleging misconduct by a licensed paralegal practitioner or seeking the transfer of a licensed paralegal practitioner to disability status;

(c) "informal complaint" means any written, notarized allegation of misconduct by or incapacity of a licensed paralegal practitioner;

(d) "injury" means harm to a client, the public, the legal system, or the profession which results from a licensed paralegal practitioner's misconduct. The level of injury can range from "serious" injury to "little or no" injury; a reference to "injury" alone indicates any level of injury greater than "little or no" injury;

(e) "intent" means the conscious objective or purpose to accomplish a particular result;

(f) "knowledge" means the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result;

(g) "negligence" means the failure of a licensed paralegal practitioner to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable licensed paralegal practitioner would exercise in the situation;

(h) "potential injury" means the harm to a client, the public, the legal system or the profession that is reasonably foreseeable at the time of the licensed paralegal practitioner's misconduct, and which, but for some intervening factor or event, would probably have resulted from the licensed paralegal practitioner's misconduct;

(i) "respondent" means a licensed paralegal practitioner subject to the disciplinary jurisdiction of the Supreme Court against whom an informal or formal complaint has been filed; and

(j) "Rules of Professional Conduct" means the Utah Licensed Paralegal Practitioner Rules of Professional Conduct (including the accompanying comments).

Rule 15-602. Purpose and nature of sanctions.

(a) Purpose of licensed paralegal practitioner discipline proceedings. The purpose of imposing licensed paralegal practitioner sanctions is to ensure and maintain the high standard of professional conduct required of those who undertake the discharge of professional responsibilities as licensed paralegal practitioners, and to protect the public and the administration of justice from licensed paralegal practitioners who have demonstrated by their conduct that they are unable or likely to be unable to discharge properly their professional responsibilities.

(b) Public nature of licensed paralegal practitioner discipline proceedings. Ultimate disposition of licensed aralegal practitioner discipline shall be public in cases of delicensure, suspension, and reprimand, and nonpublic in cases of admonition.

(c) Purpose of these rules. These rules are designed for use in imposing a sanction or sanctions following a determination that a licensed paralegal practitioner has violated a provision of the Licensed Paralegal Practitioner Rules of Professional Conduct. Descriptions in these rules of substantive disciplinary offenses are not intended to create grounds for determining culpability independent of the Licensed Paralegal Practitioner Rules of Professional Conduct. The rules constitute a system for determining sanctions, permitting flexibility and creativity in assigning sanctions in particular cases of licensed paralegal practitioner misconduct. They are designed to promote:

(c)(1) consideration of all factors relevant to imposing the appropriate level of sanction in an individual case;

(c)(2) consideration of the appropriate weight of such factors in light of the stated goals of licensed paralegal practitioner discipline; and

(c)(3) consistency in the imposition of disciplinary sanctions for the same or similar offenses within and among jurisdictions.

Rule 15-603. Sanctions.

(a) Scope. A disciplinary sanction is imposed on a licensed paralegal practitioner upon a finding or acknowledgement that the licensed paralegal practitioner has engaged in professional misconduct.

(b) Delicensure. Delicensure terminates the individual's status as a licensed paralegal practitioner. A licensed paralegal practitioner who has been delicensed may be relicensed as provided in Rule 15-525 of Article 5, Licensed Paralegal Practitioner Discipline and Disability.

(c) Suspension. Suspension is the removal of a licensed paralegal practitioner from the practice of law as a licensed paralegal practitioner for a specified minimum period of time. Generally, suspension should be imposed for a specific period of time equal to or greater than six months, but in no event should the time period prior to application for reinstatement be more than three years.

(c)(1) A licensed paralegal practitioner who has been suspended for six months or less may be reinstated as set forth in Rule 15-524 of Article 5, Licensed Paralegal Practitioner Discipline and Disability.

(c)(2) A licensed paralegal practitioner who has been suspended for more than six months may be reinstated as set forth in Rule 15-525 of Article 5, Licensed Paralegal Practitioner Discipline and Disability.

(d) Interim suspension. Interim suspension is the temporary suspension of a licensed paralegal practitioner from the practice of law as a licensed paralegal practitioner. Interim suspension may be imposed as set forth in Rules 15-518 and 15-519 of Article 5, Licensed Paralegal Practitioner Discipline and Disability.

(e) Reprimand. Reprimand is public discipline which declares the conduct of the licensed paralegal practitioner improper, but does not limit the paralegal practitioner’s right to practice.

(f) Admonition. Admonition is nonpublic discipline which declares the conduct of the licensed paralegal practitioner improper, but does not limit the licensed paralegal practitioner's right to practice.

(g) Probation. Probation is a sanction that allows a licensed paralegal practitioner to practice law as a licensed paralegal practitioner under specified conditions. Probation can be public or nonpublic, can be imposed alone or in conjunction with other sanctions, and can be imposed as a condition of relicensure or reinstatement.

(h) Resignation with discipline pending. Resignation with discipline pending is a form of public discipline which allows a respondent to resign from the practice of law as a licensed paralegal practitioner while either an informal or formal complaint is pending against the respondent. Resignation with discipline pending may be imposed as set forth in Rule 15-521 of Article 5, Licensed Paralegal Practitioner Discipline and Disability.

(i) Other sanctions and remedies. Other sanctions and remedies which may be imposed include:

(i)(1) restitution;

(i)(2) assessment of costs;

(i)(3) limitation upon practice;

(i)(4) appointment of a receiver;

(i)(5) a requirement that the licensed paralegal practitioner take the licensing examination or the licensed paralegal practitioner professional responsibility examination; and

(i)(6) a requirement that the licensed paralegal practitioner attend continuing education courses.

(j) Reciprocal discipline. Reciprocal discipline is the imposition of a disciplinary sanction on a licensed paralegal practitioner who has been disciplined in another court, another jurisdiction, or a regulatory body having disciplinary jurisdiction.

Rule 15-604. Factors to be considered in imposing sanctions.

The following factors should be considered in imposing a sanction after a finding of licensed paralegal practitioner misconduct:

(a) the duty violated;

(b) the licensed paralegal practitioner's mental state;

(c) the potential or actual injury caused by the licensed paralegal practitioner's misconduct; and

(d) the existence of aggravating or mitigating factors.

Rule 15-605. Imposition of sanctions.

Absent aggravating or mitigating circumstances, upon application of the factors set out in Rule 15-604 of this Article, the following sanctions are generally appropriate.

(a) Declicensure. Delicensure is generally appropriate when a licensed paralegal practitioner:

(a)(1) knowingly engages in professional misconduct as defined in Rule 8.4(a), (d), (e), or (f) of the Licensed Paralegal Practitioner Rules of Professional Conduct with the intent to benefit the licensed paralegal practitioner or another or to deceive the court, and causes serious or potentially serious injury to a party, the public, or the legal system, or causes serious or potentially serious interference with a legal proceeding; or

(a)(2) engages in serious criminal conduct, a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution, or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses; or

(a)(3) engages in any other intentional misconduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the licensed paralegal practitioner's fitness to practice law as a licensed paralegal practitioner.

(b) Suspension. Suspension is generally appropriate when a licensed paralegal practitioner:

(b)(1) knowingly engages in professional misconduct as defined in Rule 8.4(a), (d), (e), or (f) of the Licensed Paralegal Practitioner Rules of Professional Conduct and causes injury or potential injury to a party, the public, or the legal system, or causes interference or potential interference with a legal proceeding; or

(b)(2) engages in criminal conduct that does not contain the elements listed in Rule 15-605(a)(2) but nevertheless seriously adversely reflects on the licensed paralegal practitioner's fitness to practice law as a licensed paralegal practitioner.

(c) Reprimand. Reprimand is generally appropriate when a licensed paralegal practitioner:

(c)(1) negligently engages in professional misconduct as defined in Rule 8.4(a), (d), (e), or (f) of the Licensed Paralegal Practitioner Rules of Professional Conduct and causes injury to a party, the public, or the legal system, or causes interference with a legal proceeding; or

(c)(2) engages in any other misconduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the licensed paralegal practitioner's fitness to practice law as a licensed paralegal practitioner.

(d) Admonition. Admonition is generally appropriate when a licensed paralegal practitioner:

(d)(1) negligently engages in professional misconduct as defined in Rule 8.4(a), (d), (e), or (f) of the Licensed Paralegal Practitioner Rules of Professional Conduct and causes little or no injury to a party, the public, or the legal system or interference with a legal proceeding, but exposes a party, the public, or the legal system to potential injury or causes potential interference with a legal proceeding; or

(d)(2) engages in any professional misconduct not otherwise identified in this rule that adversely reflects on the licensed paralegal practitioner's fitness to practice law as a licensed paralegal practitioner.

Rule 15-606. Prior discipline orders.

Absent aggravating or mitigating circumstances, upon application of the factors set out in Rule 15-604 of this Article, the following principles generally apply in cases involving prior discipline.

(a) The district court or Supreme Court may impose further sanctions upon a licensed paralegal practitioner who violates the terms of a prior disciplinary order.

(b) When a licensed paralegal practitioner engages in misconduct similar to that for which the licensed paralegal practitioner has previously been disciplined, the appropriate sanction will generally be one level more severe than the sanction the licensed paralegal practitioner previously received, provided that the harm requisite for the higher sanction is present.

Rule 15-607. Aggravation and mitigation.

After misconduct has been established, aggravating and mitigating circumstances may be considered and weighed in deciding what sanction to impose.

(a) Aggravating circumstances. Aggravating circumstances are any considerations or factors that may justify an increase in the degree of discipline to be imposed. Aggravating circumstances may include:

(a)(1) prior record of discipline;

(a)(2) dishonest or selfish motive;

(a)(3) a pattern of misconduct;

(a)(4) multiple offenses;

(a)(5) obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary authority;

(a)(6) submission of false evidence, false statements, or other deceptive practices during the disciplinary process;

(a)(7) refusal to acknowledge the wrongful nature of the misconduct involved, either to the client or to the disciplinary authority;

(a)(8) vulnerability of victim;

(a)(9) substantial experience in the practice of law;

(a)(10) lack of good faith effort to make restitution or to rectify the consequences of the misconduct involved; and

(a)(11) illegal conduct, including the use of controlled substances.

(b) Mitigating circumstances. Mitigating circumstances are any considerations or factors that may justify a reduction in the degree of discipline to be imposed. Mitigating circumstances may include:

(b)(1) absence of a prior record of discipline;

(b)(2) absence of a dishonest or selfish motive;

(b)(3) personal or emotional problems;

(b)(4) timely good faith effort to make restitution or to rectify the consequences of the misconduct involved;

(b)(5) full and free disclosure to the client or the disciplinary authority prior to the discovery of any misconduct or cooperative attitude toward proceedings;

(b)(6) inexperience in the practice of law;

(b)(7) good character or reputation;

(b)(8) physical disability;
(b)(9) mental disability or impairment, including substance abuse when:
(b)(9)(A) the respondent is affected by a substance abuse or mental disability; and
(b)(9)(B) the substance abuse or mental disability causally contributed to the misconduct; and
(b)(9)(C) the respondent's recovery from the substance abuse or mental disability is demonstrated by a meaningful and sustained period of successful rehabilitation; and
(b)(9)(D) the recovery arrested the misconduct and the recurrence of that misconduct is unlikely;
(b)(10) unreasonable delay in disciplinary proceedings, provided that the respondent did not substantially contribute to the delay and provided further that the respondent has demonstrated prejudice resulting from the delay;
(b)(11) interim reform in circumstances not involving mental disability or impairment;
(b)(12) imposition of other penalties or sanctions;
(b)(13) remorse; and
(b)(14) remoteness of prior offenses.
(c) Other circumstances. The following circumstances should not be considered as either aggravating or mitigating:
(c)(1) forced or compelled restitution;
(c)(2) withdrawal of complaint against the licensed practitioner;
(c)(3) resignation prior to completion of disciplinary proceedings;
(c)(4) complainant's recommendation as to sanction; and
(c)(5) failure of injured client to complain.

ARTICLE 7. ADMISSIONS

ARTICLE 8. RESERVED.

ARTICLE 9. LICENSED PARALEGAL PRACTITIONERS' FUND FOR CLIENT PROTECTION

Rule 15-901. Definitions.

As used in this article:
(a) "Bar" means the Utah State Bar;
(b) "Board" means the Board of Commissioners of the Utah State Bar;
(c) "Committee" means the Committee on Licensed Paralegal Practitioners' Fund for Client Protection;
(d) "Dishonest conduct" means either wrongful acts committed by a licensed paralegal practitioner in the nature of theft or embezzlement of money or the wrongful

taking of or conversion of money, property or other things of value, or refusal to refund unearned fees received in advance where the licensed paralegal practitioner performed no service or such an insignificant service that the refusal to return the unearned fees constitutes a wrongful taking or conversion of money; and

(e) "Fund" means the Licensed Paralegal Practitioners' Fund for Client Protection; and

(f) "Supreme Court" means the Utah Supreme Court.

Rule 15-902. Purpose and scope; establishment of Fund.

(a) The Fund is established to reimburse clients for losses caused by the dishonest conduct committed by licensed paralegal practitioners admitted to practice in Utah.

(b) The purpose of the Fund is to promote public confidence in the administration of justice and the integrity of the legal profession by reimbursing losses caused by the dishonest conduct of licensed paralegal practitioners admitted to practice law in Utah, occurring in the course of the licensed paralegal practitioner/client or fiduciary relationship between the licensed paralegal practitioner and the claimant.

(c) Every licensed paralegal practitioner has an obligation to the public to participate in the collective effort of the Bar to reimburse persons who have lost money or property as a result of the dishonest conduct of another licensed paralegal practitioner. Contribution to the Fund is an acceptable method of meeting this obligation.

(d) Reserved.

Rule 15-903. Committee membership and terms; Board approval of Committee recommendations.

(a) The Committee shall consist of the Committee on Lawyers' Fund for Client Protection established in Rule 14-903.

(b) The Board shall retain the capacity to make any final determination after considering the recommendations of the Committee. The Board, functioning with regard to the Fund, is under the supervision of the Supreme Court.

Rule 15-904. Funding.

(a) The Supreme Court shall provide for funding by licensed paralegal practitioners in amounts adequate for the proper payment of claims and costs of administering the Fund subject to paragraph (c).

(b) All determinations with regards to funding shall be within the discretion of the Board, subject to approval of the Supreme Court.

(c) The Bar shall have the authority to assess its members for purposes of maintaining the Fund at sufficient levels to pay eligible claims in accordance with these rules. The Committee shall report annually to the Commission on a timely basis as to

known prospective claims as well as total claims paid to date so that an appropriate assessment can be made for the upcoming fiscal year. After the assessment at the beginning of the fiscal year is determined, the Fund balance shall be set in an amount of not less than $_____. The Bar shall then report to the Supreme Court as to known prospective claims as well as total claims paid to date after which the final assessment and fund balance shall be set with the Court's approval.

(d) A licensed paralegal practitioner's failure to pay any fee assessed under paragraph (c) shall be cause for administrative suspension from practice until payment has been made.

(e) Any licensed paralegal practitioner whose actions have caused payment of funds to a claimant from the Fund shall reimburse the Fund for all monies paid out as a result of his or her conduct with interest at legal rate, in addition to payment of the assessment for the procedural costs of processing the claim and reasonable attorney fees incurred by the Bar's Office of Professional Conduct or any other attorney or investigator engaged by the Committee to investigate and process the claim as a condition of continued practice.

(e)(1) In discipline cases where a licensed paralegal practitioner receives a public reprimand and the Fund pays an eligible claim, the licensed paralegal practitioner's license to practice shall be administratively suspended for non-payment until reimbursement to the Fund has been made by the licensed paralegal practitioner.

Rule 15-905. Segregated bank account.

All monies or other assets of the Fund including accrued interest thereon shall be held in the name of the Fund in a bank account segregated from all other accounts of the Bar or any committees or sections, subject to the direction of the Board.

Rule 15-906. Committee meetings.

(a) The Committee shall meet as frequently as necessary to conduct the business of the Fund and to timely process claims.

(b) The chairperson shall call a meeting at any reasonable time, or upon the request of at least two Committee members.

(c) A quorum of any meeting of the Committee shall be three members.

(d) Minutes of the meeting shall be taken and permanently maintained.

Rule 15-907. Duties and responsibilities of the committee.

The Committee shall have the following duties and responsibilities:

(a) to receive, evaluate, determine and make recommendations to the Board relative to the individual claims;

(b) to promulgate rules of procedure not inconsistent with these rules;

(c) to provide a full report, at least annually, to the Board and to make other reports as necessary;

(d) to publicize its activities to the public and the Bar, subject to approval of the Board;

(e) to appropriately utilize Bar staff to assist in the Committee's performance of its functions effectively and without delay;

(f) to engage in studies and evaluations of programs for client protection and the prevention of dishonest conduct by licensed paralegal practitioners; and

(g) to perform all other acts necessary or proper for the fulfillment of the purposes of the Fund and its effective administration.

Rule 15-908. Conflict of interest.

(a) A Committee member who has or has had a lawyer-client relationship, or a financial relationship, with a claimant or licensed paralegal practitioner who is the subject of a claim shall not participate in the investigation or adjudication of a claim involving that claimant or licensed paralegal practitioner.

(b) A Committee member with a past or present relationship, other than as provided in paragraph (a), with a claimant or the licensed paralegal practitioner whose alleged conduct is the subject of a claim, shall disclose such relationship to the Committee and, if the Committee deems appropriate, that Committee member shall not participate in any proceeding relating to such claim.

Rule 15-909. Immunity.

The Committee members, employees and agents of the Bar and claimant and lawyers who assist claimants are absolutely immune from civil liability for all acts in the course of their duties.

Rule 15-910. Eligible claim.

(a) The loss must be caused by the dishonest conduct of the licensed paralegal practitioner and shall have arisen out of the course of a licensed paralegal

practitioner/client or fiduciary relationship between the licensed paralegal practitioner and the claimant and by reason of that relationship.

(b) The claim for reimbursement shall be filed within one year after the date of the final order of discipline.

(b)(1) In cases of the licensed paralegal practitioner's death, the claim for reimbursement shall be filed within one year of the licensed paralegal practitioner's date of death.

(b)(2) In cases of the licensed paralegal practitioner's formal disability, the claim for reimbursement shall be filed within one year of the date of the order of disability.

(c) If the subject of the application for reimbursement from the Fund is or arises out of loss occasioned by a loan or an investment transaction with a licensed paralegal practitioner, each loss will not be considered reimbursable from the Fund unless it arose out of and in the course of the licensed paralegal practitioner/client relationship; and but for the fact that the dishonest licensed paralegal practitioner enjoyed a licensed paralegal practitioner/client relationship with the claimant, such loss could not have occurred. In considering whether that standard has been met the following factors will be considered:

(c)(1) the disparity in bargaining power between the licensed paralegal practitioner and the client in their respective educational backgrounds in business sophistication;

(c)(2) the extent to which the licensed paralegal practitioner's status overcame the normal prudence of the claimant;

(c)(3) the extent to which the licensed paralegal practitioner, by virtue of the licensed paralegal practitioner/client relationship with the claimant, became privy to information as to the client's financial affairs. It is significant if the licensed paralegal practitioner knew of the fact that the client had available assets or was expecting to receive assets which were ultimately wrongfully converted by the licensed paralegal practitioner;

(c)(4) whether a clear majority of the service arose out of a relationship requiring a license to practice law in Utah, as opposed to one that did not. In making this evaluation, consideration will be given to:

(c)(4)(A) whether the transaction originated with the licensed paralegal practitioner;

(c)(4)(B) the reputation of the licensed paralegal practitioner as to scope and nature of his/her practice and/or business involvement;

(c)(4)(C) the amount of the charge made for legal services, if any, compared to that for a finder's fee, if any; and

(c)(4)(D) the number of prior transactions of either a similar or different nature in which the client participated, either with the licensed paralegal practitioner involved or any other licensed paralegal practitioner, person or business organization;

(c)(5) the extent to which the licensed paralegal practitioner failed to make full disclosure to the client in compliance with the Licensed Paralegal Practitioner Rules of Professional Conduct, including disclosure of the licensed paralegal practitioner's financial condition and his/her intended use of the funds.

(d) Exceptions. Except as provided by paragraph (e), the following losses shall not be reimbursed:

(d)(1) loss incurred by spouses, children, parents, grandparents, siblings, partners and associates of the licensed paralegal practitioner;

(d)(2) losses covered by any bond, surety, agreement or insurance contract to the extent covered thereby, including any loss to which any bonding agent, surety or insurer is subrogated to the extent of that subrogated interest;

(d)(3) losses of any financial institution which are recoverable under a "Banker's Blanket Bond" or similar commonly available insurance or surety contract;

(d)(4) any business entity controlled by the licensed paralegal practitioner or any person or entity described in paragraph (d)(1);

(d)(5) any governmental entity or agency;

(d)(6) any assigned claims, third party claims, claims of heirs or estates of deceased claimants;

(d)(7) any claims where claimant has failed to exhaust all other reasonably available services or recovery methods;

(d)(8) any investment losses, as distinguished from licensed paralegal practitioner fees, which might reasonably be characterized as:

(d)(8)(A) any pyramid or ponzie scheme;

(d)(8)(B) any investment in or loan to any offshore entity;

(d)(8)(C) any investment in or loan to an entity that claims that a benefit to the investor would be the evasion, avoidance, reduction or other sheltering of taxes that would be otherwise assessed on the investment; or

(d)(8)(D) any investment that promises such a high rate of return that a reasonable and prudent person would suspect that the venture is of unusually high risk.

(e) In cases of extreme hardship or special and unusual circumstances, the Committee may, in its discretion, recognize a claim which would otherwise be excluded under these rules.

Rule 15-911. Procedures and form; responsibilities of claimants to complete form.

(a) The Committee shall prepare and approve a form of claim for reimbursement.

(b) The form shall include at least the following information provided by the claimant under penalty of perjury:

(b)(1) the claimant's name and address, home and business telephone, occupation and employer, and social security number for purposes of subrogation and tax reporting;

(b)(2) the name, address and telephone number of the licensed paralegal practitioner who has dishonestly taken the claimant's money or property;

(b)(3) the legal or other fiduciary services the licensed paralegal practitioner was to perform for the client;

(b)(4) how much was paid to the licensed paralegal practitioner;

(b)(5) the copy of any written agreement pertaining to the claim;

(b)(6) the form of the claimant's loss involved and the attachment of any documents that evidence the claimed loss such as cancelled checks or credit card statements;

(b)(7) the amount of loss and the date when the loss occurred;

(b)(8) the date when the claimant discovered the loss and how the claimant discovered the loss;

(b)(9) the licensed paralegal practitioner's dishonest conduct and the names and addresses of any persons who have knowledge of the loss;

(b)(10) identification of whom the loss has been reported to (e.g. county attorney, police, disciplinary agency, or other person or entity), and a copy of any complaint and description of any action that was taken;

(b)(11) the source, if any, from which the loss could be reimbursed, including any insurance, fidelity or surety agreement;

(b)(12) the description of any steps taken to recover the loss directly from the licensed paralegal practitioner or any other source;

(b)(13) the circumstances under which the claimant has been, or will be, reimbursed for any part of the claim (including the amount received or to be received, and the source), along with a statement that the claimant agrees to notify the Committee of any reimbursements the claimant receives during the pendency of the claim;

(b)(14) the existence of facts believed to be important to the Committee's consideration of the claim;

(b)(15) the manner in which the claimant learned about the Fund;

(b)(16) the name, address and telephone number of the claimant's present lawyer or licensed paralegal practitioner, if any;

(b)(17) the claimant's agreement to cooperate with the Committee in reference to the claim, as required by the Utah or Federal Rules of Civil Procedure, in reference to civil actions which may be brought in the name of the Bar, pursuant to a subrogation and assignment clause, which shall also be contained within the claim;

(b)(18) the name and address of any other state fund to which the claimant has applied or intends to apply for reimbursement, together with a copy of the application; and

(b)(19) the statement that the claimant agrees to the publication of appropriate information about the nature of the claim and the amount of reimbursement, if reimbursement is made.

(c) The claimant shall have the responsibility to complete the claim form and provide satisfactory evidence of a reimbursable loss.

(d) The claim shall be filed with the Committee by providing the same to the Utah State Bar, Licensed Paralegal Practitioners' Fund for Client Protection at the Law and Justice Center, 645 South 200 East, Salt Lake City, Utah 84111.

Rule 15-912. Processing claims.

(a) Whenever it appears that a claim is not eligible for reimbursement pursuant to these rules, the claimant shall be advised of the reasons why the claim may not be eligible for reimbursement, and that unless additional facts to support eligibility are submitted to the Committee, the claim file shall be closed. The chairperson of the Fund may appoint any member of the Committee and/or his/herself to determine the eligibility of claims.

(b) A certified copy of an order disciplining a licensed paralegal practitioner for the same dishonest act or conduct alleged in the claim, or a final judgment imposing civil or criminal liability therefor, shall be evidence that a licensed paralegal practitioner committed such dishonest act or conduct.

(c) The Bar's Office of Professional Conduct Senior Counsel shall be promptly notified of each and every claim.

(d) The licensed paralegal practitioner alleged to have engaged in dishonest conduct shall be provided a copy of the claim and given an opportunity to respond in writing within 20 days of the receipt thereof to the Committee.

(e) The Committee may request that testimony be presented. The licensed paralegal practitioner or licensed paralegal practitioner's representative shall be given an opportunity to be heard if they so request within 20 days of receiving a notice from the Committee that the Committee will process the claim.

(f) The Committee may make a finding of dishonest conduct for purposes of adjudicating a claim. Such a determination is not a finding of dishonest conduct for the purposes of professional discipline and further, represents only a recommendation to the Board. A claim may only be considered if the individual licensed paralegal practitioner involved has been disciplined to a threshold level of a public reprimand or is no longer in practice.

(g) The claim shall be determined on the basis of all available evidence, and notice shall be given to the claimant and the licensed paralegal practitioner of the final decision by the Board after a recommendation has been made by the Committee. The recommendation for approval or denial of a claim shall require the affirmative votes of at least a majority of the Committee members and a quorum of the voting members of the Board.

(h) Any proceeding upon a claim shall not be conducted according to technical rules relating to evidence, procedure and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in court proceedings. The claimant shall have the duty to supply relevant evidence to support the claim.

(i) The Board shall determine the order and manner of payment and pay those claims it deems meritorious, but unless the Board directs otherwise, no claim should be approved during the pendency of a disciplinary proceeding involving the same act or conduct as alleged in the claim; specifically, no determination and/or hearing shall take place until such time that all disciplinary proceedings have, in fact, been completed.

(j) Both the claimant and the licensed paralegal practitioner shall be advised of the status of the Board's consideration of the claim and after having received the recommendation of the Committee, also shall be informed of the final determination.

(k) The claimant may request reconsideration within 30 days of the denial or determination of the amount of the claim.

Rule 15-913. Payment of reimbursement.

(a) The Board may, from time to time, fix a maximum amount of reimbursement that is payable by the Fund. Initially, the maximum amount shall be $_____ per claim and $_____ total dollars within any given calendar year with regards to an individual licensed paralegal practitioner.

(a)(1) There shall be a lifetime claim limit of $_____ per licensed paralegal practitioner.

(b) Claimant shall be reimbursed for losses in amounts to be determined by the Board after recommendations by the Committee. Reimbursement shall not include interest and other incidental and out-of-pocket expenses.

(c) Payment of reimbursement shall be made in such amounts and at such time as the Board approves and may be paid in lump sum or installment amounts. In the event that the Committee determines that there is a substantial likelihood that claims against the licensed paralegal practitioner may exceed either the annual or lifetime claim limits, claims may be paid on a pro rata basis or otherwise as the Board and the Committee determine is equitable under the circumstances.

(d) If a claimant is a minor or incompetent, the reimbursement may be paid to any proper and legally recognized person or authorized entity for the benefit of the claimant.

Rule 15-914. Reimbursement from the fund as a matter of grace.

No person shall have a legal right to reimbursement from the Fund, whether as claimant, beneficiary or otherwise, and any payment is a matter of grace.

Rule 15-915. Restitution and subrogation.

(a) A licensed paralegal practitioner whose dishonest conduct results in reimbursement to a claimant shall be liable to the Fund for restitution, and the Bar may bring such action as it deems advisable to enforce such obligation.

(b) As a condition of reimbursement, a claimant shall be required to provide the Fund with a pro tanto transfer of the claimant's rights against the licensed paralegal practitioner, the licensed paralegal practitioner 's legal representative, estate or assigns; and of claimant's rights against any third party or entity who may be liable for the claimant's loss.

(c) Upon commencement of an action by the Bar as subrogee or assignee of a claim, it shall advise the claimant, who may then join in such action to recover the claimant's unreimbursed losses.

(d) In the event the claimant commences an action to recover unreimbursed losses against the licensed paralegal practitioner or any other entity who may be liable for the claimant's loss, the claimant shall be required to notify the Bar of such action.

(e) The claimant shall be required to agree to cooperate in all efforts that the Bar undertakes to achieve restitution for the Fund.

Rule 15-916. Confidentiality.

Claims, proceedings and reports involving claims for reimbursement are confidential until the Committee recommends and final determination is made by the Board, authorizing reimbursement to the claimant, except as provided below. After payment of the reimbursement, the Board may publicize the nature of the claim, the amount of reimbursement and the name of the licensed paralegal practitioner. The name and address of the claimant shall not be publicized by the Bar, unless specific permission has been granted by the claimant.

ARTICLE 10. INTEREST ON LICENSED PARALEGAL PRACTITIONERS' TRUST ACCOUNTS.

Rule 15-1001. IOLPPTA.

(a) A licensed paralegal practitioner or a licensed paralegal practitioner firm shall create and maintain an interest or dividend-bearing trust account for client funds ("IOLPPTA account"). All client funds shall be placed into this account except those funds which can earn net income for the client in excess of the costs to secure such income, except as provided in paragraph (g).

(b) In determining whether a client's funds can earn net income in excess of the costs of securing that income for the benefit of the client, the licensed paralegal practitioner or licensed paralegal practitioner firm shall consider the following factors:

(b)(1) the amount of the funds to be deposited;

(b)(2) the expected duration of the deposit, including the likelihood of delay in the matter for which funds are held;

(b)(3) the rates of interest or yield at financial institutions where the funds are to be deposited;

(b)(4) the costs of establishing and administering non-IOLPPTA accounts for the client's benefit, including service charges, and the costs of preparing any tax reports required for income accruing to the client's benefit; and

(b)(5) the capability of financial institutions, licensed paralegal practitioners, or their firms to calculate and pay income to individual clients and any other circumstances that may affect the ability of the client's funds to earn net income.

(c) The licensed paralegal practitioner, or the licensed paralegal practitioner firm, shall review the IOLPPTA account at reasonable intervals, but not less than annually, to determine whether changed circumstances require further action with respect to the funds of a particular client.

(d) The licensed paralegal practitioner, or the licensed paralegal practitioner firm shall:

(d)(1) not allow earnings from an IOLPPTA account to be made available to a licensed paralegal practitioner, or licensed paralegal practitioner firm;

(d)(2) place in the IOLPPTA account all client funds which cannot earn net income for the client in excess of the costs of securing that income;

(d)(3) establish an IOLPPTA account with an eligible financial institution that has voluntarily chosen to offer and maintain IOLPPTA accounts, and:

(d)(3)(A) is authorized by federal or state law to do business in Utah;

(d)(3)(B) is insured by the Federal Deposit Insurance Corporation or its equivalent;

(d)(3)(C) complies with Rule 1.15 (a) of the Utah Rules of Licensed Paralegal Practitioner Professional Conduct; and

(d)(4) direct the depository institution where the IOLPPTA account is established:

(d)(4)(A) to remit all interest or dividends, net of allowable reasonable service charges or fees, if any, on the average monthly balance in the account, or as otherwise computed in accordance with the institution's standard practice, at least quarterly, solely to the Utah Bar Foundation ("Foundation"). When feasible, the depository institution shall remit the interest or dividends on all of its IOLPPTA accounts in a lump sum, however, the depository institution must provide, for each individual IOLPPTA account, the information to the Foundation required by subparagraphs (d)(4)(B) and (d)(4)(C) of this rule;

(d)(4)(B) to report in a form and through any manner of transmission approved by the Foundation showing the name of the licensed paralegal practitioner, or licensed paralegal practitioner firm, and the amount of the remittance attributable to each, account number for each account, the rate and type of interest or dividend applied, the amount and type of allowable reasonable service charges or fees deducted, the average account balance for the reporting period and such other information as is reasonably required by the Foundation;

(d)(4)(C) to report in accordance with normal procedures for reporting to depositors;

(d)(4)(D) that allowable reasonable service charges or fees in excess of the interest earned on the account for any period shall not be taken from interest earned on other IOLPPTA accounts or any principal balance of the accounts; and

(d)(4)(E) to comply with all other administrative rules for IOLPPTA accounts as promulgated by the Foundation or the Supreme Court.

(e) The determination of whether an institution is an eligible institution and whether it is meeting the requirements of this rule shall be made by the Utah Bar Foundation. The Foundation shall maintain a list of participating eligible financial institutions, and shall provide a copy of the list to any Utah licensed paralegal practitioner upon request.

(f) Licensed paralegal practitioners may only maintain IOLPPTA accounts in eligible financial institutions. Eligible financial institutions are those that voluntarily offer IOLPPTA accounts and comply with the requirements of this rule, including maintaining IOLPPTA accounts which pay the highest interest rate or dividend generally available from the institution to its non-IOLPPTA account customers when IOLPPTA accounts meet or exceed the same minimum balance or other account eligibility qualifications, if any. In determining the highest interest rate or dividend generally available from the institution to its non-IOLPPTA accounts, eligible institutions may consider factors, in addition to the IOLPPTA account balance, customarily considered by the institution when setting interest rates or dividends for its customers, provided that such factors do not discriminate between IOLPPTA accounts and accounts of non-IOLPPTA customers, and that these factors do not include that the account is an IOLPPTA account.

(f)(1) An eligible financial institution may satisfy these comparability requirements by electing one of the following options:

(f)(1)(A) establish the IOLPPTA account as the comparable rate product; or

(f)(1)(B) pay the comparable rate on the IOLPPTA checking account in lieu of actually establishing the comparable highest interest rate or dividend product;

(f)(1)(C) pay an amount on funds that would otherwise qualify for the investment options noted at (f)(3) equal to 70% of the federal funds targeted rate as of the first business day of the month or other IOLPPTA remitting period, which is deemed to be already net of allowable reasonable service charges or fees. The safe harbor yield rate may be adjusted once per year by the Foundation, upon 90 days' written notice to financial institutions participating in the IOLPPTA program; or

(f)(1)(D) pay a yield rate specified by the Foundation, if the Foundation so chooses, which is agreed to by the financial institution. The rate would be deemed to be already net of allowable reasonable fees and would be in effect for and remain unchanged during a period of no more than twelve months from the inception of the agreement between financial institution and the Foundation.

(f)(2) IOLPPTA accounts may be established as:

(f)(2)(A) a business checking account with an automated investment feature, such as an overnight and investment in repurchase agreements or money market funds invested solely in or fully collateralized by U.S. government securities, including U.S. Treasury obligations and obligations issued or guaranteed as to principal and interest by the United States or any agency or instrument thereof;

(f)(2)(B) a checking account paying preferred interest rates, such as money market or indexed rates;

(f)(2)(C) a government interest-bearing checking account such as accounts used for municipal deposits;

(f)(2)(D) an interest-bearing checking account such as a negotiable order of withdrawal (NOW) account, or business checking account with interest;

(f)(2)(E) any other suitable interest-bearing deposit account offered by the institution to its non-IOLPPTA customers.

(f)(3) A daily financial institution repurchase agreement shall be fully collateralized by United States Government Securities and may be established only with an eligible institution that is "well capitalized" or "adequately capitalized" as those terms are defined by applicable federal statutes and regulations. An open-end money-market fund shall be invested solely in the United States Government Securities or repurchase agreements fully collateralized by United States Government Securities, shall hold itself out as a "money-market fund" as that term is defined by federal statutes and regulations under the Investment Company Act of 1940 and, at the time of the investment, shall have total assets of at least two hundred fifty million dollars ($250,000,000).

(f)(4) Nothing in this rule shall preclude a participating financial institution from paying a higher interest rate or dividend than described above or electing to waive any service charges or fees on IOLPPTA accounts.

(f)(5) Interest and dividends shall be calculated in accordance with the participating financial institution's standard practice for non-IOLPPTA customers.

(f)(6) "Allowable reasonable service charges or fees" for IOLPPTA accounts are defined as per check charges, per deposit charges, a fee in lieu of minimum balances, sweep fees, FDIC insurance fees, and a reasonable IOLPPTA account administrative fee.

(f)(7) Allowable reasonable service charges or fees may be deducted from interest or dividends on an IOLPPTA account only at the rates and in accordance with the customary practices of the eligible institution for non-IOLPPTA customers. No fees or service charges other than allowable reasonable fees may be assessed against the accrued interest or dividends on an IOLPPTA account. Any fees and service charges other than allowable reasonable fees shall be the sole responsibility of, and may be charged to, the licensed paralegal practitioner or licensed paralegal practitioner firm maintaining the IOLPPTA account.

(g) Any IOLPPTA account which has or may have the net effect of costing the IOLPPTA program more in fees than earned in interest over a period of any time, may at the discretion of the Foundation, be exempted from and removed from the IOLPPTA program. Exemption of an IOLPPTA account from the IOLPPTA program revokes the permission to use the Foundation's tax identification number for that account. Exemption of such account from the IOLPPTA program shall not relieve the licensed paralegal practitioner and/or licensed paralegal practitioner firm from the obligation to maintain the property of client funds separately, as required above, in a non-interest bearing account and also will not relieve the licensed paralegal practitioner of the annual IOLPPTA certification.

(h) In the event a licensed paralegal practitioner determines that funds placed in an IOLPPTA account should have been placed in an interest bearing account for the benefit of the client, the licensed paralegal practitioner, licensed paralegal practitioner firm shall:

(h)(1) make a request for a refund in writing, in a timely manner, to the Foundation on firm letterhead within a reasonable period of time after the interest was remitted to the Foundation; and

(h)(2) provide verification from the financial institution of the interest amount. In no event will the Foundation refund more than the amount of net interest it received; remittance shall be made to the financial institution for transmittal to the licensed paralegal practitioner, or licensed paralegal practitioner firm, after appropriate accounting and reporting.

(i) On or before September 1 of each year, any licensed paralegal practitioner licensed in Utah shall certify to the Foundation, in such form as the Foundation shall provide ("IOLPPTA Certification Form"), that the licensed paralegal practitioner is in compliance with, or is exempt from, the provisions of this rule. If the licensed paralegal practitioner, or licensed paralegal practitioner firm, maintains an IOLPPTA account, the licensed paralegal practitioner shall certify the manner in which the licensed paralegal practitioner accounts for the interest on clients' trust accounts. The IOLPPTA Certification Form shall include the financial institution, account numbers, name of accounts and such other information as the Foundation shall require. If the licensed paralegal practitioner is exempt from the IOLPPTA program, the licensed paralegal practitioner must still submit an IOLPPTA Certification Form annually to certify to the Foundation that he or she is exempt from the provisions in this Rule. Each licensed paralegal practitioner shall keep and maintain records supporting the information submitted in the IOLPPTA Certification Form. The licensed paralegal practitioner shall maintain these records for a period of five years from the end of the period for which the IOLPPTA Certification Form is filed, and these records shall be submitted to the

Foundation upon written request. Failure by the licensed paralegal practitioner to produce such records within thirty days after written request by the Foundation constitutes a rebuttable presumption that the licensed paralegal practitioner has not complied with these rules.

(i)(1) If the IOLPPTA Certification Form is timely filed, indicating compliance, there will be no acknowledgement. Should an IOLPPTA Certification Form filed by a licensed paralegal practitioner fail to evidence compliance, the Foundation shall contact the licensed paralegal practitioner and attempt to resolve the non-compliance administratively.

(i)(2) The Foundation shall furnish annually to the Utah Supreme Court a list of all licensed paralegal practitioners who have not timely filed an IOLPPTA Certification Form and any licensed paralegal practitioners with whom the Foundation has been unable to administratively resolve an impediment to the proper filing of an IOLPPTA Certification Form or the proper compliance with Rule 15-1001, IOLPPTA.

(i)(3) Any licensed paralegal practitioner who is not in compliance with IOLPPTA or who has failed to complete the IOLPPTA Certification Form by September 1 will be sent, by certified mail, return receipt requested, a non-compliance notice. Should the licensed paralegal practitioner fail or refuse to rectify the situation within thirty (30) days of such notice, the Foundation shall petition the Utah Supreme Court for the licensed paralegal practitioner's suspension from the practice of law.

(i)(4) A licensed paralegal practitioner suspended by the Utah Supreme Court under the provisions of this rule may be reinstated by the Court upon motion of the Foundation showing that the licensed paralegal practitioner has cured the noncompliance issue for which the licensed paralegal practitioner has been suspended. If a licensed paralegal practitioner has been suspended by the Utah Supreme Court for non-compliance with these rules, the licensed paralegal practitioner must then comply with all applicable rules to be eligible to return to active or inactive status.

(j) A licensed paralegal practitioner may be exempt from having to maintain an IOLPPTA account for the following reasons:

(j)(1) the licensed paralegal practitioner, or law firm's client trust account has been exempted and removed from the IOLPPTA program by the Foundation pursuant to paragraph (g) of this rule; or

(j)(2) the licensed paralegal practitioner has certified in his or her most recent annual IOLPPTA Certification Form that the licensed paralegal practitioner:

(j)(2)(A) is not engaged in the private practice of law or does not manage or handle client trust funds and does not have a client trust account;

(j)(2)(B) does not have an office within Utah and has the client's permission to hold the funds out of state; or

(j)(2)(C) has been exempted by an order of general or special application of this Court which is cited in the certification;

(j)(3) the licensed paralegal practitioner, or licensed paralegal practitioner firm petitions for and receives a written exemption from the Foundation that compliance with this rule would create an undue hardship on the licensed paralegal practitioner and would be extremely impractical, based on geographic distance between the licensed paralegal practitioner's principal office and the closest depository institution which is participating in the IOLPPTA program.

(k) Licensed paralegal practitioners must notify the Foundation in writing within thirty (30) days of any change in IOLPPTA status, including the opening or closing of any IOLPPTA accounts.

(l) The Foundation is the only entity authorized to receive and administer IOLPPTA funds in Utah.

(l)(1) The Foundation shall have general supervisory authority over the administration of the IOLPPTA funds, subject to the continuing jurisdiction of the Supreme Court.

(l)(2) The Foundation shall receive the net earnings from all IOLPPTA accounts and shall make appropriate investments of IOLPPTA funds. The Foundation shall maintain proper records of all IOLPPTA receipts and disbursements, which records shall be audited or reviewed annually by a certified public accountant. The Foundation shall annually present to the Supreme Court a reviewed or audited financial statement of the IOLPPTA receipts and expenditures for the prior year and a summary thereof shall be made available to anyone requesting copies.

(l)(3) The Foundation shall be responsible to present annually to the Supreme Court a status report on activities of the Foundation and compliance with these rules.

(l)(4) The Foundation shall be responsible to make disbursements from the IOLPPTA program funds, including current and accumulated net earnings, by grants, appropriations and other appropriate measures, as outlined in the articles and by-laws for the organization.

(l)(5) The Foundation shall promulgate such other rules, procedures, reports and forms that are necessary or advisable for the proper implementation of the foregoing rules.

(m) Every licensed paralegal practitioner, shall, as a condition thereof, be conclusively deemed to have consented to the reporting requirements mandated by this rule.

ARTICLE 11. RESOLUTION OF FEE DISPUTES FOR LICENSED PARALEGAL PRACTITIONERS

Rule 15-1101. Definitions.

As used in this article:

(a) "Bar" means the Utah State Bar;

(b) "chair" means the chair of the Utah State Bar Fee Dispute Resolution Committee;

(c) "client" means a person or entity who, directly or through an authorized representative, consults, retains or secures legal services or advice from a licensed paralegal practitioner in the licensed paralegal practitioner's professional capacity;

(d) "Committee" means the Utah State Bar Fee Dispute Resolution Committee;

(e) "decision" means the determination made by the panel in a fee arbitration proceeding;

(f) "executive director" means the executive director of the Bar or his designee;

(g) “Lawyer Rule” means the rules in Article 11, Arbitration of Fee Disputes, Chapter 14, Rules Governing the Utah State Bar, of the Supreme Court Rules of Professional Practice.

(h) "panel" means the arbitrator(s) assigned to hear a fee dispute and to issue a decision;

(i) "petition" means a written request for fee arbitration in a form approved by the Committee;

(j) "petitioner" means the party requesting fee arbitration and can be either a client or a licensed paralegal practitioner;

(k) "respondent" means the party with whom the petitioner has a fee dispute and can be either a client or a licensed paralegal practitioner; and

(l) “Rule” means, except where indicated otherwise, one of the rules of Resolution of Fee Disputes for Licensed Paralegal Practitioners.

Rule 15-1102. Purpose and composition of the committee.

(a) The purpose of the Committee is to resolve fee disputes between licensed paralegal practitioners and their clients by means of arbitration, mediation or other alternative dispute resolution mechanisms.

(b) The Committee shall be the committee created in Lawyer Rule 14-1102.

(c) Participation in the fee arbitration process is non-mandatory. If all the necessary parties elect in writing to arbitrate, however, the decision is binding.

(d). After all parties have agreed in writing to be bound by an arbitration decision, a party may not withdraw from that agreement unless all parties agree to the withdrawal in writing.

Rule 15-1103. Exclusions.

(a) Disputes not subject to arbitration. These rules do not apply to the following:

(a)(1) disputes in which the client seeks relief against a licensed paralegal practitioner based upon alleged malpractice. The arbitration panel may consider evidence relating to claims of malpractice and professional misconduct, but only to the extent that those claims bear upon the fees, costs, or both, to which the licensed paralegal practitioner claims he or she is entitled. The panel may not award affirmative relief in the form of damages for injuries underlying any such claim;

(a)(2) disputes in which entitlement to, and the amount of the fees and/or costs charged or paid to a licensed paralegal practitioner by the client or on the client's behalf, have been determined by court order;

(a)(3) disputes in which the request for arbitration or mediation is filed more than four years after the licensed paralegal practitioner/client relationship has been terminated, or more than four years after the final billing has been received by the client, or the civil action concerning the disputed amount is barred by the statute of limitations, whichever is later; and

(a)(4) at the discretion of the executive director or the chair, disputes which are deemed to be administratively burdensome due to either the complexity, the nature or number of the factual and/or legal issues involved or the amount in controversy.

(b) Mediation to be considered. In those cases where all necessary parties refuse to be bound by arbitration, the chair or his designee will advise the petitioner and the respondent of the option of entering into non-binding mediation. Mediation must be agreed upon by the petitioner, respondent and third parties responsible for payment, if any.

Rule 15-1104. Petition; agreement to arbitrate, answer, discovery; and extension.

(a) Petition and agreement to arbitrate. Proceedings before the Committee shall be started by the petitioning party completing and filing a verified petition to arbitrate fee dispute as well as an agreement to arbitrate fee dispute. The petition and agreement to arbitrate shall be on forms provided by the Bar. When the petition and agreement to arbitrate are completed and signed by the petitioner, they shall be filed with the Bar.

(b) Answer. The Bar shall forward to the respondent the petition and agreement to arbitrate, and request that the respondent sign and return the agreement to arbitrate and file an answer to the petition. The Bar will further advise that if the respondent fails to answer and return the signed agreement to arbitrate within ten days, the Committee will construe such failure as constituting a refusal by the respondent to submit to arbitration. Upon the Bar's receipt of the signed agreement to arbitrate and respondent's answer, the Bar shall forward to the petitioner a copy of the executed agreement to arbitrate and a copy of the respondent's answer.

(c) Fee. After both parties have agreed to binding arbitration, the petitioner shall pay a $10 fee. Unless the fee is paid, the proceeding will not go forward.

(d) Respondent's refusal to arbitrate. If the respondent refuses to submit the fee dispute to arbitration, the Bar shall notify the petitioner and the chair. No fee arbitration proceeding shall be conducted unless the respondent agrees to binding arbitration in writing. If all the parties refuse binding arbitration, the chair or his designee shall encourage the parties to elect mediation under Rule 15-1103 (b).

(e) Subpoena and discovery. The provisions of Utah Uniform Arbitration Act pertaining to the issuance of subpoenas in arbitration proceedings shall be applicable to arbitration proceedings held pursuant to these rules. The chair, in his sole discretion, and upon the motion of petitioner or respondent, may authorize the use of discovery procedures as provided in the Utah Uniform Arbitration Act.

(f) Extensions and postponements. The chair or his designee may grant extensions of time for the performance of any act required by these rules.

Rule 15-1105. Selection of the arbitration panel; additional claims.

(a) Designation of panel composition. When the Committee has on file the agreement to arbitrate duly signed by all parties, and the petition and the answer, the chair or his designee shall designate from the Committee three persons to serve as a panel for the arbitration. Each panel shall consist of one lawyer licensed to practice law in Utah, one state or federal judge, and one non-lawyer. The chair or his designee, by written notice served personally or by mail to all parties to the arbitration, shall inform

the parties of the names of the designated panel members. The chair shall designate the lawyer or the judge in each panel as the chair of the panel. The chair or his designee may request the panel chair to designate the non-lawyer member of the panel.

(b) Less than $3,000 in controversy. Notwithstanding the provisions contained in paragraph (a), the chair or his designee shall designate from the Committee an arbitration panel consisting of one lawyer in those arbitration proceedings in which the amount in controversy is less than $3,000.

(c) Assigning file. When the composition of the panel has been determined, the chair shall assign the file to the member(s) of the arbitration panel.

(d) New claims. If new claims not set forth in the petition are raised by a respondent's answer or by other documents in the arbitration, the consent of the petitioner to the panel's consideration of such new claims shall not be required.

(e) Conflict of interest. As soon as practical, an arbitrator shall notify the Committee of any conflict of interest with a party to the arbitration as defined by the Utah Rules of Professional Conduct. Upon notification of the conflict, the Committee shall appoint a replacement from the list of approved arbitrators.

Rule 15-1106. Conduct of the hearing; evidence and civil procedure; right to counsel; right to record hearing; effect of failure to appear; postponements.

(a) Setting of hearing. The panel chair or the sole arbitrator, shall set a time and place for the hearing and shall cause written notice to be served personally or by mail on all parties to the arbitration, and on the remaining panel members, not less than 30 days before the hearing. A party's participation at a scheduled hearing shall constitute a waiver on his part of any deficiency with respect to the filing of the notice of the hearing.

(b) Notice of hearing and rights. In the notice of the hearing, the panel chair or sole arbitrator shall inform the parties of their right to present witnesses and documentary evidence in support of their respective positions, and to be represented by an attorney.

(c) Court reporter and transcripts. Any party may have the hearing reported by a certified court reporter at his expense, by written request presented to the panel chair or sole arbitrator at least three days prior to the date of the hearing. The chair or arbitrator shall confirm with the court reporter that the requesting party, and not the Bar, is responsible for all costs of the court reporter. In such event, any other party to the arbitration shall be entitled to obtain, at his own expense, a copy of the reporter's transcript of the testimony by arrangements made directly with the reporter. When no party to the arbitration requests that the hearing be reported, and the panel chair or sole arbitrator deems it necessary to have the hearing reported, the panel chair or sole arbitrator may employ a certified court reporter for such purpose if authorized to do so by the executive director in writing.

(d) Testimony under oath. Upon request by any party to the arbitration or any member of the panel, the testimony of witnesses shall be given under oath. When so requested, any member of the panel or the court reporter may administer an oath to the witness.

(e) Evidence and civil procedure. The panel shall be the judge of the relevancy and materiality of evidence offered and shall rule on questions of procedure. The panel shall

exercise all powers related to the conduct of the hearing. Conformity to legal rules of evidence or civil procedure shall not be required.

(f) Panel member failure to appear. If, at the time set for any hearing, one of the members of the panel is not present, the panel chair, or in the event of his unavailability, the chair or his designee, in his sole discretion, shall decide either to postpone the hearing, or with the consent of the parties, to proceed with the hearing with the remaining two members of the panel as the arbitrators.

(g) Party failure to appear. If any party to an arbitration who has been duly notified fails to appear at a scheduled hearing, the panel may proceed with the hearing and determine the controversy upon the evidence produced.

(h) Adjournment and postponement. The panel chair or the sole arbitrator may adjourn the hearing from time to time as necessary. Upon the request of a party and for good cause, or upon the determination of the panel chair or sole arbitrator, the panel chair or sole arbitrator may postpone the hearing from time to time.

(i) Failure of a licensed paralegal practitioner respondent to respond. Failure of a licensed paralegal practitioner respondent to file the fee arbitration response form shall not delay the scheduling of a hearing. In any such case, the panel may, in its discretion, refuse to consider evidence offered by the licensed paralegal practitioner which would reasonably be expected to have been disclosed in the response.

(j) Telephonic hearings. In its discretion, a panel may permit a party to appear or present witness testimony at the hearing by telephonic conference call. The cost of the telephone call shall be paid by the party.

(k) Reopening of hearing. With good cause shown, the panel may reopen the hearing at any time before a decision is issued.

(l) Burden of proof and standard. The burden of proof shall be on the licensed paralegal practitioner to prove the reasonableness of the fee by a preponderance of the evidence.

Rule 15-1107. Award; form; service of award; judicial confirmation of award.

(a) Time frame. Whenever practical the panel or sole arbitrator shall hold a hearing within 60 days after receipt of the agreement to arbitrate, signed by both parties, and the signed petition and answer, and shall render its award within 20 days after the close of the hearing or the close of the final hearing if more than one hearing has been held. The award of the panel shall be made by the majority of the panel or by the sole arbitrator.

(b) Delivery to Bar office. The award shall be in writing, and shall be signed by the members of the panel concurring or by the sole arbitrator. The award shall include a determination of all questions submitted to the panel or sole arbitrator which are necessary to resolve the dispute. The original of the award shall be forwarded by the panel chair or sole arbitrator to the Bar office.

(c) Form. While the award is not required to be in any particular form, it should, in general, consist of a preliminary statement reciting the jurisdictional facts, such as that a hearing was held upon notice pursuant to a written agreement to arbitrate, the parties

were given an opportunity to testify and cross-examine, and shall include a brief statement of the dispute, findings and the award.

(d) Service on parties. The panel or sole arbitrator shall render a written decision which shall be forwarded by the panel chairman or sole arbitrator to the Bar office, which shall then forward the decision to the petitioner and the respondent.

(e) Client award – judicial confirmation. If the award favors the client, and the licensed paralegal practitioner fails to comply with the award within 20 days after the date on which a copy of the award is mailed to him, the client may seek a confirmation of the award in accordance with the Utah Uniform Arbitration Act but without further assistance by the Bar.

(f) Licensed paralegal practitioner award – judicial confirmation. If the award favors the licensed paralegal practitioner, and the client fails to comply with the award within 20 days after the date upon which a copy of the award is mailed to the client by the Bar office the licensed paralegal practitioner may exercise his or her rights under the Utah Uniform Arbitration Act, which provides for the judicial confirmation of arbitration awards but without further assistance by the Bar.

(g) Modification of award by arbitrators.

(g)(1) Upon motion of any party to the arbitrators or upon order of the court pursuant to a motion, the arbitrators may modify the award if:

(g)(1)(A) there was an evident miscalculation of figures or description of a person or property referred to in the award;

(g)(1)(B) the award is imperfect as to form; or

(g)(1)(C) necessary to clarify any part of the award.

(g)(2) A motion to the arbitrators for modification of an award shall be made within 20 days after service of the award upon the moving party. Written notice that a motion has been made shall be promptly served personally or by certified mail upon all other parties to the proceeding. The notice of motion for modification shall contain a statement that objections to the motion be served upon the moving party within ten days after receipt of the notice.

Rule 15-1108. Relief granted by award; accord and satisfaction application to court; confidentiality; enforceability of award; claims of malpractice.

(a) If the award determines that the licensed paralegal practitioner is not entitled to any portion of the disputed fee, service of a copy of such award on the licensed paralegal practitioner:

(a)(1) terminates all claims and interests of the licensed paralegal practitioner against the client with respect to the subject matter of the arbitration;

(a)(2) terminates all right of the licensed paralegal practitioner to retain possession of any documents, records or other properties of the client pertaining to the subject matter of the arbitration then held under claim of the paralegal practitioner's lien or for other reasons; and

(a)(3) terminates all right of the licensed paralegal practitioner to oppose the substitution of one or more other licensed paralegal practitioners designated by the client in any pending litigation pertaining to the subject matter of the arbitration.

(b) If the award determines that the licensed paralegal practitioner is entitled to some portion of his fee, the award shall state the amount to which he or she is entitled and payment of this amount shall:

(b)(1) constitute a complete accord and satisfaction of all claims of the licensed paralegal practitioner against the client with respect to the subject matter of the arbitration;

(b)(2) terminate all right of the licensed paralegal practitioner to retain possession of any documents, records or other properties of the client pertaining to the subject matter of the arbitration then held under claim of the licensed paralegal practitioner's lien or for other reasons; and

(b)(3) terminate all right of the licensed paralegal practitioner to oppose the substitution of one or more other licensed paralegal practitioners designated by the client in place of the licensed paralegal practitioner in any pending litigation pertaining to the subject matter of the arbitration.

(c) Confidentiality. All documents, records, files, proceedings and hearings pertaining to the arbitration of a fee dispute under these rules shall not be open to the public or to a person not involved in the dispute.

(d) If both parties have signed a binding agreement to arbitrate any award rendered in such case may be enforced by any court of competent jurisdiction in the manner provided in the Utah Uniform Arbitration Act without further assistance by the Bar.

(e) Claims of malpractice. A decision rendered by the panel regarding a disputed fee generated by the licensed paralegal practitioner/client relationship shall not bar any claim the client may have against the licensed paralegal practitioner for malpractice by the licensed paralegal practitioner in the course of the licensed paralegal practitioner/client relationship.

Rule 15-1109. Ex parte communication between the parties and the panel members.

There shall be no communication between the parties and the members of the panel upon the subject matter of the arbitration other than the necessary notices and arbitration proceedings. Any other oral or written communication from the parties to the members of the panel, or from the members of the panel to the parties, shall be directed to the Bar office for transmittal.

Rule 15-1110. Necessary parties.

If the person responsible for the payment of legal fees wants to participate in fee arbitration but is not the former client who received or was intended to receive legal services, the former client must join in the request to arbitrate. If the former client is unavailable due to incarceration or other exigent circumstances, the person responsible for payment of the legal services shall obtain a special power of attorney for purposes of participating in the fee arbitration proceeding.

Rule 15-1111. Exemption from future testimony and confidentiality of records and information.

No Committee member participating in a fee dispute decision or mediation proceeding shall be called as a witness in any subsequent legal proceeding related to the fee dispute. Information and documentation submitted in a fee dispute proceeding shall be deemed confidential and shall not be disclosed other than to enforce a written decision. Notwithstanding the above, confidential information may be disclosed if the request is made to the Bar by:

(a) an agency authorized to investigate the qualifications of persons for admission or licensure to practice law;

(b) an agency authorized to investigate the qualifications of persons for government employment;

(c) a lawyer or licensed paralegal practitioner discipline enforcement agency; or

(d) an agency authorized to investigate the qualifications of judicial candidates.

Rule 15-1112. Request and agreement to mediate fee dispute, answer.

(a) Request and agreement to mediate. A fee dispute mediation shall be initiated by either the client or licensed paralegal practitioner filing with the Committee a request and agreement for mediation of fee dispute on a form provided by the Committee.

(b) Answer. The Committee shall forward to the respondent the request and agreement for mediation of fee dispute, and request that the respondent sign and return the request and agreement within ten days.

(c) Fee. After both parties have agreed to mediation of the fee dispute, the petitioner shall pay a $10 fee. Unless the fee is paid, the mediation will not go forward.

Rule 15-1113. Selection of mediator.

(a) Appointment of mediator. When the Committee has received the request and agreement to mediate fee dispute signed by all of the parties, together with the $10 fee, the chair or his designee shall appoint a mediator from the Committee's list of trained fee dispute mediators. The mediator shall schedule the mediation session(s) with the parties.

(b) Mediator to be impartial. The mediator shall be impartial. Before accepting a mediation, the mediator shall make a reasonable inquiry to determine whether there are any known facts or potential conflicts of interest that a reasonable person would consider likely to affect the impartiality of the mediator, including a financial or personal interest in the outcome of the mediation and an existing or past relationship with a mediation party, and disclose such fact and potential conflicts to the parties to the Committee. Upon notification of a conflict, the Committee shall appoint a replacement mediator from the list of approved mediators.

Rule 15-1114. Matters entitled to mediation.

(a) Any fee dispute may be mediated. Any fee dispute arising out of a licensed paralegal practitioner/client relationship, regardless of the amount of the fee in dispute, may be mediated by the Committee upon the agreement of the parties to the fee dispute.

(b) Claims of malpractice. An agreement by the parties negotiated during a fee dispute mediation regarding a disputed fee generated by the licensed paralegal practitioner/client relationship shall not bar any claim the client may have against the licensed paralegal practitioner for malpractice by the licensed paralegal practitioner in the course of the licensed paralegal practitioner/client relationship.

Rule 15-1115. Mediation is voluntary.

Mediation of fee disputes is voluntary, and the parties may withdraw from the mediation process at any time for any reason.

Rule 15-1116. Conduct of the mediation.

(a) Scheduling the mediation. The designated mediator shall set the time and place for the mediation and shall cause written notice of the mediation to be served personally or by mail on all parties to the mediation.

(b) Right to be represented by counsel. In the notice of the mediation, the mediator shall inform the parties of their right to be represented by their own legal counsel at their own cost at any stage of the mediation process. Failure to be represented by legal counsel at any stage of the mediation is a waiver of this right at that stage of the mediation, although a party may use legal counsel later in the mediation process.

(c) Right to be assisted at mediation. A party may designate an individual to accompany that party to the mediation and to participate with the party in the mediation process.

(d) Procedure. The mediator may use joint or private caucuses during the mediation process. The process may be adjourned from time to time in the discretion of the mediator or at the request of the parties.

Rule 15-1117. Confidentiality.

All mediation communications are confidential. Other than the parties, their respective legal counsel, the individual designated by a party to accompany and assist that party at the mediation, and the mediator, no other persons shall be allowed to attend or participate in the mediation session without the written consent of all parties and the mediator. All documents, records, files, proceedings and mediation sessions shall not be open to the public.

Rule 15-1118. Ex parte communications with the mediator.

There shall be no ex parte communication between the parties and the mediator upon the subject matter of the mediation other than necessary communications for scheduling purposes and the mediation proceedings themselves. Any other oral or written communication from the parties to the mediator, or from the mediator to the parties, shall be directed to the Committee for transmittal to the mediator.

Rule 15-1119. Exemption from future testimony.

A mediator in a fee dispute mediation may not be compelled to disclose mediation communications, and such communications are not subject to discovery or admissible in evidence in a proceeding except as provided by Title 78B, Chapter 10, Utah Uniform Mediation Act, as amended from time to time, and except as provided in Rule 15-1111, above.

Rule 15-1120. Mediation agreement.

Upon the successful conclusion of a fee dispute mediation, the parties to the mediation shall each sign a written memorandum of their agreement reached during the mediation process.

ARTICLE 12. LICENSED PARALEGAL PRACTITIONER RULES OF PROFESSIONAL CONDUCT

Preamble: A Licensed Paralegal Practitioner's Responsibilities.

[1] A licensed paralegal practitioner is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice. Every licensed paralegal practitioner is responsible to observe the law and the Licensed Paralegal Practitioner Rules of Professional Conduct, shall take the Licensed Paralegal Practitioner's Oath upon licensure as a licensed paralegal practitioner, and shall be subject to the Rules of Licensed Paralegal Practitioner Discipline and Disability.

Licensed Paralegal Practitioner's Oath

"I do solemnly swear that I will support, obey and defend the Constitution of the United States and the Constitution the State of Utah; that I will discharge the duties of licensed paralegal practitioner as an officer of the courts of this State with honesty, fidelity, professionalism, and civility; and that I will faithfully observe the Licensed Paralegal Practitioner Rules of Professional Conduct and the Standards of Professionalism and Civility promulgated by the Supreme Court of the State of Utah."

[2] As a representative of clients, a licensed paralegal practitioner performs various functions. As advisor, a licensed paralegal practitioner provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a licensed paralegal practitioner zealously asserts the client's position under the rules of the adversary system. As negotiator, a licensed paralegal practitioner seeks a result advantageous to the client but consistent with requirements of honest dealings with others. A licensed paralegal practitioner's representation of a client does not constitute an endorsement of the client's political, economic, social or moral views or activities.

[3] In addition to these representational functions, a licensed paralegal practitioner may serve as a third-party neutral, a nonrepresentational role helping the parties to resolve a dispute or other matter. Some of these Rules apply directly to licensed paralegal practitioners who are or have served as third-party neutrals. See, e.g., Rules 1.12 and 2.4. In addition, there are rules that apply to licensed paralegal practitioners who are not active in the practice of law or to practicing licensed paralegal practitioners even when they are acting in a nonprofessional capacity. For example, a licensed paralegal practitioner who commits fraud in the conduct of a business is subject to discipline for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. See Rule 8.4.

[4] In all professional functions a licensed paralegal practitioner should be competent, prompt and diligent. A licensed paralegal practitioner should maintain communication with a client concerning the representation. A licensed paralegal practitioner should keep in confidence information relating to representation of a client except so far as disclosure is required or permitted by the Licensed Paralegal Practitioner Rules of Professional Conduct or other law.

[5] A licensed paralegal practitioner's conduct should conform to the requirements of the law, both in professional service to clients and in the licensed paralegal practitioner's business and personal affairs. A licensed paralegal practitioner should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A licensed paralegal practitioner should demonstrate respect for the legal system and for those who serve it, including judges, attorneys, other licensed paralegal practitioners and public officials. While it is a licensed paralegal practitioner's duty, when necessary, to challenge the rectitude of official action, it is also a licensed paralegal practitioner's duty to uphold legal process.

[6] As a public citizen, a licensed paralegal practitioner should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession. In addition, a licensed paralegal practitioner should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority. A licensed paralegal practitioner should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance and, therefore, all licensed paralegal practitioners should devote professional time and resources and use civic influence in their behalf to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel. A licensed paralegal practitioner should aid the legal profession in pursuing these objectives and should help the Bar regulate itself in the public interest.

[7] Many of a licensed paralegal practitioner's professional responsibilities are prescribed in the Licensed Paralegal Practitioner Rules of Professional Conduct, as well as substantive and procedural law. However, a licensed paralegal practitioner is also guided by personal conscience and the approbation of professional peers. A licensed paralegal practitioner should strive to attain the highest level of skill, to improve the law and the legal profession and to exemplify the legal profession's ideals of public service.

[8] A licensed paralegal practitioner's responsibilities as a representative of clients, an officer of the legal system and a public citizen are usually harmonious. Thus, a licensed paralegal practitioner can be sure that preserving client confidences ordinarily serves the public interest because people are more likely to seek legal advice, and thereby heed their legal obligations, when they know their communications will be private.

[9] In the nature of law practice, however, conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from conflict between a licensed paralegal practitioner's responsibilities to clients, to the legal system and to the licensed paralegal practitioner's own interest in remaining an ethical person while earning a satisfactory living. The Licensed Paralegal Practitioner Rules of Professional Conduct often prescribe terms for resolving such conflicts. Within the framework of these Rules, however, many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the Rules. These principles include the licensed paralegal practitioner's obligation zealously to protect and pursue a client's legitimate interests, within the bounds of the adversarial system, while maintaining a professional, courteous and civil attitude toward all persons involved in the legal system.

[10] The legal profession is largely self-governing. Although other professions also have been granted powers of self-government, the legal profession is unique in this respect because of the close relationship between the profession and the processes of government and law enforcement. This connection is manifested in the fact that ultimate authority over the legal profession is vested largely in the courts.

[11] To the extent that licensed paralegal practitioners meet the obligations of their professional calling, the occasion for government regulation is obviated. Self-regulation also helps maintain the legal profession's independence from government domination. An independent legal profession is an important force in preserving government under law, for abuse of legal authority is more readily challenged by a profession whose members are not dependent on government for the right to practice.

[12] The legal profession's relative autonomy carries with it special responsibilities of self-government. The profession has a responsibility to ensure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the Bar. Every licensed paralegal practitioner is responsible for observance of the Licensed Paralegal Practitioner Rules of Professional Conduct. A licensed paralegal practitioner should also aid in securing their observance by other licensed paralegal practitioners and lawyers. Neglect of these responsibilities compromises the independence of the profession and the public interest which it serves.

[13] Licensed paralegal practitioners play a vital role in the preservation of society. The fulfillment of this role requires an understanding by licensed paralegal practitioners of their relationship to our legal system. The Licensed Paralegal Practitioner Rules of Professional Conduct, when properly applied, serve to define that relationship.

Scope

[14] The Licensed Paralegal Practitioner Rules of Professional Conduct are rules of reason. They should be interpreted with reference to the purposes of legal representation and of the law itself. Some of the Rules are imperatives, cast in the terms "shall" or "shall not." These define proper conduct for purposes of professional discipline. Others, generally cast in the term "may," are permissive and define areas under the Rules in which the licensed paralegal practitioner has discretion to exercise professional judgment. No disciplinary action should be taken when the licensed paralegal practitioner chooses not to act or acts within the bounds of such discretion. Other Rules define the nature of relationships between the licensed paralegal practitioner and others. The Rules are thus partly obligatory and disciplinary and partly constitutive and descriptive in that they define a licensed paralegal practitioner's professional role. Many of the Comments use the term "should." Comments do not add obligations to the Rules but provide guidance for practicing in compliance with the Rules.

[15] The Rules presuppose a larger legal context shaping the licensed paralegal practitioner's role. That context includes court rules and statutes relating to matters of licensure, laws defining specific obligations of licensed paralegal practitioners and substantive and procedural law in general. The Comments are sometimes used to alert licensed paralegal practitioners to their responsibilities under such other law.

[16] Compliance with the Rules, as with all law in an open society, depends primarily upon understanding and voluntary compliance, secondarily upon reinforcement by peer and public opinion and finally, when necessary, upon enforcement through disciplinary proceedings. The Rules do not, however, exhaust the moral and ethical considerations that should inform a licensed paralegal practitioner, for no worthwhile human activity can be completely defined by legal rules. The Rules simply provide a framework for the ethical practice of law.

[17] Furthermore, for purposes of determining the licensed paralegal practitioner's authority and responsibility, principles of substantive law external to these Rules determine whether a licensed paralegal practitioner-client relationship exists. Most of the duties flowing from the licensed paralegal practitioner-client relationship attach only after the client has requested the licensed paralegal practitioner to render legal services and the licensed paralegal practitioner has agreed to do so. But there are some duties, such as that of confidentiality under Rule 1.6, that attach when the licensed paralegal practitioner agrees to consider whether a licensed paralegal practitioner-client relationship shall be established. See Rule 1.18. Whether a licensed paralegal practitioner-client relationship exists for any specific purpose can depend on the circumstances and may be a question of fact.

[18] Reserved.

[19] Failure to comply with an obligation or prohibition imposed by a Rule is a basis for invoking the disciplinary process. The Rules presuppose that disciplinary assessment of a licensed paralegal practitioner's conduct will be made on the basis of the facts and circumstances as they existed at the time of the conduct in question and in recognition of the fact that a licensed paralegal practitioner often has to act upon uncertain or incomplete evidence of the situation. Moreover, the Rules presuppose that whether or not discipline should be imposed for a violation, and the severity of a sanction, depend on all the circumstances, such as the willfulness and seriousness of the violation, extenuating factors and whether there have been previous violations.

[20] Violation of a rule should not itself give rise to a cause of action against a licensed paralegal practitioner nor should it create any presumption in such a case that a legal duty has been breached. In addition, violation of a rule does not necessarily warrant any other nondisciplinary remedy. The Rules are designed to provide guidance to licensed paralegal practitioners and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. Furthermore, the purpose of the Rules can be subverted when they are invoked by opposing parties as procedural weapons. The fact that a rule is a just basis for a licensed paralegal practitioner's self-assessment, or for sanctioning a licensed paralegal practitioner under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the rule. Nevertheless, since the Rules do establish standards of conduct by licensed paralegal practitioners, a licensed paralegal practitioner’s violation of a rule may be evidence of breach of an applicable standard of conduct.

[21] The comment accompanying each rule explains and illustrates the meaning and purpose of the rule. The Preamble and this note on Scope provide general orientation. The comments are intended as guides to interpretation, but the text of each rule is authoritative.

Rule 1.0. Terminology.

(a) "Belief" or "believes" denotes that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from circumstances.

(b) "Confirmed in writing," when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a licensed paralegal practitioner promptly transmits to the person confirming an oral informed consent. See paragraph (f) for the definition of "informed consent." If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the licensed paralegal practitioner must obtain or transmit it within a reasonable time thereafter.

(c) "Consult" or "consultation" denotes communication of information reasonably sufficient to permit the client to appreciate the significance of the matter in question.

(d) "Firm" or " licensed paralegal practitioner firm" denotes a licensed paralegal practitioner or licensed paralegal practitioners in a partnership, professional corporation, sole proprietorship or other association authorized to practice law; or licensed paralegal practitioners employed in a law firm, a legal services organization or the legal department of a corporation or other organization.

(e) "Fraud" or "fraudulent" denotes conduct that is fraudulent under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive.

(f) "Informed consent" denotes the agreement by a person to a proposed course of conduct that is within the scope of the licensed paralegal practitioner's licensure after the licensed paralegal practitioner has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.

(g) "Knowingly," "known" or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

(h) "Partner" denotes a member of a partnership, a shareholder in a licensed paralegal practitioner firm organized as a professional corporation, or a member of an association authorized to practice law.

(i) "Reasonable" or "reasonably" when used in relation to conduct by a licensed paralegal practitioner denotes the conduct of a reasonably prudent and competent licensed paralegal practitioner.

(j) "Reasonable belief" or "reasonably believes" when used in reference to a licensed paralegal practitioner denotes that the licensed paralegal practitioner believes the matter in question and that the circumstances are such that the belief is reasonable.

(k) "Reasonably should know" when used in reference to a licensed paralegal practitioner denotes that a licensed paralegal practitioner of reasonable prudence and competence would ascertain the matter in question.

(l) "Rule" refers to the corresponding Rule of Licensed Paralegal Practitioner Professional Conduct.

(m) "Screened" denotes the isolation of a licensed paralegal practitioner from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated licensed paralegal practitioner is obligated to protect under these Rules or other law.

(n) "Substantial" when used in reference to degree or extent denotes a material matter of clear and weighty importance.

(o) "Tribunal" denotes a court, an arbitrator in a binding arbitration proceeding or a legislative body, administrative agency or other body acting in

an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party's interests in a particular matter.

(p) "Writing" or "written" denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or video recording and electronic communications. A "signed" writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

Comment

Confirmed in Writing

[1] If it is not feasible to obtain or transmit a written confirmation at the time the client gives informed consent, then the licensed paralegal practitioner must obtain or transmit it within a reasonable time thereafter. If a licensed paralegal practitioner has obtained a client's informed consent, the licensed paralegal practitioner may act in reliance on that consent so long as it is confirmed in writing within a reasonable time thereafter.

Firm

[2] Whether two or more licensed paralegal practitioners constitute a firm within paragraph (d) can depend on the specific facts. For example, two practitioners who share office space and occasionally consult or assist each other ordinarily would not be regarded as constituting a firm. However, if they present themselves to the public in a way that suggests that they are a firm or conduct themselves as a firm, they should be regarded as a firm for purposes of these Rules. The terms of any formal agreement between associated licensed paralegal practitioners are relevant in determining whether they are a firm, as is the fact that they have mutual access to information concerning the clients they serve. Furthermore, it is relevant in doubtful cases to consider the underlying purpose of the rule that is involved. A group of licensed paralegal practitioners could be regarded as a firm for purposes of the rule that the same licensed paralegal practitioner should not represent opposing parties in litigation, while it might not be so regarded for purposes of the rule that information acquired by one licensed paralegal practitioner is attributed to another.

[3] Reserved.

[4] Similar questions can also arise with respect to licensed paralegal practitioners in legal aid and legal services organizations. Depending upon the structure of the organization, the entire organization or different components of it may constitute a firm or firms for purposes of these Rules.

Fraud

[5] When used in these Rules, the terms "fraud" or "fraudulent" refer to conduct that is characterized as such under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive. This does not include merely negligent misrepresentation or negligent failure to apprise another of relevant information. For purposes of these Rules, it is not necessary that anyone has suffered damages or relied on the misrepresentation or failure to inform.

Informed Consent

[6] Many of the licensed paralegal Practitioner Rules of Professional Conduct require the licensed paralegal practitioner to obtain the informed consent of a client or other person (e.g., a former client or, under certain circumstances, a prospective client) before accepting or continuing representation or pursuing a course of conduct. See, e.g, Rules 1.6(a), 1.7(b) and 1.9(a). The communication necessary to obtain such consent will vary according to the rule involved and the circumstances giving rise to the need to obtain informed consent. In some circumstances it may be required for a licensed paralegal practitioner to advise a client or other person to seek the advice of an attorney.

[7] Obtaining informed consent will usually require an affirmative response by the client or other person. In general, a licensed paralegal practitioner may not assume consent from a client's or other person's silence. Consent may be inferred, however, from the conduct of a client or other person who has reasonably adequate information about the matter. A number of rules require that a person's consent be confirmed in writing. See, e.g., Rules 1.7(b) and 1.9(a). For a definition of "writing" and "confirmed in writing," see paragraphs (p) and (b). Other rules require that a client's consent be obtained in a writing signed by the client. See, e.g., Rules 1.8(a) and (g). For a definition of "signed," see paragraph (p).

Screened

[8] This definition applies to situations where screening of a personally disqualified licensed paralegal practitioner is permitted to remove imputation of a conflict of interest under Rules 1.10, 1.11, 1.12 or 1.18.

[9] The purpose of screening is to assure the affected parties that confidential information known by the personally disqualified licensed paralegal practitioner remains protected. The personally disqualified licensed paralegal practitioner should acknowledge the obligation not to communicate with any of the other attorneys and licensed paralegal practitioners in the firm with respect to the matter. Similarly, other licensed paralegal practitioners in the firm who are working on the matter should be informed that the screening is in place and that they may not communicate with the personally disqualified licensed paralegal practitioner with respect to the matter. Additional screening measures that are appropriate for the particular matter will depend on the circumstances. To implement, reinforce and remind all affected licensed paralegal practitioners of the presence of the screening, it may be appropriate for the firm to undertake such procedures as a written undertaking by the screened licensed paralegal practitioner to avoid any communication with other firm personnel and any contact with any firm files or other information, including information in electronic form, relating to the matter, written notice and instructions to all other firm personnel forbidding any communication with the screened licensed paralegal practitioner relating to the matter, denial of access by the screened licensed paralegal practitioner to firm files or other information, including information in electronic form, relating to the matter and periodic reminders of the screen to the screened licensed paralegal practitioner and all other firm personnel.

[10] In order to be effective, screening measures must be implemented as soon as practical after a licensed paralegal practitioner or law firm knows or reasonably should know that there is a need for screening.

CLIENT-LICENSED PARALEGAL PRACTITIONER RELATIONSHIP

Rule 1.1. Competence.

A licensed paralegal practitioner shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary to a) perform the contracted services; and b) determine when the matter should be referred to an attorney.

Comment

Legal Knowledge and Skill

[1] In determining whether a licensed paralegal practitioner employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the licensed paralegal practitioner's general experience, the licensed paralegal practitioner's training and experience in the field in question, and whether it is appropriate to refer the matter to, or associate with, a lawyer of established competence in the field in question.

[2] A newly admitted licensed paralegal practitioner can be as competent as a practitioner with long experience. Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge.

[3] Reserved.

[4] A licensed paralegal practitioner may accept representation in only the fields in which the licensed paralegal practitioner is licensed.

Thoroughness and Preparation

[5] Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem and use of methods and procedures meeting the standards of competent licensed paralegal practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake.

Retaining or Contracting With Other Licensed Paralegal Practitioners

[6] Before a licensed paralegal practitioner retains or contracts with other licensed paralegal practitioners outside the licensed paralegal practitioner's own firm to provide or assist in the provision of legal services to a client, the licensed paralegal practitioner should ordinarily obtain informed consent from the client and must reasonably believe that the other licensed paralegal practitioners' services will contribute to the competent and ethical representation of the client.

[7] When licensed paralegal practitioners from more than one firm are providing legal services to the client on a particular matter, the licensed

paralegal practitioners ordinarily should consult with each other and the client about the scope of their respective representations and the allocation of responsibility among them. See Rules 1.2 and 1.4. When making allocations of responsibility in a matter pending before a tribunal, licensed paralegal practitioners and parties may have additional obligations that are a matter of law beyond the scope of these Rules.

Maintaining Competence

[8] To maintain the requisite knowledge and skill, a licensed paralegal practitioner should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing education requirements to which the licensed paralegal practitioner is subject.

Rule 1.2. Scope of Representation and Allocation of Authority Between Client and Licensed Paralegal Practitioner and Notice to Be Displayed.

(a) Subject to paragraphs (c) and (d), a licensed paralegal practitioner shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A licensed paralegal practitioner may take such action on behalf of the client as is authorized to carry out the representation. A licensed paralegal practitioner shall abide by a client's decision whether to settle a matter.

(b) A licensed paralegal practitioner's representation of a client does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A licensed paralegal practitioner shall limit the scope of the representation to that which is reasonable under the circumstances.

(d) A licensed paralegal practitioner shall not counsel a client to engage, or assist a client to engage, in conduct that the licensed paralegal practitioner knows is criminal or fraudulent.

(e) A licensed paralegal practitioner shall conspicuously display in the licensed paralegal practitioner's office a notice that shall be at least 12 by 20 inches with boldface type or print with each character at least one inch in height and width that contains a statement that the licensed paralegal practitioner is not an attorney.

Comment

Allocation of Authority Between Client and Licensed Paralegal Practitioner

[1] Paragraph (a) confers upon the client the ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the licensed paralegal practitioner's professional obligations. The decisions specified in paragraph (a), such as whether to settle a civil matter, must also be made by the client. See Rule 1.4(a)(1) for the licensed paralegal practitioner's duty to communicate with the client about such decisions. With respect to the means by which the client's objectives are to be pursued, the licensed paralegal practitioner shall consult with the client as required by Rule 1.4(a)(2) and may take such action as is authorized to carry out the representation.

[2] On occasion, however, a licensed paralegal practitioner and a client may disagree about the means to be used to accomplish the client's objectives. Because of the varied nature of the matters about which a licensed paralegal practitioner and client might disagree and because the actions in question may implicate the interests of a tribunal or other persons, this Rule does not prescribe how such disagreements are to be resolved. Other law, however, may be applicable and should be consulted by the licensed paralegal practitioner. The licensed paralegal practitioner should also consult with the client and seek a mutually acceptable resolution of the disagreement. If such efforts are unavailing and the licensed paralegal practitioner has a fundamental disagreement with the client, the licensed paralegal practitioner may withdraw from the representation. See Rule 1.16(b)(4). Conversely, the client may resolve the disagreement by discharging the licensed paralegal practitioner. See Rule 1.16(a)(3).

[3] At the outset of a representation, the client may authorize the licensed paralegal practitioner to take specific action on the client's behalf without further consultation. Absent a material change in circumstances and subject to Rule 1.4, a licensed paralegal practitioner may rely on such an advance authorization. The client may, however, revoke such authority at any time.

[4] In a case in which the client appears to be suffering diminished capacity, the licensed paralegal practitioner's duty to abide by the client's decisions is to be guided by reference to Rule 1.14.

Independence from Client's Views or Activities

[5] Legal representation should not be denied to people who are unable to afford legal services or whose cause is controversial or the subject of popular disapproval. By the same token, representing a client does not constitute approval of the client's views or activities.

Agreements Limiting Scope of Representation

[6] Reserved.

[7] This Rule affords the licensed paralegal practitioner and client substantial latitude to limit the representation to that which is reasonable under the

circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the licensed paralegal practitioner and client may agree that the licensed paralegal practitioner's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted were not sufficient to yield advice upon which the client could rely. The limitation on representation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. See Rule 1.1.

[8] All agreements concerning a licensed paralegal practitioner's representation of a client must accord with the Licensed Paralegal Practitioner Rules of Professional Conduct and other law. See, e.g., Rules 1.1, 1.8 and 5.6.

Criminal, Fraudulent and Prohibited Transactions

[9] Paragraph (d) prohibits a licensed paralegal practitioner from knowingly counseling or assisting a client to commit a crime or fraud, but the fact that a client uses advice in a course of action that is criminal or fraudulent does not of itself make a licensed paralegal practitioner a party to the course of action.

[10] When the client's course of action has already begun and is continuing, the licensed paralegal practitioner's responsibility is especially delicate. The licensed paralegal practitioner is required to avoid assisting the client, for example, by drafting or delivering documents that the licensed paralegal practitioner knows are fraudulent or by suggesting how the wrongdoing might be concealed. A licensed paralegal practitioner may not continue assisting a client in conduct that the licensed paralegal practitioner originally supposed was legally proper but then discovers is criminal or fraudulent. The licensed paralegal practitioner must, therefore, withdraw from the representation of the client in the matter. See Rule 1.16(a). In some cases, withdrawal alone might be insufficient. It may be necessary for the licensed paralegal practitioner to give notice of the fact of withdrawal and to disaffirm any document, affirmation or the like. See Rule 4.1.

[11] Where the client is a fiduciary, the licensed paralegal practitioner may be charged with special obligations in dealings with a beneficiary.

[12] Paragraph (d) applies whether or not the defrauded party is a party to the transaction. Hence, a licensed paralegal practitioner must not participate in a transaction to effectuate criminal or fraudulent avoidance of tax liability.

[13] If a licensed paralegal practitioner comes to know or reasonably should know that a client expects assistance not permitted by the Licensed Paralegal Practitioner Rules of Professional Conduct or other law or if the licensed paralegal practitioner intends to act contrary to the client's instructions, the licensed paralegal practitioner must consult with the client regarding the limitations on the licensed paralegal practitioner's conduct. See Rule 1.4(a)(5).

[14] Licensed paralegal practitioners are encouraged to advise their clients that their representations are guided by the Utah Standards of Professionalism and Civility and to provide a copy to their clients.

Rule 1.3. Diligence.

A licensed paralegal practitioner shall act with reasonable diligence and promptness in representing a client.

Comment

[1] A licensed paralegal practitioner should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the licensed paralegal practitioner and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A licensed paralegal practitioner must act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf. A licensed paralegal practitioner is not bound, however, to press for every advantage that might be realized for a client. For example, a licensed paralegal practitioner may have authority to exercise professional discretion in determining the means by which a matter should be pursued. See Rule 1.2. The licensed paralegal practitioner's duty to act with reasonable diligence does not require the use of offensive tactics or preclude the treating of all persons involved in the legal process with courtesy and respect.

[2] A licensed paralegal practitioner’s work load must be controlled so that each matter can be handled competently.

[3] Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests often can be adversely affected by the passage of time or the change of conditions; in extreme instances, as when a licensed paralegal practitioner overlooks a statute of limitations, the client's legal position may be destroyed. Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the licensed paralegal practitioner's trustworthiness. A licensed paralegal practitioner’s duty to act with reasonable promptness, however, does not preclude the licensed paralegal practitioner from agreeing to a reasonable request for a postponement that will not prejudice the licensed paralegal practitioner’s client.

[4] Unless the relationship is terminated as provided in Rule 1.16, a licensed paralegal practitioner should carry through to conclusion all matters undertaken for a client. As a licensed paralegal practitioner's employment is limited to a specific matter, the relationship terminates when the matter has been resolved.

[5] To prevent neglect of client matters in the event of a sole licensed paralegal practitioner's death or disability, the duty of diligence may require that each sole licensed paralegal practitioner prepare a plan, in conformity with applicable rules, that designates another competent licensed paralegal practitioner to review client files, notify each client of the licensed paralegal practitioner's death or disability, and determine whether there is a need for immediate protective action.

Rule 1.4. Communication.

(a) A licensed paralegal practitioner shall:

(a)(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(f), is required by these Rules;

(a)(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(a)(3) keep the client reasonably informed about the status of the matter;

(a)(4) promptly comply with reasonable requests for information; and

(a)(5) consult with the client about any relevant limitation on the licensed paralegal practitioner's conduct when the licensed paralegal practitioner knows that the client expects assistance not permitted by the Licensed Paralegal Practitioner Rules of Professional Conduct or other law.

(b) A licensed paralegal practitioner shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Comment

[1] Reasonable communication between the licensed paralegal practitioner and the client is necessary for the client effectively to participate in the representation.

Communicating with Client

[2] If these Rules require that a particular decision about the representation be made by the client, paragraph (a)(1) requires that the licensed paralegal practitioner promptly consult with and secure the client's consent prior to taking action unless prior discussions with the client have resolved what action the client wants the licensed paralegal practitioner to take. For example, a licensed paralegal practitioner who receives from opposing counsel an offer of settlement in a civil controversy must promptly inform the client of its substance unless the client has previously indicated that the proposal will be acceptable or

unacceptable or has authorized the licensed paralegal practitioner to accept or to reject the offer. See Rule 1.2(a).

[3] Paragraph (a)(2) requires the licensed paralegal practitioner to reasonably consult with the client about the means to be used to accomplish the client's objectives. In some situations—depending on both the importance of the action under consideration and the feasibility of consulting with the client—this duty will require consultation prior to taking action. Additionally, paragraph (a)(3) requires that the licensed paralegal practitioner keep the client reasonably informed about the status of the matter, such as significant developments affecting the timing or the substance of the representation.

[4] A licensed paralegal practitioner’s regular communication with clients will minimize the occasions on which a client will need to request information concerning the representation. When a client makes a reasonable request for information, however, paragraph (a)(4) requires prompt compliance with the request, or if a prompt response is not feasible, that the licensed paralegal practitioner, or a member of the licensed paralegal practitioner's staff, acknowledge receipt of the request and advise the client when a response may be expected. A licensed paralegal practitioner should promptly respond to or acknowledge client communications.

Explaining Matters

[5] The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so. Adequacy of communication depends in part on the kind of advice or assistance that is involved. For example, when there is time to explain a proposal made in a negotiation, the licensed paralegal practitioner should review all important provisions with the client before proceeding to an agreement. On the other hand, a licensed paralegal practitioner ordinarily will not be expected to describe negotiation strategy in detail. The guiding principle is that the licensed paralegal practitioner should fulfill reasonable client expectations for information consistent with the duty to act in the client's best interests and the client's overall requirements as to the character of representation. In certain circumstances, such as when a licensed paralegal practitioner asks a client to consent to a representation affected by a conflict of interest, the client must give informed consent, as defined in Rule 1.0(f).

[6] Ordinarily, the information to be provided is that appropriate for a client who is a comprehending and responsible adult. However, fully informing the client according to this standard may be impracticable, for example, where the

client suffers from diminished capacity. See Rule 1.14. When the client is an organization or group, it is often impossible or inappropriate to inform every one of its members about its legal affairs; ordinarily, the licensed paralegal practitioner should address communications to the appropriate officials of the organization. See Rule 1.13.

Withholding Information

[7] In some circumstances, a licensed paralegal practitioner may be justified in delaying transmission of information when the client would be likely to react imprudently to an immediate communication. Thus, a licensed paralegal practitioner might withhold a psychiatric diagnosis of a client when the examining psychiatrist indicates that disclosure would harm the client. A licensed paralegal practitioner may not withhold information to serve the licensed paralegal practitioner's own interest or convenience or the interests or convenience of another person. Rules or court orders governing litigation may provide that information supplied to a licensed paralegal practitioner may not be disclosed to the client. Rule 3.4(c) directs compliance with such rules or orders.

Rule 1.5. Requirements for Written Contract and Fees.

(a) Before providing any services, a licensed paralegal practitioner shall provide the client with a written contract that:

(a)(1) states the purpose for which the licensed paralegal practitioner has been hired;

(a)(2) states the services to be performed;

(a)(3) states the rate or fee for the services to be performed and whether and to what extent the client will be responsible for any costs, expenses or disbursements in the course of the representation;

(a)(4) includes a statement printed in 12-point boldface type that the licensed paralegal practitioner is not an attorney and is limited to practice in only those areas in which the licensed paralegal practitioner is licensed;

(a)(5) includes a provision stating that the client may report complaints relating to a licensed paralegal practitioner or the unauthorized practice of law to the Utah State Bar, including a toll-free number and Internet website;

(a)(6) identifies the document to be prepared;

(a)(7) explains the purpose of the document;

(a)(8) explains the process to be followed in preparing the document;

(a)(9) states whether the licensed paralegal practitioner will be filing the document on the client’s behalf; and

(a)(10) states the approximate time necessary to complete the task.

(b) A licensed paralegal practitioner may not make an oral or written statement guaranteeing or promising an outcome, unless the licensed paralegal practitioner has some basis in fact for making the guarantee or promise.

(c) A written contract is void if not written in accordance with this section.

(d) A licensed paralegal practitioner shall not make an agreement for, charge or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

(d)(1) the time and labor required and the skill requisite to perform the legal service properly;

(d)(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the licensed paralegal practitioner;

(d)(3) the fee customarily charged in the locality for similar legal services;

(d)(4) the amount involved and the results obtained;

(d)(5) the time limitations imposed by the client or by the circumstances;

(d)(6) the nature and length of the professional relationship with the client; and

(d)(7) the experience, reputation and ability of the licensed paralegal practitioner or licensed paralegal practitioners performing the services.

(d)(8) Reserved.

(e) Any changes in the basis or rate of the fee or expenses shall also be communicated to the client.

(f) A licensed paralegal practitioner may not enter into a contingency fee agreement with a client.

(g) A division of a fee between licensed paralegal practitioners who are not in the same firm may be made only if:

(g)(1) the division is in proportion to the services performed by each licensed paralegal practitioner or each licensed paralegal practitioner assumes joint responsibility for the representation;

(g)(2) the client agrees to the arrangement, including the share each licensed paralegal practitioner will receive, and the agreement is confirmed in writing; and

(g)(3) the total fee is reasonable.

Comment

Reasonableness of Fee and Expenses

[1] Paragraph (d) requires that licensed paralegal practitioners charge fees that are reasonable under the circumstances. The factors specified in (d)(1) through (d)(7) are not exclusive. Nor will each factor be relevant in each instance. Paragraph (d) also requires that expenses for which the client will be charged must be reasonable. A licensed paralegal practitioner may seek reimbursement

for the cost of services performed in-house, such as copying, or for other expenses incurred in-house, such as telephone charges, either by charging a reasonable amount to which the client has agreed in advance or by charging an amount that reasonably reflects the cost incurred by the licensed paralegal practitioner.

[2] Reserved.

[3] Reserved.

Terms of Payment

[4] A licensed paralegal practitioner may require advance payment of a fee but is obligated to return any unearned portion. See Rule 1.16(d). A licensed paralegal practitioner may accept property in payment for services, such as an ownership interest in an enterprise, providing this does not involve acquisition of a proprietary interest in the cause of action or subject matter of the litigation contrary to Rule 1.8(i). However, a fee paid in property instead of money may be subject to the requirements of Rule 1.8(a) because such fees often have the essential qualities of a business transaction with the client.

[5] An agreement may not be made whose terms might induce the licensed paralegal practitioner improperly to curtail services for the client or perform them in a way contrary to the client's interest. For example, a licensed paralegal practitioner should not enter into an agreement whereby services are to be provided only up to a stated amount when it is foreseeable that more extensive services probably will be required, unless the situation is adequately explained to the client. Otherwise, the client might have to bargain for further assistance in the midst of a proceeding or transaction. However, it is proper to define the extent of services in light of the client's ability to pay. A licensed paralegal practitioner should not exploit a fee arrangement based primarily on hourly charges by using wasteful procedures.

[6] Prohibited Contingent Fees. Paragraph (f) prohibits a licensed paralegal practitioner from charging a contingent fee.

Division of Fees

[7] A division of fee is a single billing to a client covering the fee of two or more licensed paralegal practitioners or a licensed paralegal practitioner and a lawyer who are not in the same firm. A division of fee facilitates association of more than one licensed paralegal practitioner or lawyer in a matter in which neither alone could serve the client as well, and most often is used when the fee is contingent and the division is between a referring licensed paralegal practitioner and a lawyer or trial specialist. Paragraph (g) permits the division of a fee either on the basis of the proportion of services they render or if each practitioner assumes responsibility for the representation as a whole. In addition, the client must agree to the arrangement, including the share that each practitioner is to receive, and the agreement must be confirmed in writing. Joint responsibility for the representation entails financial and ethical

responsibility for the representation as if the licensed paralegal practitioner and the other licensed paralegal practitioner or lawyer were associated in a partnership. A licensed paralegal practitioner should only refer a matter to a licensed paralegal practitioner or lawyer whom the referring licensed paralegal practitioner reasonably believes is competent to handle the matter. See Rule 1.1.

[8] Paragraph (g) does not prohibit or regulate division of fees to be received in the future for work done when licensed paralegal practitioners were previously associated in a law firm.

Disputes Over Fees

[9] If a procedure has been established for resolution of fee disputes, such as an arbitration or mediation procedure established by the Bar, the licensed paralegal practitioner must comply with the procedure when it is mandatory, and, even when it is voluntary, the licensed paralegal practitioner should conscientiously consider submitting to it.

Rule 1.6. Confidentiality of Information.

(a) A licensed paralegal practitioner shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

(b) A licensed paralegal practitioner may reveal information relating to the representation of a client to the extent the licensed paralegal practitioner reasonably believes necessary:

(b)(1) to prevent reasonably certain death or substantial bodily harm;

(b)(2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interest or property of another and in furtherance of which the client has used the licensed paralegal practitioner's services;

(b)(3) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the licensed paralegal practitioner's services;

(b)(4) to secure legal advice about the licensed paralegal practitioner's compliance with these Rules;

(b)(5) to establish a claim or defense on behalf of the licensed paralegal practitioner in a controversy between the licensed paralegal practitioner and the client, to establish a defense to a criminal charge or civil claim against the licensed paralegal practitioner based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the licensed paralegal practitioner's representation of the client;

(b)(6) to comply with other law or a court order; or

(b)(7) to detect and resolve conflicts of interest arising from the licensed paralegal practitioner's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the licensed paralegal practitioner — client privilege or otherwise prejudice the client.

(c) A licensed paralegal practitioner shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the epresentation of a client.

Comment

[1] This Rule governs the disclosure by a licensed paralegal practitioner of information relating to the representation of a client during the licensed paralegal practitioner's representation of the client. See Rule 1.18 for the licensed paralegal practitioner's duties with respect to information provided to the licensed paralegal practitioner by a prospective client, Rule 1.9(c)(2) for the licensed paralegal practitioner's duty not to reveal information relating to the licensed paralegal practitioner's prior representation of a former client and Rules 1.8(b) and 1.9(c)(1) for the licensed paralegal practitioner's duties with respect to the use of such information to the disadvantage of clients and former clients.

[2] A fundamental principle in the licensed paralegal practitioner-client relationship is that, in the absence of the client's informed consent, the licensed paralegal practitioner must not reveal information relating to the representation. See Rule 1.0(f) for the definition of informed consent. This contributes to the trust that is the hallmark of the client-licensed paralegal practitioner relationship.

[3] The principle of licensed paralegal practitioner-client confidentiality is given effect by related bodies of law including the licensed paralegal practitioner-client privilege, the work product doctrine and the rule of confidentiality established in professional ethics. The attorney-client privilege and work product doctrine apply in judicial and other proceedings in which a licensed paralegal practitioner may be called as a witness or otherwise required to produce evidence concerning a client. The rule of licensed paralegal practitioner-client confidentiality applies in situations other than those where evidence is sought from the licensed paralegal practitioner through compulsion of law. The confidentiality rule, for example, applies not only to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source. A licensed paralegal practitioner may not disclose such information except as authorized or required by the Licensed

Paralegal Practitioner Rules of Professional Conduct or other law. See also Scope.

[4] Paragraph (a) prohibits a licensed paralegal practitioner from revealing information relating to the representation of a client. This prohibition also applies to disclosures by a licensed paralegal practitioner that do not in themselves reveal protected information but could reasonably lead to the discovery of such information by a third person. A licensed paralegal practitioner's use of a hypothetical to discuss issues relating to the representation is permissible so long as there is no reasonable likelihood that the listener will be able to ascertain the identity of the client or the situation involved.

Authorized Disclosure

[5] Except to the extent that the client's instructions or special circumstances limit that authority, a licensed paralegal practitioner is impliedly authorized to make disclosures about a client when appropriate in carrying out the representation. In some situations, for example, a licensed paralegal practitioner may be impliedly authorized to admit a fact that cannot properly be disputed or to make a disclosure that facilitates a satisfactory conclusion to a matter. licensed paralegal practitioners in a firm may, in the course of the firm's practice, disclose to each other information relating to a client of the firm, unless the client has instructed that particular information be confined to specified licensed paralegal practitioners.

Disclosure Adverse to Client

[6] Although the public interest is usually best served by a strict rule requiring licensed paralegal practitioners to preserve the confidentiality of information relating to the representation of their clients, the confidentiality rule is subject to limited exceptions. Paragraph (b)(1) recognizes the overriding value of life and physical integrity and permits disclosure reasonably necessary to prevent reasonably certain death or substantial bodily harm. Such harm is reasonably certain to occur if it will be suffered imminently or if there is a present and substantial threat that a person will suffer such harm at a later date if the licensed paralegal practitioner fails to take action necessary to eliminate the threat.

[7] Paragraph (b)(2) is a limited exception to the rule of confidentiality that permits the licensed paralegal practitioner to reveal information to the extent necessary to enable affected persons or appropriate authorities to prevent the client from committing a crime or fraud, as defined in Rule 1.0(e), that is

reasonably certain to result in substantial injury to the financial or property interests of another and in furtherance of which the client has used or is using the licensed paralegal practitioner's services. Such a serious abuse of the client-licensed paralegal practitioner relationship by the client forfeits the protection of this Rule. The client can, of course, prevent such disclosure by refraining from the wrongful conduct. Although paragraph (b)(2) does not require the licensed paralegal practitioner to reveal the client's misconduct, the licensed paralegal practitioner may not counsel or assist the client in conduct the licensed paralegal practitioner knows is criminal or fraudulent. See Rule 1.2(d). See also Rule 1.16 with respect to the licensed paralegal practitioner's obligation or right to withdraw from the representation of the client in such circumstances, and Rule 1.13(c) which permits the licensed paralegal practitioner, where the client is an organization, to reveal information relating to the representation in limited circumstances.

[8] Paragraph (b)(3) addresses the situation in which the licensed paralegal practitioner does not learn of the client's crime or fraud until after it has been consummated. Although the client no longer has the option of preventing disclosure by refraining from the wrongful conduct, there will be situations in which the loss suffered by the affected person can be prevented, rectified or mitigated. In such situations, the licensed paralegal practitioner may disclose information relating to the representation to the extent necessary to enable the affected persons to prevent or mitigate reasonably certain losses or to attempt to recoup their losses.

[9] A licensed paralegal practitioner's confidentiality obligations do not preclude a licensed paralegal practitioner from securing confidential legal advice about the licensed paralegal practitioner's personal responsibility to comply with these Rules. In most situations, disclosing information to secure such advice will be impliedly authorized for the licensed paralegal practitioner to carry out the representation. Even when the disclosure is not impliedly authorized, paragraph (b)(4) permits such disclosure because of the importance of a licensed paralegal practitioner's compliance with the Licensed Paralegal Practitioner Rules of Professional Conduct.

[10] Where a legal claim or disciplinary charge alleges complicity of the licensed paralegal practitioner in a client's conduct or other misconduct of the licensed paralegal practitioner involving representation of the client, the licensed paralegal practitioner may respond to the extent the licensed paralegal practitioner reasonably believes necessary to establish a defense. The same is true with respect to a claim involving the conduct or representation of a former client. Such a charge can arise in a civil, criminal, disciplinary or other proceeding and can be based on a wrong allegedly committed by the licensed

paralegal practitioner against the client or on a wrong alleged by a third person, for example, a person claiming to have been defrauded by the licensed paralegal practitioner and client acting together. The licensed paralegal practitioner's right to respond arises when an assertion of such complicity has been made. Paragraph (b)(5) does not require the licensed paralegal practitioner to await the commencement of an action or proceeding that charges such complicity, so that the defense may be established by responding directly to a third party who has made such an assertion. The right to defend also applies, of course, where a proceeding has been commenced.

[11] A licensed paralegal practitioner entitled to a fee is permitted by paragraph (b)(5) to prove the services rendered in an action to collect it. This aspect of the rule expresses the principle that the beneficiary of a fiduciary relationship may not exploit it to the detriment of the fiduciary.

[12] Other law may require that a licensed paralegal practitioner disclose information about a client. Whether such a law supersedes Rule 1.6 is a question of law beyond the scope of these Rules. When disclosure of information relating to the representation appears to be required by other law, the licensed paralegal practitioner must discuss the matter with the client to the extent required by Rule 1.4. If, however, the other law supersedes this Rule and requires disclosure, paragraph (b)(6) permits the licensed paralegal practitioner to make such disclosures as are necessary to comply with the law.

Detection of Conflicts of Interest

[13] Paragraph (b)(7) recognizes that licensed paralegal practitioners in different firms may need to disclose limited information to each other to detect and resolve conflicts of interest, such as when a licensed paralegal practitioner is considering an association with another firm, two or more firms are considering a merger, or a licensed paralegal practitioner is considering the purchase of a licensed paralegal practice. See Rule 1.17, Comment [7]. Under these circumstances, licensed paralegal practitioners and law firms are permitted to disclose limited information, but only once substantive discussions regarding the new relationship have occurred. Any such disclosure should ordinarily include no more than the identity of the persons and entities involved in a matter, a brief summary of the general issues involved, and information about whether the matter has terminated. Even this limited information, however, should be disclosed only to the extent reasonably necessary to detect and resolve conflicts of interest that might arise from the possible new relationship. Moreover, the disclosure of any information is prohibited if it would compromise the licensed paralegal practitioner-client privilege or otherwise prejudice the client (e.g., the fact that a person has consulted a licensed

paralegal practitioner about the possibility of divorce before the person's intentions are known to the person's spouse). Under those circumstances, paragraph (a) prohibits disclosure unless the client or former client gives informed consent. A licensed paralegal practitioner's fiduciary duty to the licensed paralegal practitioner's firm may also govern a licensed paralegal practitioner's conduct when exploring an association with another firm and is beyond the scope of these Rules.

[14] Any information disclosed pursuant to paragraph (b)(7) may be used or further disclosed only to the extent necessary to detect and resolve conflicts of interest. Paragraph (b)(7) does not restrict the use of information acquired by means independent to any disclosure pursuant to paragraph (b)(7). Paragraph (b)(7) also does not affect the disclosure of information within a law firm when the disclosure is otherwise authorized, see Comment [5], such as when a licensed paralegal practitioner in a firm discloses information to another licensed paralegal practitioner in the same firm to detect and resolve conflicts of interest that could arise in connection with undertaking a new representation.

[15] A licensed paralegal practitioner may be ordered to reveal information relating to the representation of a client by a court or by another tribunal or governmental entity claiming authority pursuant to other law to compel the disclosure. Absent informed consent of the client to do otherwise, the licensed paralegal practitioner should assert on behalf of the client all nonfrivolous claims that the order is not authorized by other law or that the information sought is protected against disclosure by the attorney-client privilege or other applicable law. In the event of an adverse ruling, the licensed paralegal practitioner must consult with the client about the availability of appeal and refer the client to an attorney to the extent required by Rule 1.4. Unless review is sought, however, paragraph (b)(6) permits the licensed paralegal practitioner to comply with the court’s order.

[16] Paragraph (b) permits disclosure only to the extent the licensed paralegal practitioner reasonably believes the disclosure is necessary to accomplish one of the purposes specified. Where practicable, the licensed paralegal practitioner should first seek to persuade the client to take suitable action to obviate the need for disclosure. In any case, a disclosure adverse to the client’s interest should be no greater than the licensed paralegal practitioner reasonably believes necessary to accomplish the purpose. If the disclosure will be made in connection with a judicial proceeding, the disclosure should be made in a manner that limits access to the information to the tribunal or other persons having a need to know it and appropriate protective orders or other arrangements should be sought by the licensed paralegal practitioner to the fullest extent practicable.

[17] Paragraph (b) permits but does not require the disclosure of information relating to a client's representation to accomplish the purposes specified in paragraphs (b)(1) through (b)(7). In exercising the discretion conferred by this Rule, the licensed paralegal practitioner may consider such factors as the nature of the licensed paralegal practitioner's relationship with the client and with those who might be injured by the client, the licensed paralegal practitioner's own involvement in the transaction and factors that may extenuate the conduct in question. A licensed paralegal practitioner's decision not to disclose as permitted by paragraph (b) does not violate this Rule. Disclosure may be required, however, by other rules. Some rules require disclosure only if such disclosure would be permitted by paragraph (b). See Rules 4.1(b), 8.1 and 8.3. Rule 3.3, on the other hand, requires disclosure in some circumstances regardless of whether such disclosure is permitted by this Rule. See Rule 3.3.

Acting Competently to Preserve Confidentiality

[18] Paragraph (c) requires a licensed paralegal practitioner to act competently to safeguard information relating to the representation of a client against unauthorized access by third parties and against inadvertent or unauthorized disclosure by the licensed paralegal practitioner or other persons who are participating in the representation of the client or who are subject to the licensed paralegal practitioner's supervision. See Rules 1.1, 5.1 and 5.3. The unauthorized access to, or the inadvertent or unauthorized disclosure of, information relating to the representation of a client does not constitute a violation of paragraph (c) if the licensed paralegal practitioner has made reasonable efforts to prevent the access or disclosure. Factors to be considered in determining the reasonableness of the licensed paralegal practitioner's efforts include, but are not limited to, the sensitivity of the information, the likelihood of disclosure if additional safeguards are not employed, the cost of employing additional safeguards, the difficulty of implementing the safeguards, and the extent to which the safeguards adversely affect the licensed paralegal practitioner's ability to represent clients (e.g., by making a device or important piece of software excessively difficult to use). A client may require the licensed paralegal practitioner to implement special security measures not required by this Rule or may give informed consent to forgo security measures that would otherwise be required by this Rule. Whether a licensed paralegal practitioner may be required to take additional steps to safeguard a client's information in order to comply with other law, such as state and federal laws that govern data privacy or that impose notification requirements upon the loss of, or unauthorized access to, electronic information, is beyond the scope of these Rules. For a licensed paralegal

practitioner's duties when sharing information with nonparalegal practitioners outside the licensed paralegal practitioner's own firm, see Rule 5.3. Comments [3]-[4].

[19] When transmitting a communication that includes information relating to the representation of a client, the licensed paralegal practitioner must take reasonable precautions to prevent the information from coming into the hands of unintended recipients. This duty, however, does not require that the licensed paralegal practitioner use special security measures if the method of communication affords a reasonable expectation of privacy. Special circumstances, however, may warrant special precautions. Factors to be considered in determining the reasonableness of the licensed paralegal practitioner's expectation of confidentiality include the sensitivity of the information and the extent to which the privacy of the communication is protected by law or by a confidentiality agreement. A client may require the licensed paralegal practitioner to implement special security measures not required by this Rule or may give informed consent to the use of a means of communication that would otherwise be prohibited by this Rule. Whether a licensed paralegal practitioner may be required to take additional steps in order to comply with other law, such as state and federal laws that govern data privacy, is beyond the scope of these Rules.

Former Client

[20] The duty of confidentiality continues after the licensed paralegal practitioner-client relationship has terminated. See Rule 1.9(c)(2). See Rule 1.9(c)(1) for the prohibition against using such information to the disadvantage of the former client.

Rule 1.7. Conflict of Interest: Current Clients.

(a) Except as provided in paragraph (b), a licensed paralegal practitioner shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(a)(1) The representation of one client will be directly adverse to another client; or

(a)(2) There is a significant risk that the representation of one or more clients will be materially limited by the licensed paralegal practitioner's responsibilities to another client, a former client or a third person or by a personal interest of the licensed paralegal practitioner.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a licensed paralegal practitioner may represent a client if:

(b)(1) the licensed paralegal practitioner reasonably believes that the licensed paralegal practitioner will be able to provide competent and diligent representation to each affected client;

(b)(2) the representation is not prohibited by law;

(b)(3) the representation does not involve the assertion of a claim by one client against another client represented by the licensed paralegal practitioner in the same litigation or other proceeding before a tribunal; and

(b)(4) each affected client gives informed consent, confirmed in writing.

Comment

General Principles

[1] Loyalty and independent judgment are essential elements in the licensed paralegal practitioner's relationship to a client. Concurrent conflicts of interest can arise from the licensed paralegal practitioner's responsibilities to another client, a former client or a third person or from the licensed paralegal practitioner's own interests. For specific rules regarding certain concurrent conflicts of interest, see Rule 1.8. For former client conflicts of interest, see Rule 1.9. For conflicts of interest involving prospective clients, see Rule 1.18. For definitions of "informed consent" and "confirmed in writing," see Rules 1.0(f) and (b).

[2] Resolution of a conflict of interest problem under this Rule requires the licensed paralegal practitioner to: 1) clearly identify the client or clients; 2) determine whether a conflict of interest exists; 3) decide whether the representation may be undertaken despite the existence of a conflict, i.e., whether the conflict is consentable; and 4) if so, consult with the clients affected under paragraph (a)(1) and obtain their informed consent, confirmed in writing. The clients affected under paragraph (a)(1) include both of the clients referred to in paragraph (a)(1) and the one or more clients whose representation might be materially limited under paragraph (a)(2).

[3] A conflict of interest may exist before representation is undertaken, in which event the representation must be declined, unless the licensed paralegal practitioner obtains the informed consent of each client under the conditions of paragraph (b). To determine whether a conflict of interest exists, a licensed paralegal practitioner should adopt reasonable procedures, appropriate for the size and type of firm and practice, to determine in both litigation and nonlitigation matters the persons and issues involved. See also Comment to Rule 5.1. Ignorance caused by a failure to institute such procedures will not excuse a licensed paralegal practitioner's violation of this Rule.

[4] If a conflict arises after representation has been undertaken, the licensed paralegal practitioner ordinarily must withdraw from the representation, unless the licensed paralegal practitioner has obtained the informed consent of the client under the conditions of paragraph (b). See Rule 1.16. Where more than

one client is involved, whether the licensed paralegal practitioner may continue to represent any of the clients is determined both by the licensed paralegal practitioner's ability to comply with duties owed to the former client and by the licensed paralegal practitioner's ability to represent adequately the remaining client or clients, given the licensed paralegal practitioner's duties to the former client. See Rule 1.9. See also Comments [5] and [29].

[5] Unforeseeable developments, such as changes in corporate and other organizational affiliations or the addition or realignment of parties in litigation, might create conflicts in the midst of a representation, as when a company sued by the licensed paralegal practitioner on behalf of one client is bought by another client represented by the licensed paralegal practitioner in an unrelated matter. Depending on the circumstances, the licensed paralegal practitioner may have the option to withdraw from one of the representations in order to avoid the conflict. The licensed paralegal practitioner must withdraw where necessary and take steps to minimize harm to the clients. See Rule 1.16. The licensed paralegal practitioner must continue to protect the confidences of the client from whose representation the licensed paralegal practitioner has withdrawn. See Rule 1.9(c).

Identifying Conflicts of Interest: Directly Adverse

[6] Loyalty to a current client prohibits undertaking representation directly adverse to that client without that client's informed consent. The client as to whom the representation is directly adverse is likely to feel betrayed, and the resulting damage to the licensed paralegal practitioner-client relationship is likely to impair the licensed paralegal practitioner's ability to represent the client effectively. In addition, the client on whose behalf the adverse representation is undertaken reasonably may fear that the licensed paralegal practitioner will pursue that client's case less effectively out of deference to the other client, i.e., that the representation may be materially limited by the licensed paralegal practitioner's interest in retaining the current client.

[7] Reserved.

Identifying Conflicts of Interest: Material Limitation

[8] Even where there is no direct adverseness, a conflict of interest exists if there is a significant risk that a licensed paralegal practitioner's ability to consider, recommend or carry out an appropriate course of action for the client will be materially limited as a result of the licensed paralegal practitioner's other responsibilities or interests. The critical questions are the likelihood that a difference in interests will eventuate and, if it does, whether it will materially interfere with the licensed paralegal practitioner's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client.

Licensed Paralegal Practitioner's Responsibilities to Former Clients and Other Third Persons

[9] In addition to conflicts with other current clients, a licensed paralegal practitioner's duties of loyalty and independence may be materially limited by responsibilities to former clients under Rule 1.9 or by the licensed paralegal practitioner's responsibilities to other persons, such as fiduciary duties arising from a licensed paralegal practitioner's service as a trustee, executor or corporate director.

Personal Interest Conflicts

[10] The licensed paralegal practitioner's own interests should not be permitted to have an adverse effect on representation of a client. For example, if the probity of a licensed paralegal practitioner's own conduct in a transaction is in serious question, it may be difficult or impossible for the licensed paralegal practitioner to give a client detached advice. Similarly, when a licensed paralegal practitioner has discussions concerning possible employment with an opponent of the licensed paralegal practitioner's client, or with a law firm representing the opponent, such discussions could materially limit the licensed paralegal practitioner's representation of the client. In addition, a licensed paralegal practitioner may not allow related business interests to affect representation, for example, by referring clients to an enterprise in which the licensed paralegal practitioner has an undisclosed financial interest. See Rule 1.8 for specific rules pertaining to a number of personal interest conflicts, including business transactions with clients. See also Rule 1.10 (personal interest conflicts under Rule 1.7 ordinarily are not imputed to other licensed paralegal practitioners in a law firm).

[11] When licensed paralegal practitioners representing different clients in the same matter or in substantially related matters are closely related by blood or marriage, there may be a significant risk that client confidences will be revealed and that the licensed paralegal practitioner's family relationship will interfere with both loyalty and independent professional judgment. As a result, each client is entitled to know of the existence and implications of the relationship between the licensed paralegal practitioners before the licensed paralegal practitioner agrees to undertake the representation. Thus, a licensed paralegal practitioner related to another licensed paralegal practitioner, e.g., as parent, child, sibling or spouse, ordinarily may not represent a client in a matter where that licensed paralegal practitioner is representing another party, unless each client gives informed consent. The disqualification arising from a close family relationship is personal and ordinarily is not imputed to members of firms with whom the licensed paralegal practitioners are associated. See Rule 1.10.

[12] A licensed paralegal practitioner is prohibited from engaging in sexual relationships with a client unless the sexual relationship predates the formation of the licensed paralegal practitioner-client relationship. See Rule 1.8(j).

Interest of Person Paying for a Licensed Paralegal Practitioner's Service

[13] A licensed paralegal practitioner may be paid from a source other than the client, including a co-client, if the client is informed of that fact and consents and the arrangement does not compromise the licensed paralegal practitioner's duty of loyalty or independent judgment to the client. See Rule 1.8(f). If acceptance of the payment from any other source presents a significant risk that the licensed paralegal practitioner's representation of the client will be materially limited by the licensed paralegal practitioner's own interest in accommodating the person paying the licensed paralegal practitioner's fee or by the licensed paralegal practitioner's responsibilities to a payer who is also a co-client, then the licensed paralegal practitioner must comply with the requirements of paragraph (b) before accepting the representation, including determining whether the conflict is consentable and, if so, that the client has adequate information about the material risks of the representation.

Prohibited Representations

[14] Ordinarily, clients may consent to representation notwithstanding a conflict. However, as indicated in paragraph (b), some conflicts are nonconsentable, meaning that the licensed paralegal practitioner involved cannot properly ask for such agreement or provide representation on the basis of the client's consent. When the licensed paralegal practitioner is representing more than one client, the question of consentability must be resolved as to each client.

[15] Consentability is typically determined by considering whether the interests of the clients will be adequately protected if the clients are permitted to give their informed consent to representation burdened by a conflict of interest. Thus, under paragraph (b)(1), representation is prohibited if in the circumstances the licensed paralegal practitioner cannot reasonably conclude that the licensed paralegal practitioner will be able to provide competent and diligent representation. See Rule 1.1 (competence) and Rule 1.3 (diligence).

[16] Paragraph (b)(2) describes conflicts that are nonconsentable because the representation is prohibited by applicable law.

[17] Paragraph (b)(3) describes conflicts that are nonconsentable because of the institutional interest in vigorous development of each client's position when the clients are aligned directly against each other in the same litigation or other proceeding before a tribunal. Whether clients are aligned directly against each other within the meaning of this paragraph requires examination of the context of the proceeding. Although this paragraph does not preclude a licensed paralegal practitioner's multiple representation of adverse parties to a mediation (because mediation is not a proceeding before a "tribunal" under Rule 1.0(o)), such representation may be precluded by paragraph (b)(1).

Informed Consent

[18] Informed consent requires that each affected client be aware of the relevant circumstances and of the material and reasonably foreseeable ways

that the conflict could have adverse effects on the interests of that client. See Rule 1.0(f) (informed consent). The information required depends on the nature of the conflict and the nature of the risks involved. When representation of multiple clients in a single matter is undertaken, the information must include the implications of the common representation, including possible effects on loyalty, confidentiality and the licensed paralegal practitioner-client privilege and the advantages and risks involved. See Comments [30] and [31] (effect of common representation on confidentiality).

[19] Under some circumstances it may be impossible to make the disclosure necessary to obtain consent. For example, when the licensed paralegal practitioner represents different clients in related matters and one of the clients refuses to consent to the disclosure necessary to permit the other client to make an informed decision, the licensed paralegal practitioner cannot properly ask the latter to consent. In some cases the alternative to common representation can be that each party may have to obtain separate representation with the possibility of incurring additional costs. These costs, along with the benefits of securing separate representation, are factors that may be considered by the affected client in determining whether common representation is in the client's interests.

Consent Confirmed in Writing

[20] Paragraph (b) requires the licensed paralegal practitioner to obtain the informed consent of the client, confirmed in writing. Such a writing may consist of a document executed by the client or one that the licensed paralegal practitioner promptly records and transmits to the client following an oral consent. See Rule 1.0(b). See also Rule 1.0(p) (writing includes electronic transmission). If it is not feasible to obtain or transmit the writing at the time the client gives informed consent, then the licensed paralegal practitioner must obtain or transmit it within a reasonable time thereafter. See Rule 1.0(b). The requirement of a writing does not supplant the need in most cases for the licensed paralegal practitioner to talk with the client, to explain the risks and advantages, if any, of representation burdened with a conflict of interest, as well as reasonably available alternatives, and to afford the client a reasonable opportunity to consider the risks and alternatives and to raise questions and concerns. Rather, the writing is required in order to impress upon clients the seriousness of the decision the client is being asked to make and to avoid disputes or ambiguities that might later occur in the absence of a writing.

Revoking Consent

[21] A client who has given consent to a conflict may revoke the consent and, like any other client, may terminate the licensed paralegal practitioner's representation at any time. Whether revoking consent to the client's own representation precludes the licensed paralegal practitioner from continuing to represent other clients depends on the circumstances, including the nature of the conflict, whether the client revoked consent because of a material change in

circumstances, the reasonable expectations of the other client and whether material detriment to the other clients or the licensed paralegal practitioner would result.

Consent to Future Conflict

[22] Whether a licensed paralegal practitioner may properly request a client to waive conflicts that might arise in the future is subject to the test of paragraph (b). The effectiveness of such waivers is generally determined by the extent to which the client reasonably understands the material risks that the waiver entails. The more comprehensive the explanation of the types of future representations that might arise and the actual and reasonably foreseeable adverse consequences of those representations, the greater the likelihood that the client will have the requisite understanding.

Conflicts in Litigation

[23] Paragraph (b)(3) prohibits representation of opposing parties in the same litigation, regardless of the clients' consent. On the other hand, simultaneous representation of parties whose interests in litigation may conflict, such as co-plaintiffs or co-defendants, is governed by paragraph (a)(2). A conflict may exist by reason of substantial discrepancy in the parties' testimony, incompatibility in positions in relation to an opposing party or the fact that there are substantially different possibilities of settlement of the claims or liabilities in question. Common representation of persons having similar interests in civil litigation is proper if the requirements of paragraph (b) are met

[24] Ordinarily a licensed paralegal practitioner may take inconsistent legal positions in different tribunals at different times on behalf of different clients. The mere fact that advocating a legal position on behalf of one client might create precedent adverse to the interests of a client represented by the licensed paralegal practitioner in an unrelated matter does not create a conflict of interest. A conflict of interest exists, however, if there is a significant risk that a licensed paralegal practitioner's action on behalf of one client will materially limit the licensed paralegal practitioner's effectiveness in representing another client in a different case; for example, when a decision favoring one client will create a precedent likely to seriously weaken the position taken on behalf of the other client. Factors relevant in determining whether the clients need to be advised of the risk include: where the cases are pending, whether the issue is substantive or procedural, the temporal relationship between the matters, the significance of the issue to the immediate and long-term interests of the clients involved and the clients' reasonable expectations in retaining the licensed paralegal practitioner. If there is significant risk of material limitation, then absent informed consent of the affected clients, the licensed paralegal practitioner must refuse one of the representations or withdraw from one or both matters.

[25] Reserved.

Non-litigation Conflicts

[26] Conflicts of interest under paragraphs (a)(1) and (a)(2) arise in contexts other than litigation. Relevant factors in determining whether there is significant potential for material limitation include the duration and intimacy of the licensed paralegal practitioner's relationship with the client or clients involved, the functions being performed by the licensed paralegal practitioner, the likelihood that disagreements will arise and the likely prejudice to the client from the conflict. The question is often one of proximity and degree. See Comment [8].

[27] Reserved.

[28] Whether a conflict is consentable depends on the circumstances. For example, a licensed paralegal practitioner may not represent multiple parties to a negotiation whose interests are fundamentally antagonistic to each other, but common representation is permissible where the clients are generally aligned in interest even though there is some difference in interest among them. Thus, a licensed paralegal practitioner may seek to establish or adjust a relationship between clients on an amicable and mutually advantageous basis; for example, in helping to organize a business in which two or more clients are entrepreneurs, working out the financial reorganization of an enterprise in which two or more clients have an interest or arranging a property distribution in settlement of an estate. The licensed paralegal practitioner seeks to resolve potentially adverse interests by developing the parties' mutual interests. Otherwise, each party might have to obtain separate representation, with the possibility of incurring additional cost, complication or even litigation. Given these and other relevant factors, the clients may prefer that the licensed paralegal practitioner act for all of them.

Special Considerations in Common Representation

[29] In considering whether to represent multiple clients in the same matter, a licensed paralegal practitioner should be mindful that if the common representation fails because the potentially adverse interests cannot be reconciled, the result can be additional cost, embarrassment and recrimination. Ordinarily, the licensed paralegal practitioner will be forced to withdraw from representing all of the clients if the common representation fails. In some situations, the risk of failure is so great that multiple representation is plainly impossible. For example, a licensed paralegal practitioner cannot undertake common representation of clients where contentious litigation or negotiations between them are imminent or contemplated. Moreover, because the licensed paralegal practitioner is required to be impartial between commonly represented clients, representation of multiple clients is improper when it is unlikely that impartiality can be maintained. Generally, if the relationship between the parties has already assumed antagonism, the possibility that the clients' interests can be adequately served by common representation is not very good. Other relevant factors are whether the licensed paralegal practitioner subsequently will represent both parties on a continuing basis and

whether the situation involves creating or terminating a relationship between the parties.

[30] A particularly important factor in determining the appropriateness of common representation is the effect on licensed paralegal practitioner-client confidentiality and the licensed paralegal practitioner-client privilege. With regard to the licensed paralegal practitioner-client privilege, the prevailing rule is that, as between commonly represented clients, the privilege does not attach. Hence, it must be assumed that if litigation eventuates between the clients, the privilege will not protect any such communications, and the client should be so advised.

[31] As to the duty of confidentiality, continued common representation will almost certainly be inadequate if one client asks the licensed paralegal practitioner not to disclose to the other client information relevant to the common representation. This is so because the licensed paralegal practitioner has an equal duty of loyalty to each client, and each client has the right to be informed of anything bearing on the representation that might affect that client's interests and the right to expect that the licensed paralegal practitioner will use that information to that client's benefit. See Rule 1.4. The licensed paralegal practitioner should, at the outset of the common representation and as part of the process of obtaining each client's informed consent, advise each client that information will be shared and that the licensed paralegal practitioner will have to withdraw if one client decides that some matter material to the representation should be kept from the other. In limited circumstances, it may be appropriate for the licensed paralegal practitioner to proceed with the representation when the clients have agreed, after being properly informed, that the licensed paralegal practitioner will keep certain information confidential.

[32] When seeking to establish or adjust a relationship between clients, the licensed paralegal practitioner should make clear that the licensed paralegal practitioner's role is not that of partisanship normally expected in other circumstances and, thus, that the clients may be required to assume greater responsibility for decisions than when each client is separately represented. Any limitations on the scope of the representation made necessary as a result of the common representation should be fully explained to the clients at the outset of the representation. See Rule 1.2(c).

[33] Subject to the above limitations, each client in the common representation has the right to loyal and diligent representation and the protection of Rule 1.9 concerning the obligations to a former client. The client also has the right to discharge the licensed paralegal practitioner as stated in Rule 1.16.

Organizational Clients

[34] A licensed paralegal practitioner who represents a corporation or other organization does not, by virtue of that representation, necessarily represent any constituent or affiliated organization, such as a parent or subsidiary. See Rule 1.13(a). Thus, the licensed paralegal practitioner for an organization is not

barred from accepting representation adverse to an affiliate in an unrelated matter, unless the circumstances are such that the affiliate should also be considered a client of the licensed paralegal practitioner, there is an understanding between the licensed paralegal practitioner and the organizational client that the licensed paralegal practitioner will avoid representation adverse to the client's affiliates, or the licensed paralegal practitioner's obligations to either the organizational client or the new client are likely to limit materially the licensed paralegal practitioner's representation of the other client.

[35] A licensed paralegal practitioner for a corporation or other organization who is also a member of its board of directors should determine whether the responsibilities of the two roles may conflict.

Rule 1.8. Conflict of Interest: Current Clients: Specific Rules.

(a) A licensed paralegal practitioner shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(a)(1) the transaction and terms on which the licensed paralegal practitioner acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;

(a)(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and

(a)(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the licensed paralegal practitioner's role in the transaction, including whether the licensed paralegal practitioner is representing the client in the transaction.

(b) A licensed paralegal practitioner shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these Rules.

(c) A licensed paralegal practitioner shall not solicit any substantial gift from a client, including a testamentary gift.

(d) Prior to the conclusion of representation of a client, a licensed paralegal practitioner shall not make or negotiate an agreement giving the licensed paralegal practitioner literary or media rights to a portrayal or an account based in substantial part on information relating to the representation.

(e) A licensed paralegal practitioner shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

(e)(1) a licensed paralegal practitioner may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and

(e)(2) a licensed paralegal practitioner representing an indigent client may pay court costs and expenses of litigation, and minor expenses reasonably connected to the litigation, on behalf of the client.

(f) A licensed paralegal practitioner shall not accept compensation for representing a client from one other than the client unless:

(f)(1) the client gives informed consent;

(f)(2) there is no interference with the licensed paralegal practitioner's independence of professional judgment or with the licensed paralegal practitioner-client relationship; and

(f)(3) information relating to representation of a client is protected as required by Rule 1.6.

(g) A licensed paralegal practitioner who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients unless each client gives informed consent, in writing signed by the client. The licensed paralegal practitioner's disclosure shall include the existence and nature of all the claims involved and of the participation of each person in the settlement.

(h) A licensed paralegal practitioner shall not:

(h)(1) make an agreement prospectively limiting the licensed paralegal practitioner's liability to a client for malpractice unless the client is independently represented in making the agreement; or

(h)(2) settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking, and is given a reasonable opportunity to seek, the advice of independent legal counsel in connection therewith.

(i) A licensed paralegal practitioner shall not acquire a proprietary interest in the cause of action or subject matter of litigation the licensed paralegal practitioner is providing services on for a client.

(j) A licensed paralegal practitioner shall not engage in sexual relations with a client that exploit the licensed paralegal practitioner-client relationship. For the purposes of this Rule:

(j)(1) "sexual relations" means sexual intercourse or the touching of an intimate part of another person for the purpose of sexual arousal, gratification, or abuse; and

(j)(2) except for a spousal relationship or a sexual relationship that existed at the commencement of the licensed paralegal practitioner-client relationship, sexual relations between the licensed paralegal practitioner and the client shall be presumed to be exploitive. This presumption is rebuttable.

(k) While licensed paralegal practitioners are associated in a firm, a prohibition in the foregoing paragraphs (a) through (i) that applies to any one of the firm shall apply to all members of the firm.

Comment

Business Transactions Between Client and Licensed Paralegal Practitioner

[1] A licensed paralegal practitioner's legal skill and training, together with the relationship of trust and confidence between licensed paralegal practitioner and client, create the possibility of overreaching when the licensed paralegal practitioner participates in a business, property or financial transaction with a client, for example, a loan or sales transaction or a licensed paralegal practitioner investment on behalf of a client. The requirements of paragraph (a) must be met even when the transaction is not closely related to the subject matter of the representation, as when a licensed paralegal practitioner drafting a will for a client learns that the client needs money for unrelated expenses and offers to make a loan to the client. The Rule applies to licensed paralegal practitioners engaged in the sale of goods or services related to the practice of law, for example, the sale of title insurance or investment services to existing clients of the licensed paralegal practitioner's legal practice. It does not apply to ordinary fee arrangements between client and licensed paralegal practitioner, which are governed by Rule 1.5, although its requirements must be met when the licensed paralegal practitioner accepts an interest in the client's business or other nonmonetary property as payment of all or part of a fee. In addition, the Rule does not apply to standard commercial transactions between the licensed paralegal practitioner and the client for products or services that the client generally markets to others, for example, banking or brokerage services, medical services, products manufactured or distributed by the client, and utilities' services. In such transactions, the licensed paralegal practitioner has no advantage in dealing with the client, and the restrictions in paragraph (a) are unnecessary and impracticable.

[2] Paragraph (a)(1) requires that the transaction itself be fair to the client and that its essential terms be communicated to the client, in writing, in a manner that can be reasonably understood. Paragraph (a)(2) requires that the client also be advised, in writing, of the desirability of seeking the advice of independent legal counsel. It also requires that the client be given a reasonable opportunity to obtain such advice. Paragraph (a)(3) requires that the licensed paralegal practitioner obtain the client's informed consent, in a writing signed by the client, both to the essential terms of the transaction and to the licensed paralegal practitioner's role. When necessary, the licensed paralegal practitioner should discuss both the material risks of the proposed transaction, including any risk presented by the licensed paralegal practitioner's involvement, and the existence of reasonably available alternatives and should explain why the advice of independent legal counsel is desirable. See Rule 1.0(f) (definition of informed consent).

[3] The risk to a client is greatest when the client expects the licensed paralegal practitioner to represent the client in the transaction itself or when the licensed paralegal practitioner's financial interest otherwise poses a significant risk that the licensed paralegal practitioner's representation of the client will be

materially limited by the licensed paralegal practitioner's financial interest in the transaction. Here the licensed paralegal practitioner's role requires that the licensed paralegal practitioner must comply, not only with the requirements of paragraph (a), but also with the requirements of Rule 1.7. Under that Rule, the licensed paralegal practitioner must disclose the risks associated with the licensed paralegal practitioner's dual role as both legal adviser and participant in the transaction, such as the risk that the licensed paralegal practitioner will structure the transaction or give legal advice in a way that favors the licensed paralegal practitioner's interests at the expense of the client. Moreover, the licensed paralegal practitioner must obtain the client's informed consent. In some cases, the licensed paralegal practitioner's interest may be such that Rule 1.7 will preclude the licensed paralegal practitioner from seeking the client's consent to the transaction.

[4] If the client is independently represented in the transaction, paragraph (a)(2) of this Rule is inapplicable, and the paragraph (a)(1) requirement for full disclosure is satisfied either by a written disclosure by the licensed paralegal practitioner involved in the transaction or by the client's independent counsel. The fact that the client was independently represented in the transaction is relevant in determining whether the agreement was fair and reasonable to the client as paragraph (a)(1) further requires.

Use of Information Related to Representation

[5] Use of information relating to the representation to the disadvantage of the client violates the licensed paralegal practitioner's duty of loyalty. Paragraph (b) applies when the information is used to benefit either the licensed paralegal practitioner or a third person, such as another client or business associate of the licensed paralegal practitioner. For example, if a licensed paralegal practitioner learns that a client intends to purchase and develop several parcels of land, the licensed paralegal practitioner may not use that information to purchase one of the parcels in competition with the client or to recommend that another client make such a purchase. The rule does not prohibit uses that do not disadvantage the client. Paragraph (b) prohibits disadvantageous use of client information unless the client gives informed consent, except as permitted or required by these Rules. See Rules 1.6, 1.9(c), 3.3, 4.1(b), 8.1 and 8.3.

Gifts to Licensed Paralegal Practitioners

[6] A licensed paralegal practitioner may accept a gift from a client, if the transaction meets general standards of fairness. For example, a simple gift such as a present given at a holiday or as a token of appreciation is permitted. If a client offers the licensed paralegal practitioner a more substantial gift, paragraph (c) does not prohibit the licensed paralegal practitioner from accepting it, although such a gift may be voidable by the client under the doctrine of undue influence, which treats client gifts as presumptively fraudulent. In any event, due to concerns about overreaching and imposition on clients, a licensed paralegal practitioner may not suggest that a substantial gift

be made to the licensed paralegal practitioner or for the licensed paralegal practitioner's benefit.

[7] If effectuation of a substantial gift requires preparing a legal instrument such as a will or conveyance, the client should have the detached advice that another licensed paralegal practitioner or a lawyer can provide.

[8] This Rule does not prohibit a licensed paralegal practitioner from seeking to have the licensed paralegal practitioner or a partner or associate of the licensed paralegal practitioner named as executor of the client's estate or to another potentially lucrative fiduciary position. Nevertheless, such appointments will be subject to the general conflict of interest provision in Rule 1.7. In obtaining the client's informed consent to the conflict, the licensed paralegal practitioner should advise the client concerning the nature and extent of the licensed paralegal practitioner's financial interest in the appointment, as well as the availability of alternative candidates for the position.

Literary Rights

[9] An agreement by which a licensed paralegal practitioner acquires literary or media rights concerning the conduct of the representation creates a conflict between the interests of the client and the personal interests of the licensed paralegal practitioner. Measures suitable in the representation of the client may detract from the publication value of an account of the representation.

Financial Assistance

[10] Licensed paralegal practitioners may not subsidize lawsuits brought on behalf of their clients, including making or guaranteeing loans to their clients for living expenses, because to do so would encourage clients to pursue lawsuits that might not otherwise be brought and because such assistance gives licensed paralegal practitioners too great a financial stake in the litigation. These dangers do not warrant a prohibition on a licensed paralegal practitioner lending a client court costs and litigation expenses.

Person Paying for a Licensed Paralegal Practitioner's Services

[11] Licensed paralegal practitioners are frequently asked to represent a client under circumstances in which a third person will compensate the licensed paralegal practitioner, in whole or in part. The third person might be a relative or friend. Because third-party payers frequently have interests that differ from those of the client, including interests in minimizing the amount spent on the representation and in learning how the representation is progressing, licensed paralegal practitioners are prohibited from accepting or continuing such representations unless the licensed paralegal practitioner determines that there will be no interference with the licensed paralegal practitioner's independent professional judgment and there is informed consent from the client. See also Rule 5.4(c) (prohibiting interference with a licensed paralegal practitioner's professional judgment by one who recommends, employs or pays the licensed paralegal practitioner to render legal services for another).

[12] Sometimes, it will be sufficient for the licensed paralegal practitioner to obtain the client's informed consent regarding the fact of the payment and the identity of the third-party payer. If, however, the fee arrangement creates a conflict of interest for the licensed paralegal practitioner, then the licensed paralegal practitioner must comply with Rule. 1.7. The licensed paralegal practitioner must also conform to the requirements of Rule 1.6 concerning confidentiality. Under Rule 1.7(a), a conflict of interest exists if there is significant risk that the licensed paralegal practitioner's representation of the client will be materially limited by the licensed paralegal practitioner's own interest in the fee arrangement or by the licensed paralegal practitioner's responsibilities to the third-party payer (for example, when the third-party payer is a co-client). Under Rule 1.7(b), the licensed paralegal practitioner may accept or continue the representation with the informed consent of each affected client, unless the conflict is nonconsentable under that paragraph. Under Rule 1.7(b), the informed consent must be confirmed in writing.

Aggregate Settlements

[13] Differences in willingness to make or accept an offer of settlement are among the risks of common representation of multiple clients by a single licensed paralegal practitioner. Under Rule 1.7, this is one of the risks that should be discussed before undertaking the representation, as part of the process of obtaining the clients' informed consent. In addition, Rule 1.2(a) protects each client's right to have the final say in deciding whether to accept or reject an offer of settlement.

Limiting Liability and Settling Malpractice Claims

[14] Agreements prospectively limiting a licensed paralegal practitioner's liability for malpractice are prohibited unless the client is independently represented in making the agreement because they are likely to undermine competent and diligent representation. Also, many clients are unable to evaluate the desirability of making such an agreement before a dispute has arisen, particularly if they are then represented by the licensed paralegal practitioner seeking the agreement. This paragraph does not, however, prohibit a licensed paralegal practitioner from entering into an agreement with the client to arbitrate legal malpractice claims, provided such agreements are enforceable and the client is fully informed of the scope and effect of the agreement. Nor does this paragraph limit the ability of licensed paralegal practitioners to practice in the form of a limited-liability entity, where permitted by law, provided that each licensed paralegal practitioner remains personally liable to the client for his or her own conduct and the firm complies with any conditions required by law, such as provisions requiring client notification or maintenance of adequate liability insurance. Nor does it prohibit an agreement in accordance with Rule 1.2 that defines the scope of the representation, although a definition of scope that makes the obligations of representation illusory will amount to an attempt to limit liability.

[15] Agreements settling a claim or a potential claim for malpractice are not prohibited by this Rule. Nevertheless, in view of the danger that a licensed paralegal practitioner will take unfair advantage of an unrepresented client or former client, the licensed paralegal practitioner must first advise such a person in writing of the appropriateness of independent representation in connection with such a settlement. In addition, the licensed paralegal practitioner must give the client or former client a reasonable opportunity to find and consult independent counsel.

Acquiring Proprietary Interest in Litigation

[16] Paragraph (i) states the traditional general rule that licensed paralegal practitioners are prohibited from acquiring a proprietary interest in litigation. Like paragraph (e), the general rule has its basis in common law champerty and maintenance and is designed to avoid giving the licensed paralegal practitioner too great an interest in the representation. In addition, when the licensed paralegal practitioner acquires an ownership interest in the subject of the representation, it will be more difficult for a client to discharge the licensed paralegal practitioner if the client so desires. The rule is subject to specific exceptions developed in decisional law and continued in these Rules. The exception for certain advances of the costs of litigation is set forth in paragraph (e). In addition, paragraph (i) sets forth exceptions for liens authorized by law to secure the licensed paralegal practitioner's fees or expenses and contracts for reasonable contingent fees. The law of each jurisdiction determines which liens are authorized by law. These may include liens granted by statute, liens originating in common law and liens acquired by contract with the client. When a licensed paralegal practitioner acquires by contract a security interest in property other than that recovered through the licensed paralegal practitioner's efforts in the litigation, such an acquisition is a business or financial transaction with a client and is governed by the requirements of paragraph (a). Contracts for contingent fees in civil cases are prohibited by Rule 1.5.

Client-Licensed Paralegal Practitioner Sexual Relationships

[17] The relationship between licensed paralegal practitioner and client is a fiduciary one in which the licensed paralegal practitioner occupies the highest position of trust and confidence. The relationship is almost always unequal; thus, a sexual relationship between licensed paralegal practitioner and client can involve unfair exploitation of the licensed paralegal practitioner's fiduciary role, in violation of the licensed paralegal practitioner's basic ethical obligation not to use the trust of the client to the client's disadvantage. In addition, such a relationship presents a significant danger that, because of the licensed paralegal practitioner's emotional involvement, the licensed paralegal practitioner will be unable to represent the client without impairment of the exercise of independent professional judgment. Because of the significant danger of harm to client interests and because the client's own emotional involvement renders it unlikely that the client could give adequate informed consent, this Rule creates a rebuttable prohibition on the licensed paralegal

practitioner's having sexual relations with a client regardless of whether the relationship is consensual and regardless of the absence of prejudice to the client.

[18] Spousal relationships and sexual relationships that predate the licensed paralegal practitioner-client relationship are not prohibited. Issues relating to the exploitation of the fiduciary relationship and client dependency are diminished when the sexual relationship existed prior to the commencement of the licensed paralegal practitioner-client relationship. However, before proceeding with the representation in these circumstances, the licensed paralegal practitioner should consider whether the licensed paralegal practitioner's ability to represent the client will be materially limited by the relationship. See Rule 1.7(a)(2).

[19] When the client is an organization, paragraph (j) of this Rule prohibits a licensed paralegal practitioner for the organization from having a sexual relationship with a constituent of the organization who supervises, directs or regularly consults with that licensed paralegal practitioner concerning the organization's legal matters.

Imputation of Prohibitions

[20] Under paragraph (k), a prohibition on conduct by an individual licensed paralegal practitioner in paragraphs (a) through (i) also applies to all licensed paralegal practitioners associated in a firm with the personally prohibited licensed paralegal practitioner. For example, one licensed paralegal practitioner in a firm may not enter into a business transaction with a client of another member of the firm without complying with paragraph (a), even if the first licensed paralegal practitioner is not personally involved in the representation of the client. The prohibition set forth in paragraph (j) is personal and is not applied to associated licensed paralegal practitioners.

Rule 1.9. Duties to Former Clients.

(a) A licensed paralegal practitioner who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

(b) A licensed paralegal practitioner shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the licensed paralegal practitioner formerly was associated had previously represented a client

(b)(1) whose interests are materially adverse to that person; and

(b)(2) about whom the licensed paralegal practitioner had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter, unless the former client gives informed consent, confirmed in writing.

(c) A licensed paralegal practitioner who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(c)(1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or

(c)(2) reveal information relating to the representation except as these Rules would permit or require.

Comment

[1] After termination of a licensed paralegal practitioner-client relationship, a licensed paralegal practitioner has certain continuing duties with respect to confidentiality and conflicts of interest and thus may not represent another client except in conformity with this Rule. Under this Rule, for example, a licensed paralegal practitioner who has represented multiple clients in a matter could not represent one of the clients against the others in the same or a substantially related matter after a dispute arose among the clients in that matter, unless all affected clients give informed consent. See Comment [9]. Current and former government licensed paralegal practitioners must comply with this Rule to the extent required by Rule 1.11.

[2] The scope of a "matter" for purposes of this Rule depends on the facts of a particular situation or transaction. The licensed paralegal practitioner's involvement in a matter can also be a question of degree. When a licensed paralegal practitioner has been directly involved in a specific transaction, subsequent representation of other clients with materially adverse interests in that transaction clearly is prohibited. On the other hand, a licensed paralegal practitioner who recurrently handled a type of problem for a former client is not precluded from later representing another client in a factually distinct problem of that type even though the subsequent representation involves a position adverse to the prior client. The underlying question is whether the licensed paralegal practitioner was so involved in the matter that the subsequent representation can be justly regarded as a changing of sides in the matter in question.

[3] Matters are "substantially related" for purposes of this Rule if they involve the same transaction or legal dispute or if there otherwise is a substantial risk that confidential factual information as would normally have been obtained in the prior representation would materially advance the client's position in the subsequent matter. For example, a licensed paralegal practitioner who has represented a businessperson and learned extensive private financial information about that person may not then represent that person's spouse in seeking a divorce. Information that has been disclosed to the public or to other parties adverse to the former client ordinarily will not be disqualifying. Information acquired in a prior representation may have been rendered obsolete by the passage of time, a circumstance that may be relevant in

determining whether two representations are substantially related. In the case of an organizational client, general knowledge of the client's policies and practices ordinarily will not preclude a subsequent representation; on the other hand, knowledge of specific facts gained in a prior representation that are relevant to the matter in question ordinarily will preclude such a representation. A former client is not required to reveal the confidential information learned by the licensed paralegal practitioner in order to establish a substantial risk that the licensed paralegal practitioner has confidential information to use in the subsequent matter. A conclusion about the possession of such information may be based on the nature of the services the licensed paralegal practitioner provided the former client and information that would in ordinary practice be learned by a licensed paralegal practitioner providing such services.

Licensed Paralegal Practitioners Moving Between Firms

[4] When licensed paralegal practitioners have been associated within a firm but then end their association, the question of whether a licensed paralegal practitioner should undertake representation is more complicated. There are several competing considerations. First, the client previously represented by the former firm must be reasonably assured that the principle of loyalty to the client is not compromised. Second, the rule should not be so broadly cast as to preclude other persons from having reasonable choice of legal counsel. Third, the rule should not unreasonably hamper licensed paralegal practitioners from forming new associations and taking on new clients after having left a previous association. If the concept of imputation were applied with unqualified rigor, the result would be radical curtailment of the opportunity of licensed paralegal practitioners to move from one practice setting to another and of the opportunity of clients to change counsel.

[5] Paragraph (b) operates to disqualify the licensed paralegal practitioner only when the licensed paralegal practitioner involved has actual knowledge of information protected by Rules 1.6 and 1.9(c). Thus, if a licensed paralegal practitioner while with one firm acquired no knowledge or information relating to a particular client of the firm, and that licensed paralegal practitioner later joined another firm, neither the licensed paralegal practitioner individually nor the second firm is disqualified from representing another client in the same or a related matter even though the interests of the two clients conflict. See Rule 1.10(b) for the restrictions on a firm once a licensed paralegal practitioner has terminated association with the firm.

[6] Application of paragraph (b) depends on a situation's particular facts, aided by inferences, deductions or working presumptions that reasonably may be made about the way in which licensed paralegal practitioners work together. A licensed paralegal practitioner may have general access to files of all clients of a law firm and may regularly participate in discussions of their affairs; it should be inferred that such a licensed paralegal practitioner in fact is privy to all

information about all the firm's clients. In contrast, another licensed paralegal practitioner may have access to the files of only a limited number of clients and participate in discussions of the affairs of no other clients; in the absence of information to the contrary, it should be inferred that such a licensed paralegal practitioner in fact is privy to information about the clients actually served but not those of other clients. In such an inquiry, the burden of proof should rest upon the firm whose disqualification is sought.

[7] Independent of the question of disqualification of a firm, a licensed paralegal practitioner changing professional association has a continuing duty to preserve confidentiality of information about a client formerly represented. See Rules 1.6 and 1.9(c).

[8] Paragraph (c) provides that information acquired by the licensed paralegal practitioner in the course of representing a client may not subsequently be used or revealed by the licensed paralegal practitioner to the disadvantage of the client. However, the fact that a licensed paralegal practitioner has once served a client does not preclude the licensed paralegal practitioner from using generally known information about that client when later representing another client.

[9] The provisions of this Rule are for the protection of former clients and can be waived if the client gives informed consent, which consent must be confirmed in writing under paragraphs (a) and (b). See Rule 1.0(b) and (f). With regard to the effectiveness of an advance waiver, see Comment [22] to Rule 1.7. With regard to disqualification of a firm with which a licensed paralegal practitioner is or was formerly associated, see Rule 1.10.

Rule 1.10. Imputation of Conflicts of Interest: General Rule.

(a) While licensed paralegal practitioners are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9, unless the prohibition is based on a personal interest of the prohibited licensed paralegal practitioner and does not present a significant risk of materially limiting the representation of the client by the remaining licensed paralegal practitioners in the firm.

(b) When a licensed paralegal practitioner has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated licensed paralegal practitioner and not currently represented by the firm, unless:

(b)(1) the matter is the same or substantially related to that in which the formerly associated licensed paralegal practitioner represented the client; and

(b)(2) any licensed paralegal practitioner or licensed paralegal practitioner remaining in the firm has information protected by Rules 1.6 and 1.9(c) that is material to the matter.

(c) When a licensed paralegal practitioner becomes associated with a firm, no licensed paralegal practitioner or licensed paralegal practitioner associated in the firm shall knowingly represent a person in a matter in which that licensed paralegal practitioner is disqualified under Rule 1.9 unless:

(c)(1) the personally disqualified licensed paralegal practitioner is timely screened from any participation in the matter and is apportioned no part of the fee therefrom, and

(c)(2) written notice is promptly given to any affected former client.

(d) A disqualification prescribed by this Rule may be waived by the affected client under the conditions stated in Rule 1.7.

(e) The disqualification of licensed paralegal practitioners associated in a firm with former or current government licensed paralegal practitioners is governed by Rule 1.11.

(f) Reserved.

Comment

Definition of ''Firm''

[1] “Firm,” as used in this rule, is defined in Rule 1.0(d). Whether two or more licensed paralegal practitioners constitute a firm for purposes of determining conflict imputation can depend on the specific facts. See Rule 1.0, Comments [2] - [4].

Principles of Imputed Disqualification

[2] The rule of imputed disqualification stated in paragraph (a) gives effect to the principle of loyalty to the client as it applies to licensed paralegal practitioners who practice in a law firm. Such situations can be considered from the premise that a firm of licensed paralegal practitioners is essentially one licensed paralegal practitioner for purposes of the rules governing loyalty to the client, or from the premise that each licensed paralegal practitioner is vicariously bound by the obligation of loyalty owed by each licensed paralegal practitioner with whom the licensed paralegal practitioner is associated. Paragraph (a) operates only among the licensed paralegal practitioners currently associated in a firm. When a licensed paralegal practitioner moves from one firm to another, the situation is governed by Rules 1.9(b) and 1.10(b).

[3] The rule in paragraph (a) does not prohibit representation where neither questions of client loyalty nor protection of confidential information are presented. Where one licensed paralegal practitioner in a firm could not effectively represent a given client because of strong political beliefs, for example, but that licensed paralegal practitioner will do no work on the case and the personal beliefs of the licensed paralegal practitioner will not materially

limit the representation by others in the firm, the firm should not be disqualified. On the other hand, if an opposing party in a case were owned by a licensed paralegal practitioner in the law firm, and others in the firm would be materially limited in pursuing the matter because of loyalty to that licensed paralegal practitioner, the personal disqualification of the licensed paralegal practitioner would be imputed to all others in the firm.

[4] The rule in paragraph (a) also does not prohibit representation by others in the firm where the person prohibited from involvement in a matter is neither an attorney nor a licensed paralegal practitioner, such as a licensed paralegal or legal secretary. Nor does paragraph (a) prohibit representation if the licensed paralegal practitioner is prohibited from acting because of events before the person became a licensed paralegal practitioner, for example, work that the person did while a student. Such persons, however, ordinarily must be screened from any personal participation in the matter to avoid communication to others in the firm of confidential information that both the nonparalegal practitioners and the firm have a legal duty to protect. See Rule 5.3.

[5] Rule 1.10(b) operates to permit a law firm, under certain circumstances, to represent a person with interests directly adverse to those of a client represented by a licensed paralegal practitioner who formerly was associated with the firm. The rule applies regardless of when the formerly associated licensed paralegal practitioner represented the client. However, the law firm may not represent a person with interests adverse to those of a present client of the firm, which would violate Rule 1.7. Moreover, the firm may not represent the person where the matter is the same or substantially related to that in which the formerly associated licensed paralegal practitioner represented the client and any other licensed paralegal practitioner currently in the firm has material information protected by Rules 1.6 and 1.9(c).

[6] Rule 1.10(d) removes imputation with the informed consent of the affected client or former client under the conditions stated in Rule 1.7. The conditions stated in Rule 1.7 require the licensed paralegal practitioner to determine that the representation is not prohibited by Rule 1.7 and that each affected client or former client has given informed consent to the representation, confirmed in writing. In some cases, the risk may be so severe that the conflict may not be cured by client consent. For a discussion of the effectiveness of client waivers of conflicts that might arise in the future, see Rule 1.7, Comment [22]. For a definition of informed consent, see Rule 1.0(f).

[7] Where a licensed paralegal practitioner has joined a private firm after having represented the government, imputation is governed by Rule 1.11(b) and (c), not this Rule. Under Rule 1.11(d), where a licensed paralegal practitioner represents the government after having served clients in private practice, nongovernmental employment or in another government agency, former-client conflicts are not imputed to government licensed paralegal practitioners associated with the individually disqualified licensed paralegal practitioner.

[8] Where a licensed paralegal practitioner is prohibited from engaging in certain transactions under Rule 1.8, paragraph (k) of that Rule, and not this Rule, determines whether that prohibition also applies to other licensed paralegal practitioners associated in a firm with the personally prohibited licensed paralegal practitioner.

Rule 1.11. Special Conflicts of Interest for Former and Current Government Employees.

(a) Except as law may otherwise expressly permit, a licensed paralegal practitioner who has formerly served as a public officer or employee of the government:

(a)(1) is subject to Rule 1.9(c); and

(a)(2) shall not otherwise represent a client in connection with a matter in which the licensed paralegal practitioner participated personally and substantially as a public officer or employee, unless the appropriate government agency gives its informed consent, confirmed in writing, to the representation.

(b) When a licensed paralegal practitioner is disqualified from representation under paragraph (a), no attorney or licensed paralegal practitioner in a firm with which that licensed paralegal practitioner is associated may knowingly undertake or continue representation in such a matter unless:

(b)(1) the disqualified licensed paralegal practitioner is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(b)(2) written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this Rule.

(c) Except as law may otherwise expressly permit, a licensed paralegal practitioner having information that the licensed paralegal practitioner knows is confidential government information about a person acquired when the licensed paralegal practitioner was a public officer or employee may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. As used in this Rule, the term “confidential government information” means information that has been obtained under governmental authority and which at the time the rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose and which is not otherwise available to the public. A firm with which that licensed paralegal practitioner is associated may undertake or continue representation in the matter only if the disqualified licensed paralegal practitioner is screened from any participation in the matter and is apportioned no part of the fee therefrom.

(d) Except as law may otherwise expressly permit, a licensed paralegal practitioner serving as a public officer or employee:

(d)(1) is subject to Rules 1.7 and 1.9; and

(d)(2) shall not:

(d)(2)(i) participate in a matter in which the licensed paralegal practitioner participated personally and substantially while in private practice or nongovernmental employment, unless the appropriate government agency gives its informed consent, confirmed in writing; or

(d)(2)(ii) negotiate for private employment with any person who is involved as a party or as counsel for a party in a matter in which the licensed paralegal practitioner is participating personally and substantially.

(e) As used in this Rule, the term “matter” includes:

(e)(1) any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties; and

(e)(2) any other matter covered by the conflict of interest rules of the appropriate government agency.

Comment

[1] A licensed paralegal practitioner, who has served or is currently serving as a public officer or employee is personally subject to the licensed paralegal Practitioner Rules of Professional Conduct, including the prohibition against concurrent conflicts of interest stated in Rule 1.7. In addition, such a licensed paralegal practitioner may be subject to statutes and government regulations regarding conflicts of interest. Such statutes and regulations may circumscribe the extent to which the government agency may give consent under this Rule. See Rule 1.0(f) for the definition of informed consent.

[2] Paragraphs (a)(1), (a)(2) and (d)(1) restate the obligations of an individual licensed paralegal practitioner who has served or is currently serving as an officer or employee of the government toward a former government or private client. Rule 1.10 is not applicable to the conflicts of interest addressed by this Rule. Rather, paragraph (b) sets forth a special imputation rule for former government licensed paralegal practitioners that provides for screening and notice. Because of the special problems raised by imputation within a government agency, paragraph (d) does not impute the conflicts of a licensed paralegal practitioner currently serving as an officer or employee of the government to other associated government officers or employees, although ordinarily it will be prudent to screen such licensed paralegal practitioners.

[3] Paragraphs (a)(2) and (d)(2) apply regardless of whether a licensed paralegal practitioner is adverse to a former client and are thus designed not only to protect the former client, but also to prevent a licensed paralegal

practitioner from exploiting public office for the advantage of another client. For example, a licensed paralegal practitioner who has pursued a claim on behalf of the government may not pursue the same claim on behalf of a later private client after the licensed paralegal practitioner has left government service, except when authorized to do so by the government agency under paragraph (a). As with paragraphs (a)(1) and (d)(1), Rule 1.10 is not applicable to the conflicts of interest addressed by these paragraphs.

[4] This Rule represents a balancing of interests. On the one hand, where the successive clients are a government agency and another client, public or private, the risk exists that power or discretion vested in that agency might be used for the special benefit of the other client. A licensed paralegal practitioner should not be in a position where benefit to the other client might affect performance of the licensed paralegal practitioner's professional functions on behalf of the government. Also, unfair advantage could accrue to the other client by reason of access to confidential government information about the client's adversary obtainable only through the licensed paralegal practitioner's government service. On the other hand, the rules governing licensed paralegal practitioners presently or formerly employed by a government agency should not be so restrictive as to inhibit transfer of employment to and from the government. The government has a legitimate interest in attracting qualified licensed paralegal practitioners as well as in maintaining high ethical standards. Thus a former government licensed paralegal practitioner is disqualified only from particular matters in which the licensed paralegal practitioner participated personally and substantially. The provisions for screening and waiver in paragraph (b) are necessary to prevent the disqualification rule from imposing too severe a deterrent against entering public service. The limitation of disqualification in paragraphs (a)(2) and (d)(2) to matters involving a specific party or parties, rather than extending disqualification to all substantive issues on which the licensed paralegal practitioner worked, serves a similar function.

[5] When a licensed paralegal practitioner has been employed by one government agency and then moves to a second government agency, it may be appropriate to treat that second agency as another client for purposes of this Rule, as when a licensed paralegal practitioner is employed by a city and subsequently is employed by a federal agency. However, because the conflict of interest is governed by paragraph (d), the latter agency is not required to screen the licensed paralegal practitioner as paragraph (b) requires a law firm to do. The question of whether two government agencies should be regarded as the same or different clients for conflict of interest purposes is beyond the scope of these Rules.

[6] Paragraphs (b) and (c) contemplate a screening arrangement. See Rule 1.0(m) (requirements for screening procedures). These paragraphs do not prohibit a licensed paralegal practitioner from receiving a salary or partnership share established by prior independent agreement, but that licensed paralegal practitioner may not receive compensation directly relating to the fee in the matter in which the licensed paralegal practitioner is disqualified.

[7] Notice, including a description of the screened licensed paralegal practitioner's prior representation and of the screening procedures employed, generally should be given as soon as practicable after the need for screening becomes apparent.

[8] Paragraph (c) operates only when the licensed paralegal practitioner in question has knowledge of the information, which means actual knowledge; it does not operate with respect to information that merely could be imputed to the licensed paralegal practitioner.

[9] Reserved.

[10] For purposes of paragraph (e) of this Rule, a "matter" may continue in another form. In determining whether two particular matters are the same, the licensed paralegal practitioner should consider the extent to which the matters involve the same basic facts, the same or related parties, and the time elapsed.

Rule 1.12. Arbitrator, Mediator or Other Third-Party Neutral.

(a) A licensed paralegal practitioner shall not represent anyone in connection with a matter in which the licensed paralegal practitioner participated personally and substantially as an arbitrator, mediator or other third-party neutral, unless all parties to the proceeding give informed consent, confirmed in writing.

(b) A licensed paralegal practitioner shall not negotiate for employment with any person who is involved as a party or as counsel for a party in a matter in which the licensed paralegal practitioner is participating personally and substantially as an arbitrator, mediator or other third-party neutral.

(c) If a licensed paralegal practitioner is disqualified by paragraph (a), no attorney or licensed paralegal practitioner in a firm with which that licensed paralegal practitioner is associated may knowingly undertake or continue representation in the matter unless:

(c)(1) the disqualified licensed paralegal practitioner is timely screened from any participation in the matter and is apportioned no part of the fee from that matter; and

(c)(2) written notice is promptly given to the parties and any appropriate tribunal.

(d) Reserved.

Rule 1.13. Organization as a Client.

(a) A licensed paralegal practitioner employed or retained by an organization represents the organization acting through its duly authorized constituents.

(b) If a licensed paralegal practitioner for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law that reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, then the licensed paralegal practitioner shall proceed as is reasonably necessary in the best interest of the organization. Unless the licensed paralegal practitioner reasonably believes that it is not necessary in the best interest of the organization to do so, the licensed paralegal practitioner shall refer the matter to higher authority in the organization, including, if warranted by the circumstances, to the highest authority that can act on behalf of the organization as determined by applicable law.

(c) Except as provided in paragraph (d), if

(c)(1) despite the licensed paralegal practitioner's efforts in accordance with paragraph (b), the highest authority that can act on behalf of the organization insists upon or fails to address in a timely and appropriate manner an action, or a refusal to act, that is clearly a violation of law, and

(c)(2) the licensed paralegal practitioner reasonably believes that the violation is reasonably certain to result in substantial injury to the organization, then the licensed paralegal practitioner may reveal information relating to the representation whether or not Rule 1.6 permits such disclosure, but only if and to the extent the licensed paralegal practitioner reasonably believes necessary to prevent substantial injury to the organization.

(d) Reserved.

(e) A licensed paralegal practitioner who has been discharged and reasonably believes the discharge was because of the licensed paralegal practitioner's actions taken pursuant to paragraphs (b) or (c), or who withdraws under circumstances that require or permit the licensed paralegal practitioner to take action under either of those paragraphs, shall proceed as the licensed paralegal practitioner reasonably believes necessary to ensure that the organization's highest authority is informed of the licensed paralegal practitioner's discharge or withdrawal.

(f) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a licensed paralegal practitioner shall explain the identity of the client when the licensed paralegal practitioner knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the licensed paralegal practitioner is dealing.

(g) A licensed paralegal practitioner representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 1.7. If the organization's consent to the dual representation is required by Rule 1.7, the consent shall be

given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.

(h) Reserved.

Rule 1.14. Client with Diminished Capacity.

(a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the licensed paralegal practitioner shall, as far as reasonably possible, maintain a normal licensed paralegal practitioner-client relationship with the client.

(b) When the licensed paralegal practitioner reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the licensed paralegal practitioner may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client.

(c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the licensed paralegal practitioner is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

Comment

[1] The normal licensed paralegal practitioner-client relationship is based on the assumption that the client, when properly advised and assisted, is capable of making decisions about important matters. When the client is a minor or suffers from a diminished mental capacity, however, maintaining the ordinary licensed paralegal practitioner-client relationship may not be possible in all respects. In particular, a severely incapacitated person may have no power to make legally binding decisions. Nevertheless, a client with diminished capacity often has the ability to understand, deliberate upon and reach conclusions about matters affecting the client's own well-being. For example, children as young as five or six years of age, and certainly those of ten or twelve, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody. So also, it is recognized that some persons of advanced age can be quite capable of handling routine financial matters while needing special legal protection concerning major transactions.

[2] The fact that a client suffers a disability does not diminish the licensed paralegal practitioner's obligation to treat the client with attention and respect. Even if the person has a legal representative, the licensed paralegal

practitioner should as far as possible accord the represented person the status of client, particularly in maintaining communication.

[3] The client may wish to have family members or other persons participate in discussions with the licensed paralegal practitioner. When necessary to assist in the representation, the presence of such persons generally does not affect the applicability of the attorney-client evidentiary privilege. Nevertheless, the licensed paralegal practitioner must keep the client's interests foremost and, except for protective action authorized under paragraph (b), must look to the client, and not family members, to make decisions on the client's behalf.

[4] If a legal representative has already been appointed for the client, the licensed paralegal practitioner should ordinarily look to the representative for decisions on behalf of the client. In matters involving a minor, whether the licensed paralegal practitioner should look to the parents as natural guardians may depend on the type of proceeding or matter in which the licensed paralegal practitioner is representing the minor. If the licensed paralegal practitioner represents the guardian as distinct from the ward, and is aware that the guardian is acting adversely to the ward's interest, the licensed paralegal practitioner may have an obligation to prevent or rectify the guardian's misconduct. See Rule 1.2(d).

Taking Protective Action

[5] If a licensed paralegal practitioner reasonably believes that a client is at risk of substantial physical, financial or other harm unless action is taken, and that a normal licensed paralegal practitioner-client relationship cannot be maintained as provided in paragraph (a) because the client lacks sufficient capacity to communicate or to make adequately considered decisions in connection with the representation, then paragraph (b) permits the licensed paralegal practitioner to take protective measures deemed necessary. Such measures could include: consulting with family members, using a reconsideration period to permit clarification or improvement of circumstances, using voluntary surrogate decision-making tools such as durable powers of attorney or consulting with support groups, professional services, adult-protective agencies or other individuals or entities that have the ability to protect the client. In taking any protective action, the licensed paralegal practitioner should be guided by such factors as the wishes and values of the client to the extent known, the client's best interests and the goals of intruding into the client's decision-making autonomy to the least extent feasible, maximizing client capacities and respecting the client's family and social connections.

[6] In determining the extent of the client's diminished capacity, the licensed paralegal practitioner should consider and balance such factors as: the client's ability to articulate reasoning leading to a decision, variability of state of mind and ability to appreciate consequences of a decision; the substantive fairness of a decision; and the consistency of a decision with the known long-term commitments and values of the client. In appropriate circumstances, the

licensed paralegal practitioner may seek guidance from an appropriate diagnostician.

[7] If a legal representative has not been appointed, the licensed paralegal practitioner should consider whether appointment of a guardian ad litem, conservator or guardian is necessary to protect the client's interests. Thus, if a client with diminished capacity has substantial property that should be sold for the client's benefit, effective completion of the transaction may require appointment of a legal representative. In addition, rules of procedure in litigation sometimes provide that minors or persons with diminished capacity must be represented by a guardian or next friend if they do not have a general guardian. In many circumstances, however, appointment of a legal representative may be more expensive or traumatic for the client than circumstances in fact require. Evaluation of such circumstances is a matter entrusted to the professional judgment of the licensed paralegal practitioner. In considering alternatives, however, the licensed paralegal practitioner should be aware of any law that requires the licensed paralegal practitioner to advocate the least restrictive action on behalf of the client.

Disclosure of the Client's Condition

[8] Disclosure of the client's diminished capacity could adversely affect the client's interests. For example, raising the question of diminished capacity could, in some circumstances, lead to proceedings for involuntary commitment. Information relating to the representation is protected by Rule 1.6. Therefore, unless authorized to do so, the licensed paralegal practitioner may not disclose such information. When taking protective action pursuant to paragraph (b), the licensed paralegal practitioner is impliedly authorized to make the necessary disclosures, even when the client directs the licensed paralegal practitioner to the contrary. Nevertheless, given the risks of disclosure, paragraph (c) limits what the licensed paralegal practitioner may disclose in consulting with other individuals or entities or seeking the appointment of a legal representative. At the very least, the licensed paralegal practitioner should determine whether it is likely that the person or entity consulted with will act adversely to the client's interests before discussing matters related to the client. The licensed paralegal practitioner's position in such cases is an unavoidably difficult one.

[9] Reserved.

[10] Reserved.

Rule 1.15. Safekeeping Property.

(a) A licensed paralegal practitioner shall hold property of clients or third persons that is in a licensed paralegal practitioner's possession in connection with a representation separate from the licensed paralegal practitioner's own property. Funds shall be kept in a separate account maintained in the state

where the licensed paralegal practitioner's office is situated or elsewhere with the consent of the client or third person. The account may only be maintained in a financial institution that agrees to report to the Office of Professional Conduct in the event any instrument in properly payable form is presented against an attorney or licensed paralegal practitioner trust account containing insufficient funds, irrespective of whether or not the instrument is honored. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the licensed paralegal practitioner and shall be preserved for a period of five years after termination of the representation.

(b) A licensed paralegal practitioner may deposit the licensed paralegal practitioner's own funds in a client trust account for the sole purpose of paying bank service charges on that account, but only in an amount necessary for that purpose.

(c) A licensed paralegal practitioner shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the licensed paralegal practitioner only as fees are earned or expenses incurred.

(d) Upon receiving funds or other property in which a client or third person has an interest, a licensed paralegal practitioner shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a licensed paralegal practitioner shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(e) When in the course of representation a licensed paralegal practitioner is in possession of property in which two or more persons (one of whom may be the licensed paralegal practitioner) claim interests, the property shall be kept separate by the licensed paralegal practitioner until the dispute is resolved. The licensed paralegal practitioner shall promptly distribute all portions of the property as to which the interests are not in dispute.

Comment

[1] A licensed paralegal practitioner should hold property of others with the care required of a professional fiduciary. Securities should be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances. All property which is the property of clients or third persons, including prospective clients, must be kept separate from the licensed paralegal practitioner's business and personal property and, if monies, in one or more trust accounts. In addition to normal monthly maintenance fees on each account, licensed paralegal practitioners can anticipate that financial institutions may charge additional fees for reporting overdrafts in accordance with this Rule. A licensed paralegal practitioner should maintain on a current basis

books and records in accordance with generally accepted accounting practice and comply with any recordkeeping rules established by law or court order.

[2] While normally it is impermissible to commingle the licensed paralegal practitioner's own funds with client funds, paragraph (b) provides that it is permissible when necessary to pay bank service charges on that account. Accurate records must be kept regarding which part of the funds are the licensed paralegal practitioner's.

[3] Licensed paralegal practitioners often receive funds from third parties from which the licensed paralegal practitioner's fee will be paid. The licensed paralegal practitioner is not required to remit to the client funds that the licensed paralegal practitioner reasonably believes represent fees owed. However, a licensed paralegal practitioner may not hold funds to coerce a client into accepting the licensed paralegal practitioner's contention. The disputed portion of the funds must be kept in a trust account, and the licensed paralegal practitioner should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds shall be promptly distributed.

[4] Paragraph (e) also recognizes that third parties may have lawful claims against specific funds or other property in a licensed paralegal practitioner's custody. A licensed paralegal practitioner may have a duty under applicable law to protect such third-party claims against wrongful interference by the client. In such cases, when the third-party claim is not frivolous under applicable law, the licensed paralegal practitioner must refuse to surrender the property to the client until the claims are resolved. A licensed paralegal practitioner should not unilaterally assume to arbitrate a dispute between the client and the third party.

[5] The obligations of a licensed paralegal practitioner under this Rule are independent of those arising from activity other than rendering legal services. For example, a licensed paralegal practitioner who serves as an escrow agent is governed by the applicable law relating to fiduciaries even though the licensed paralegal practitioner does not render legal services in the transaction and is not governed by this Rule.

[6] A licensed paralegal practitioners' fund for client protection provides a means through the collective efforts of the Bar to reimburse persons who have lost money or property as a result of dishonest conduct of a licensed paralegal practitioner. Where such a fund has been established, a licensed paralegal practitioner must participate where it is mandatory, and, even when it is voluntary, the licensed paralegal practitioner should participate.

Rule 1.16. Declining or Terminating Representation.

(a) A licensed paralegal practitioner shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(a)(1) the representation will result in violation of the Licensed Paralegal Practitioner Rules of Professional Conduct or other law;

(a)(2) the licensed paralegal practitioner's physical or mental condition materially impairs the licensed paralegal practitioner's ability to represent the client; or

(a)(3) the licensed paralegal practitioner is discharged.

(b) A licensed paralegal practitioner may withdraw from representing a client if:

(b)(1) withdrawal can be accomplished without material adverse effect on the interests of the client;

(b)(2) the client persists in a course of action involving the licensed paralegal practitioner's services that the licensed paralegal practitioner reasonably believes is criminal or fraudulent;

(b)(3) the client has used the licensed paralegal practitioner's services to perpetrate a crime or fraud;

(b)(4) the client insists upon taking action that the licensed paralegal practitioner considers repugnant or with which the licensed paralegal practitioner has a fundamental disagreement;

(b)(5) the client fails substantially to fulfill an obligation to the licensed paralegal practitioner regarding the licensed paralegal practitioner's services and has been given reasonable warning that the licensed paralegal practitioner will withdraw unless the obligation is fulfilled;

(b)(6) the representation will result in an unreasonable financial burden on the licensed paralegal practitioner or has been rendered unreasonably difficult by the client; or

(b)(7) other good cause for withdrawal exists.

(c) Reserved.

(d) Upon termination of representation, a licensed paralegal practitioner shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The licensed paralegal practitioner must provide, upon request, the client's file to the client. The licensed paralegal practitioner may reproduce and retain copies of the client file at the licensed paralegal practitioner's expense.

Comment

[1] A licensed paralegal practitioner should not accept representation in a matter unless it can be performed competently, promptly, without improper conflict of interest and to completion. Ordinarily, a representation in a matter is

completed when the agreed upon assistance has been concluded. See Rules 1.2(c) and 6.5. See also Rule 1.3, Comment 4.

Mandatory Withdrawal

[2] A licensed paralegal practitioner ordinarily must decline or withdraw from representation if the client demands that the licensed paralegal practitioner engage in conduct that is illegal or violates the Licensed Paralegal Practitioner Rules of Professional Conduct or other law. The licensed paralegal practitioner is not obliged to decline or withdraw simply because the client suggests such a course of conduct; a client may make such a suggestion in the hope that a licensed paralegal practitioner will not be constrained by a professional obligation.

[3] Reserved.

Discharge

[4] A client has a right to discharge a licensed paralegal practitioner at any time, with or without cause, subject to liability for payment for the licensed paralegal practitioner's services. Where future dispute about the withdrawal may be anticipated, it may be advisable to prepare a written statement reciting the circumstances.

[5] Reserved.

[6] If the client has severely diminished capacity, the client may lack the legal capacity to discharge the licensed paralegal practitioner, and in any event the discharge may be seriously adverse to the client's interests. The licensed paralegal practitioner should make special effort to help the client consider the consequences and may take reasonably necessary protective action as provided in Rule 1.14.

Optional Withdrawal

[7] A licensed paralegal practitioner may withdraw from representation in some circumstances. The licensed paralegal practitioner has the option to withdraw if it can be accomplished without material adverse effect on the client's interests. Withdrawal is also justified if the client persists in a course of action that the licensed paralegal practitioner reasonably believes is criminal or fraudulent, for a licensed paralegal practitioner is not required to be associated with such conduct even if the licensed paralegal practitioner does not further it. Withdrawal is also permitted if the licensed paralegal practitioner's services were misused in the past even if that would materially prejudice the client. The licensed paralegal practitioner may also withdraw where the client insists on taking action that the licensed paralegal practitioner considers repugnant or with which the licensed paralegal practitioner has a fundamental disagreement.

[8] A licensed paralegal practitioner may withdraw if the client refuses to abide by the terms of an agreement relating to the representation, such as an agreement concerning fees or court costs or an agreement limiting the objectives of the representation.

Assisting the Client Upon Withdrawal

[9] Even if the licensed paralegal practitioner has been unfairly discharged by the client, a licensed paralegal practitioner must take all reasonable steps to mitigate the consequences to the client. Upon termination of representation, a licensed paralegal practitioner shall provide, upon request, the client's file to the client notwithstanding any other law. It is impossible to set forth one all encompassing definition of what constitutes the client file. However, the client file generally would include the following: all papers and property the client provides to the licensed paralegal practitioner; litigation materials such as pleadings, motions, discovery, and legal memoranda; all correspondence; depositions; expert opinions; business records; exhibits or potential evidence; and witness statements. The client file generally would not include the following: the licensed paralegal practitioner's work product such as recorded mental impressions; research notes; legal theories; internal memoranda; and unfiled pleadings.

Rule 1.17. Sale of Licensed Paralegal Practice.

A licensed paralegal practitioner may sell or purchase a licensed paralegal practice, if the following conditions are satisfied:

(a) The seller ceases to engage in licensed paralegal practice in the geographic area in which the practice has been conducted;

(b) The entire practice is sold to one or more licensed paralegal practitioners;

(c) The seller gives written notice to each of the seller's clients regarding:

(c)(1) the proposed sale and the identity of the purchaser;

(c)(2) the client's right to retain other representation or to take possession of the file; and

(c)(3) the fact that the client's consent to the transfer of the client's files will be presumed if the client does not take any action or does not otherwise object within ninety (90) days of mailing of the notice; and

(d) The fees charged clients are not increased by reason of the sale.

Comment

[1] The practice of law is a profession, not merely a business. Clients are not commodities who can be purchased and sold at will. Pursuant to this Rule,

when a licensed paralegal practitioner or an entire firm ceases to practice, or ceases to practice in an area of law, and other licensed paralegal practitioners or firms take over the representation, the selling licensed paralegal practitioner or firm may obtain compensation for the reasonable value of the practice as may withdrawing partners of law firms. See Rules 5.4 and 5.6.

Notification

In complying with this Rule, a seller must undertake reasonable steps in locating the clients who would be subject to the sale of the practice or area of practice. Typically, this would require attempts to contact the client at the last known address.

Termination of Practice by the Seller

[2] The requirement that all of the private practice be sold is satisfied if the seller in good faith makes the entire practice available for sale to the purchasers. The fact that a number of the seller's clients decide not to be represented by the purchasers but take their matters elsewhere, therefore, does not result in a violation. Return to private practice as a result of an unanticipated change in circumstances does not necessarily result in a violation.

[3] The requirement that the seller cease to engage in the private practice of law in the geographic area does not prohibit employment as a licensed paralegal practitioner on the staff of a public agency or a legal services entity that provides legal services to the poor, or as in-house counsel to a business. [4] The rule permits a sale of an entire practice attendant upon retirement from the private practice of law within the geographic area.

Sale of Entire Practice or Entire Area of Practice

[5] Reserved.

[6] The rule requires that the seller's entire practice be sold. The prohibition against sale of less than an entire practice area protects those clients whose matters are less lucrative and who might find it difficult to secure other counsel if a sale could be limited to substantial fee-generating matters. The purchasers are required to undertake all client matters in the practice or practice area, subject to client consent. This requirement is satisfied, however, even if a purchaser is unable to undertake a particular client matter because of a conflict of interest.

Client Confidences, Consent and Notice

[7] Negotiations between seller and prospective purchaser prior to disclosure of information relating to a specific representation of an identifiable client no more violate the confidentiality provisions of Rule 1.6 than do preliminary discussions concerning the possible association of another licensed paralegal practitioner or mergers between firms, with respect to which client consent is not required. Providing the purchaser access to client-specific information relating to the representation and to the file, however, requires client consent. The rule provides that before such information can be disclosed by the seller to the purchaser, the client must be given actual written notice of the contemplated sale.

[8] Reserved.

[9] All elements of client autonomy, including the client's absolute right to discharge a licensed paralegal practitioner and transfer the representation to another, survive the sale of the practice or area of practice.

Fee Arrangements Between Client and Purchaser

[10] The sale may not be financed by increases in fees charged the clients of the practice. Existing arrangements between the seller and the client as to fees and the scope of the work must be honored by the purchaser.

Other Applicable Ethical Standards

[11] Licensed paralegal practitioners participating in the sale of a law practice are subject to the ethical standards applicable to involving another licensed paralegal practitioner in the representation of a client. These include, for example, the seller’s obligation to exercise competence in identifying a purchaser qualified to assume the practice and the purchaser’s obligation to undertake the representation competently (see Rule 1.1); to charge reasonable fees (see Rule 1.5); to protect client confidences (see Rule 1.6); to avoid disqualifying conflicts and secure the client's informed consent for those conflicts for which there is agreement (see Rules 1.7, 1.9 and Rule 1.0(f) for the definition of informed consent); to releases of liability (see Rule 1.8(h)); and to withdrawal of representation (see Rule 1.16)).
[12] Reserved.

Applicability of the Rule

[13] This Rule applies to the sale of a licensed paralegal practice by representatives of a deceased, disabled or disappeared licensed paralegal practitioner. Thus, the seller may be represented by a nonparalegal practitioner representative not subject to these Rules. Since, however, no licensed paralegal practitioner may participate in a sale of a law practice which does not conform to the requirements of this Rule, the representatives of the seller as well as the purchasing licensed paralegal practitioner can be expected to see to it that they are met.

[14] Admission to or retirement from a licensed paralegal partnership or professional association, retirement plans and similar arrangements, and a sale of tangible assets of a practice, do not constitute a sale or purchase governed by this Rule.

[15] This Rule does not apply to the transfers of legal representation between licensed paralegal practitioners when such transfers are unrelated to the sale of a practice or an area of practice.

[15a] This Rule does not prohibit a licensed paralegal practitioner from selling an interest in a firm and thereafter continuing association with the firm or in an of-counsel capacity.

[15b] Reserved.

[15c] Section (c)(3) of Utah's Rule 1.7 of the Lawyer's Rules of Professional Conduct deviate from the ABA Model Rule by providing that the 90-day client objection period begins to run from the mailing of the notice rather than from receipt of the notice. The only practical way to prove receipt would be by commercial courier or certified/registered mail. Proving receipt of notice could therefore be cost-prohibitive, especially to the small sole practitioner. Often when a licensed paralegal practitioner does not have a viable address for a client, it is because the subject-matter of the representation has become stale or the client has failed to keep in touch with the licensed paralegal practitioner presumably due to a loss of interest in the matter. Both the Utah Rules of Civil Procedure and the Utah Rules of Criminal Procedure allow for notices to be given by regular U.S. mail at the last-known address for the client and provide a presumption of service upon deposit of the notice in the mail, postage pre-paid. There does not appear to be good reason to place a more onerous burden upon a licensed paralegal practitioner selling a practice or area of practice. Whether the client received actual notice of the proposed sale of a practice or area of practice, the client is not abandoned; there is new counsel to protect the client's existing rights.

Rule 1.18. Duties to Prospective Client.

(a) A person who discusses with a licensed paralegal practitioner the possibility of forming a licensed paralegal practitioner-client relationship with respect to a matter is a prospective client.

(b) Even when no licensed paralegal practitioner-client relationship ensues, a licensed paralegal practitioner who has learned information from a prospective client shall not use or reveal that information, except as Rule 1.9 would permit with respect to information of a former client.

(c) A licensed paralegal practitioner subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the licensed paralegal practitioner received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in paragraph (d). If a licensed paralegal practitioner is disqualified from representation under this paragraph, no attorney or licensed paralegal practitioner in a firm with which that licensed paralegal practitioner is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (d).

(d) When the licensed paralegal practitioner has received disqualifying information as defined in paragraph (c), representation is permissible if:

(d)(1) both the affected client and the prospective client have given informed consent, confirmed in writing, or;

(d)(2) the licensed paralegal practitioner who received the information took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client; and

(d)(2)(i) the disqualified licensed paralegal practitioner is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(d)(2)(ii) written notice is promptly given to the prospective client.

Comment

[1] Prospective clients, like clients, may disclose information to a licensed paralegal practitioner, place documents or other property in the licensed paralegal practitioner's custody, or rely on the licensed paralegal practitioner's advice. A licensed paralegal practitioner's consultations with a prospective client usually are limited in time and depth and leave both the prospective client and the licensed paralegal practitioner free (and sometimes required) to

proceed no further. Hence, prospective clients should receive some but not all of the protection afforded clients.

[2] A person becomes a prospective client by consulting with a licensed paralegal practitioner about the possibility of forming a licensed paralegal practitioner-client relationship with respect to a matter. Whether communications, including written, oral, or electronic communications, constitute a consultation depends on the circumstances. For example, a consultation is likely to have occurred if a licensed paralegal practitioner, either in person or through the licensed paralegal practitioner's advertising in any medium, specifically requests or invites the submission of information about a potential representation without clear and reasonably understandable warnings and cautionary statements that limit the licensed paralegal practitioner's obligations, and a person provides information in response. See also Comment [4]. In contrast, a consultation does not occur if a person provides information to a licensed paralegal practitioner in response to advertising that merely describes the licensed paralegal practitioner's education, experience, areas of practice, and contact information, or provides legal information of general interest. Such a person communicates information unilaterally to a licensed paralegal practitioner, without any reasonable expectation that the licensed paralegal practitioner is willing to discuss the possibility of forming a licensed paralegal practitioner - client relationship, and is thus not a "prospective client". Moreover, a person who communicates with a licensed paralegal practitioner for the purpose of disqualifying the licensed paralegal practitioner is not a "prospective client."

[3] It is often necessary for a prospective client to reveal information to the licensed paralegal practitioner during an initial consultation prior to the decision about formation of a licensed paralegal practitioner - client relationship. The licensed paralegal practitioner often must learn such information to determine whether there is a conflict of interest with an existing client and whether the matter is one that the licensed paralegal practitioner is willing to undertake. Paragraph (b) prohibits the licensed paralegal practitioner from using or revealing that information, except as permitted by Rule 1.9, even if the client or licensed paralegal practitioner decides not to proceed with the representation. The duty exists regardless of how brief the initial conference may be.

[4] In order to avoid acquiring disqualifying information from a prospective client, a licensed paralegal practitioner considering whether or not to undertake a new matter should limit the initial consultation to only such information as reasonably appears necessary for that purpose. Where the information indicates that a conflict of interest or other reason for non-representation exists, the licensed paralegal practitioner should so inform the prospective client or decline the representation. If the prospective client wishes to retain the licensed paralegal practitioner, and if consent is possible under Rule 1.7, then consent

from all affected present or former clients must be obtained before accepting the representation.

[5] A licensed paralegal practitioner may condition a consultation with a prospective client on the person's informed consent that no information disclosed during the consultation will prohibit the licensed paralegal practitioner from representing a different client in the matter. See Rule 1.0(f) for the definition of informed consent. If the agreement expressly so provides, the prospective client may also consent to the licensed paralegal practitioner's subsequent use of information received from the prospective client.

[6] Even in the absence of an agreement, under paragraph (c), the licensed paralegal practitioner is not prohibited from representing a client with interests adverse to those of the prospective client in the same or a substantially related matter unless the licensed paralegal practitioner has received from the prospective client information that could be significantly harmful if used in the matter.

[7] Under paragraph (c), the prohibition in this Rule is imputed to other licensed paralegal practitioners as provided in Rule 1.10, but, under paragraph (d)(1), imputation may be avoided if the licensed paralegal practitioner obtains the informed consent, confirmed in writing, of both the prospective and affected clients. In the alternative, imputation may be avoided if the conditions of paragraph (d)(2) are met and all disqualified licensed paralegal practitioners are timely screened and written notice is promptly given to the prospective client. See Rule 1.0(m) (requirements for screening procedures). Paragraph (d)(2)(i) does not prohibit the screened licensed paralegal practitioner from receiving a salary or partnership share established by prior independent agreement, but that licensed paralegal practitioner may not receive compensation directly related to the matter in which the licensed paralegal practitioner is disqualified.

[8] Notice, including a general description of the subject matter about which the licensed paralegal practitioner was consulted, and of the screening procedures employed, generally should be given as soon as practicable after the need for screening becomes apparent.

[9] For the duty of competence of a licensed paralegal practitioner who gives assistance on the merits of a matter to a prospective client, see Rule 1.1. For a licensed paralegal practitioner's duties when a prospective client entrusts valuables or papers to the licensed paralegal practitioner's care, see Rule 1.15.

COUNSELOR

Rule 2.1. Advisor.

In representing a client, a licensed paralegal practitioner shall exercise independent professional judgment and render candid advice. In rendering advice, a licensed paralegal practitioner may refer not only to law but to other considerations such as moral, economic, social and political factors that may be relevant to the client's situation.

Comment

Scope of Advice

[1] A client is entitled to straightforward advice expressing the licensed paralegal practitioner’s honest assessment. Legal advice often involves unpleasant facts and alternatives that a client may be disinclined to confront. In presenting advice, a licensed paralegal practitioner endeavors to sustain the client's morale and may put advice in as acceptable a form as honesty permits. However, a licensed paralegal practitioner should not be deterred from giving candid advice by the prospect that the advice will be unpalatable to the client.

[2] Advice couched in narrow legal terms may be of little value to a client, especially where practical considerations, such as cost or effects on other people, are predominant. Purely technical legal advice, therefore, can sometimes be inadequate. It is proper for a licensed paralegal practitioner to refer to relevant moral and ethical considerations in giving advice. Although a licensed paralegal practitioner is not a moral advisor as such, moral and ethical considerations impinge upon most legal questions and may decisively influence how the law will be applied.

[3] A client may expressly or impliedly ask the licensed paralegal practitioner for purely technical advice. When such a request is made by a client experienced in legal matters, the licensed paralegal practitioner may accept it at face value. When such a request is made by a client inexperienced in legal matters, however, the licensed paralegal practitioner's responsibility as advisor may include indicating that more may be involved than strictly legal considerations.

[4] Matters that go beyond strictly legal questions within the scope of the licensed paralegal practitioner’s license may also be in the domain of another profession. Family matters can involve problems within the professional competence of psychiatry, clinical psychology or social work; business matters can involve problems within the competence of the accounting profession or of financial specialists; legal matters may be beyond the expertise of the licensed paralegal practitioner. Where consultation with a professional in another field or with a lawyer is itself something a competent licensed paralegal practitioner would recommend, the licensed paralegal practitioner should make such a recommendation. At the same time, a licensed paralegal practitioner's advice at its best often consists of recommending a course of action in the face of conflicting recommendations of experts.

Offering Advice

[5] In general, a licensed paralegal practitioner is not expected to give advice until asked by the client. However, when a licensed paralegal practitioner knows that a client proposes a course of action that is likely to result in substantial adverse legal consequences to the client, the licensed paralegal practitioner's duty to the client under Rule 1.4 may require that the licensed paralegal practitioner offer advice if the client's course of action is related to the representation. Similarly, when a matter is likely to involve litigation, it may be necessary under Rules 1.1 and 1.4 to seek competent legal advice from a lawyer. A licensed paralegal practitioner ordinarily has no duty to initiate investigation of a client's affairs or to give advice that the client has indicated is unwanted, but a licensed paralegal practitioner may initiate advice to a client when doing so appears to be in the client's interest and when giving the advice is within the scope of the licensed paralegal practitioner's license.

Rule 2.2. Reserved.

Rule 2.3. Evaluation for Use by Third Persons.

(a) A licensed paralegal practitioner may provide an evaluation of a matter affecting a client for the use of someone other than the client if the licensed paralegal practitioner reasonably believes that making the evaluation is compatible with other aspects of the licensed paralegal practitioner's relationship with the client.

(b) When the licensed paralegal practitioner knows or reasonably should know that the evaluation is likely to affect the client's interests materially and adversely, the licensed paralegal practitioner shall not provide the evaluation unless the client gives informed consent.

(c) Except as disclosure is authorized in connection with a report of an evaluation, information relating to the evaluation is otherwise subject to Rule 1.6.

Comment

Definition

[1] An evaluation may be performed at the client's direction or when impliedly authorized in order to carry out the representation. See Rule 1.2. Such an evaluation may be for the primary purpose of establishing information which may be used by third parties; for example, a calculation of child support obligations of another party.

[2]-[6] Reserved.

Rule 2.4. Reserved.

ADVOCATE

Rule 3.1. Meritorious Claims and Contentions.

A licensed paralegal practitioner shall not assert or controvert an issue in a negotiation, unless there is a basis in law and fact for doing so that is not frivolous.

Comment

[1] The advocate in a negotiation has a duty to use legal procedure for the fullest benefit of the client's cause, but also a duty not to abuse legal procedure. The law, both procedural and substantive, establishes the limits within which an advocate may proceed. However, the law is not always clear and never is static. Accordingly, in determining the proper scope of advocacy, account must be taken of the law's ambiguities and potential for change.

[2] What is required of licensed paralegal practitioners is that they inform themselves about the facts of their clients' cases and the applicable law and determine that they can make good faith arguments in support of their clients' positions. Such action is not frivolous even though the paralegal practitioner believes that the client's position ultimately will not prevail. The action is frivolous, however, if the licensed paralegal practitioner is unable either to make a good-faith argument on the merits of the action taken or to support the action taken by a good-faith argument for an extension, modification or reversal of existing law.

Rule 3.2. Reserved.

Rule 3.3. Candor Toward the Tribunal.

A licensed paralegal practitioner shall not knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the licensed paralegal practitioner.

Comment

Representations by a Licensed Paralegal Practitioner

[1] A licensed paralegal practitioner is responsible for pleadings and other documents prepared for litigation, but is usually not required to have personal

knowledge of matters asserted therein, for litigation documents ordinarily present assertions by the client, or by someone on the client's behalf, and not assertions by the paralegal practitioner. Compare Rule 3.1. However, an assertion purporting to be on the licensed paralegal practitioner's own knowledge, as in an affidavit by the licensed paralegal practitioner, may properly be made only when the licensed paralegal practitioner knows the assertion is true or believes it to be true on the basis of a reasonably diligent inquiry. There are circumstances where failure to make a disclosure is the equivalent of an affirmative misrepresentation. The obligation prescribed in Rule 1.2(d) not to counsel a client to commit or assist the client in committing a fraud applies. Regarding compliance with Rule1.2(d), see the Comment to that Rule. See also the Comment to Rule 8.4.

[2]-[14] Reserved.

Rule 3.4. Fairness to Opposing Party and Counsel.

A licensed paralegal practitioner shall not:

(a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A licensed paralegal practitioner shall not counsel or assist another person to do any such act;

(b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;

(c) knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists;

(d) request a person other than a client to refrain from voluntarily giving relevant information to another party unless:

(d)(1) the person is a relative or an employee or other agent of a client; and

(d)(2) the licensed paralegal practitioner reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

Comment

[1] The procedure of the adversary system contemplates that the evidence in a case is to be marshalled competitively by the contending parties. Fair competition in the adversary system is secured by prohibitions against destruction or concealment of evidence, improperly influencing witnesses, obstructive tactics in discovery procedure and the like.

[2] Documents and other items of evidence are often essential to establish a claim or defense. Subject to evidentiary privileges, the right of an opposing party, including the government, to obtain evidence through discovery or subpoena is an important procedural right. The exercise of that right can be frustrated if relevant material is altered, concealed or destroyed. Applicable law

in many jurisdictions makes it an offense to destroy material for the purpose of impairing its availability in a pending proceeding or one whose commencement can be foreseen. Falsifying evidence is also generally a criminal offense. Paragraph (a) applies to evidentiary material generally, in whatever form it may exist and on whatever medium it may be found.

Rule 3.5. Impartiality and Decorum of the Tribunal.

A paralegal practitioner shall not:

(a) Seek to influence a judge or other official by means prohibited by law; or

(b) Communicate *ex parte* as to the merits of the case with a judge or court official during the proceeding unless authorized to do so by law, rule or court order; or

(c) engage in conduct intended to disrupt a tribunal.

Comment

[1] Many forms of improper influence upon a tribunal are proscribed by criminal law. Others are specified in the Utah Code of Judicial Conduct, with which an advocate should be familiar. A licensed paralegal practitioner is required to avoid contributing to a violation of such provisions.

[2] During a proceeding a licensed paralegal practitioner may not communicate *ex parte* with persons serving in an official capacity in the proceeding, such as judges unless authorized to do so by law, rule or court order.

[2a]-[5] Reserved.

Rule 3.6. Reserved.

Rule 3.7. Reserved.

Rule 3.8. Reserved.

Rule 3.9. Reserved.

TRANSACTIONS WITH PERSONS OTHER THAN CLIENTS

Rule 4.1. Truthfulness in Statements to Others.

In the course of representing a client a licensed paralegal practitioner shall not knowingly:

(a) Make a false statement of material fact or law to a third person; or

(b) Fail to disclose a material fact, when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

Comment

Misrepresentation

[1] A licensed paralegal practitioner is required to be truthful when dealing with others on a client's behalf, but generally has no affirmative duty to inform an opposing party of relevant facts. A misrepresentation can occur if the licensed paralegal practitioner incorporates or affirms a statement of another person that the licensed paralegal practitioner knows is false. Misrepresentations can also occur by partially true but misleading statements or omissions that are the equivalent of affirmative false statements. For dishonest conduct that does not amount to a false statement or for misrepresentation by a licensed paralegal practitioner other than in the course of representing a client, see Rule 8.4.

Statements of Fact

[2] This Rule refers to statements of fact. Whether a particular statement should be regarded as one of fact can depend on circumstances. Under generally accepted conventions in negotiation, certain types of statements ordinarily are not taken as statements of material fact. Estimates of price or value placed on the subject of a transaction and a party's intentions as to an acceptable settlement of a claim are ordinarily in this category, and so is the existence of an undisclosed principal except where nondisclosure of the principal would constitute fraud. Licensed paralegal practitioners should be mindful of their obligations under applicable law to avoid criminal and tortious misrepresentation.

Crime or Fraud by Client

[3] Under Rule 1.2(d), a licensed paralegal practitioner is prohibited from counseling or assisting a client in conduct that the paralegal practitioner knows is criminal or fraudulent. Paragraph (b) states a specific application of the principle set forth in Rule 1.2(d) and addresses the situation where a client’s crime or fraud takes the form of a lie or misrepresentation. Ordinarily, a licensed paralegal practitioner can avoid assisting a client’s crime or fraud by withdrawing from the representation. Sometimes it may be necessary for the licensed paralegal practitioner to give notice of the fact of withdrawal and to disaffirm an opinion, document, affirmation or the like. In extreme cases,

substantive law may require a licensed paralegal practitioner to disclose information relating to the representation to avoid being deemed to have assisted the client's crime or fraud. If the licensed paralegal practitioner can avoid assisting a client's crime or fraud only by disclosing this information, then under paragraph (b) the licensed paralegal practitioner is required to do so, unless the disclosure is prohibited by Rule 1.6.

Rule 4.2. Communication with Persons Represented by Counsel.

(a) General Rule. In representing a client, a licensed paralegal practitioner shall not communicate about the subject of the representation with a person the licensed paralegal practitioner knows to be represented by another lawyer or licensed paralegal practitioner in the matter, unless the licensed paralegal practitioner has the consent of the other lawyer or licensed paralegal practitioner. Notwithstanding the foregoing, a licensed paralegal practitioner may, without such prior consent, communicate with another's client if authorized to do so by any law, rule, or court order, in which event the communication shall be strictly restricted to that allowed by the law, rule or court order, or as authorized by paragraph (b) of this Rule.

(b) Rules Relating to Unbundling of Legal Services. A licensed paralegal practitioner may consider a person whose representation by counsel in a matter does not encompass all aspects of the matter to be unrepresented for purposes of this Rule and Rule 4.3, unless that person's counsel has provided written notice to the licensed paralegal practitioner of those aspects of the matter or the time limitation for which the person is represented. Only as to such aspects and time is the person considered to be represented by counsel.

Comment

[1] Reserved.

[2] This Rule contributes to the proper functioning of the legal system by protecting a person who has chosen to be represented by a lawyer in a matter against possible overreaching by others who are participating in the matter, interference by a paralegal practitioner with the client-lawyer relationship and the uncounselled disclosure of information relating to the representation.

[3] This Rule applies to communications with any person who is represented by a lawyer or a licensed paralegal practitioner concerning the matter to which the communication relates.

[4] This Rule applies even though the represented person initiates or consents to the communication. A licensed paralegal practitioner must immediately terminate communication with a person if, after commencing communication, the licensed paralegal practitioner learns that the person is one with whom communication is not permitted by this Rule.

[5] Reserved.

[6] A licensed paralegal practitioner may not make a communication prohibited by this Rule through the acts of another. See Rule 8.4(a). Parties to a matter may communicate directly with each other, and a licensed paralegal practitioner is not prohibited from advising a client concerning a communication that the client is legally entitled to make.

[7] A licensed paralegal practitioner may communicate with a person who is known to be represented by counsel in the matter to which the communication relates only if the communicating licensed paralegal practitioner obtains the consent of the represented person's lawyer or licensed paralegal practitioner, or if the communication is otherwise permitted by paragraphs (a) or (b). Paragraph (a) permits a licensed paralegal practitioner to communicate with a person known to be represented by counsel in a matter without first securing the consent of the represented person’s lawyer or LPP if the communicating paralegal practitioner is authorized to do so by law, rule or court order. Paragraph (b) recognizes that the scope of representation of a person by counsel may, under Rule 1.2, be limited by mutual agreement.

[8] A communication with a represented person is authorized by paragraph (a) if permitted by law, rule or court order. This recognizes constitutional and statutory authority as well as the well-established role of the state judiciary in regulating the practice of the legal profession.

[9] Reserved.

[10] In the event the person with whom the licensed paralegal practitioner communicates is not known to be represented by counsel in the matter, the licensed paralegal practitioner’s communication is subject to Rule 4.3.

[11]-[20] Reserved.

[21] This Rule prohibits communications with any person who is known by the licensed paralegal practitioner making the communication to be represented by a lawyer or a licensed paralegal practitioner in the matter to which the communication relates. A person is "known" to be represented when the licensed paralegal practitioner has actual knowledge of the representation. Knowledge is a question of fact to be resolved by reference to the totality of the circumstances, including reference to any written notice of the representation. See Rule 1.0(g). Written notice to a licensed paralegal practitioner is relevant, but not conclusive, on the issue of knowledge.

[22]-[23] Reserved.

Rule 4.3. Dealing with Unrepresented Person.

(a) In dealing on behalf of a client with a person who is not represented by a lawyer or licensed paralegal practitioner, a licensed paralegal practitioner shall

not state or imply that the licensed paralegal practitioner is disinterested. When the licensed paralegal practitioner knows or reasonably should know that the unrepresented person misunderstands the licensed paralegal practitioner's role in the matter, the licensed paralegal practitioner shall make reasonable efforts to correct the misunderstanding. The licensed paralegal practitioner shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the licensed paralegal practitioner knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.

(b) A licensed paralegal practitioner may consider a person, whose representation by counsel in a matter does not encompass all aspects of the matter, to be unrepresented for purposes of this Rule and Rule 4.2, unless that person's counsel has provided written notice to the licensed paralegal practitioner of those aspects of the matter or the time limitation for which the person is represented. Only as to such aspects and time is the person considered to be represented by counsel.

Comment

[1] An unrepresented person, particularly one not experienced in dealing with legal matters, might assume that a licensed paralegal practitioner is disinterested in loyalties or is a disinterested authority on the law even when the licensed paralegal practitioner represents a client. In order to avoid a misunderstanding, a licensed paralegal practitioner will typically need to identify his or her client and, where necessary, explain that the client has interests opposed to those of the unrepresented person.

[2] This rule distinguishes between situations involving unrepresented persons whose interests may be adverse to those of the licensed paralegal practitioner's client and those in which the person's interests are not in conflict with the client's. In the former situation, the possibility that the licensed paralegal practitioner will compromise the unrepresented person's interests is so great that this rule prohibits the giving of any advice, apart from the advice to obtain counsel. Whether a licensed paralegal practitioner is giving impermissible advice may depend on the experience and sophistication of the unrepresented person, as well as the setting in which the behavior and comments occur.

[3] Paragraph (b) recognizes that the scope of representation of a person by counsel may, under Rule 1.2, be limited by mutual agreement. Because a lawyer or licensed paralegal practitioner for another party cannot know which of Rule 4.2 or 4.3 applies under these circumstances, a licensed paralegal practitioner who undertakes a limited representation must assume the responsibility for informing another party's lawyer or licensed paralegal practitioner of the limitations. This ensures that such a limited representation will not improperly or unfairly induce an adversary's lawyer or licensed paralegal practitioner to avoid contacting the person on those aspects of a

matter for which the person is not represented by counsel. Note that this responsibility on the licensed paralegal practitioner undertaking limited-scope representation also relates to the ability of another party's lawyer or licensed paralegal practitioner to make certain ex parte contacts without violating Rule 4.2.

Rule 4.4. Reserved.

FIRMS AND ASSOCIATIONS

Rule 5.1. Responsibilities of Partners, Managers, and Supervisory Licensed Paralegal Practitioners.

(a) A partner in a firm of licensed paralegal practitioners, and a licensed paralegal practitioner who individually or together with other licensed paralegal practitioners possesses comparable managerial authority in a firm of licensed paralegal practitioners, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all licensed paralegal practitioners in the firm conform to these Licensed Paralegal Practitioner Rules of Professional Conduct.

(b) A licensed paralegal practitioner having direct supervisory authority over another licensed paralegal practitioner shall make reasonable efforts to ensure that the other licensed paralegal practitioner conforms to the Licensed Paralegal Practitioner Rules of Professional Conduct.

(c) A licensed paralegal practitioner shall be responsible for another licensed paralegal practitioner’s violation of the Licensed Paralegal Practitioner Rules of Professional Conduct if:

(c)(1) The licensed paralegal practitioner orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(c)(2) The licensed paralegal practitioner is a partner or has comparable managerial authority in the firm of licensed paralegal practitioners in which the other licensed paralegal practitioner practices or has direct supervisory authority over the other licensed paralegal practitioner, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Comment

[1] Paragraph (a) applies to licensed paralegal practitioners who have managerial authority over the professional work of a firm of licensed paralegal practitioners. This includes members of a partnership, the shareholders in a firm organized as a professional corporation and members of other

associations authorized to practice law as licensed paralegal practitioners; and licensed paralegal practitioners who have intermediate managerial responsibilities in a firm of licensed paralegal practitioners. Paragraph (b) applies to licensed paralegal practitioners who have supervisory authority over the work of other licensed paralegal practitioners in a firm.

[2] Paragraph (a) requires licensed paralegal practitioners with managerial authority within a firm of licensed paralegal practitioners to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that all licensed paralegal practitioners in the firm will conform to the Licensed Paralegal Practitioner Rules of Professional Conduct. Such policies and procedures include those designed to detect and resolve conflicts of interest, identify dates by which actions must be taken in pending matters, account for client funds and property and ensure that inexperienced licensed paralegal practitioners are properly supervised. The responsibility for the firm's compliance with paragraph (a) resides with each partner, or other licensed paralegal practitioner in the firm with comparable authority. Even though the concept of firm discipline is possible, a firm should not be responsible in the absence of individual culpability for a rule violation.

[3] Other measures that may be required to fulfill the responsibility prescribed in paragraph (a) can depend on the firm's structure and the nature of its practice. In a small firm of experienced licensed paralegal practitioners, informal supervision and periodic review of compliance with the required systems ordinarily will suffice. In a large firm, or in practice situations in which difficult ethical problems frequently arise, more elaborate measures may be necessary. Some firms, for example, may put in place a procedure whereby junior licensed paralegal practitioners can make confidential referral of ethical problems directly to a designated partner or special committee. See Rule 5.2. Firms, whether large or small, may also rely on continuing education in professional ethics. In any event, the ethical atmosphere of a firm can influence the conduct of all its members and the partners may not assume that all licensed paralegal practitioners associated with the firm will inevitably conform to the Rules.

[4] Paragraph (c)(1) expresses a general principle of personal responsibility for acts of another. See also Rule 8.4(a).

[5] Paragraph (c)(2) defines the duty of a partner or other licensed paralegal practitioner having comparable managerial authority in a firm of licensed paralegal practitioners, as well as a licensed paralegal practitioner who has direct supervisory authority over performance of specific legal work by another licensed paralegal practitioner. Whether a licensed paralegal practitioner has such supervisory authority in particular circumstances is a question of fact. Partners and licensed paralegal practitioners with comparable authority have at least indirect responsibility for all work being done by the firm, while a partner or manager in charge of a particular matter ordinarily also has supervisory responsibility for the work of other firm licensed paralegal practitioners engaged in the matter. Appropriate remedial action by a partner or managing licensed

paralegal practitioner would depend on the immediacy of that licensed paralegal practitioner's involvement and the seriousness of the misconduct. A supervisor is required to intervene to prevent avoidable consequences of misconduct if the supervisor knows that the misconduct occurred. Thus, if a supervising licensed paralegal practitioner knows that a subordinate misrepresented a matter to an opposing party in negotiation, the supervisor as well as the subordinate has a duty to correct the resulting misapprehension.

[6] Professional misconduct by a licensed paralegal practitioner under supervision could reveal a violation of paragraph (b) on the part of the supervisory licensed paralegal practitioner even though it does not entail a violation of paragraph (c) because there was no direction, ratification or knowledge of the violation.

[7] Apart from this Rule and Rule 8.4(a), a licensed paralegal practitioner does not have disciplinary liability for the conduct of a partner, associate or subordinate. Whether a licensed paralegal practitioner may be liable civilly or criminally for another licensed paralegal practitioner's conduct is a question of law beyond the scope of these Rules.

[8] The duties imposed by this rule on managing and supervising licensed paralegal practitioners do not alter the personal duty of each licensed paralegal practitioner in a firm to abide by the Licensed Paralegal Practitioner Rules of Professional Conduct. See Rule 5.2(a).

Rule 5.2. Responsibilities of a Subordinate Licensed Paralegal Practitioner.

(a) A licensed paralegal practitioner is bound by the Licensed Paralegal Practitioner Rules of Professional Conduct notwithstanding that the licensed paralegal practitioner acted at the direction of another person.

(b) A subordinate licensed paralegal practitioner does not violate the Licensed Paralegal Practitioner Rules of Professional Conduct if that licensed paralegal practitioner acts in accordance with a supervisory lawyer or licensed paralegal practitioner's reasonable resolution of a question of professional duty.

Comment

[1] Although a licensed paralegal practitioner is not relieved of responsibility for a violation by the fact that the licensed paralegal practitioner acted at the direction of a supervisor, that fact may be relevant in determining whether a licensed paralegal practitioner had the knowledge required to render conduct a violation of the Rules. For example, if a subordinate filed a frivolous pleading at the direction of a supervisor, the subordinate would not be guilty of a professional violation unless the subordinate knew of the document's frivolous character.

[2] When licensed paralegal practitioners in a supervisor-subordinate relationship encounter a matter involving professional judgment as to ethical duty, the supervisor may assume responsibility for making the judgment. Otherwise a consistent course of action or position could not be taken. If the question can reasonably be answered only one way, the duty of both licensed paralegal practitioners is clear and they are equally responsible for fulfilling it. If the question is reasonably arguable, someone has to decide upon the course of action. That authority ordinarily reposes in the supervisor, and a subordinate may be guided accordingly. For example, if a question arises whether the interests of two clients conflict under Rule 1.7, the supervisor's reasonable resolution of the question should protect the subordinate professionally if the resolution is subsequently challenged.

Rule 5.3. Responsibilities Regarding Non-Lawyer and Non-Licensed Paralegal Practitioner Assistants.

With respect to a non-lawyer or non-licensed paralegal practitioner employed or retained by or associated with a licensed paralegal practitioner:
(a) a partner, and a licensed paralegal practitioner who individually or together with other licensed paralegal practitioners possesses comparable managerial authority in a firm of licensed paralegal practitioners, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the licensed paralegal practitioner;
(b) a licensed paralegal practitioner having direct supervisory authority over the non-lawyer or non-licensed paralegal practitioner shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the licensed paralegal practitioner; and
(c) a licensed paralegal practitioner shall be responsible for conduct of such a person that would be a violation of the Licensed Paralegal Practitioner Rules of Professional Conduct if engaged in by a licensed paralegal practitioner if:
(c)(1) the licensed paralegal practitioner orders or, with knowledge of the specific conduct, ratifies the conduct involved; or
(c)(2) the licensed paralegal practitioner is a partner or has comparable managerial authority in the firm of licensed paralegal practitioners in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Comment

[1] Paragraph (a) requires licensed paralegal practitioners with managerial authority within a firm of licensed paralegal practitioners to make reasonable efforts to ensure that the firm has in effect measures giving reasonable

assurance that non-lawyers or non-licensed paralegal practitioners in the firm and non-lawyers or non-paralegals outside the firm who work on firm matters act in a way compatible with the professional obligations of the licensed paralegal practitioner. See Comment [1] to Rule 5.1 (responsibilities with respect to licensed paralegal practitioners within a firm). Paragraph (b) applies to licensed paralegal practitioners who have supervisory authority over such non-lawyers or non-licensed paralegal practitioners within or outside the firm. Paragraph (c) specifies the circumstances in which a licensed paralegal practitioner is responsible for the conduct of such non-lawyers or non-licensed paralegal practitioners within or outside the firm that would be a violation of the Licensed Paralegal Practitioner Rules of Professional Conduct if engaged in by a licensed paralegal practitioner. The firm's compliance with paragraph (a) resides with each partner or other licensed paralegal practitioner in the firm with comparable authority.

[1a] Even though the concept of firm discipline is possible, a firm should not be responsible in the absence of individual culpability for a rule violation.

Non-Lawyers or Non-Licensed Paralegal Practitioners Within the Firm

[2] Licensed paralegal practitioners may employ assistants in their practice, including secretaries, investigators, law student interns and paraprofessionals. Such assistants, whether employees or independent contractors, act for the licensed paralegal practitioner in the rendition of the licensed paralegal practitioner's professional services. A licensed paralegal practitioner must give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising non-lawyers or non-paralegal practitioners should take account of the fact that they do not have legal training and are not subject to professional discipline.

Non-lawyers or Non-Licensed Paralegal Practitioners Outside the Firm

[3] A licensed paralegal practitioner may use non-lawyers or non-LPPs outside the firm to assist the LPP in rendering legal services to the client. Examples include sending client documents to a third party for printing or scanning, and using an Internet-based service to store client information. When using such services outside the firm, a licensed paralegal practitioner must make reasonable efforts to ensure that the services are provided in a manner that is compatible with the licensed paralegal practitioner's professional obligations. The extent of this obligation will depend upon the circumstances, including the education, experience and reputation of the non-lawyer or non-licensed paralegal practitioner; the nature of the services involved; the terms of any arrangements concerning the protection of client information; and the legal and

ethical environments of the jurisdictions in which the services will be performed, particularly with regard to confidentiality. See also Rules 1.1 (competence), 1.2 (allocation of authority), 1.4 (communication with client), 1.6 (confidentiality), 5.4(a) (professional independence of the licensed paralegal practitioner), and 5.5(a) (unauthorized practice of law). When retaining or directing a non-lawyer or non-licensed paralegal practitioner outside the firm, a licensed paralegal practitioner should communicate directions appropriate under the circumstances to give reasonable assurance that the non-lawyer's or non-licensed paralegal practitioner's conduct is compatible with the professional obligations of the licensed paralegal practitioner.

[4] Where the client directs the selection of a particular non-lawyer or non-licensed paralegal practitioner service provider outside the firm, the licensed paralegal practitioner ordinarily should agree with the client concerning the allocation of responsibility for monitoring as between the client and the licensed paralegal practitioner. See Rule 1.2. When making such an allocation in a matter pending before a tribunal, licensed paralegal practitioners and parties may have additional obligations that are a matter of law beyond the scope of these Rules.

Rule 5.4. Professional Independence of a Licensed Paralegal Practitioner.

(a) A licensed paralegal practitioner or firm of licensed paralegal practitioners shall not share legal fees with a non-lawyer or a non-licensed paralegal practitioner, except that:

(a)(1) an agreement by a licensed paralegal practitioner with the licensed paralegal practitioner's firm, partner or associate may provide for the payment of money, over a reasonable period of time after the licensed paralegal practitioner's death, to the licensed paralegal practitioner's estate or to one or more specified persons;

(a)(2)(i) a licensed paralegal practitioner who purchases the practice of a deceased, disabled or disappeared licensed paralegal practitioner may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that licensed paralegal practitioner the agreed-upon purchase price; and

(a)(2)(ii) a licensed paralegal practitioner who undertakes to complete unfinished legal business of a deceased licensed paralegal practitioner may pay to the estate of the deceased licensed paralegal practitioner that proportion of the total compensation which fairly represents the services rendered by the deceased licensed paralegal practitioner; and

(a)(3) a licensed paralegal practitioner or firm of licensed paralegal practitioners may include non-lawyer and non-licensed paralegal practitioner employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement.

(b) A licensed paralegal practitioner shall not form a partnership with a non-lawyer or non-LPP if any of the activities of the partnership consist of the practice of law.

(c) A licensed paralegal practitioner shall not permit a person who recommends, employs or pays the licensed paralegal practitioner to render legal services for another to direct or regulate the licensed paralegal practitioner's professional judgment in rendering such legal services.

(d) A licensed paralegal practitioner shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:

(d)(1) a non-lawyer or non-licensed paralegal practitioner owns any interest therein, except that a fiduciary representative of the estate of a licensed paralegal practitioner may hold the stock or interest of the licensed paralegal practitioner for a reasonable time during administration;

(d)(2) a non-lawyer or non-licensed paralegal practitioner is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation; or

(d)(3) a non-lawyer or non-licensed paralegal practitioner has the right to direct or control the professional judgment of a licensed paralegal practitioner.

(e) A licensed paralegal practitioner may practice in a non-profit corporation which is established to serve the public interest provided that the non-lawyer or non-licensed paralegal practitioner directors and officers of such corporation do not interfere with the independent professional judgment of the licensed paralegal practitioner.

Comment

[1] The provisions of this Rule express traditional limitations on sharing fees. These limitations are to protect the licensed paralegal practitioner's professional independence of judgment. Where someone other than the client pays the licensed paralegal practitioner's fee or salary, or recommends employment of the licensed paralegal practitioner, that arrangement does not modify the licensed paralegal practitioner's obligation to the client. As stated in paragraph (c), such arrangements should not interfere with the licensed paralegal practitioner's professional judgment.

[2] The rule also expresses traditional limitations on permitting a third party to direct or regulate the licensed paralegal practitioner's professional judgment in rendering legal services to another. See also Rule 1.8(f) (licensed paralegal practitioner may accept compensation from a third party as long as there is no interference with the licensed paralegal practitioner's independent professional judgment and the client gives informed consent).

[2a] Reserved.

Rule 5.5. Unauthorized Practice of Law; Multijurisdictional Practice of Law.

(a) A licensed paralegal practitioner shall not provide legal services in a jurisdiction or in a manner that is in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) A licensed paralegal practitioner who is not admitted to provide legal services in this jurisdiction shall not:

(b)(1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the purpose of providing legal services; or

(b)(2) hold out to the public or otherwise represent that the licensed paralegal practitioner is admitted to practice law or otherwise provide legal services in this jurisdiction.

Comment

[1] A licensed paralegal practitioner may provide legal services only in a jurisdiction in which the licensed paralegal practitioner is authorized to provide such services. A licensed paralegal practitioner may be admitted to provide legal services in a jurisdiction on a regular basis or may be authorized by court rule or order or by law to practice for a limited purpose or on a restricted basis. Paragraph (a) applies to unauthorized practice of law by a licensed paralegal practitioner, whether through the licensed paralegal practitioner's direct action or by the licensed paralegal practitioner's assisting another person. For example, a licensed paralegal practitioner may not assist a person in practicing law in violation of the rules governing professional conduct in that person's jurisdiction.

[2] The definition of the practice of law is established by law and varies from one jurisdiction to another. The "practice of law" in Utah is defined in Rule 14-802(b)(1), Authorization to Practice Law, of the Supreme Court Rules of Professional Practice.

[2a]-[3] Reserved.

[4] Other than as authorized by law or this rule, a licensed paralegal practitioner who is not admitted to practice generally in this jurisdiction violates paragraph (b)(1) if the licensed paralegal practitioner establishes an office or other systematic and continuous presence in this jurisdiction for the purpose of providing legal services. Presence may be systematic and continuous even if the licensed paralegal practitioner is not physically present here. Such a

licensed paralegal practitioner must not hold out to the public or otherwise represent that he or she is admitted to practice law in this jurisdiction or is otherwise allowed to provide legal services. See also Rules 7.1(a) and 7.5(b).
[5]-[21] Reserved.

Rule 5.6. Restrictions on Right to Practice.

A licensed paralegal practitioner shall not participate in offering or making:
(a) a partnership, shareholder, operating, employment, or other similar type of agreement that restricts the right of a licensed paralegal practitioner to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or
(b) an agreement in which a restriction on the licensed paralegal practitioner's right to practice is part of the settlement of a client controversy.

Comment

[1] An agreement restricting the right of licensed paralegal practitioners to practice after leaving a firm not only limits their professional autonomy but also limits the freedom of clients to choose a licensed paralegal practitioner. Paragraph (a) prohibits such agreements except for restrictions incident to provisions concerning retirement benefits for service with the firm.

[2] Paragraph (b) prohibits a licensed paralegal practitioner from agreeing not to represent other persons in connection with settling a claim on behalf of a client.

[3] This Rule does not apply to prohibit restrictions that may be included in the terms of the sale of a licensed paralegal practitioner practice pursuant to Rule 1.17.

Rule 5.7. Reserved.

PUBLIC SERVICE

Rule 6.1. Voluntary Pro Bono Legal Service.

Every licensed paralegal practitioner has a professional responsibility to provide legal services to those unable to pay. A licensed paralegal practitioner should aspire to render at least 30 hours of pro bono publico legal services per year. In fulfilling this responsibility, the licensed paralegal practitioner should:

(a) provide a substantial majority of the 30 hours of legal services without fee or expectation of fee to:

(a)(1) persons of limited means or

(a)(2) charitable, religious, civic, community, governmental and educational organizations in matters that are designed primarily to address the needs of persons of limited means; and

(b) provide any additional services through:

(b)(1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate;

(b)(2) delivery of legal services at a substantially reduced fee to persons of limited means; or

(b)(3) participation in activities for improving the law, the legal system or the legal profession.

(c) A licensed paralegal practitioner may also discharge the responsibility to provide pro bono publico legal services by making an annual contribution of at least $5 per hour for each hour not provided under paragraph (a) or (b) above to an agency that provides direct services as defined in paragraph (a) above.

(d) Each licensed paralegal practitioner is urged to report annually to the Utah State Bar whether the licensed paralegal practitioner has satisfied the LPP's professional responsibility to provide pro bono legal services. Each licensed paralegal practitioner may report this information through a simplified reporting form that is made a part of the Bar's annual dues statement.

(e) In addition to providing pro bono legal services, a licensed paralegal practitioner should voluntarily contribute financial support to organizations that provide legal services to persons of limited means.

Comment

[1] Every licensed paralegal practitioner, regardless of professional prominence or professional work load, has a responsibility to provide legal services to those unable to pay. Personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a licensed paralegal practitioner. All licensed paralegal practitioners are urged to provide a minimum of 30 hours of pro bono services annually. It is recognized that in some years a licensed paralegal practitioner may render greater or fewer hours than the annual standard specified, but during the course of the licensed paralegal practitioner's career, each licensed paralegal practitioner should render on average per year, the number of hours set forth in this Rule. Services can be performed in any area in which the licensed paralegal practitioner is authorized to practice.

[2] Paragraphs (a)(1) and (a)(2) recognize the critical need for legal services that exists among persons of limited means by providing that a substantial

majority of the legal services rendered annually to the disadvantaged be furnished without fee or expectation of fee. Legal services under these paragraphs include individual representation, the provision of legal advice, legislative lobbying, administrative rule making and the provision of free training or mentoring to those who represent persons of limited means.

[3] Persons eligible for legal services under paragraphs (a)(1) and (a)(2) are those who qualify for participation in programs funded by the Legal Services Corporation and those whose incomes and financial resources are slightly above the guidelines utilized by such programs but nevertheless cannot afford counsel. Legal services can be rendered to individuals or to organizations such as homeless shelters, battered women's centers and food pantries that serve those of limited means.

[4] Because service must be provided without fee or expectation of fee, the intent of the licensed paralegal practitioner to render free legal services is essential for the work performed to fall within the meaning of paragraphs (a)(1) and (a)(2). Accordingly, services rendered cannot be considered pro bono if an anticipated fee is uncollected. LPPs who do receive fees in such cases are encouraged to contribute an appropriate portion of such fees to organizations or projects that benefit persons of limited means.

[5] While it is possible for a licensed paralegal practitioner to fulfill the annual responsibility to perform pro bono services exclusively through activities described in paragraphs (a)(1) and (a)(2), to the extent that any hours of service remain unfulfilled, the remaining commitment can be met in a variety of ways as set forth in paragraph (b).

[6] Paragraph (b)(1) includes the provision of certain types of legal services to those whose incomes and financial resources place them above limited means. It also permits the pro bono licensed paralegal practitioner to accept a substantially reduced fee for services.

[7] Paragraph (b)(2) covers instances in which licensed paralegal practitioners agree to and receive a modest fee for furnishing pro bono legal services to persons of limited means. Participation in judicare programs and acceptance of court appointments in which the fee is substantially below a licensed paralegal practitioner's usual rate are encouraged under this section.

[8] Paragraph (b)(3) recognizes the value of licensed paralegal practitioners engaging in activities that improve the law, the legal system or the legal profession. Serving on bar association committees, serving on boards of pro bono or legal services programs, taking part in Law Day and other law related education activities, acting as a continuing legal education instructor, a mediator or an arbitrator and engaging in legislative lobbying to improve the law, the legal system or the profession are a few examples of the many activities that fall within this paragraph.

[9] Because the provision of pro bono services is a professional responsibility, it is the individual ethical commitment of each licensed paralegal practitioner. Nevertheless, there may be times when it is not feasible for a licensed paralegal practitioner to engage in pro bono services. At such times a licensed paralegal practitioner may discharge the pro bono responsibility by providing financial support to organizations providing free legal services to persons of limited means. In addition, at times it may be more feasible to satisfy the pro bono responsibility collectively, as by a firm's aggregate pro bono activities.

[9a] This Rule explicitly allows licensed paralegal practitioners to discharge their pro bono services responsibility by annually contributing at least $5 per hour for each hour not provided under paragraphs (a) and (b). While the personal involvement of each licensed paralegal practitioner in the provision of pro bono legal services is generally preferable, such personal involvement may not always be possible. The annual contribution alternative allows a licensed paralegal practitioner to provide financial assistance to increase and improve the delivery of pro bono legal services when a licensed paralegal practitioner cannot or decides not to provide pro bono legal services through the contribution of time. Also, there is no prohibition against a licensed paralegal practitioner’s contributing a combination of hours and financial support.

[10] Because the efforts of individual licensed paralegal practitioners are not enough to meet the need for free legal services that exists among persons of limited means, the government and the profession have instituted additional programs to provide those services. Every licensed paralegal practitioner should financially support such programs, in addition to either providing direct pro bono services or making financial contributions when pro bono service is not feasible.

[11] Law and law-related firms employing licensed paralegal practitioners should act reasonably to enable and encourage all licensed paralegal practitioners in the firm to provide the pro bono legal services called for in this Rule.

[11a] Voluntary reporting is designed to provide a basis for reminding licensed paralegal practitioners of their professional responsibility under this Rule and to provide useful statistical information. The intent of this Rule is to direct resources towards providing representation for persons of limited means. Therefore, only contributions made to organizations described in subsection (a) should be reported. Reporting records for individual licensed paralegal practitioners will not be kept or released by the Utah State Bar. The Utah State Bar will gather useful statistical information at the close of each reporting cycle and then purge individual reporting statistics from its database. The general statistical information will be maintained by the Bar for year-to-year comparisons and may be released, at the Bar's discretion, to appropriate organizations and individuals for furthering access to justice in Utah.

[12] The responsibility set forth in this Rule is not intended to be enforced through disciplinary process.

Rule 6.2. Reserved.

Rule 6.3. Membership in Legal Services Organization.

A licensed paralegal practitioner may serve as a director, officer or member of a legal services organization, apart from the firm in which the licensed paralegal practitioner practices, notwithstanding that the organization serves persons having interests adverse to a client of the licensed paralegal practitioner. The licensed paralegal practitioner shall not knowingly participate in a decision or action of the organization:

(a) If participation in the decision would be incompatible with the licensed paralegal practitioner's obligations to a client under Rule 1.7 of the Rules of Professional Conduct for Licensed Paralegal Practitioners; or

(b) Where the decision could have a material adverse effect on the representation of a client of the organization whose interests are adverse to a client of the licensed paralegal practitioner or on the representation of a client of the licensed paralegal practitioner or the licensed paralegal practitioner's firm.

Comment

[1] Licensed paralegal practitioners should be encouraged to support and participate in legal service organizations. A licensed paralegal practitioner who is an officer or a member of such an organization does not thereby have a client-licensed paralegal practitioner relationship with persons served by the organization. However, there is potential conflict between the interests of such persons and the interests of the licensed paralegal practitioner's clients. If the possibility of such conflict disqualified a licensed paralegal practitioner from serving on the board of a legal services organization, the profession's involvement in such organizations would be severely curtailed.

[2] It may be necessary in appropriate cases to reassure a client of the organization that the representation will not be affected by conflicting loyalties of a member of the board. Established, written policies in this respect can enhance the credibility of such assurances.

Rule 6.4. Law Reform Activities Affecting Client Interests.

A licensed paralegal practitioner may serve as a director, officer or member of an organization involved in reform of the law or its administration

notwithstanding that the reform may affect the interests of a client of the licensed paralegal practitioner. When the licensed paralegal practitioner knows that the interests of a client may be materially benefited by a decision in which the licensed paralegal practitioner participates, the licensed paralegal practitioner shall disclose that fact but need not identify the client.

Comment

[1] Licensed paralegal practitioners involved in organizations seeking law reform generally do not have a client-licensed paralegal practitioner relationship with the organization. Otherwise, it might follow that a licensed paralegal practitioner could not be involved in a bar association law reform program that might indirectly affect a client. In determining the nature and scope of participation in such activities, a licensed paralegal practitioner should be mindful of obligations to clients under other rules, particularly Rule 1.7 of the Licensed Paralegal Practitioner Rules of Professional Conduct. A licensed paralegal practitioner is professionally obligated to protect the integrity of the program by making an appropriate disclosure within the organization when the licensed paralegal practitioner knows a private client might be materially benefited.

Rule 6.5. Nonprofit and Court-Annexed Limited Legal Services Programs.

(a) A licensed paralegal practitioner who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the licensed paralegal practitioner or the client that the licensed paralegal practitioner will provide continuing representation in the matter:

(a)(1) is subject to Rule 1.7 and 1.9(a) of the Licensed Paralegal Practitioner Rules of Professional Conduct only if the licensed paralegal practitioner knows that the representation of the client involves a conflict of interest; and

(a)(2) is subject to Rule 1.10 of the Licensed Paralegal Practitioner Rules of Professional Conduct only if the licensed paralegal practitioner knows that another lawyer or licensed paralegal practitioner associated with the licensed paralegal practitioner in a law firm is disqualified by Rule 1.7 or 1.9(a) of the Licensed Paralegal Practitioner Rules of Professional Conduct with respect to the matter.

(b) Except as provided in paragraph (a)(2), Rule 1.10 of the Licensed Paralegal Practitioner Rules of Professional Conduct is inapplicable to a representation governed by this Rule.

Comment

[1] Legal services organizations, courts and various nonprofit organizations have established programs through which licensed paralegal practitioners

provide short-term limited legal services such as advice for the completion of legal forms that will assist persons to address their legal problems without further representation by a licensed paralegal practitioner or lawyer. In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, a client-licensed paralegal practitioner relationship is established, but there is no expectation that the licensed paralegal practitioner's representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a licensed paralegal practitioner to systematically screen for conflicts of interest as is generally required before undertaking a representation. See, e.g. Rules 1.7, 1.9 and 1.10 of the Licensed Paralegal Practitioner Rules of Professional Conduct.

[2] A licensed paralegal practitioner who provides short-term limited legal services pursuant to this Rule must secure the client's informed consent to the limited scope of the representation. See Rule 1.2(c) of the Licensed Paralegal Practitioner Rules of Professional Conduct. If a short-term limited representation would not be reasonable under the circumstances, the licensed paralegal practitioner may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this Rule, the Licensed Paralegal Practitioner Rules of Professional Conduct, including Rule 1.6 and 1.9(c) of the Licensed Paralegal Practitioner Rules of Professional Conduct, are applicable to the limited representation.

[3] Because a licensed paralegal practitioner who is representing a client in the circumstances addressed by this Rule ordinarily is not able to check systematically for conflicts of interest, paragraph (a) requires compliance with Rule 1.7 or 1.9(a) of the Licensed Paralegal Practitioner Rules of Professional Conduct only if the licensed paralegal practitioner knows that the representation presents a conflict of interest for the licensed paralegal practitioner, and with Rule 1.10 of the Licensed Paralegal Practitioner Rules of Professional Conduct only if the licensed paralegal practitioner knows that another licensed paralegal practitioner or lawyer in the licensed paralegal practitioner's firm is disqualified in the matter by Rules 1.7 or 1.9(a) of the Licensed Paralegal Practitioner Rules of Professional Conduct.

[4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the licensed paralegal practitioner's firm, paragraph (b) provides that Rule 1.10 of the Licensed Paralegal Practitioner Rules of Professional Conduct is inapplicable to a representation governed by this Rule except as provided by paragraph (a)(2). Paragraph (a)(2) requires the participating licensed paralegal practitioner to comply with Rule 1.10 of the Licensed Paralegal Practitioner Rules of Professional Conduct when the licensed paralegal practitioner knows that the licensed paralegal practitioner's firm is disqualified by Rules 1.7 or 1.9(a) of the Licensed Paralegal Practitioner Rules of Professional Conduct. By virtue of paragraph (b), however, a licensed paralegal practitioner's participation in a

short-term limited legal services program will not preclude the licensed paralegal practitioner's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the personal disqualification of a licensed paralegal practitioner participating in the program be imputed to other licensed paralegal practitioners participating in the program.

[5] If, after commencing a short-term limited representation in accordance with this Rule, a licensed paralegal practitioner undertakes to represent the client in the matter on an ongoing basis, Rules 1.7, 1.9(a) and 1.10 of the Licensed Paralegal Practitioner Rules of Professional Conduct become applicable.

Rule 7.1. Communications Concerning a Licensed Paralegal Practitioner's Services.

A licensed paralegal practitioner shall not make a false or misleading communication about the licensed paralegal practitioner or the licensed paralegal practitioner's services. A communication is false or misleading if it:

(a) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;

(b) is likely to create an unjustified or unreasonable expectation about results the licensed paralegal practitioner can achieve or has achieved; or

(c) contains a testimonial or endorsement that violates any portion of this rule.

Comment

[1] This Rule governs all communications about a licensed paralegal practitioner's services, including advertising permitted by Rule 7.2 of the Licensed Paralegal Practitioner Rules of Professional Conduct. Whatever means are used to make known a licensed paralegal practitioner's services, statements about them must be truthful.

[2] Truthful statements that are misleading are also prohibited by this Rule. A truthful statement is misleading if it omits a fact necessary to make the licensed paralegal practitioner's communication considered as a whole not materially misleading. A truthful statement is also misleading if there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the licensed paralegal practitioner or the licensed paralegal practitioner's services for which there is no reasonable factual foundation.

[3] An advertisement that truthfully reports a licensed paralegal practitioner's achievements on behalf of clients or former clients may be misleading if presented so as to lead a reasonable person to form an unjustified expectation

that the same results could be obtained for other clients in similar matters without reference to the specific factual and legal circumstances of each client's case. Similarly, an unsubstantiated comparison of the licensed paralegal practitioner's services or fees with the services or fees of other licensed paralegal practitioners may be misleading if presented with such specificity as would lead a reasonable person to conclude that the comparison can be substantiated. The inclusion of an appropriate disclaimer or qualifying language may preclude a finding that a statement is likely to create unjustified expectations or otherwise mislead the public.

[4] See also Rule 8.4(e) of the Licensed Paralegal Practitioner Rules of Professional Conduct for the prohibition against stating or implying an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law.

[4a] Reserved.

Rule 7.2. Advertising.

(a) Subject to the requirements of Rules 7.1 and 7.3, a licensed paralegal practitioner may advertise services through written recorded or electronic communication, including public media.

(b) If the advertisement uses any actors to portray a licensed paralegal practitioner, members of the firm, or clients or utilizes depictions of fictionalized events or scenes, the same must be disclosed.

(c) All advertisements disseminated pursuant to these Rules shall include the name and office address of at least one licensed paralegal practitioner or law firm responsible for their content.

(d) Reserved.

(e) A licensed paralegal practitioner who advertises a specific fee or range of fees shall include all relevant charges and fees, and the duration such fees are in effect.

(f) A licensed paralegal practitioner shall not give anything of value to a person for recommending the licensed paralegal practitioner's services, except that a licensed paralegal practitioner may pay the reasonable cost of advertising permitted by these Rules and may pay the usual charges of a legal referral service or other legal service plan.

Comment

[1] To assist the public in learning about and obtaining legal services, licensed paralegal practitioners should be allowed to make known their services not only through reputation but also through organized information campaigns in the form of advertising. Advertising involves an active quest for clients, contrary to

the tradition that a licensed paralegal practitioner should not seek clientele. However, the public's need to know about legal services can be fulfilled in part through advertising. This need is particularly acute in the case of persons of moderate means who have not made extensive use of legal services. The interest in expanding public information about legal services ought to prevail over considerations of tradition. Nevertheless, advertising by licensed paralegal practitioners entails the risk of practices that are misleading or overreaching.

[2] This Rule permits public dissemination of information concerning a licensed paralegal practitioner's name or firm name, address, email address, website and telephone number; the kinds of services the licensed paralegal practitioner will undertake; the basis on which the licensed paralegal practitioner's fees are determined, including prices for specific services and payment and credit arrangements; a licensed paralegal practitioner's foreign language ability; names of references and, with their consent, names of clients regularly represented; and other information that might invite the attention of those seeking legal assistance.

[3] Questions of effectiveness and taste in advertising are matters of speculation and subjective judgment. Some jurisdictions have had extensive prohibitions against television and other forms of advertising, against advertising going beyond specified facts about a licensed paralegal practitioner or against "undignified" advertising. Television, the Internet and other forms of electronic communication are now among the most powerful media for getting information to the public, particularly persons of low and moderate income; prohibiting television, Internet, and other forms of electronic advertising, therefore, would impede the flow of information about legal services to many sectors of the public. Limiting the information that may be advertised has a similar effect and assumes that the Bar can accurately forecast the kind of information that the public would regard as relevant. But see Rule 7.3 of the Licensed Paralegal Practitioner Rules of Professional Conduct for the prohibition against a solicitation through a real-time electronic exchange initiated by the licensed paralegal practitioner.

[4] Neither this Rule nor Rule 7.3 of the Licensed Paralegal Practitioner Rules of Professional Conduct prohibits communications authorized by law, such as notice to members of a class in class action litigation.

Paying Others to Recommend a Licensed Paralegal Practitioner

[5] Except as permitted by paragraph (f), licensed paralegal practitioners are not permitted to pay others for recommending the licensed paralegal practitioner’s services or for channeling professional work in a manner that violates Rule 7.3 of the Licensed Paralegal Practitioner Rules of Professional Conduct. A communication contains a recommendation if it endorses or vouches for a licensed paralegal practitioner’s credentials, abilities, competence, character, or other professional qualities. Paragraph (f), however,

allows a licensed paralegal practitioner to pay for advertising and communications permitted by this rule, including the costs of print directory listings, on-line directory listings, newspaper ads, television and radio airtime, domain-name registrations, sponsorship fees, Internet-based advertisements and group advertising. A licensed paralegal practitioner may compensate employees, agents and vendors who are engaged to provide marketing or client-development services, such as publicists, public-relations personnel, business-development staff and website designers. Moreover, a licensed paralegal practitioner may pay others for generating client leads, such as Internet-based client leads, as long as the lead generator does not recommend the licensed paralegal practitioner, and any payment to the lead generator is consistent with the licensed paralegal practitioner's obligations under these rules. To comply with Rule 7.1 of the Licensed Paralegal Practitioner Rules of Professional Conduct, a licensed paralegal practitioner must not pay a lead generator that states, implies, or creates a reasonable impression that it is recommending the licensed paralegal practitioner is making the referral without payment from the licensed paralegal practitioner, or has analyzed a person's legal problems when determining which lawyer should receive the referral. See Rule 5.3 of the Licensed Paralegal Practitioner Rules of Professional Conduct (duties of licensed paralegal practitioners and law firms with respect to the conduct of non-lawyers and non-licensed paralegal practitioners); Rule 8.4(a) of the Licensed Paralegal Practitioner Rules of Professional Conduct (duty to avoid violating the Rules through the acts of another).

[6] A licensed paralegal practitioner may pay the usual charges of a legal service plan or a referral service. A legal service plan is a prepaid or group legal service plan or a similar delivery system that assists prospective clients to secure legal representation. A licensed paralegal practitioner referral service, on the other hand, is an organization that holds itself out to the public to provide referrals to licensed paralegal practitioners with appropriate experience in the subject matter of the representation. No fee generating referral may be made to any licensed paralegal practitioner or firm that has an ownership interest in, or who operates or is employed by, the licensed paralegal practitioner referral service, or who is associated with a firm that has an ownership interest in, or operates or is employed by, the licensed paralegal practitioner referral service.

[7] A licensed paralegal practitioner who accepts assignments or referral from a legal service plan or referrals from a licensed paralegal practitioner referral service must act reasonably to assure that the activities of the plan or service are compatible with the licensed paralegal practitioner's professional obligations. See Rule 5.3 of the Licensed Paralegal Practitioner Rules of Professional Conduct. Legal service plans and licensed paralegal practitioner referral services may communicate with the public, but such communication must be in conformity with these Rules. Thus, advertising must not be false or misleading, as would be the case if the communications of a group advertising program or a group legal services plan would mislead the public to think that it

was a licensed paralegal practitioner referral service sponsored by a state agency or bar association. Nor could the licensed paralegal practitioner allow in-person, telephonic, or real-time contacts that would violate Rule 7.3.

[8] For the disciplinary authority and choice of law provisions applicable to advertising, see Rule 8.5 of the Licensed Paralegal Practitioner Rules of Professional Conduct.

[8a] Reserved.

Rule 7.3. Solicitation of Clients.

(a) A licensed paralegal practitioner shall not by in-person, live telephone or real-time electronic contact solicit professional employment from a prospective client when a significant motive for the licensed paralegal practitioner's doing so is the licensed paralegal practitioner's pecuniary gain, unless the person contacted:

(a)(1) is a lawyer or other licensed paralegal practitioner;

(a)(2) has a family, close personal, or prior professional relationship with the licensed paralegal practitioner, or

(a)(3) is unable to make personal contact with a lawyer or licensed paralegal practitioner and the licensed paralegal practitioner's contact with the prospective client has been initiated by a third party on behalf of the prospective client.

(b) A licensed paralegal practitioner shall not solicit professional employment by written, recorded or electronic communication or by in-person, live telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:

(b)(1) the target of the solicitation has made known to the licensed paralegal practitioner a desire not to be solicited by the licensed paralegal practitioner; or

(b)(2) the solicitation involves coercion, duress or harassment.

(c) Every written, recorded or electronic communication from a licensed paralegal practitioner soliciting professional employment from anyone known to be in need of legal services in a particular matter shall include the words "Advertising Material" on the outside envelope, if any, and at the beginning of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraphs (a)(1) or (a)(2). For the purposes of this subsection, "written communication" does not include advertisement through public media, including but not limited to a telephone directory, legal directory, newspaper or other periodical, outdoor advertising, radio, television or webpage.

(d) Notwithstanding the prohibitions in paragraph (a), a licensed paralegal practitioner may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the licensed paralegal practitioner that uses in-person or other real-time communication to solicit memberships or

subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

Comment

[1] A solicitation is a targeted communication initiated by the licensed paralegal practitioner that is directed to a specific person and that offers to provide, or can reasonably be understood as offering to provide, legal services. In contrast, a licensed paralegal practitioner's communication typically does not constitute a solicitation if it is directed to the general public, such as through a billboard, an Internet banner advertisement, a website or a television commercial, or if it is in response to a request for information or is automatically generated in response to Internet searches.

[2] There is a potential for abuse when a solicitation involves direct in-person, live telephone or real-time electronic contact by a licensed paralegal practitioner with someone known to need legal services. These forms of contact subject a person to the private importuning of the trained advocate in a direct interpersonal encounter. The person, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult fully to evaluate all available alternatives with reasoned judgment and appropriate self-interest in the face of the licensed paralegal practitioner's presence and insistence upon being retained immediately. The situation is fraught with the possibility of undue influence, intimidation, and over-reaching.

[3] This potential for abuse inherent in direct in-person, live telephone or real-time electronic solicitation justifies its prohibition, particularly since licensed paralegal practitioners have alternative means of conveying necessary information to those who may be in need of legal services. In particular, communications can be mailed or transmitted by email or other electronic means that do not involve real-time contact and do not violate other laws governing solicitations. These forms of communications and solicitations make it possible for the public to be informed about the need for legal services, and about the qualifications of available licensed paralegal practitioners and law firms, without subjecting the public to direct in-person, live telephone or real-time electronic persuasion that may overwhelm a person's judgment.

[4] The use of general advertising and written, recorded or electronic communications to transmit information from licensed paralegal practitioner to the public, rather than direct in-person or other real-time communications, will help to ensure that the information flows cleanly as well as freely. The contents of advertisements and communications permitted under Rule 7.2 of the Licensed Paralegal Practitioner Rules of Professional Conduct can be permanently recorded so that they cannot be disputed and may be shared with others who know the licensed paralegal practitioner. This potential for informal review is itself likely to help guard against statements and claims that might constitute false and misleading communications in violation of Rule 7.1 of the

Licensed Paralegal Practitioner Rules of Professional Conduct. The contents of direct in-person, live telephone or real-time electronic contact can be disputed and may not be subject to third-party scrutiny. Consequently, they are much more likely to approach (and occasionally cross) the dividing line between accurate representations and those that are false and misleading.

[5] There is far less likelihood that a licensed paralegal practitioner would engage in abusive practices against a former client, or a person with whom the licensed paralegal practitioner has a close personal or family relationship, or where the licensed paralegal practitioner has been asked by a third party to contact a prospective client who is unable to contact a licensed paralegal practitioner, for example when the prospective client is unable to place a call, or is mentally incapacitated and unable to appreciate the need for legal counsel. Nor is there a serious potential for abuse in situations where the licensed paralegal practitioner is motivated by considerations other than the licensed paralegal practitioner's pecuniary gain, or when the person contacted is also a lawyer or a licensed paralegal practitioner. This rule is not intended to prohibit a licensed paralegal practitioner from applying for employment with an entity, for example, as in-house licensed paralegal practitioner. Consequently, the general prohibition in Rule 7.3(a) and the requirements of Rule 7.3(c) of the Licensed Paralegal Professional Rules of Professional Conduct are not applicable in those situations. Also, paragraph (a) is not intended to prohibit a licensed paralegal practitioner from participating in constitutionally protected activities of public or charitable legal-service organizations or *bona fide* political, social, civic, fraternal, employee or trade organizations whose purposes include providing or recommending legal services to their members or beneficiaries.

[5a] Rule 7.3(a) authorizes in-person or other real-time contact by a licensed paralegal practitioner with a prospective client when that prospective client is unable to make personal contact with a licensed paralegal practitioner, but a third party initiates contact with a licensed paralegal practitioner on behalf of the prospective client and the licensed paralegal practitioner then contacts the prospective client.

[6] But even permitted forms of solicitation can be abused. Thus, any solicitation which contains information that is false or misleading within the meaning of Rule 7.1 of the Licensed Paralegal Practitioner Rules of Professional Conduct, that involves coercion, duress or harassment within the meaning of Rule 7.3(b)(2) of the Licensed Paralegal Practitioner Rules of Professional Conduct, or that involves contact with someone who has made known to the licensed paralegal practitioner a desire not to be solicited by the licensed paralegal practitioner within the meaning of Rule 7.3(b)(1) is prohibited. Moreover, if after sending a letter or other communication as permitted by Rule 7.2 of the Licensed Paralegal Practitioner Rules of Professional Conduct the licensed paralegal practitioner receives no response, any further effort to communicate with the recipient of the communication may violate the provisions of Rule 7.3(b).

[7] This Rule is not intended to prohibit a licensed paralegal practitioner from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for their members, insureds, beneficiaries or other third parties for the purpose of informing such entities of the availability of and the details concerning the plan or arrangement which the licensed paralegal practitioner or licensed paralegal practitioner's firm is willing to offer. This form of communication is not directed to people who are seeking legal services for themselves. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services for others who may, if they choose, become prospective clients of the licensed paralegal practitioner. Under these circumstances, the activity which the licensed paralegal practitioner undertakes in communicating with such representatives and the type of information transmitted to the individual are functionally similar to and serve the same purpose as advertising permitted under Rule 7.2 of the Licensed Paralegal Practitioner Rules of Professional Conduct.

[8] The requirement in Rule 7.3(c) that certain communications be marked "Advertising Material" does not apply to communications sent in response to requests of potential clients or their spokespersons or sponsors. General announcements by licensed paralegal practitioners, including changes in personnel or office location, do not constitute communications soliciting professional employment from a client known to be in need of legal services within the meaning of this Rule.

[9] Paragraph (d) of this Rule permits a licensed paralegal practitioner to participate with an organization that uses personal contact to solicit members for its group or prepaid legal service plan, provided that the personal contact is not undertaken by any licensed paralegal practitioner who would be a provider of legal services through the plan. The organization must not be owned by or directed (whether as manager or otherwise) by any lawyer or law firm that participates in the plan. For example, paragraph (d) would not permit a licensed paralegal practitioner to create an organization controlled directly or indirectly by the licensed paralegal practitioner and use the organization for the in-person or telephone, live person-to-person contacts or other real-time electronic solicitation of legal employment of the licensed paralegal practitioner through memberships in the plan or otherwise. The communication permitted by these organizations also must not be directed to a person known to need legal services in a particular matter, but is to be designed to inform potential plan members generally of another means of affordable legal services. licensed paralegal practitioners who participate in a legal service plan must reasonably assure that the plan sponsors are in compliance with Rules 7.1, 7.2 and 7.3(b). See Rule 8.4(a) of the Licensed Paralegal Practitioner Rules of Professional Conduct.

Rule 7.4. Communication of Fields of Practice.

(a) A licensed paralegal practitioner must communicate the fact that the licensed paralegal practitioner practices only in particular fields of law.

(b)-(d) Reserved.

Comment

[1] Paragraph (a) of this Rule permits a licensed paralegal practitioner to indicate areas of practice in communications about the licensed paralegal practitioner's services. If a licensed paralegal practitioner practices only in certain fields or will not accept matters except in a specified field or fields, the licensed paralegal practitioner is required to so indicate. A licensed paralegal practitioner is generally permitted to state that the licensed paralegal practitioner is a "specialist," practices a "specialty" or "specializes in" particular fields, but such communications are subject to the "false and misleading" standard applied in Rule 7.1 to communications concerning a licensed paralegal practitioner's services.

[2]-[3] Reserved.

Rule 7.5. Firm Names and Letterheads.

(a) A licensed paralegal practitioner shall not use a firm name, letterhead or other professional designation that violates Rule 7.1 of the Licensed Paralegal Practitioner Rules of Professional Conduct. A trade name may be used by a licensed paralegal practitioner in private practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1 of the Licensed Paralegal Practitioner Rules of Professional Conduct.

(b) A law firm with licensed paralegal practitioners or a firm with licensed paralegal practitioners with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction, but identification of the licensed paralegal practitioners in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

(c) The name of a licensed paralegal practitioner holding a public office shall not be used in the name of a firm, or in communications on its behalf, during any substantial period in which the licensed paralegal practitioner is not actively and regularly practicing with the firm.

(d) Licensed paralegal practitioners may state or imply that they practice in a partnership or other organization only when that is the fact.

Comment

[1] A firm may be designated by the names of all or some of its members, by the names of deceased members where there has been a continuing succession in the firm's identity or by a trade name such as the "ABC Legal Clinic." A licensed paralegal practitioner firm may also be designated by a distinctive website address or comparable professional designation. Although the United States Supreme Court has held that legislation may prohibit the use of trade names in professional practice, use of such names in practice is acceptable so long as it is not misleading. If a private firm uses a trade name that includes a geographical name such as "Springfield Legal Clinic," an express disclaimer that it is not a public legal aid agency may be required to avoid a misleading implication. It may be observed that any firm name including the name of a deceased partner is, strictly speaking, a trade name. The use of such names to designate firms has proven a useful means of identification. However, it is misleading to use the name of a licensed paralegal practitioner not associated with the firm or a predecessor of the firm, or the name of a non-lawyer.

[2] With regard to paragraph (d), licensed paralegal practitioners sharing office facilities, but who are not in fact associated with each other in a firm, may not denominate themselves as, for example, "Smith and Jones," for that title suggests that they are practicing together in a firm.

Rule 7.6. Reserved.

MAINTAINING THE INTEGRITY OF THE PROFESSION

Rule 8.1. Licensing and Disciplinary Matters.

An applicant for licensing as a licensed paralegal practitioner, or a licensed paralegal practitioner in connection with a licensing application or in connection with a disciplinary matter, shall not:

(a) Knowingly make a false statement of material fact; or

(b) Fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6 of the Licensed Paralegal Practitioner Rules of Professional Conduct.

Comment

[1] The duty imposed by this Rule extends to persons seeking licensure as well as to licensed paralegal practitioners. Hence, if a person makes a material false statement in connection with an application for admission, it may be the basis

for subsequent disciplinary action if the person is admitted, and in any event may be relevant in a subsequent admission application. The duty imposed by this Rule applies to a licensed paralegal practitioner's own admission or discipline as well as that of others. Thus, it is a separate professional offense for a licensed paralegal practitioner to knowingly make a misrepresentation or omission in connection with a disciplinary investigation of the licensed paralegal practitioner's own conduct. Paragraph (b) of this Rule also requires correction of any prior misstatement in the matter that the applicant or licensed paralegal practitioner may have made and affirmative clarification of any misunderstanding on the part of the admissions or disciplinary authority of which the person involved becomes aware.

[2] This Rule is subject to the provisions of the Fifth Amendment of the United States Constitution and corresponding provisions of state constitutions. A person relying on such a provision in response to a question, however, should do so openly and not use the right of nondisclosure as a justification for failure to comply with this Rule.

[3] Reserved.

Rule 8.2. Judicial Officials.

(a) A licensed paralegal practitioner shall not make a public statement that the licensed paralegal practitioner knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or a candidate for election or appointment to judicial office.

(b) Reserved.

Comment

[1] Assessments by licensed paralegal practitioners are relied on in evaluating the professional or personal fitness of persons being considered for election or appointment to judicial office. Expressing honest and candid opinions on such matters contributes to improving the administration of justice. Conversely, false statements by a licensed paralegal practitioner can unfairly undermine public confidence in the administration of justice.

[2] Reserved.

[3] To maintain the fair and independent administration of justice, licensed paralegal practitioners are encouraged to continue traditional efforts to defend judges and courts unjustly criticized.

[3a] Reserved.

Rule 8.3. Reporting Professional Misconduct.

(a) A licensed paralegal practitioner who knows that a lawyer has committed a violation of the Rules of Professional Conduct or that another licensed paralegal practitioner has committed a violation of the Licensed Paralegal Practitioner Rules of Professional Conduct that raises a substantial question as to that lawyer's or licensed paralegal practitioner's honesty, trustworthiness or fitness as a lawyer or licensed paralegal practitioner in other respects shall inform the appropriate professional authority.

(b) A licensed paralegal practitioner who knows that a judge has committed a violation of applicable Rules of Judicial Conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.

(c) This Rule does not require disclosure of information otherwise protected by Rule 1.6 of the Rules of Professional Conduct and other Licensed Paralegal Practitioner Rules of Professional Conduct or information gained by a licensed paralegal practitioner or judge while participating in an approved lawyers or licensed paralegal practitioners assistance program.

Comment

[1] Self-regulation of the legal profession requires that members of the profession initiate disciplinary investigation when they know of a violation of the Licensed Paralegal Practitioner Rules of Professional Conduct. Licensed paralegal practitioners have a similar obligation with respect to judicial misconduct. An apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover. Reporting a violation is especially important where the victim is unlikely to discover the offense.

[2] A report about misconduct is not required where it would involve violation of Rule 1.6 of the Rules of Professional Conduct and of the Licensed Paralegal Practitioner Rules of Professional Conduct. However, a licensed paralegal practitioner should encourage a client to consent to disclosure where prosecution would not substantially prejudice the client's interests.

[3] If a licensed paralegal practitioner were obliged to report every violation of the Rules, the failure to report any violation would itself be a professional offense. This Rule limits the reporting obligation to those offenses that a self-regulating profession must vigorously endeavor to prevent. A measure of judgment is, therefore, required in complying with the provisions of this Rule. The term "substantial" refers to the seriousness of the possible offense and not the quantum of evidence of which the licensed paralegal practitioner is aware. A report should be made to the Bar disciplinary agency unless some other agency, such as a peer review agency, is more appropriate in the

circumstances. Similar considerations apply to the reporting of judicial misconduct.

[4] Reserved.

[5] Information about a licensed paralegal practitioner's misconduct or fitness may be received by a licensed paralegal practitioner in the course of that licensed paralegal practitioner's participation in an approved licensed paralegal practitioners assistance program. In that circumstance, providing for an exception to the reporting requirements of paragraphs (a) and (b) of this Rule encourages licensed paralegal practitioners to seek treatment through such a program. Conversely, without such an exception, licensed paralegal practitioners may hesitate to seek assistance from these programs, which may then result in additional harm to their professional careers and additional injury to the welfare of clients and the public.

Rule 8.4. Misconduct.

It is professional misconduct for a licensed paralegal practitioner to:

(a) violate or attempt to violate the Licensed Paralegal Practitioner Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the licensed paralegal practitioner's honesty, trustworthiness or fitness as a licensed paralegal practitioner in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

(e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Licensed Paralegal Practitioner Rules of Professional Conduct or other law; or

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

Comment

[1] Licensed paralegal practitioners are subject to discipline when they violate or attempt to violate the Licensed Paralegal Practitioner Rules of Professional Conduct or knowingly assist or induce another to do so through the acts of another, as when they request or instruct an agent to do so on the licensed paralegal practitioner's behalf. Paragraph (a), however, does not prohibit a licensed paralegal practitioner from advising a client concerning action the client is legally entitled to take.

[1a] A violation of paragraph (a) based solely on the licensed paralegal practitioner's violation of another of the Licensed Paralegal Practitioner Rules of Professional Conduct shall not be charged as a separate violation. However, this rule defines professional misconduct as a violation of the Licensed Paralegal Practitioner Rules of Professional Conduct as the term professional misconduct is used in the Supreme Court Rules of Professional Practice, including the Standards for Imposing Licensed Paralegal Practitioner Sanctions. In this respect, if a licensed paralegal practitioner violates any of the Licensed Paralegal Practitioner Rules of Professional Conduct, the appropriate discipline may be imposed pursuant to Rule 15-605.

[2] Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. However, some kinds of offenses carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving "moral turpitude." That concept can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, that have no specific connection to fitness for the practice of law. Although a licensed paralegal practitioner is personally answerable to the entire criminal law, a licensed paralegal practitioner should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, breach of trust or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

[3] A licensed paralegal practitioner who, in the course of representing a client, knowingly manifests by words or conduct bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, violates paragraph (d) when such actions are prejudicial to the administration of justice. Legitimate advocacy respecting the foregoing factors does not violate paragraph (d).

[3a] The Standards of Licensed Paralegal Practitioner 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 Licensed Paralegal Practitioner Professionalism and Civility may support a finding that the licensed paralegal practitioner has violated paragraph (d).

[4] A licensed paralegal practitioner may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists.

[5] Licensed paralegal practitioners holding public office assume legal responsibilities going beyond those of other citizens. A licensed paralegal practitioner's abuse of public office can suggest an inability to fulfill the professional role of licensed paralegal practitioners. 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.

Rule 8.5. Disciplinary Authority; Choice of Law.

(a) Disciplinary Authority. A licensed paralegal practitioner admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the licensed paralegal practitioner's conduct occurs.

(b) Choice of Law. In any exercise of the disciplinary authority of this jurisdiction, the rules of professional conduct to be applied shall be as follows:

(b)(1) for conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise; and

(b)(2) for any other conduct, the rules of the jurisdiction in which the licensed paralegal practitioner's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. A licensed paralegal practitioner shall not be subject to discipline if the licensed paralegal practitioner's conduct conforms to the rules of a jurisdiction in which the licensed paralegal practitioner reasonably believes the predominant effect of the licensed paralegal practitioner's conduct will occur. If both the jurisdiction where the licensed paralegal practitioner's conduct occurred and the jurisdiction where its predominant effect was felt lack rules of professional conduct for licensed paralegal practitioners, these rules shall be applied to the conduct at issue.

Comment

Disciplinary Authority

[1] The conduct of a licensed paralegal practitioner admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction. Extension of the disciplinary authority of this jurisdiction to other licensed paralegal practitioners who provide or offer to provide legal services in this jurisdiction is for the protection of the citizens of this jurisdiction. Reciprocal enforcement of a jurisdiction's disciplinary findings and sanctions will further advance the purposes of this Rule. See Rules 6 and 22, Licensed Paralegal Practitioner Discipline and Disability.

Choice of Law

[2] A licensed paralegal practitioner may be potentially subject to more than one set of rules of professional conduct that impose different obligations. The licensed paralegal practitioner may be licensed to practice in more than one jurisdiction with differing rules or may be admitted to practice before a particular

court with rules that differ from those of the jurisdiction or jurisdictions in which the licensed paralegal practitioner is licensed to practice. Additionally, the licensed paralegal practitioner's conduct may involve significant contacts with more than one jurisdiction.

[3] Paragraph (b) seeks to resolve such potential conflicts. Its premise is that minimizing conflicts between rules, as well as uncertainty about which rules are applicable, is in the best interest of both clients and the profession (as well as the bodies having authority to regulate the profession). Accordingly, it takes the approach of (i) providing that any particular conduct of a licensed paralegal practitioner shall be subject to only one set of rules of professional conduct, (ii) making the determination of which set of rules applies to particular conduct as straightforward as possible, consistent with recognition of appropriate regulatory interests of relevant jurisdictions, and (iii) providing protection from discipline for licensed paralegal practitioners who act reasonably in the face of uncertainty.

[4] Paragraph (b)(1) provides that, as to a licensed paralegal practitioner's conduct relating to a proceeding pending before a tribunal, the licensed paralegal practitioner shall be subject only to the rules of the jurisdiction in which the tribunal sits unless the rules of the tribunal, including its choice of law rule, provide otherwise. As to all other conduct, including conduct in anticipation of a proceeding not yet pending before a tribunal, paragraph (b)(2) provides that a licensed paralegal practitioner shall be subject to the rules of the jurisdiction in which the licensed paralegal practitioner's conduct occurred, or, if the predominant effect of the conduct is in another jurisdiction, the rules of that jurisdiction shall be applied to the conduct. In the case of conduct in anticipation of a proceeding that is likely to be before a tribunal, the predominant effect of such conduct could be where the conduct occurred, where the tribunal sits or in another jurisdiction. If the jurisdiction where the conduct occurred and the jurisdiction where the predominant effects of the conduct were felt both lack rules of professional practice for licensed paralegal practitioners then these rules shall apply to the conduct at issue.

[5] When a licensed paralegal practitioner's conduct involves significant contacts with more than one jurisdiction, it may not be clear whether the predominant effect of the licensed paralegal practitioner's conduct will occur in a jurisdiction other than the one in which the conduct occurred. So long as the licensed paralegal practitioner's conduct conforms to the rules of a jurisdiction in which the licensed paralegal practitioner reasonably believes the predominant effect will occur, the licensed paralegal practitioner shall not be subject to discipline under this Rule. With respect to conflicts of interest, in determining a licensed paralegal practitioner's reasonable belief under paragraph (b)(2), a written agreement between the licensed paralegal practitioner and client that reasonably specifies a particular jurisdiction as within the scope of that paragraph may be considered if the agreement was obtained with the client's informed consent confirmed in the agreement.

[6] If two admitting jurisdictions were to proceed against a licensed paralegal practitioner for the same conduct, they should, applying this Rule, identify the same governing ethics rules. They should take all appropriate steps to see that they do apply the same rule to the same conduct and in all events should avoid proceeding against a licensed paralegal practitioner on the basis of two inconsistent rules.

[7] Reserved.

Tab 4

PARALEGAL PRACTITIONER
EXECUTIVE SUBCOMMITTEE MEETING
Minutes
Thursday, March 2, 2017 10:00am
Judicial Council Conference Room
Matheson Courthouse

JUSTICE DENO HIMONAS, Presiding

ATTENDEES:
Justice Deno Himonas, Chair
Dean Robert W. Adler
Dr. Thomas Clarke
Dean Benson Dastrup (via conference call)
Steven G. Johnson
Jacqueline Esty Morrison
Judge Kate A. Toomey
Elizabeth Wright
James Ishida, Staff
Miles Pope, Law Clerk to Justice Himonas

GUEST:
Ray Wahl, Deputy State Court Administrator

EXCUSED:
Judge Royal I. Hanson, Vice Chair
James S. Jardine
Robert O. Rice

I. WELCOME AND APPROVAL OF MINUTES (Himonas)

Justice Himonas welcomed everyone to the meeting. He also welcomed to the committee Dean Benson Dastrup from the J. Reuben Clark Law School, who replaced Dean Allison Belnap. Minutes of the last meeting were approved.

II. PRESENTATION BY RAY WAHL (Wahl)

Mr. Wahl, Deputy State Court Administrator, appeared on behalf of Judge Douglas Thomas, who chairs the Judicial Council's Domestic Case Process Improvement Subcommittee, and co-chairs its Committee on Children and Family Law. Mr. Wahl explained the origin and work of the two committees, saying that the subcommittee's mission is to simplify how domestic cases are processed and to lessen the adversarial nature of those cases. The subcommittee, Mr. Wahl said, is therefore keenly interested in whether LPPs could play a role in streamlining the process. Specifically, Mr. Wahl wondered whether LPPs could assist in the pro se calendar.

Justice Himonas pointed out that while LPPs would not be authorized, at least initially, to actively represent their clients in court, an LPP could still be in court to assist a client with forms-related questions. An LPP could, for example, take notes on court proceedings, assist the client with completing a form or preparing an order as directed by the court, or help the client answer questions posed by the judge. The client would, however, still have to enter an appearance and make it clear that he or she is representing him or herself in the particular court proceeding.

Nonetheless, in spite of not being allowed to make a formal appearance in court, Justice Himonas noted that LPPs could still provide much help to their clients, and they could play a significant role in simplifying domestic cases. Mr. Wahl thanked the members for their guidance, and he said that he would take the information back to his committees for further consideration.

III. SUBCOMMITTEE REPORTS

A. Admissions and Administration Subcommittee (Wright)

Ms. Wright reported that her subcommittee has made tremendous progress and has nearly finalized its set of substantive rules. The only areas that still needed to be addressed are certain administrative issues, such which tests will be used, the timing of applications, and calculation of fees. Ms. Wright explained that her subcommittee, like the ethics and discipline subcommittee, had essentially copied the rules from their counterpart in the attorney rules. She said that there had been some discussion as to whether to model the rules after the Washington State paralegal rules, but then her subcommittee ultimately decided to model them after the Utah attorney rules.

Ms. Wright also mentioned that there was some discussion about having the Bar's admissions apparatus handle the LPP admissions process, but her subcommittee had tentatively decided that it would be better to have different staff and different committees handle LPP testing and admissions process.

B. Ethics and Discipline Subcommittee (Toomey)

Judge Toomey reported that her subcommittee is currently reviewing the proofreaders' comments on its package of proposed rules amendments, which she estimated would be completed shortly. Judge Toomey also mentioned that Dixie Jackson from her subcommittee would serve on the new examination subcommittee and Steve Johnson would serve on the new CLE subcommittee.

Later, Judge Toomey asked about the work of the new subcommittees. Specificially, would the examination subcommittee be responsible for actually drafting and grading the LPP licensing examination? Others voiced similar concerns. Mr. Wright interjected that she and John Baldwin had reached out to the LLLT officials in Washington State for guidance. Those

officials, she said, had recommended against using volunteers and instead suggested that professionals be hired to prepare the licensing examination. The officials added that they had hired a Seattle-based company to draft the questions for the LLLT licensing exam. Ms. Wright indicated that she would ask either Bar staff or the new examination subcommittee to contact this Seattle company for assistance.

Finally, Judge Toomey mentioned an ongoing study by the ABA on the Utah State Bar Office of Professional Conduct. She noted that the results of the study are overdue, and she pointed out that the ABA's findings could obviously have an impact on the attorney and LPP disciplinary process.

C. Education Subcommittee (Adler)

Dean Adler reported that his subcommittee is currently undergoing an analysis of court forms to decide which are permissible and which are not permissible for use by LPPs. This will, he said, be discussed at the next subcommittee meeting later this month. Also on the agenda will be representatives from the continuing legal education departments at the Utah Valley University and the Salt Lake Community College, who will lead a discussion on creating a new training program for prospective LPP students. The representatives, Dean Adler mentioned, are particularly interested in partnering with Utah State University because of USU's online capability.

Finally, Dean Adler noted that the subcommittee had circulated its final draft of the LPP learning objectives at the last Executive Committee meeting, and he reminded everyone to submit any comments or suggestions to him.

D. Miscellaneous

Forms. Justice Himonas reported that the new Judicial Council Committee on Forms is now up and running. Professor Dryer will chair the committee, which meets later this month, and the LPP forms will be a priority.

Costs. Dr. Clarke noted that Washington State has discovered that the regulatory costs to administer its LLLT program are too high compared to the revenues being generated to support the program. Dr. Clarke therefore offered to conduct a cost-benefit analysis for Utah, to ensure that anticipated costs and revenues are congruent. Justice Himonas thanked Dr. Clarke for his generous support.

IV. ADJOURN

Justice Himonas thanked the members, and the meeting was adjourned at 10:47am.

Tab 5

Preliminary Evaluation of the Washington State Limited License Legal Technician Program

March 2017

Prepared by Thomas M. Clarke, National Center for State Courts, and Rebecca L. Sandefur, American Bar Foundation,
with support from the Public Welfare Foundation

Public Welfare Foundation

ABF American Bar Foundation
EXPANDING KNOWLEDGE • ADVANCING JUSTICE

NCSC National Center for State Courts

Executive Summary

The Washington State Supreme Court and the Washington State Bar Association created an innovative program to expand the provision of legal services. Limited Licensed Legal Technicians (LLLTs) represent a new legal role that builds on the capabilities of traditional paralegals and operates without supervision by lawyers. LLLTs primarily help customers fill out legal forms and understand legal procedures. The program started with the family law practice area, but Washington State plans to expand to additional practice areas in the near future. A small number of LLLTs have been certified and are currently practicing.

The evaluation shows that the program has been appropriately designed to provide legal services to those who cannot afford a lawyer but still wish or need assistance. The training program prepares LLLTs to perform their role competently while keeping within the legal scope of that role. Customers have found their legal assistance to be valuable and well worth the cost. The legitimacy of the role appears to be widely accepted in spite of its short track record.

There are some questions about how best to scale up the program. The biggest current bottleneck is the required year of training with the University of Washington (UW) Law School. Washington State is actively pursing other ways to mitigate that constraint. The regulatory costs of the program are not yet close to breaking even, but scaling up the program significantly would resolve that issue. LLLTs would greatly benefit from additional training on business management and marketing, but several of the first LLLTs are successfully running a full-time LLLT practice.

The example of the LLLT program in Washington State has already encouraged a second state to create a similar program. Utah is currently designing its Paralegal Practitioner program along the lines of the Washington State program. Several of the recently approved program changes in Washington State were incorporated immediately into the Utah program design.

The LLLT program suggests that new legal roles with costs lower than traditional lawyers are a potentially significant strategy for meeting the legal needs of many people who now are dealing with their legal problems unassisted. Creating similar programs in other states would clearly improve access to justice for a broad section of the public.

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Research Summary and Recommendations

Introduction

The Washington Supreme Court's Practice of Law Board started considering the possibility of creating new legal roles almost fifteen years ago. After many years of debate and discussion, the Washington Supreme Court adopted Admission and Practice Rule (APR) 28 authorizing the creation of the Limited License Legal Technician (LLLT) role in June 2012. APR 28 created the Limited License Legal Technician Board, which was tasked with developing and implementing the new license. The Washington State Bar Association (WSBA) staffs and funds the LLLT Board and regulates the LLLTs under delegated authority from the Washington Supreme Court.

After several years of work to create the regulations, training, and administrative mechanisms to do so, the first LLLT candidates entered their practice-area education classes in 2014. Three further classes have begun the practice-area courses since then with many more students completing their core education requirements at the community college level. In 2015, the first LLLTs were licensed by the Washington Supreme Court. At the time research for this evaluation was conducted, there were fifteen (15) licensed LLLTs. Since then, that number has slowly continued to grow.[1]

A number of other states have expressed interest in the possibility of starting similar programs. Given that interest, the Public Welfare Foundation (PWF) decided to fund an independent academic evaluation of the LLLT program. Because of its more general interest in new legal roles, the PWF also funded an evaluation of the New York City Navigator program by the same research team.

Evaluation Approach

Since it was likely that states would create both similar new roles and other kinds of new legal roles, the research team first created an evaluation framework that was flexible enough to encompass a broad range of possible new legal roles.[2] The framework was also intended to support a variety of performance and evaluation measures. Given different program objectives, a particular program evaluation might utilize only a subset of the available evaluation dimensions, but at least the approach would be roughly consistent across program types and evaluator teams.

The framework identifies three broad evaluation categories at the highest level: appropriateness, efficacy, and sustainability. Essentially, researchers want to know if a program does the right thing, does it effectively, and is capable of doing it into the future. To know if the program is doing the right thing, it is necessary to see if the tasks performed by the new role align with the problems that are to be solved or the desired new services. It is also necessary to determine if the persons in the new role will be trained to perform those tasks.

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[1] For an excellent summary of the history, scope, and current status of the LLLT program, see "Report of the Limited License Legal Technician Program to the Washington Supreme Court: the first three years," February 2016, Washington State Bar Association.

[2] INCREASING ACCESS TO JUSTICE THROUGH EXPANDED 'ROLES BEYOND LAWYERS': PRELIMINARY EVALUATION AND CLASSIFICATION FRAMEWORKS, Rebecca L. Sandefur and Thomas M. Clarke, American Bar Foundation and National Center for State Courts, Chicago, IL and Williamsburg, VA, March 2015.

To be effective, researchers must see if the identified tasks are being performed competently by those in the new role and that, when they do so, the impacts on the targeted problems are positive and beneficial.

Finally, the sustainability of the program requires positive answers to three different kinds of questions. Does the regulatory regime, including training, have a stable basis? Does the business model for the new role have a stable basis? Do customers, clients, and colleagues of the new role attribute to it enough legitimacy to provide a stable clientele?

At the time of this evaluation the LLLT program was about 15 months old. The small number of certified LLLTs did not permit a rigorous statistical evaluation. As a result, the researchers opted for a more ethnographic approach using structured interviews. Thus, this evaluation must be considered preliminary and provides first impressions of how the program is progressing. More definitive results must await a larger number of certified LLLTs.

The researchers interviewed 13 of the 15 then certified LLLTs, mostly by telephone.[3] They also interviewed four clients, several colleagues of various types, and representatives of both the regulatory office at the WSBA and the training schools at several state community colleges and the UW School of Law.

Program Appropriateness

The stated objective of the LLLT program is to increase access to justice for low and moderate-income persons while protecting the public by ensuring the provision of quality legal services. This broad objective could not be pursued all at once. Instead the LLLT Board and the WSBA envisioned a more incremental approach to the new role. APR 28 was designed to have LLLTs licensed in specific practice areas, with the number of practice areas approved by the Supreme Court to grow over time. Prospective LLLTs would meet the qualifications and become licensed in each practice area separately. As practice areas were added, already licensed LLLTs could decide in which of any additional practice areas they wanted to become licensed.

The scope of the LLLT's authority was limited to be consistent with the training and testing requisite of a limited license. For example, LLLTs were barred from representing clients in talks or negotiations with lawyers or other parties. They also could not go into court hearings with their clients and assist them there. These restrictions still enabled LLLTs to provide process assistance and forms assistance. In the first practice area of family law, LLLTs can assist in these ways on a wide range of family law matters.

Training on these tasks followed a three-pronged approach. First, candidates had to receive, at a minimum, an associate level degree with 45 of the credits defined in the LLLT regulations. The courses were to be completed in an ABA-approved paralegal program. Upon the completion of this "core education," candidates then complete 15 credits in family law through a curriculum developed by an ABA-approved law school. Currently, the courses are offered through the UW School of Law, with Gonzaga University law professors helping to teach the courses. Concurrent with the education, candidates spend 3,000 hours working under the supervision of a licensed lawyer. In addition to these requirements, candidates must pass three exams: one at the completion of the core education (the

[3] The researchers interviewed LLLTs, WSBA staff, lawyers, clients, and educators.

Paralegal Core Competency (PCC) Exam), an exam on the LLLT Rules of Professional Conduct, and a subject area exam.[4]

In order to facilitate a faster "ramp up" of the new program, the Court approved a waiver path to the license recommended by the LLLT Board. The waiver is allowed for existing paralegals who have spent at least ten years performing substantive legal work under the supervision of an attorney and have current national certification with one of the national paralegal association. If these requirements are met, the LLLT candidate can proceed directly to the practice-area education and the requisite exams required for licensure. This waiver was initially put in place until the end of 2016, but the LLLT Board was considering an extension as this study was being done. In fact, most of the current LLLTs satisfied their core education requirement in this way, while a few of the newest LLLTs went through the complete education cycle.

***Discussion*:**

Although most of the waivered LLLTs gained most of their experience in family law, the experience requirement does not require practice in family law matters. This suggests that the experience requirement is intended to provide general familiarity with legal procedures and processes, rather than specific expertise in family law. This means that the formal training curriculum must provide all required content for the family law practice area.

Not all of the community colleges in Washington State that provide paralegal programs are ABA-approved. That means that certain areas of the state are not conveniently served for that portion of the training requirements. The Supreme Court subsequently approved teaching the core courses at all LLLT Board approved community colleges, mitigating the problem of geographical access significantly. In contrast to the community college approach, the law school year of training is done entirely online, making it easy for candidates from all areas of the state to participate.

The law school had no precedent for this kind of training, so essentially it had to create both a new business process and a new business model for the LLLT program. The new process is able to take advantage of some of the services offered to regular law students, but not others. In particular, prospective LLLTs cannot avail themselves of any financial aid opportunities at the law school.

The UW School of Law originally expected much larger numbers of prospective LLLTs to matriculate. The much smaller initial numbers of students enabled the University of Washington law school to more easily revise its original approach as it learned what worked best. The annual cohorts of students will still need to increase significantly if the university is to achieve a breakeven point on the economics of the program and provide appropriate management. Estimates of the desired cohort size were rough and ranged from 25 to 100 students. It is also not clear if the law school can provide enough faculty to support student cohorts of this size. In short, the economics of the law school training business model are still somewhat uncertain.

Representatives of the community colleges with non-ABA-approved paralegal programs expressed a strong interest in becoming approved LLLT training programs. More broadly, representatives of the

[4] The 2016 WSBA report describes these education requirements as: "At a minimum possess an associate level degree; complete 45 credits of core curriculum in paralegal studies as defined in the regulations; complete 15 credits of practice area course work; have 3,000 hours of work experience under the supervision of a licensed Washington attorney; pass a rigorous core curriculum examination; pass a rigorous practice area examination; and pass a rigorous professional responsibility examination."

community colleges expressed a strong interest in the possibility of teaching the entire training curriculum, including the year that is now taught at the law school.

***Findings*:**

- The law school must subsidize the LLLT program at current student levels.
- It is not clear how much the student levels would need to increase for the law school to break even on the program. Rough estimates ranged from 30 to 60 students per year. Upcoming cohorts from the community colleges may be growing already, but if so it will not be visible yet.
- It is not clear to what extent staffing and other bottlenecks at the law school would constrain student numbers if they increased significantly.
- Participating community colleges are currently unable to reliably identify which of their paralegal students intend to become LLLTs.
- Teaching the practice area classes at community colleges using remote law professors, community college professors, or adjunct faculty would be one way to mitigate the possible bottleneck at the law school.
- The Seattle University and Gonzaga University law schools are struggling financially and felt unable to subsidize a new program like the LLLTs. Gonzaga University has contributed faculty to the courses at the UW School of Law.
- The inability of the UW School of Law to provide any kind of financial aid is a significant economic deterrent to prospective students.
- Allowing non-ABA-approved paralegal programs to qualify as part of the LLLT training program would significantly improve geographical convenience for students. [A recommendation to make this change has been subsequently proposed and approved by the Washington State Supreme Court.]

Program Efficacy

The LLLT program is designed to provide assistance with the legal process and the preparation of legal forms. Program designers believe that consumers find these kinds of processes to be significant barriers to access when they cannot afford the assistance of a full-service lawyer. Thus, it was hoped that LLLTs would competently provide such services at a significantly lower cost to consumers and by doing so constitute an effective solution to this access problem.

If LLLTs are to benefit consumers in this way, it must be true that they can competently help with these kinds of tasks. It must also be true that consumers trust LLLTs to perform these tasks for them. Finally, competent assistance should result in better legal outcomes and may also improve perceived procedural justice.

***Discussion*:**

Licensed LLLTs with education waivers uniformly felt competent to provide appropriate assistance in family law matters according to the defined scope of the role. This opinion was partly supported by LLLTs without family law experience, who did not feel they could provide assistance efficiently enough to charge their desired prices until they had more experience. It will be interesting to see how these opinions and perceptions change as more LLLTs go through the program without the long years of prior family experience as paralegals.

Clients were sometimes confused about exactly what LLLTs could and could not do. Because the line between allowable and forbidden types of assistance followed the complexity of legal tasks and not the typical tasks in types of family law actions, clients were sometimes forced to do things by themselves that they wanted LLLTs to do or were required to contract with lawyers for unbundled assistance when it was available. These distinctions made no sense to them as lay persons.

From a process viewpoint, LLLTs walked clients through the engagement agreement and explained their scope in detail. Some LLLTs made referrals to lawyers when they were unable to perform a task that a client needed. Conversely, some lawyers made referrals to LLLTs when tasks were within their scope and clients could not afford a lawyer.

***Findings*:**

- Family law task competence was strongly ascribed to specific family law experience as a paralegal.
- At the same time, the training curriculum was deemed appropriate and adequate for the family law practice area.
- LLLTs suggested that the current training program be expanded to include a greater emphasis on practical completion of forms.
- LLLTs thought the 3,000 hours of experience required was about right.
- LLLTs also suggested that a subset of the experience hours should be dedicated to family law matters. Proposed ranges of dedicated experience hours ranged 500 to 1,000 hours out of a total of 3,000 hours.
- Some, but not all, of the small group of licensed LLLTs that went through the entire training sequence felt that they lacked enough specific family law experience to be fully competent at the beginning of their practice.
- Clients uniformly reported that LLLTs provided competent assistance.
- Clients reported that their legal outcomes were improved by utilizing the services of LLLTs.
- Clients were unable to articulate in what way procedural justice was improved for them, but they did frequently report reductions in stress, fear, and confusion.
- Some clients expressed a desire for LLLTs to provide similar assistance for excluded family law matters.
- Some clients expressed a desire for LLLTs to be able to represent them in conversations or negotiations with opposing lawyers and parties.
- Some clients expressed a desire for LLLTs to accompany them into court and at least assist them in answering questions during court hearings.
- Clients often did not understand the legal nuances of what tasks a LLLT could perform, even though LLLTs provided correct and detailed explanations.
- Clients did follow the advice of LLLTs on what legal assistance they could provide and when they needed to seek the help of an attorney.

Program Sustainability

Sustainability requires the program business models to work for both the participants in the new role and the organizations providing training and regulation. Separately, the new role must be performed well enough for the public to view it as legitimate and effective in an on-going way. Both of these aspects of sustainability are critical to the long-term success of the program and the new role.

As noted in the LLLT Board's report to the Supreme Court, the typical total cost of all education required to become certified is $14,440.[5] Licensed LLLTs must discover and attract sufficient numbers of clients and revenue to make an operational profit that provides a livable income and amortize the initial investment over a reasonable period of time. At the time of this evaluation, most LLLTs were not practicing full-time. Instead, they worked part-time as traditional paralegals or solely as a part-time job.

A couple of LLLTs did work full-time. These LLLTs understood very well the costs of specific tasks and managed the scope of their cases carefully. They had analyzed their tasks in enough detail to charge fees for discrete tasks, rather than charging hourly rates. They understood their business models well enough to know if they were achieving a practical standard of living or not.

Also per the LLLT Board report, the regulatory costs to date total $473,405 and the fees collected in 2015 total $11,188.[6] So, the WSBA has provided a large subsidy to date to operate the program. Many of the regulatory costs are relatively fixed startup costs that will not be incurred to the same extent as the number of participants increases. Startup costs should be smaller as new practice areas are added, since several aspects of the regulatory machinery will not need significant modification. Unfortunately, the WSBA does not break out one-time startup costs and on-going operating costs, but they should not be significantly different from the current operating costs in that regulatory area. It also has not estimated the cost of adding new practice areas, but they may be minimized by mostly using the current LLLT Board and committee members. While it may be difficult to estimate what number of new licensed practitioners per year would be required to achieve a breakeven point for operating the program with precision, presumably the WSBA could do so for various enrollment and certification scenarios.

The WSBA estimates that such a breakeven point may be achieved in five to seven years, which would include paying back the startup costs, but does not indicate what level of licenses would be needed to do so. It does estimate that up to 200 people may be currently enrolled in its core programs. If so, the WSBA can determine when the breakeven point will be achieved at least approximately. Community colleges know how many students are in their paralegal programs, but not how many of those students might go on to become licensed LLLTs. Previous estimates of LLLT cohorts have consistently proven to be too optimistic, but that may change as the program becomes better known and gathers momentum with a track record.

If the Supreme Court decides to accept training provided by community colleges with programs that are not ABA-certified, it appears that the community colleges collectively provide enough throughput to support a much larger number of LLLTs. No special subsidies would be required, since paralegal students train within the standard business model of the community colleges. The number of classes can be ramped up or down according to demand without significant disruption or change to the usual business processes.

As previously mentioned, the same is not true for the law schools. Although attempts have been made to actively involve all three law schools in the state, only the University of Washington had the resources to support the required training cycles. Gonzaga University contributed faculty in a small way, but nothing else. Even then, the Univesity of Washington law school currently loses money on the program and must subsidize it. The first three cohorts through the law school curriculum were 17, 23, and 19 students respectively. The law school was initially expecting significantly larger cohorts, and they would still like to scale up cohort sizes significantly to make the program more economic. In particular, the law school wants a full-time administrator for the program, which would require cohorts of at least 25 to 28 students

[5] See 2016 WSBA report.
[6] See 2016 WSBA report.

consistently. Larger cohorts might make the establishment of special financial aid and scholarship funds possible from an administrative funding point of view, but rules regarding financial aid would still have to be changed or finessed. On the other hand, larger cohorts might also create a faculty bottleneck according to the law school staff.

Aside from these issues, the law school supports the addition of business management and marketing content to the curriculum, but that would almost certainly lengthen the period of training and the associated costs for LLLTs. More positively, the law school thinks it could support revisions of the curriculum on court appearances and negotiations if the LLLT Board and the Supreme Court were to support those changes in LLLT scope. Washington State should know very soon if the Supreme Court is supportive. History suggests that it will be.

The law school still operates the year of LLLT training using a special and abnormal business process, because their normal process is uneconomic for LLLT training. It is run as a Continuing Legal Education (CLE) program with a large tuition break. That avoids $480 a quarter in fees and reduces the cost per quarter to $1,250. The law school and the LLLT Board are still working creatively with the community colleges to overcome the inability of the law school to offer financial aid to LLLTs. Because of the special process, LLLTs also do not have access to on-site university services, disability services, or career development services. Of those issues, the availability of financial aid is most important for prospective LLLTs.

It is also the only law school program that uses a synchronous online training method. Although not originally planned, that approach has worked well for LLLTs and the law school has been able to provide a quality educational experience. Both the law school teaching staff and the current group of licensed LLLTs consider the curriculum to be generally good, although the LLLTs consistently expressed a preference for additional practical training on forms. On the other hand, synchronous training is harder to scale and may experience problems attracting sufficient faculty in the future. An asynchronous approach would scale more easily. Perhaps a training model based on a broader provision of services by community colleges could overcome some of these issues.

The community colleges would definitely welcome an expansion of the program beyond the current ABA-certified colleges (and it has subsequently been approved). This expansion would definitely help expand the annual cohorts of LLLTs, since students noted both travel constraints and a desire to access the curriculum online when possible (which the ABA partially restricts now for certification). Providing online training is still a relatively new approach for most community colleges and not yet a core part of their education approach, but they expressed a willingness to expand those capabilities in the future.

Finally, the community colleges would agree to take on the entire curriculum, including the year that is currently provided only through the law school, if the LLLT Board and the Supreme Court would allow them to do so. That change in program design would potentially improve the sustainability of the LLLT program by solving a number of issues with the economic viability of the training program, including the financial aid issue.

The experience of licensed LLLTs to date has not been especially encouraging in terms of viable business models when operating as a pure full-time LLLT practice, but the evidence suggests that viable business models are possible under the right conditions. Two Yale University researchers describe three conceptual business models that LLLTs might implement: solo practice, semi-solo practice, and firm employee.[7] Of the currently licensed LLLTs, most are using either the semi-solo practice or the firm employee. Only a

[7] "Pathway to Success," Jie Min and Bethany Hill, unpublished.

couple of LLLTs are attempting a true solo practice at this point, but that is very likely to change as the program grows.
The few LLLTs practicing full-time had very carefully analyzed their services and their related costs. They conducted their practices according to well-structured business models. The part-time LLLTs approached their businesses in a more unstructured way and charged hourly rates instead of fixed fees. Working for law firms as paralegals provided an economic safety net that made it less necessary to work out a more explicit and detailed business plan. Partly because the services offered by LLLTs are so new and limited in ways that are not obvious to the public, marketing and public education are important issues for attracting a viable volume of clients. Support by local bars and law firms clearly helped by providing cross referrals of clients, but more attention to fundamental business marketing is clearly needed. A growing number of county bars are accepting LLLTs as members and the WSBA made LLLTs members in January 2017.

Many of the practicing LLLTs cited revenue uncertainties as their motivation for selecting the semi-solo or firm employee business models. In most cases, both models took the form of relationships with existing law firms. In several cases the LLLTs had previously worked for those firms as paralegals and simply continued those relationships in a different way. Aside from revenue concerns, a close connection to a law firm also supported appropriate referrals both to and from the LLLT, which was beneficial for both business parties.

The Yale paper goes on to lay out in simple terms a standard approach to writing a good business plan. Like many new small businesses, LLLTs often lack basic skills in business management and are at high risk of business failure if they attempt a solo practice. That risk is not reduced by the obvious value that LLLTs provide to their clients. It is rather a normal function of being a new small business. Those risks include being under-capitalized and lacking an effective marketing plan. Again, the WSBA and LLLT Board are working to mitigate these issues.[8] Several of the Yale paper recommendations parallel recommendations made later in this evaluation.

***Discussion*:**

Both the regulatory oversight and the law school training use unsustainable business models right now. With increased volumes of LLLTs both could potentially become sustainable, but the likelihood of sufficient volumes is an open question. Similarly, only a couple of the currently licensed LLLTs appear to be making a living solely as LLLTs. The rest are using mixed business models and working significant amounts as traditional paralegals for law firms to ensure sufficient incomes.

Effective marketing is perhaps the critical link for business success at this point. Many LLLTs are unable to attract a sufficient number of clients to run a viable business even though the evidence for a sufficient pool of potential clients is strong. With any new service that is not well known or understood by the public, it is difficult for potential clients to literally discover the existence of the new role and understand when it might make sense to use the services of a LLLT. When local law firms support the LLLT role and provide appropriate referrals, that behavior partially mitigates these concerns. Conversely, when the local bar is actively hostile, it makes the marketing issue much more difficult to solve. Fortunately, this problem seems to be dwindling as county bars gain experience working with LLLTs.

***Findings*:**

[8] "Suggestions for the LLLT Program," Jie Min and Bethany Hill, unpublished.

- The regulatory business model requires significant subsidies to operate to date.
- The law school business model also requires a subsidy to operate at current volumes.
- Most licensed paralegals work at least part-time for law firms as traditional paralegals.
- Even when LLLTs work for law firms as LLLTs, they sometimes receive a fixed salary rather than a proportion of the revenue they earn.
- Most LLLTs struggle to attract enough clients to sustain a viable business.
- When LLLTs understand their business well enough to charge flat fees without undue risk, they are better able to manage their business and market to potential clients.
- Many LLLTs could benefit from targeted training on business management and marketing.
- A hypothetical business model that charges fees between those of a paralegal and a lawyer seems viable, but current actual fees are mostly the same as a traditional paralegal. Where the LLLTs are operating a pure LLLT practice, their fees tend to be moderately higher than that of paralegals.
- Limited scope fixed fees can be charged for most or all current tasks, but most current LLLTs prefer to charge by the hour to mitigate risk.

Conclusions

In many ways the current LLLT program is a success. It is appropriate, efficacious, and at least potentially sustainable. It meets a significant need and is viewed as a legitimate legal role. For a new kind of program designed "from scratch" to be so successful is quite impressive. Clearly a lot of careful thought went into program design.

Several of the concerns identified in this evaluation report may be mitigated or eliminated by program modifications being considered by the LLLT Board (and several of them have now been approved by the Board). These proposals include the addition of a new practice area that targets a broad and known need, the ability to draft legal letters, and the ability to help clients fill out legal forms not in the approved practice areas.[9] The Board considered and approved proposals to permit appearances in court, participation in legal negotiations, partial elimination of the real property exclusion from the family practice area, and an indefinite extension of the time waiver. These proposals are now before the state supreme court, except for the last one which has already been approved by that body.

The WSBA regulates the LLLT program very much after the model of the traditional bar with lawyers. This model is a fairly costly regulatory approach that is viable with lawyers because of the scale at which it operates. Fortunately, the bulk of the regulatory costs are incurred at the beginning of the program. Still, the use of LLLTs will either have to scale up significantly or a more lightweight regulatory approach will be needed. Balancing consumer protection with regulatory costs may require innovative strategies.[10]

Recommendations

Several of the recommendations mirror proposed changes to the current LLLT program and the LLLT Board is already acting to implement several other recommendations.

1. ***Require a dedicated subset of the experience hours to be in the specific practice area.***
2. ***Expand the training devoted to practical document assembly tasks.***
3. ***Allow community colleges without ABA certification to qualify as trainers (now approved).***
4. ***Consider shifting the law school training to the community colleges.***
5. ***Provide more training and practical advice on business management.***
6. ***Provide practical advice and assistance on marketing.***

[9] In late 2016 the WSBA Board of Governors (BOG) passed a resolution supporting the exploration of a new practice area, expanding the tools LLLTs may use with clients, and voted to make LLLTs (and LPOs) members of the bar and be allocated one seat (either a LLLT or a Limited Practice Officer or LPO) on the BOG.

[10] For a discussion of other possible regulatory approaches, see "How to Regulate Legal Services to Promote Access, Innovation, and the Quality of Lawyering," Gillian Hadfield and Deborah Rhode, Hastings Law Review Vol. 67 (June 2016): pgs. 1191-1223.

7. ***Accelerate adoption of the scope modifications for the current practice area.***

    a. ***Allow LLLTs to interact with opposing parties and their legal representatives.***
    b. ***Allow LLLTs to appear in court with their clients and clarify matters of fact during hearings.***

8. ***Accelerate provision of new practice areas for future and existing LLLTs.***

9. ***Consider the use of innovative regulatory approaches to reduce regulatory costs while continuing to adequately protect consumers.***

The Bottom Line

The LLLT program offers an innovative way to extend affordable legal services to a potentially large segment of the public that cannot afford traditional lawyers. While the scope of the role is limited and will not be the answer for every legal problem, LLLTs definitely can provide quality legal services to those who need it and also significantly reduce the stress of navigating a foreign process that is complex and daunting.

The LLLT program also offers the possibility of improving the quality of filings in court cases involving self-represented litigants and thus reducing the time and cost required for courts to deal with such cases. The Washington State example suggests that LLLTs and lawyers may form mutually advantageous business relationships, making referrals to each other as appropriate. Since LLLTs appear to assist customers who could not afford lawyers, they do not compete directly with lawyers.

This program should be replicated in other states to improve access to justice. As experience is gained and its program design is optimized, affordable legal services should become widely available to those with needs in areas where the public typically must now use self-representation. By offering low cost legal services, state bar associations will be able to compete directly with for profit businesses operating outside the regulatory umbrella of state justice systems. By doing so, they can ensure that the public has access to quality legal services.

Appendix A. Acknowledgments

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