AGENDA
Paralegal Practitioner Steering Committee

June 21, 2018
12:00 p.m. – 2:00 p.m.
Scott M. Matheson Courthouse
Executive Dining Room, Room W18A
450 S. State St.
Salt Lake City, UT. 84111

Welcome **ACTION –** Approval of draft May 22, 2018 meeting minutes	Tab 1	Justice Himonas
DISCUSION – Review Final Rules and select effective date for rules to submit to the Supreme Court (note Rule 15-711 and 15-713 are not complete)	Tab 2	Justice Himonas
ACTION - Amend Rule 15-703 to delete a word for clarity, and to add the National Federation of Paralegal Associations (NFPA) to list of certifications	Tab 3	Julie Emery
UPDATE - Coordination with Utah Valley University – status of MOU and conversations with SLCC. Progress on test development.		Elizabeth Wright, Jaqueline Etsy Morrison, Julie Emery, Carrie Boren
DISCUSSION – Can an LPP supervise or hire a paralegal? **ACTION –** Assign a committee member to draft a proposed rule		Julie Emery
DISCUSSION – URCP and Rules of Evidence – changes to incorporate LPPs **ACTION** - Assign members to review and propose changes	Tab 4	Justice Himonas
Other Business		

Members

Justice Deno Himonas, Chair
John Baldwin
Adam Caldwell
Dr. Tom Clarke
Terry Conaway
Sue Crismon
James Deans
Cathy Dupont
Julie Emery
Judge Royal Hansen
Dixie Jackson
James S. Jardine
Scott Jensen
Steven G. Johnson
Comm. Kim M. Luhn
Ellen Maycock
Jacqueline Morrison
Daniel O'Bannon
Robert O. Rice
Rick Schwermer
Monte Sleight
Gayla Sorenson
Judge Kate Toomey
Steve Urquhart
Elizabeth Wright

Tab 1

PARALEGAL PRACTITIONER
STEERING COMMITTEE
MEETING

Minutes
May 22, 2018
Executive Dining Room
Matheson Courthouse
450 S. State St.
Salt Lake City, Utah 84111
12:00 p.m. – 2:00 p.m.

Justice Deno Himonas, Presiding

Attendees:
Justice Deno Himonas, Chair
John Baldwin
Carrie Boren
Sue Crismon
James Deans
Julie Emery
Jim Jardine
Steven Johnson
Ellen Maycock
Jacqueline Esty Morrison
Rick Schwermer
Monte Sleight
Judge Kate Toomey
Elizabeth Wright

Excused:
Dean Robert Adler
Adam Caldwell
Dr. Thomas Clarke
Terry Conaway
Dean Benson Dastrup
Judge Royal Hansen
Dixie Jackson
Scott Jensen
Commissioner Kim Luhn
Daniel O'Bannon
Rob Rice
Senator Stephen Urquhart

Staff:
Cathy Dupont
Jeni Wood – Recording secretary

Guests:
Karen Cloward

1. WELCOME AND APPROVAL OF MINUTES: (Justice Deno Himonas)
Justice Deno Himonas welcomed everyone to the meeting.

Motion: Judge Kate Toomey moved to approve the January 17, 2018 committee minutes, as amended. Jacqueline Esty Morrison seconded the motion, and it passed unanimously.

2. UPDATE ON PUBLICATION OF RULES AND REVIEW OF COMMENTS: (Cathy Dupont)
Cathy Dupont reviewed rules that recently completed a public comment period. Ms. Dupont noted there was only one comment received regarding USB rule 11-101. The committee agreed the rules are ready to be sent to the Supreme Court for final approval with a proposed

effective date of November 1. Justice Himonas reviewed and edited rules that reference both licensed legal paralegals and attorneys, where applicable.

3. UPDATE FROM EDUCATION COMMITTEE: TEST DEVELOPMENT AND VENDOR SELECTION; AND COORDINATION WITH UTAH VALLEY UNIVERSITY: (Jacqueline Esty Morrison, John Baldwin, and Julie Emery)

John Baldwin explained the results that came from a discussion with Karen Cloward, a representative from Utah Valley University (UVU). Ms. Cloward noted UVU has funding from the Perkins Grant. The results of that discussion were as follows.

Utah Valley University has committed to:

- Pay for the creation of a curriculum once they have the tests
- If the tests are complete by early September, a roll-out date would be the January, 2018 semester
- Pay for and market the courses through UVU

Utah State Bar has committed to:

- Assist with funding for advertising through the Bar
- Prepare a memorandum of understanding with UVU

Salt Lake Community College has committed to:

- Assist in locating adjunct professors to teach the four courses

Ms. Dupont noted there will be a meeting on June 18 at 10:30 am to confirm the commitments and review the MOU.

4. FORMS COMMITTEE UPDATE: (Cathy Dupont)

Ms. Dupont distributed a list of forms that have been approved by the Forms Committee. Judge Toomey noted additional forms were approved by the Judicial Council on May 21, 2018.

5. UPDATE ON PRESENTATION AT SPRING BAR CONFERENCE: (Judge Kate Toomey and Julie Emery)

Judge Toomey said everything went well at the spring conference. Julie Emery said people were engaged. John Baldwin said the Bar committed to approximately $37,000 in funding for the LPP testing. Judge Toomey said the Bar was very supportive of this program.

Ms. Emery reviewed the speakers who will present at the Bars summer conference on July 26 at 10:30 a.m.

6. UPDATE ON LPP SURVEY DATA SHARING WITH THE UTAH STATE BAR AND DEVELOPMENT OF COMMUNICATION OPTIONS: (Julie Emery)

Ms. Emery noted she and Carrie Boren are working with the Bar, however, the Bar's database will not be compatible with the current LPP data. Mr. Baldwin noted the Bar's system will be able to accommodate for LPP's.

7. UPDATE ON BAR REVIEW ARTICLE: (Cathy Dupont)

Ms. Dupont thanked Judge Toomey and Elizabeth Wright for their assistance with this article. Ms. Dupont has received positive response.

8. OTHER BUSINESS

Monte Sleight thanked the Bar for their assistance with the testing materials. Jacqueline Esty Morrison said there is concern about LPP's in rural areas. Julie Emery said there are clinics and internships available. Sue Crismon said Utah Legal Services is available statewide.

Ms. Emery said she and Monte Sleight are presenting at the paralegal conference in June.

Rick Schwermer said the e-filing system will be implemented soon to allow for LPP's to e-file. Justice Himonas said the first filings could be as early as September. Elizabeth Wright said she met with the courts to ensure all goes smoothly.

9. ADJOURN

The meeting was adjourned.

Tab 2

DRAFT – June 13, 2018

Compilation of Published Rules

Rule 14-403. Establishment and membership of Board. (Delay effective date?)

There is hereby established by this Court a Board of Mandatory Continuing Legal Education. The Board consists of 15 members, at least 13 of whom are lawyers admitted to the Bar, and up to 2 of whom are licensed paralegal practitioners. Members are appointed for three-year terms,[~~ except that three members of the initial Board will be appointed for a one-year term and three members will be appointed for a two-year term~~]. Each yearly class of members [~~will~~] shall include at least one member residing outside of Salt Lake County. [~~No lawyer may~~] A member may not serve more than two consecutive terms as a member of the Board.

Rule 14-802. Authorization to practice law.

(a) Except as set forth in subsections (c) and (d) of this rule, only persons who are active, licensed members of the Bar in good standing may engage in the practice of law in Utah.

(b) For purposes of this rule:

(b)(1) The "practice of law" is the representation of the interests of another person by informing, counseling, advising, assisting, advocating for or drafting documents for that person through application of the law and associated legal principles to that person's facts and circumstances.

(b)(2) The "law" is the collective body of declarations by governmental authorities that establish a person's rights, duties, constraints and freedoms and consists primarily of:

(b)(2)(A) constitutional provisions, treaties, statutes, ordinances, rules, regulations and similarly enacted declarations; and

(b)(2)(B) decisions, orders and deliberations of adjudicative, legislative and executive bodies of government that have authority to interpret, prescribe and determine a person's rights, duties, constraints and freedoms.

(b)(3) “Person” includes the plural as well as the singular and legal entities as well as natural persons.

(c) Exceptions and Exclusions for Licensed Paralegal Practitioners. A person may be licensed to engage in the limited practice of law in the area or 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 matters in which the dollar amount in issue does not exceed the statutory limit for small claims cases.

(c)(1)(A) Within a practice area or areas in which a Licensed Paralegal Practitioner is licensed, a Licensed Paralegal Practitioner who is in good standing may represent the interests of a natural person who is not represented by a lawyer unaffiliated with the Licensed Paralegal Practitioner by:

(c)(1)(B) establishing a contractual relationship with the client;

(c)(1)(C) interviewing the client to understand the client’s objectives and obtaining facts relevant to achieving that objective;

(c)(1)(D) completing an approved form;

(c)(1)(E) informing, counseling, advising, and assisting in determining which form to use and giving advice on how to complete the form;

(c)(1)(F) signing, filing, and completing service of the form;

(c)(1)(G) obtaining, explaining, and filing any document needed to support the form;

(c)(1)(H) reviewing documents of another party and explaining them;

(c)(1)(I) informing, counseling, assisting and advocating for a client in mediated negotiations;

(c)(1)(J) filling in, signing, filing and completing service of a written settlement agreement form in conformity with the negotiated agreement;

(c)(1)(K) communicating with another party or the party’s representative regarding the relevant form and matters reasonably related thereto; and

(c)(1)(L) explaining a court order that affects the client’s rights and obligations.

(d) Other Exceptions and Exclusions. Whether or not it constitutes the practice

of law, the following activity by a non-lawyer, who is not otherwise claiming to be a lawyer or to be able to practice law, is permitted:

(d)(1) Making legal forms available to the general public, whether by sale or otherwise, or publishing legal self-help information by print or electronic media.

(d)(2) Providing general legal information, opinions or recommendations about possible legal rights, remedies, defenses, procedures, options or strategies, but not specific advice related to another person's facts or circumstances.

(d)(3) Providing clerical assistance to another to complete a form provided by a municipal, state, or federal court located in the State of Utah when no fee is charged to do so.

(d)(4) When expressly permitted by the court after having found it clearly to be in the best interests of the child or ward, assisting one's minor child or ward in a juvenile court proceeding.

(d)(5) Representing a party in small claims court as permitted by Rule of Small Claims Procedure 13.

(d)(6) Representing without compensation a natural person or representing a legal entity as an employee representative of that entity in an arbitration proceeding, where the amount in controversy does not exceed the jurisdictional limit of the small claims court set by the Utah Legislature.

(d)(7) Representing a party in any mediation proceeding.

(d)(8) Acting as a representative before administrative tribunals or agencies as authorized by tribunal or agency rule or practice.

(d)(9) Serving in a neutral capacity as a mediator, arbitrator or conciliator.

(d)(10) Participating in labor negotiations, arbitrations or conciliations arising under collective bargaining rights or agreements or as otherwise allowed by law.

(d)(11) Lobbying governmental bodies as an agent or representative of others.

(d)(12) Advising or preparing documents for others in the following described circumstances and by the following described persons:

(d)(12)(A) a real estate agent or broker licensed by the state of Utah may complete State-approved forms including sales and associated contracts directly

related to the sale of real estate and personal property for their customers.

(d)(12)(B) an abstractor or title insurance agent licensed by the state of Utah may issue real estate title opinions and title reports and prepare deeds for customers.

(d)(12)(C) financial institutions and securities brokers and dealers licensed by Utah may inform customers with respect to their options for titles of securities, bank accounts, annuities and other investments.

(d)(12)(D) insurance companies and agents licensed by the state of Utah may recommend coverage, inform customers with respect to their options for titling of ownership of insurance and annuity contracts, the naming of beneficiaries, and the adjustment of claims under the company's insurance coverage outside of litigation.

(d)(12)(E) health care providers may provide clerical assistance to patients in completing and executing durable powers of attorney for health care and natural death declarations when no fee is charged to do so.

(d)(12)(F) Certified Public Accountants, enrolled IRS agents, public accountants, public bookkeepers, and tax preparers may prepare tax returns.

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

Rule 15-401. Purpose.

By continuing their legal education throughout the period of practice of law, licensed paralegal practitioners can better fulfill their obligation to serve their clients competently.

This article establishes minimum requirements for mandatory continuing legal education and the means by which the requirements are enforced.

Rule 15-402. Definitions.

As used in this article:

(a) Reserved;

(b) “Accredited CLE” means a CLE course that has been approved by the Board in accordance with Rule 15-410.

(c) "Active status" or "active status licensed paralegal practitioner " means a licensed paralegal practitioner who has elected to be on active status as defined under the Bar's rules, regulations and policies;

(d) Reserved;

(e)(1) "Approved law school" means an ABA approved law school as defined under Rule 14-701;

(e)(2) “Approved paralegal education program” means a program offered by an accredited school as that term is defined in Rule 15-701.

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

(g) “Bar Examination” means the Bar Examination as defined in Rules 14-710 and 14-711 and includes the UBE, regardless of where the UBE was taken;

(h) "Board" means the Utah State Board of Mandatory Continuing Legal Education as set forth in Rule 14-403;

(i) "Board of Bar Commissioners" means the governing board of the Bar;

(j) "Certificate of Compliance" means a written report evidencing a licensed paralegal practitioner's completion of accredited CLE as required and defined under Rule 15-414;

(k) "CLE" means continuing legal education;

(k)(1) "Live CLE" means a CLE program presented in a classroom setting where the licensed paralegal practitioner is in the same room as the presenter;

(k)(2) "Live Attendance" means in person attendance at a Utah state courthouse where a course is streamed by live audio-visual communication from another Utah state courthouse or from the Law and Justice Center;

(k)(3) "Self-Study CLE Program" means a program presented in a suitable setting where the licensed paralegal practitioner can view approved self-study activities;

(l) Reserved;

(m) "Compliance Cycle" means the period of 2 years beginning July 1 through June 30;

(n) "Ethics" means standards set by the Utah Rules of Professional Conduct with which a licensed paralegal practitioner must comply to remain authorized to certify as a licensed paralegal practitioner in Utah and remain in good standing;

(o) Reserved;

(p) Reserved;

(q) "Inactive status" or "inactive status licensed paralegal practitioner" means a licensed paralegal practitioner who has elected to be on inactive status as defined under the Bar's rules, regulations and policies;

(r) "MCLE" means mandatory continuing legal education as defined under this article;

(s) Reserved;

(t) "New admittee" means a licensed paralegal practitioner newly licensed by the Utah State Bar;

(u) Reserved;

(v) "Presumptively approved sponsor" means those CLE sponsors or providers who

qualify under the standards set forth in Rule 14-412;

(w) "Presumptive CLE accreditation" means those CLE courses or activities that qualify under the standards set forth in Rule 14-412;

(x) “Professionalism and Civility” means conduct consistent with the tenets of the legal profession by which a licensed paralegal practitioner demonstrates civility, honesty, integrity, character, fairness, competence, ethical conduct, public service, and respect for the rules of law, the courts, clients, lawyers, other licensed paralegal practitioners, witnesses and unrepresented parties;

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

(z) Reserved; and

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

Rule 15-403. Reserved.

Rule 15-404. Active status licensed paralegal practitioners: MCLE.

(a) Active status licensed paralegal practitioners. Commencing with calendar year 2018, each paralegal practitioner licensed to practice in Utah must complete, during each two fiscal year period (July 1 through June 30), a minimum of 12 hours of Utah accredited CLE which must include a minimum of three hours of accredited ethics or professional responsibility. One of the three hours of ethics or professional responsibility must be in the area of professionalism and civility. Licensed paralegal practitioners on inactive status are not subject to the requirements of this rule.

(b) Reserved.

(c) Reserved.

(d) Reserved.

(e) Reserved.

(f) Reserved.

(g) Out-of-state CLE activities. CLE credit may be awarded for out-of-state activities that the Board determines meet standards in furthering a licensed paralegal

practitioner's legal education. The Board determines whether to accredit the activities and, if accredited, the number of hours of credit to allow for such activities.

(h) Activities that may be regarded as equivalent to state-sponsored self-study CLE may include, but are not limited to, viewing of approved CLE audio, video, and webcast presentations, computer interactive telephonic programs, writing and publishing an article in a legal periodical, part-time teaching in an approved law school or approved paralegal education program, or delivering a paper or speech on a professional subject at a meeting primarily attended by lawyers, licensed paralegal practitioners, legal assistants, or law school students.

(i) A licensed paralegal practitioner's application for accreditation of a CLE activity must be submitted in writing to the Board if the activity has not been previously approved for CLE credit in Utah.

Rule 15-405. MCLE requirements for licensed paralegal practitioners on inactive status.

(a) Licensed paralegal practitioners on inactive status are not subject to MCLE requirements while on inactive status.

(b) Return to active status. A licensed legal practitioner who is on inactive status for 12 months or more and who returns to active status must complete the 24 hour MCLE requirement by June 30 of the fiscal year following his or her return to active status and may use CLE hours completed prior to activation to satisfy part or all of the MCLE requirement if those hours were completed during the CLE cycle in which the licensed legal practitioner must complete the MCLE requirement.

(c) A licensed legal practitioner who has been on inactive status for less than 12 months may not elect active status until completing the MCLE requirements that were incomplete at the time the licensed legal practitioner elected to be enrolled as an inactive licensed legal practitioner.

Rule 15-406. MCLE requirements for licensed paralegal practitioners on active military duty.

(a) Waiver. Licensed paralegal practitioners who are serving or called to federal active military duty that will last for 90 consecutive days or longer during any portion of a compliance period will have MCLE requirements waived for that particular compliance period.

(b) Statement of compliance. Each licensed legal practitioner serving or called to federal active military duty that will last for 90 concurrent days or longer must file with the Board a statement of compliance providing verification of the date the licensed legal practitioner was called to federal active military duty. The statement of compliance is due by July 31 following the end of the compliance cycle in which the report is due.

Rule 15-407. Reserved.

Rule 15-408. Credit hour defined; application for approval.

(a) An hour of accredited CLE means 60 minutes of attendance in a one-hour period at an accredited CLE program.4

(b) A licensed paralegal practitioner or a sponsoring agency applying for approval of a CLE activity or program must submit to the Board all the necessary information required under this article.

Rule 15-409. Self-study categories of accredited MCLE defined.

(a) Lecturing, teaching, and panel discussions. Licensed paralegal practitioners who lecture in an accredited CLE program will receive credit for three hours for each hour spent lecturing. No lecturing or teaching credit is available for participation in a panel discussion or for preparation time.

(b) Final published course schedule. The Board will determine the number of accredited CLE hours available for a program based on the final published course schedule.

(c) Equivalent CLE credit for certain self-study activities. Subject to the Board's

determination, the Board will allow equivalent credit for such activities that further the purpose of this article and qualify for equivalency. Such equivalent activities may include, but are not limited to, viewing of approved CLE audio, video, and webcast presentations, computer interactive telephonic programs, writing and publishing an article in a legal periodical, part-time teaching by a licensed paralegal practitioner in an approved law school or approved paralegal education program, or delivering a paper or speech on a professional subject at a meeting primarily attended by lawyers, licensed paralegal practitioners, legal assistants or law students. The number of hours of credit allowed for such activities and the procedures for obtaining equivalent credit will be determined specifically by the Board for each instance.

Rule 15-410. Accreditation of MCLE; attendance; undue hardship and special accreditation.

(a) Accredited CLE activities provided by this article must:

(a)(1) have as their primary objective to increase licensed paralegal practitioners' professional competency;

(a)(2) be comprised of subject matter directly related to the practice of law in the areas approved for practice by licensed paralegal practitioners; and

(a)(3) comply with the specific requirements set forth in this article with respect to each activity.

(b) The Board shall assign an appropriate number of credit hours to each accredited CLE activity.

(c) Attendance. A licensed paralegal practitioner may attend a course in person or by live, interactive audio-video communication from a Utah state courthouse to another Utah state courthouse or from the Law and Justice Center to a Utah state courthouse.

(c)(1) The total of all hours allowable for live, interactive webcasts that are broadcast from a Utah state courthouse to another Utah state courthouse or from the Law and Justice Center to a Utah state courthouse must be authorized by the Board.

(d) Ethics and professional responsibility courses. All courses or components of courses offered to fulfill the ethics and professional responsibility requirement under 14-404(a) must be specifically accredited by the Board.

(d)(1) Professionalism and Civility. All courses or components of courses offered to fulfill the professionalism and civility requirement under 14-404(a) must be specifically accredited by the Board.

(e) Undue hardship; special accreditation. Formal instruction or educational seminars which meet the requirements of paragraph (a) lend themselves well to the fulfillment of the educational requirement imposed by this article and will be readily accredited by the Board. It is not intended that compliance with this article will impose any undue hardship upon any licensed paralegal practitioner because the licensed paralegal practitioner may find it difficult to attend such activities because of health or other special reasons. In addition to accrediting formal instruction at centralized locations, the Board, in its discretion, may accredit such educational activities including, but not limited to, audio and video presentations, webcast, computer interactive telephonic programs, teaching, preparation of articles and other meritorious learning experiences as provided in this article.

Rule 15-411. Board accreditation of non-approved sponsor courses.

The Board in its discretion may accredit CLE courses or activities offered by non-approved sponsors if they meet the following standards.

(a) The course must be of intellectual or practical content and, where appropriate, should include an ethics or professional responsibility component.

(b) The course or activity must contribute directly to a licensed paralegal practitioner's professional competence or skills, or the licensed paralegal practitioner's professional ethical obligations.

(c) Course or activity leaders or lecturers must have the necessary practical or academic skills to conduct the course effectively.

(d) Prior to or during the course or activity, each attendee must be provided with written or electronic course materials of a quality and quantity which indicate that adequate time has been devoted to preparation and which are of value to licensed paralegal practitioners in their practice of the law. One-hour courses or activities meet this requirement by providing an outline of the course or activity's content.

(e) The course or activity must be presented in an appropriate setting.

(f) The course or activity must be made available to licensed paralegal practitioners throughout the state unless the sponsor demonstrates to the satisfaction of the Board that there is good reason to limit availability.

(g) A sponsor or attendee must submit to all reasonable requests for information related to the course or activity.

(h) A sponsor or attendee must submit a written request for accreditation on an approved form within 60 days prior to or following the course or activity. Sponsors who wish to advertise a course or activity as being accredited must submit a request for approval at least 60 days prior to the event.

(i) The sponsor must submit the registration list in an approved format and CLE fees if applicable within 30 days following the presentation of a course.

Rule 15-412. Presumptively approved sponsors; presumptive MCLE accreditation.

(a) The Board may designate an individual or organization as a presumptively approved sponsor of accredited CLE courses or activities if they meet the following standards:

(a)(1) The sponsor must be either an approved law school, an approved paralegal education program, or an organization engaged in CLE that has, during the three years immediately preceding its application, sponsored at least six separate courses that comply with the requirements for individual course accreditation under Rule 14-411. Status as a presumptively approved sponsor is subject to periodic review.

(a)(2) Presumptively approved sponsors are required to pay annual presumptive fees.

(a)(3) Within 60 days prior to offering a course, the sponsor must indicate on a Board-approved form that the course satisfies the provisions of Rule 14-411. The sponsor should also submit a copy of the brochure or outline describing the course, a description of the method or manner of presentation, and, if specifically requested by the Board, a set of materials.

(a)(4) The sponsor must submit the registration list in an approved format, and CLE fees if applicable within 30 days following the presentation of a course.

(a)(5) The sponsor must make its courses available to all licensed paralegal practitioners throughout the state, unless it can demonstrate to the satisfaction of the

Board that there is good reason to limit the availability.

(a)(6) The sponsor must submit to all reasonable requests for information and comply with this article.

(b) Denial of presumptively approved sponsor status. Notwithstanding a sponsor's compliance with paragraphs (a)(1) through (a)(6), the Board may deny designation as a presumptively approved sponsor if the Board finds there is just cause for denial.

(c) Revocation of presumptive approval. The Board may audit any sponsor having presumptive approval and may revoke the presumptive approval if it determines that the sponsor is offering, as accredited, courses which do not satisfy the standards established under Rule 14-411.

Rule 15-413. MCLE credit for qualified audio and video presentations; webcasts; computer interactive telephonic programs; writing; lecturing; teaching; live attendance.

(a) Credit will be allowed for self-study with Board accredited audio and video presentations, webcasts or computer interactive telephonic programs in accordance with the following.

(a)(1) One hour of self-study credit will be allowed for viewing and/or listening to 60 minutes of audio or video presentations, webcasts or computer interactive telephonic programs in accordance with Rule 14-408(a).

(a)(2) No more than 6 hours of credit may be obtained through self-study with audio or video presentations, webcasts or computer interactive telephonic programs. Upon application to the Board, the Board may grant a waiver, permitting a licensed paralegal practitioner on active status to obtain all required hours of credit through self-study, if the licensed paralegal practitioner:

(a)(2)(A) does not reside in Utah; and

(a)(2)(B) is engaged in full-time volunteer work for a religious or charitable organization.

(b) Credit will be allowed for writing and publishing an article in a legal periodical in accordance with the following.

(b)(1) To be eligible for any credit, an article must:

(b)(1)(A) be written to address a licensed paralegal practitioner audience;

(b)(1)(B) be at least 3,000 words in length;

(b)(1)(C) be published by a recognized publisher of legal material; and

(b)(1)(D) not be used in conjunction with a seminar.

(b)(2) Three credit hours will be allowed for each 3,000 words in the article. An application for accreditation of the article must be submitted at least 60 days prior to reporting the activity for credit. Two or more authors may share credit obtained pursuant to this paragraph in proportion to their contribution to the article. No more than 6 hours of credit may be obtained through writing and publishing an article or articles.

(c) Credit will be allowed for lecturing in an accredited CLE program, part-time teaching by a licensed paralegal practitioner in an approved paralegal education program or by a lawyer in an approved law school, or delivering a paper or speech on a professional subject at a meeting primarily attended by lawyers, licensed paralegal practitioners, legal assistants, or law students in accordance with the following.

(c)(1) Lecturers in an accredited CLE program and part-time teachers may receive three hours of credit for each hour spent in lecturing or teaching as provided in Rule 14-408(a).

(c)(2) No lecturing or teaching credit is available for participation in a panel discussion.

(c)(3) No more than 6 hours of credit may be obtained through lecturing and part-time teaching.

(d) Credit will be allowed for lecturing and teaching by full-time law school or approved paralegal education program faculty members in accordance with the following:

(d)(1) Full-time law school or approved paralegal education program faculty members may receive credit for lecturing and teaching but only for lecturing and teaching accredited CLE courses.

(d)(2) No lecturing or teaching credit is available for participation in panel discussions.

(d)(3) No more than 6 hours of credit may be obtained through lecturing and teaching by full-time law school or approved paralegal education program faculty members.

(e) Credit will be allowed for attendance at an accredited CLE program in accordance with the following.

(e)(1) Credit is allowed for attendance at an accredited CLE program in accordance with Rule 14-408(a).

(e)(2) A minimum of 6 CLE hours, with no maximum restriction, must be obtained through attendance at live in-person CLE programs.

Rule 15-414. Certificate of compliance; filing, late, and reinstatement fees; suspension; reinstatement. (technical difficulty with random line in text)

(a) Certificate of compliance. On or before July 31 of alternate years, each licensed paralegal practitioner subject to MCLE requirements must file a Certificate of Compliance with the Board, appropriately evidencing the licensed paralegal practitioner's completion of accredited CLE courses or activities ending the preceding 30th day of June. The Certificate of Compliance must include the title of programs or the audio or video presentation, computer interactive webcast, telephonic program attended, viewed or listened to; the sponsoring entity; the number of hours in actual attendance at each program or the number of hours of such audio or video presentation; and other information as the Board requires.

(b) Filing fees, late fees and reinstatement fees.

(b)(1) Each licensed paralegal practitioner shall pay a filing fee in the amount of $15 at the time of filing the Certificate of Compliance under paragraph (a).

(b)(2) Any licensed paralegal practitioner who fails to complete the MCLE requirement by the June 30 deadline, or fails to file by the July 31 deadline will be assessed a $100 late fee.

(b)(3) Licensed paralegal practitioners who fail to comply with the MCLE requirements but who file within a reasonable time, as determined by the Board and who are subject to an administrative suspension pursuant to Rule 14-415

will be assessed, in addition to the late fee, a $200 reinstatement fee and a $500 fee if the failure to comply is a repeat violation within the past 5 years.

(c) Maintaining proof of compliance. Each licensed paralegal practitioner will maintain proof to substantiate the information provided on the filed Certificate of Compliance. The proof may contain, but is not limited to, certificates of completion or attendance from sponsors, certificates from course leaders, or materials related to credit. The licensed paralegal practitioner must retain this proof for a period of four years from the end of the period for which the Certificate of Compliance is filed. Proof must be submitted to the Board upon written request.

(d) Failure to provide proof of compliance; rebuttable presumption. Failure by the licensed paralegal practitioner to produce proof of compliance within 15 days after written request by the Board constitutes a rebuttable presumption that the licensed paralegal practitioner has not complied with the MCLE requirements for the applicable time period.

(e) Verification period. The Board may, at any time within four years after the Certificate of Compliance has been filed, commence verification proceedings to determine a licensed paralegal practitioner's compliance with this article.

Rule 15-415. Failure to satisfy MCLE requirements; notice; appeal procedures; reinstatement; waivers and extensions; deferrals.

(a) Failure to comply; petition for suspension. A licensed paralegal practitioner who fails to comply with reporting provisions of Rule 14-414 will be assessed a late fee. A licensed paralegal practitioner who fails to comply with Rule 14-414 or who files a Certificate of Compliance showing that he or she has failed to complete the required number of hours of MCLE will be notified that a petition for the licensed paralegal practitioner's suspension of their license will be submitted to the Supreme Court unless all requirements are completed and reported within 30 days.

(a)(1) The licensed paralegal practitioner will have the opportunity during the 30-day period to file an affidavit with the Board disclosing facts demonstrating that the licensed paralegal practitioner's noncompliance was not willful and to tender such

documents that, if accepted, would cure the delinquency. A hearing before the Board will be granted if requested.

(a)(2) If, after a hearing or a failure to cure the delinquency by satisfactory affidavit and compliance, the licensed paralegal practitioner is suspended by the Supreme Court, the licensed paralegal practitioner will be notified by certified mail, return receipt requested.

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

(c) Waivers and extensions of time. For good cause shown, the Board may use its discretion in cases involving hardship or extenuating circumstances to grant waivers of the minimum MCLE requirements or extensions of time within which to fulfill the requirements.

(d) Deferrals. The Board may defer MCLE requirements in the event of the licensed paralegal practitioner's serious illness.

(e) Petition to appeal. Any licensed paralegal practitioner who is aggrieved by any decision of the Board under this rule may, within 30 days from the date of the notice of decision, appeal to the Board by filing a petition setting forth the decision and the relief sought along with the factual and legal basis. Unless a petition is filed, the Board's decision is final.

(e)(1) The Board may approve a petition without hearing or may set a date for hearing. If the Board determines to hold a hearing, the licensed paralegal practitioner will have at least 10 days' notice of the time and place set for the hearing. Testimony taken at the hearing will be under oath. The Board shall enter written findings of fact, conclusions of law and the decision on each petition. A copy will be sent by certified mail, return receipt requested, to the licensed paralegal practitioner.

(e)(2) The Board may grant the petitioner an extension of time within which to comply with this rule.

(e)(3) Decisions of the Board are final and are not subject to further contest, unless the decision was a denial of a request for a waiver or a recommendation of suspension of licensed paralegal practitioner's license.

(f) Appeal to Supreme Court. A decision denying a request for waiver or a decision to suspend the licensed paralegal practitioner is final under paragraph (e)(3) unless within 30 days after service of the findings of fact, conclusions of law and decision, the licensed paralegal practitioner files a written notice of appeal with the Supreme Court.

(f)(1) Transcripts. To perfect an appeal to the Supreme Court, the licensed paralegal practitioner must, at the licensed paralegal practitioner's expense, obtain a transcript of the proceedings from the Board. If testimony was taken before the Board, the Board will certify that the transcript contains a fair and accurate report of the proceedings. The Board will prepare and certify a transcript of all orders and other documents pertinent to the proceeding before it and file these promptly with the clerk of the Supreme Court. The matter will be heard by the Supreme Court under this article and other applicable rules.

(f)(2) The time set forth in this article for filing notices of appeal are jurisdictional. The Board or the Supreme Court, as to appeals pending before each such body, may, for good cause shown either extend the time for the filing or certification of any material or dismiss the appeal for failure to prosecute.

(f) The total of all hours allowable under paragraphs (a), (b), (c), and (d) of this rule may not exceed 6 hours during a reporting period.

(g) No credit is allowed for self-study programs except as expressly permitted under paragraph (a).

Rule 15-416. Licensed paralegal practitioners on active status not practicing law in **Utah; licensed paralegal practitioners on active status engaged in full-time volunteer work in remote locations**.

(a) A licensed paralegal practitioner on active status who is not engaged in practice

in Utah may file and attach to his or her Utah Certificate of Compliance evidence showing that the licensed paralegal practitioner has met the Utah MCLE requirements in Rule 15-404 with CLE courses accredited in the state in which the licensed paralegal practitioner resides and practices. This may include certificates of compliance, certificates of attendance or other information indicating the identity of the accrediting jurisdiction.

(a)(1) The licensed paralegal practitioner must attach to his or her Utah Certificate of Compliance a copy of the licensed paralegal practitioner's Certificate of Compliance with the MCLE requirements from that jurisdiction together with evidence that the licensed paralegal practitioner has completed a minimum of three hours of accredited ethics or professional responsibility. One of the three hours of ethics or professional responsibility must be in the area of professionalism and civility.

(a)(2) If the licensed paralegal practitioner lives in a jurisdiction where there is not a CLE requirement, the licensed paralegal practitioner must comply with the Utah CLE requirements or place his or her license on inactive status.

(b) Upon application by a licensed paralegal practitioner on active status, the Board may grant a waiver of the MCLE requirements of Rule 15-404 and issue a certificate of exemption if the licensed paralegal practitioner:

(b)(1) resides in a remote location outside of Utah where audio or video presentations or computer interactive telephonic programs sufficient to allow the licensed paralegal practitioner to participate in CLE credit hours are not reasonably available to the licensed paralegal practitioner; and

(b)(2) is engaged in full-time volunteer work for a religious or charitable organization.

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

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 regional or national accrediting organization that is approved by the U.S. Department of Education.

(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, 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) “Full-time” means providing legal services as a paralegal for no fewer than 80 hours per month.

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

(p) “Licensed Paralegal Practitioner” means a person 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 matters in which the dollar amount in issue does not exceed the statutory limit for small claims cases.

(q) “LPP” means Licensed Paralegal Practitioner.

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

(s) "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, with implementation of this article, reviewing requests for test accommodations, and assessing the qualifications of applicants

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

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

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

(w) “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.

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

(y) “Paralegal Studies and Paralegal Studies Degree” mean course work that prepares a holder to work as a paralegal.

(z) "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 and LPP Admissions Committee, and the identity of individuals participating in the drafting, reviewing, grading and scoring of the LPP Licensure Examination.

(aa) “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.

(bb) “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.

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

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

(ee) "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 an LPP persons who possess the necessary qualifications of learning, ability and character which are a prerequisite to the privilege of licensure as an 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 Associate Degree in paralegal studies from an Accredited School; or

(a)(4)(C) a Bachelor's Degree in paralegal studies from an Accredited School; or
(a)(4)(D) a Bachelor's Degree in any field from an Accredited School, plus a Paralegal Certificate or 15 credit hours of paralegal studies from an Accredited School;
(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 temporary separation, divorce, parentage, cohabitant abuse, civil stalking, custody and support, and name change if the Applicant is to be licensed in that area, or 100 hours of Substantive Law-Related Experience in forcible entry and detainer or debt collection if the Applicant is to be licensed in those areas.
(a)(6) has successfully passed the Licensed Paralegal Practitioner Ethics Examination;
(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 seeks to be licensed; and
(b)(3) have passed either the National Association of Legal Assistants or The Association of Legal Professionals certification examination.
(c) An individual who has been disbarred or suspended in any jurisdiction may not apply for licensure as a Paralegal Practitioner.

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 Full-time Substantive Law-Related Experience as a Paralegal within the 10 years preceding the application for the waiver, including experience for the practice area in which the Applicant seeks licensure, including 500 hours of Substantive Law-Related Experience in temporary separation, divorce, parentage, cohabitant abuse, civil stalking, custody and support, and name change, if the Applicant is to be licensed in that area, or 100 hours of Substantive Law-Related Experience in forcible entry and detainer or debt collection if the Applicant is to be licensed in those areas. Proof of 7 years of Full-time 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 Admissions 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 Admissions 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 Admissions 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 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 Admissions 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 Admissions 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 Admissions Committee prior to sitting for the Paralegal Practitioner Examinations. At any time before being licensed as a Paralegal Practitioner, the LPP Admissions 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 Admissions 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 Admissions 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 Admissions Committee decides to convene or an Applicant so requests, the LPP Admissions 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 Admissions 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 Admissions 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 Admissions 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 Admissions 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 delicensed 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.

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.

(b) Administration of the (Ethics Exam).

Rule 15-714. (Reserved).

Rule 15-715. Requests for Review.

(a) Request for Review. An Applicant may request a review of final decision made regarding a Test Accommodation, Character and Fitness and denial of an application. 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.

(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 Admissions 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 Licensed Paralegal Practitioner 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 Admissions 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 LPP Admissions 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 Admission Committee in conjunction with a formal hearing in accordance with Rule 15-708(c); and

(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.

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

(NOTE; If the committee approves of the numbering of this Article, the cross references in the comments will need to be changed)

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 15-1200. 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 15-1201. 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 15-1202. 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 15-1203. 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 15-1204. 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 15-1205. 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 15-1206. 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 15-1207. 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 15-1208. 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 15-1209. 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 15-1210. 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 15-1211. 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 15-1212. 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 15-1213. 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 15-1214. 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 15-1215. 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 15-1216. 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 15-1217. 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 15-1218. 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 15-1219. 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 15-1220. Reserved.

Rule 15-1221. 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 15-1222. Reserved.

ADVOCATE

Rule 15-1223. 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 15-1224. Reserved.

Rule 15-1225. 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 15-1226. 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 15-1227. 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 15-1228. Reserved.

Rule 15-1229. Reserved.

Rule 15-1230. Reserved.

Rule 15-1231. Reserved.

TRANSACTIONS WITH PERSONS OTHER THAN CLIENTS

Rule 15-1232. 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 15-1233. 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 15-1234. 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 15-1235. Reserved.

FIRMS AND ASSOCIATIONS

Rule 15-1236. 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 15-1237. 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 15-1238. 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 15-1239. 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 15-1240. 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 15-1240. 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 15-1241. Reserved.

PUBLIC SERVICE

Rule 15-1242. 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 15-1243. Reserved.

Rule 15-1244. 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 15-1245. 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 15-1246. 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 15-1247. 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 15-1248. 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 15-1249. 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 15-1250. 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 15-1251. 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 15-1252. Reserved.

MAINTAINING THE INTEGRITY OF THE PROFESSION

Rule 15-1253. 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 15-1254. 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 15-1255. 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 15-1256. 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 15-1257. 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 3

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 Associate Degree in paralegal studies from an Accredited School; or

(a)(4)(C) a Bachelor's Degree in paralegal studies from an Accredited School; or

(a)(4)(D) a Bachelor's Degree in any field from an Accredited School, plus a Paralegal Certificate or 15 credit hours of paralegal studies from an Accredited School;

(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 temporary separation, divorce, parentage, cohabitant abuse, civil stalking, custody and support, and name change if the Applicant is to be licensed in that area, or 100 hours of Substantive Law-Related Experience in forcible entry and detainer or debt collection if the Applicant is to be licensed in those areas.

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

(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 seeks to be licensed; and

(b)(3) have passed either the National Association of Legal Assistants (NALA) Certified Paralegal (CP) or Certified Legal Assistant (CLA) examination; ~~or~~ The National Association of Legal Professionals (NALS) Professional Paralegal (PP) certification examination; or the National Federal of Paralegal Associates (NFPA) paralegal CORE competency examination (CORE) or paralegal advanced competency examination (PACE).

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

Tab 4

Utah Rules of Civil Procedure

Table of Contents

Part I Scope of Rules - One Form of Action

Rule 1. General provisions.

Scope of rules. These rules govern the procedure in the courts of the state of Utah in all actions of a civil nature, whether cognizable at law or in equity, and in all statutory proceedings, except as governed by other rules promulgated by this court or statutes enacted by the Legislature and except as stated in Rule 81. They shall be liberally construed and applied to achieve the just, speedy, and inexpensive determination of every action. These rules govern all actions brought after they take effect and all further proceedings in actions then pending. If, in the opinion of the court, applying a rule in an action pending when the rule takes effect would not be feasible or would be unjust, the former procedure applies.

URCP 1

Advisory Committee Notes

These rules apply to court commissioners to the same extent as to judges.

A primary purpose of the 2011 amendments is to give effect to the long-standing but often overlooked directive in Rule 1 that the Rules of Civil Procedure should be construed and applied to achieve "the just, speedy and inexpensive determination of every action." The amendments serve this purpose by limiting parties to discovery that is proportional to the stakes of the litigation, curbing excessive expert discovery, and requiring the early disclosure of documents, witnesses and evidence that a party intends to offer in its case-in-chief. The committee's purpose is to restore balance to the goals of Rule 1, so that a just resolution is not achieved at the expense of speedy and inexpensive resolutions, and greater access to the justice system can be afforded to all members of society.

Due to the significant changes in the discovery rules, the Supreme Court order adopting the 2011 amendments makes them effective only as to cases filed on or after the effective date, November 1, 2011, unless otherwise agreed to by the parties or ordered by the court.

Rule 2. One form of action.

There shall be one form of action to be known as “civil action.”

Part II Commencement of Action; Service of Process, Pleadings, Motions and Orders

Rule 3. Commencement of action.

(a) How commenced. A civil action is commenced (1) by filing a complaint with the court, or (2) by service of a summons together with a copy of the complaint in accordance with Rule 4. If the action is commenced by the service of a summons and a copy of the complaint, then the complaint, the summons and proof of service, must be filed within ten days of such service. If, in a case commenced under paragraph (a)(2) of this rule, the complaint, summons and proof of service are not filed within ten days of service, the action commenced shall be deemed dismissed and the court shall have no further jurisdiction thereof. If a check or other form of payment tendered as a filing fee is dishonored, the party shall pay the fee by cash or cashier's check within 10 days after notification by the court. Dishonor of a check or other form of payment does not

affect the validity of the filing, but may be grounds for such sanctions as the court deems appropriate, which may include dismissal of the action and the award of costs and attorney fees.

(b) Time of jurisdiction. The court shall have jurisdiction from the time of filing of the complaint or service of the summons and a copy of the complaint.

URCP 003

Advisory Committee Notes

Rule 3 constitutes a significant change from the prior rule. The rule retains service of the ten-day summons as one of two means to commence an action, but the rule requires that the summons together with a copy of the complaint be served on the defendant pursuant to Rule 4. In so doing, the rule eliminates the requirement that a copy of the complaint be deposited with the clerk for the defendant whose address is unknown. The changes in Rule 3 must be read and should be interpreted in conjunction with coordinate changes in Rule 4 and with a change in Rule 12(a) that begins the running of the defendant's 20-day response time from the service of the summons and complaint.

Paragraph (a). This paragraph eliminates the requirement that a copy of the complaint be deposited with the clerk for the defendant whose address is unknown. Paragraph (b) of the former rule, which permitted the plaintiff to deposit copies of the complaint with the clerk for defendants not otherwise served with a copy at the time of the service of the summons, has also been eliminated. The rule requires, in effect, that both the summons and the complaint be served pursuant to Rule 4. Under a coordinate change in Rule 12(a), the defendant's time for answering or otherwise responding to the complaint does not begin to run until service of the summons and complaint pursuant to Rule 4.

Paragraph (b). This paragraph is substantially identical to paragraph (c) of the former rule.

Rule 4. Process.

(a) Signing of summons. The summons must be signed and issued by the plaintiff or the plaintiff's attorney. Separate summonses may be signed and issued.

Comment [JM1]:

(b) Time of service. Unless the summons and complaint are accepted, a copy of the summons and complaint in an action commenced under Rule 3(a)(1) must be served no later than 120 days after the complaint is filed, unless the court orders a different period under Rule 6. If the summons and complaint are not timely served, the action against the unserved defendant may be dismissed without prejudice on motion of any party or on the court's own initiative.

(c) Contents of summons.

(c)(1) The summons must:

(c)(1)(A) contain the name and address of the court, the names of the parties to the action, and the county in which it is brought;

(c)(1)(B) be directed to the defendant;

(c)(1)(C) state the name, address and telephone number of the plaintiff's attorney, if any, and otherwise the plaintiff's address and telephone number;

Comment [JM2]:

(c)(1)(D) state the time within which the defendant is required to answer the complaint in writing;

(c)(1)(E) notify the defendant that in case of failure to answer in writing, judgment by default will be entered against the defendant; and

(c)(1)(F) state either that the complaint is on file with the court or that the complaint will be filed with the court within 10 days after service.

(c)(2) If the action is commenced under Rule 3(a)(2), the summons must also:

(c)(2)(A) state that the defendant need not answer if the complaint is not filed within 10 days after service; and

(c)(2)(B) state the telephone number of the clerk of the court where the defendant may call at least 14 days after service to determine if the complaint has been filed.

(c)(3) If service is by publication, the summons must also briefly state the subject matter and the sum of money or other relief demanded, and that the complaint is on file with the court.

(d) Methods of service. The summons and complaint may be served in any state or judicial district of the United States. Unless service is accepted, service of the summons and complaint must be by one of the following methods:

(d)(1) Personal service. The summons and complaint may be served by any person 18 years of age or older at the time of service and not a party to the action or a party's attorney. If the person to be served refuses to accept a copy of the summons and complaint, service is sufficient if the person serving them states the name of the process and offers to deliver them. Personal service must be made as follows:

Comment [JM3]:

(d)(1)(A) Upon any individual other than one covered by paragraphs (d)(1)(B), (d)(1)(C) or (d)(1)(D), by delivering a copy of the summons and complaint to the individual personally, or by leaving them at the individual's dwelling house or usual place of abode with a person of suitable age and discretion who resides there, or by delivering them to an agent authorized by appointment or by law to receive process;

(d)(1)(B) Upon a minor under 14 years old by delivering a copy of the summons and complaint to the minor and also to the minor's father, mother, or guardian or, if none can be found within the state, then to any person having the care and control of the minor, or with whom the minor resides, or by whom the minor is employed;

(d)(1)(C) Upon an individual judicially declared to be incapacitated, of unsound mind, or incapable of conducting the individual's own affairs, by delivering a copy of the summons and complaint to the individual and to the guardian or conservator of the individual if one has been appointed; the individual's legal representative if one has been appointed, and, in the absence of a guardian, conservator, or legal representative, to the person, if any, who has care, custody, or control of the individual;

Comment [JM4]:

Comment [JM5]:

(d)(1)(D) Upon an individual incarcerated or committed at a facility operated by the state or any of its political subdivisions, by delivering a copy of the summons and complaint to the person who has the care, custody, or control of the individual, or to that person's designee or to the guardian or conservator of the individual if one has been appointed. The person to whom the summons and complaint are delivered must promptly deliver them to the individual;

(d)(1)(E) Upon a corporation not otherwise provided for in this rule, a limited liability company, a partnership, or an unincorporated association subject to suit under a common

name, by delivering a copy of the summons and complaint to an officer, a managing or general agent, or other agent authorized by appointment or law to receive process and by also mailing a copy of the summons and complaint to the defendant, if the agent is one authorized by statute to receive process and the statute so requires. If no officer or agent can be found within the state, and the defendant has, or advertises or holds itself out as having, a place of business within the state or elsewhere, or does business within this state or elsewhere, then upon the person in charge of the place of business;

(d)(1)(F) Upon an incorporated city or town, by delivering a copy of the summons and complaint as required by statute, or in the absence of a controlling statute, to the recorder;

(d)(1)(G) Upon a county, by delivering a copy of the summons and complaint as required by statute, or in the absence of a controlling statute, to the county clerk;

(d)(1)(H) Upon a school district or board of education, by delivering a copy of the summons and complaint as required by statute, or in the absence of a controlling statute, to the superintendent or administrator of the board;

(d)(1)(I) Upon an irrigation or drainage district, by delivering a copy of the summons and complaint as required by statute, or in the absence of a controlling statute, to the president or secretary of its board;

(d)(1)(J) Upon the state of Utah or its department or agency by delivering a copy of the summons and complaint to the attorney general and any other person or agency required by statute to be served; and

(d)(1)(K) Upon a public board, commission or body by delivering a copy of the summons and complaint as required by statute, or in the absence of a controlling statute, to any member of its governing board, or to its executive employee or secretary.

(d)(2) Service by mail or commercial courier service.

(d)(2)(A) The summons and complaint may be served upon an individual other than one covered by paragraphs (d)(1)(B) or (d)(1)(C) by mail or commercial courier service in any state or judicial district of the United States provided the defendant signs a document indicating receipt.

(d)(2)(B) The summons and complaint may be served upon an entity covered by paragraphs (d)(1)(E) through (d)(1)(I) by mail or commercial courier service in any state or judicial district of the United States provided defendant's agent authorized by appointment or by law to receive service of process signs a document indicating receipt.

(d)(2)(C) Service by mail or commercial courier service shall be complete on the date the receipt is signed as provided by this rule.

(d)(3) Acceptance of service.

(d)(3)(A) Duty to avoid expenses. All parties have a duty to avoid unnecessary expenses of serving the summons and complaint.

(d)(3)(B) Acceptance of service by party. Unless the person to be served is a minor under 14 years old or an individual judicially declared to be incapacitated, of unsound mind, or incapable of conducting the individual’s own affairs, a party may accept service of a summons and complaint by signing a document that acknowledges receipt of the summons and complaint.

(d)(3)(C) Acceptance of service by attorney for party. An attorney may accept service of a summons and complaint on behalf of the attorney's client by signing a document that acknowledges receipt of the summons and complaint.

Comment [JM6]:

Comment [JM7]:

(d)(3)(D) Effect of acceptance, proof of acceptance. A person who accepts service of the summons and complaint retains all defenses and objections, except for adequacy of service. Service is effective on the date of the acceptance. Filing the acceptance of service with the court constitutes proof of service under Rule 4(e).

(d)(4) Service in a foreign country. Service in a foreign country must be made as follows:

(d)(4)(A) by any internationally agreed means reasonably calculated to give notice, such as those means authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents;

(d)(4)(B) if there is no internationally agreed means of service or the applicable international agreement allows other means of service, provided that service is reasonably calculated to give notice:

(d)(4)(B)(i) in the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction;

(d)(4)(B)(ii) as directed by the foreign authority in response to a letter of request issued by the court; or

(d)(4)(B)(iii) unless prohibited by the law of the foreign country, by delivering a copy of the summons and complaint to the individual personally or by any form of mail requiring a signed receipt, addressed and dispatched by the clerk of the court to the party to be served; or

(d)(4)(C) by other means not prohibited by international agreement as may be directed by the court.

(d)(5) Other service.

(d)(5)(A) If the identity or whereabouts of the person to be served are unknown and cannot be ascertained through reasonable diligence, if service upon all of the individual parties is impracticable under the circumstances, or if there is good cause to believe that the person to be served is avoiding service, the party seeking service may file a motion to allow service by some other means. An affidavit or declaration supporting the motion must set forth the efforts made to identify, locate, and serve the party, or the circumstances that make it impracticable to serve all of the individual parties.

(d)(5)(B) If the motion is granted, the court will order service of the complaint and summons by means reasonably calculated, under all the circumstances, to apprise the named parties of the action. The court's order must specify the content of the process to be served and the event upon which service is complete. Unless service is by publication, a copy of the court's order must be served with the process specified by the court.

(d)(5)(C) If the summons is required to be published, the court, upon the request of the party applying for service by other means, must designate a newspaper of general circulation in the county in which publication is required.

(e) Proof of service.

(e)(1)The person effecting service must file proof of service stating the date, place, and manner of service, including a copy of the summons. If service is made by a person other than by an attorney, sheriff, constable, United States Marshal, or by the sheriff's, constable's or marshal's deputy, the proof of service must be by affidavit or declaration under penalty of Utah Code Section 78B-5-705.

Comment [JM8]:

(e)(2) Proof of service in a foreign country must be made as prescribed in these rules for service within this state, or by the law of the foreign country, or by order of the court.

(e)(3) When service is made pursuant to paragraph(d)(4)(C), proof of service must include a receipt signed by the addressee or other evidence of delivery to the addressee satisfactory to the court.

(e)(4) Failure to file proof of service does not affect the validity of the service. The court may allow proof of service to be amended.

(b) Time of jurisdiction. The court shall have jurisdiction from the time of filing of the complaint or service of the summons and a copy of the complaint.

URCP 004

Advisory Committee Notes

Rule 4 constitutes a substantial change from prior practice. The rule modernizes and simplifies procedure relating to service of process. Although this rule and Rule 3 retain the ten-day summons procedure for commencement of actions, this rule endeavors to make practice under the ten-day summons provision more consistent with practice in actions commenced by the filing of a complaint. The rule retains portions of prior Rule 4, adopts portions of the present federal Rule 4, and adopts entirely new language in other areas. The rule eliminates the statement (appearing in paragraph (m) of the prior rule) that all writs and process may be served by any constable of the court. In the committee's view, this rule does not properly deal with the question of who may serve types of process other than the summons and complaint. In recommending the elimination of paragraph (m), the committee did not intend to change the law governing eligibility to serve such other process.

Paragraph (a). This paragraph eliminates the prior rule's reference to the issuance of summonses. See paragraph (b). Otherwise the paragraph is identical to the former paragraph (a).

Paragraph (b). This paragraph, a substantial change from the prior rule, requires that in an action commenced under Rule 3(a)(1), the summons, together with a copy of the complaint, must be served within 120 days of the filing of the complaint. The time period was borrowed from Rule 4(j), Federal Rules of Civil Procedure.

Paragraph (c). This paragraph makes minor revisions to the corresponding paragraph of the prior rule. In addition to data historically required to appear in the summons, the address of the court and information concerning the plaintiff or plaintiff's attorney are also required.

Comment [JM9]:

Paragraph (d). In prescribing the persons who may serve process, this paragraph eliminates the prior rule's distinction between in-state and out-of-state service. The paragraph is consistent with other changes in the rule designed to simplify and unify practice for in-state and out-of-state service. In order to be eligible to serve a summons or complaint, persons who are not sheriffs or other law enforcement personnel must be at least 18 years of age at the time of service. For

eligibility to make service in a foreign country, see paragraph (d)(3). Subparagraph (d)(1)(A) presents the general rule for personal service on individuals who are not infants, incompetent, or incarcerated. Subparagraph (B) deals with service on infants and subparagraph (C) with service on incompetent persons. Subparagraphs (A), (B) and (C) are patterned after Rule 4(e), Federal Rules of Civil Procedure. Subparagraph (D) deals with service on persons who are incarcerated or committed to the custody of a state institution. Subparagraph (E) deals with service on business entities. Subparagraphs (F) through (I) change and modernize service on political subdivisions of the state. Subparagraphs (J) and (K) provide for service on the state and its departments, agencies, boards and commissions with only minor changes from the prior rule. Subparagraph (d)(2) adds a provision for service by mail or commercial courier service within any judicial district of the United States. The term "mail" refers to services provided by the United States Postal Service. The term "commercial courier service" refers to businesses that provide for the delivery of documents. Examples of "commercial courier service" include Federal Express and United Parcel Service. Methods of service by mail or commercial courier service must provide for a document indicating receipt. Subparagraphs (A) and (B) specify who must sign the document indicting receipt. For service under Subparagraph (d)(2) to be effective, the court must be clearly convinced that the proper person signed the document indicating receipt. Infants or incompetent persons may not be served by mail or commercial courier service. Subparagraph (C) details when service by mail or commercial courier service is complete.

Paragraph (d)(3). This paragraph provides several alternative means by which service must be made in foreign countries and provides for proof of such service.

Paragraph (d)(4). This paragraph replaces most of paragraph (f) of the prior rule. It is designed to permit alternative means of service where the identity or whereabouts of the person to be served is unknown, where personal service is impracticable, or where a party avoids personal service. Under the circumstances identified in the rule, this paragraph permits the court to fashion means of service reasonably calculated to apprise the parties of the pendency of the action. Use of this provision is not limited to actions traditionally considered in rem or quasi in rem. See Carlson v. Bos, 740 P.2d 1269, 1272 (Utah 1987). The present rule eliminates specific mention of service by telegraph or telephone (in paragraph (1) of the prior rule) since such service could be ordered under this paragraph if appropriate. The court's order of substituted service must specify the content of service and the event or events as of which service will be deemed complete. A copy of the order must itself be served so that the party served will be able to determine the sufficiency of service and the time as of which his or her response is due.

Paragraph (e). This paragraph replaces paragraph (g) in the prior rule. It requires proof of service to be filed "promptly" and in any event before a responsive pleading is due. The rule eliminates failure to file proof of service as a basis for challenging the validity of service. The rule contains specific requirements for proof of service depending upon who serves and what method of service is used. If the summons and complaint are served by mail or commercial courier service, subparagraph (1) requires the receipt signed by defendant or defendant's agent to be included in the proof of service.

Paragraph (f) adds an option for a plaintiff to request a defendant to waive service. This provision is similar to federal Rule (4)(d). The defendant is required to return the waiver of service within 20 days (30 days for a defendant outside the United States) from the date the request for waiver is sent. The rule grants a defendant who waives service additional time to file

a response to the complaint. A defendant who does not return the request for waiver of service will be assessed plaintiff's actual costs in effecting service under other provisions of this rule.

2016 Amendments

Paragraph (d)(3) contemplates delivery and acceptance of the summons and complaint by various methods, including electronic delivery and signature. Elimination of the express procedure for seeking waiver of service under paragraph (f) does not eliminate the parties' ability to agree to accept service under paragraph (d)(3).

Rule 5. Service and filing of pleadings and other papers.

(a) When service is required.

(a)(1) Papers that must be served. Except as otherwise provided in these rules or as otherwise directed by the court, the following papers must be served on every party:

(a)(1)(A) a judgment;

(a)(1)(B) an order that states it must be served;

(a)(1)(C) a pleading after the original complaint;

(a)(1)(D) a paper relating to disclosure or discovery;

(a)(1)(E) a paper filed with the court other than a motion that may be heard ex parte; and

(a)(1)(F) a written notice, appearance, demand, offer of judgment, or similar paper.

(a)(2) Serving parties in default. No service is required on a party who is in default except that:

(a)(2)(A) a party in default must be served as ordered by the court;

(a)(2)(B) a party in default for any reason other than for failure to appear must be served as provided in paragraph (a)(1);

(a)(2)(C) a party in default for any reason must be served with notice of any hearing to determine the amount of damages to be entered against the defaulting party;

(a)(2)(D) a party in default for any reason must be served with notice of entry of judgment under Rule 58A(d); and

(a)(2)(E) a party in default for any reason must be served under Rule 4 with pleadings asserting new or additional claims for relief against the party.

(a)(3) Service in actions begun by seizing property. If an action is begun by seizing property and no person is or need be named as defendant, any service required before the filing of an answer, claim or appearance must be made upon the person who had custody or possession of the property when it was seized.

(b) How service is made.

(b)(1) Whom to serve. If a party is represented by an attorney, a paper served under this rule must be served upon the attorney unless the court orders service upon the party. Service must be made upon the attorney and the party if

Comment [JM10]:

Comment [JM11]:

Comment [JM12]:

(b)(1)(A) an attorney has filed a Notice of Limited Appearance under Rule 75 and the papers being served relate to a matter within the scope of the Notice; or

Comment [JM13]:

(b)(1)(B) a final judgment has been entered in the action and more than 90 days has elapsed from the date a paper was last served on the attorney.

Comment [JM14]:

(b)(2) When to serve. If a hearing is scheduled 7 days or less from the date of service, a party must serve a paper related to the hearing by the method most likely to be promptly received. Otherwise, a paper that is filed with the court must be served before or on the same day that it is filed.

(b)(3) Methods of service. A paper is served under this rule by:

(b)(3)(A) except in the juvenile court, submitting it for electronic filing if the person being served has an electronic filing account;

(b)(3)(B) emailing it to the email address provided by the person or to the email address on file with the Utah State Bar, if the person has agreed to accept service by email or has an electronic filing account;

(b)(3)(C) mailing it to the person's last known address;

(b)(3)(D) handing it to the person;

(b)(3)(E) leaving it at the person's office with a person in charge or, if no one is in charge, leaving it in a receptacle intended for receiving deliveries or in a conspicuous place;

(b)(3)(F) leaving it at the person's dwelling house or usual place of abode with a person of suitable age and discretion who resides there; or

(b)(3)(G) any other method agreed to in writing by the parties.

(b)(4) When service is effective. Service by mail or electronic means is complete upon sending.

(b)(5) Who serves. Unless otherwise directed by the court:

(b)(5)(A) every paper required to be served must be served by the party preparing it; and

(b)(5)(B) an order or judgment prepared by the court will be served by the court.

(c) Serving numerous defendants. If an action involves an unusually large number of defendants, the court, upon motion or its own initiative, may order that:

(c)(1) a defendant's pleadings and replies to them do not need to be served on the other defendants;

(c)(2) any cross-claim, counterclaim avoidance or affirmative defense in a defendant's pleadings and replies to them are deemed denied or avoided by all other parties;

(c)(3) filing a defendant's pleadings and serving them on the plaintiff constitutes notice of them to all other parties; and

(c)(4) a copy of the order must be served upon the parties.

(d) Certificate of service. A paper required by this rule to be served, including electronically filed papers, must include a signed certificate of service showing the name of the document served, the date and manner of service and on whom it was served.

(e) Filing. Except as provided in Rule 7(j) and Rule 26(f), all papers after the complaint that are required to be served must be filed with the court. Parties with an electronic filing account must file a paper electronically. A party without an electronic filing account may file a paper by delivering it to the clerk of the court or to a judge of the court. Filing is complete upon the earliest of acceptance by the electronic filing system, the clerk of court or the judge.

(f) Filing an affidavit or declaration. If a person files an affidavit or declaration, the filer may:

(f)(1) electronically file the original affidavit with a notary acknowledgment as provided by Utah Code Section 46-1-16(7);

(f)(2) electronically file a scanned image of the affidavit or declaration;

(f)(3) electronically file the affidavit or declaration with a conformed signature; or

(f)(4) if the filer does not have an electronic filing account, present the original affidavit or declaration to the clerk of the court, and the clerk will electronically file a scanned image and return the original to the filer.

The filer must keep an original affidavit or declaration of anyone other than the filer safe and available for inspection upon request until the action is concluded, including any appeal or until the time in which to appeal has expired.

URCP 5.

Advisory Committee Notes

Rule 5(d) is amended to give the trial court the option, either on an ad hoc basis or by local rule, of ordering that discovery papers, depositions, written interrogatories, document requests, requests for admission, and answers and responses need not be filed unless required for specific use in the case. The committee is of the view that a local rule of the district courts on the subject should be encouraged.

The 1999 amendment to subdivision (b)(1)(B) does not authorize the court to conduct a hearing with less than 5 days notice, but rather specifies the manner of service of the notice when the court otherwise has that authority.

2001 amendments

Paragraph (b)(1)(A) has been changed to allow service by means other than U.S. Mail and hand delivery if consented to in writing by the person to be served, i.e. the attorney of the party. Electronic means include facsimile transmission, e-mail and other possible electronic means.

Comment [JM15]:

While it is not necessary to file the written consent with the court, it would be advisable to have the consent in the form of a stipulation suitable for filing and to file it with the court.

Paragraph (b)(1)(B) establishes when service by electronic means, if consented to in writing, is complete. The term "normal business hours" is intended to mean 8:00 a.m. to 5:00 p.m. Monday through Friday, excluding legal holidays. If a fax or e-mail is received after 5:00 p.m., the service is deemed complete on the next business day.

2015 amendments

Since the Rules of Juvenile Procedure do not have a rule on serving papers, this rule applies in juvenile court proceedings under Rule 1, Rule 81(a) and Rule of Juvenile Procedure 2.

Under paragraph (b)(3)(A), electronically filing a document has the effect of serving the document on lawyers who have an e-filing account. (Lawyers representing parties in the district court are required to have an account and electronically file documents. Code of Judicial Administration Rule 4-503.) The 2015 amendment excepts from this provision documents electronically filed in juvenile court.

Comment [JM16]:

Comment [JM17]:

Rule 6. Time.

(a) Computing time. The following rules apply in computing any time period specified in these rules, any local rule or court order, or in any statute that does not specify a method of computing time.

(a)(1) When the period is stated in days or a longer unit of time:

(a)(1)(A) exclude the day of the event that triggers the period;

(a)(1)(B) count every day, including intermediate Saturdays, Sundays, and legal holidays; and

(a)(1)(C) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday or legal holiday.

(a)(2) When the period is stated in hours:

(a)(2)(A) begin counting immediately on the occurrence of the event that triggers the period;

(a)(2)(B) count every hour, including hours during intermediate Saturdays, Sundays, and legal holidays; and

(a)(2)(C) if the period would end on a Saturday, Sunday, or legal holiday, the period continues to run until the same time on the next day that is not a Saturday, Sunday, or legal holiday.

(a)(3) Unless the court orders otherwise, if the clerk's office is inaccessible:

(a)(3)(A) on the last day for filing under Rule 6(a)(1), then the time for filing is extended to the first accessible day that is not a Saturday, Sunday or legal holiday; or

(a)(3)(B) during the last hour for filing under Rule 6(a)(2), then the time for filing is extended to the same time on the first accessible day that is not a Saturday, Sunday, or legal holiday.

(a)(4) Unless a different time is set by a statute or court order, filing on the last day means:

(a)(4)(A) for electronic filing, before midnight; and

(a)(4)(B) for filing by other means, the filing must be made before the clerk's office is scheduled to close.

(a)(5) The "next day" is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

(a)(6) "Legal holiday" means the day for observing:

(a)(6)(A) New Year's Day;

(a)(6)(B) Dr. Martin Luther King, Jr. Day;
(a)(6)(C) Washington and Lincoln Day;
(a)(6)(D) Memorial Day;
(a)(6)(E) Independence Day;
(a)(6)(F) Pioneer Day;
(a)(6)(G) Labor Day;
(a)(6)(H) Columbus Day;
(a)(6)(I) Veterans' Day;
(a)(6)(J) Thanksgiving Day;
(a)(6)(K) Christmas; and
(a)(6)(L) any day designated by the Governor or Legislature as a state holiday.

(b) Extending time.

(b)(1) When an act may or must be done within a specified time, the court may, for good cause, extend the time:

(b)(1)(A) with or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires; or

(b)(1)(B) on motion made after the time has expired if the party failed to act because of excusable neglect.

(b)(2) A court must not extend the time to act under Rules 50(b) and (d), 52(b), 59(b), (d) and (e), and 60(c).

(c) Additional time after service by mail. When a party may or must act within a specified time after service and service is made by mail under Rule 5(b)(3)(C), 3 days are added after the period would otherwise expire under paragraph (a).

Part III Pleadings, Motions, and Orders

Rule 7. Pleadings allowed; motions, memoranda, hearings, orders.

(a) Pleadings. Only these pleadings are allowed:

(a)(1) a complaint;

(a)(2) an answer to a complaint;

(a)(3) an answer to a counterclaim designated as a counterclaim;

(a)(4) an answer to a crossclaim;

(a)(5) a third-party complaint;

(a)(6) an answer to a third-party complaint; and

(a)(7) a reply to an answer if ordered by the court.

(b) Motions. A request for an order must be made by motion. The motion must be in writing unless made during a hearing or trial, must state the relief requested, and must state the grounds for the relief requested. Except for the following, a motion must be made in accordance with this rule.

(b)(1) A motion, other than a motion described in paragraphs (b)(2), (b)(3) or (b)(4), made in proceedings before a court commissioner must follow Rule 101.

(b)(2) A request under Rule 26 for extraordinary discovery must follow Rule 37(a).

(b)(3) A request under Rule 37 for a protective order or for an order compelling disclosure or discovery—but not a motion for sanctions—must follow Rule 37(a).

(b)(4) A request under Rule 45 to quash a subpoena must follow Rule 37(a).

(b)(5) A motion for summary judgment must follow the procedures of this rule as supplemented by the requirements of Rule 56.

(c) Name and content of motion.

(c)(1) The rules governing captions and other matters of form in pleadings apply to motions and other papers. The moving party must title the motion substantially as: "Motion [short phrase describing the relief requested]." The motion must include the supporting memorandum. The motion must include under appropriate headings and in the following order:

(c)(1)(A) a concise statement of the relief requested and the grounds for the relief requested; and

(c)(1)(B) one or more sections that include a concise statement of the relevant facts claimed by the moving party and argument citing authority for the relief requested.

(c)(2) If the moving party cites documents, interrogatory answers, deposition testimony, or other discovery materials, relevant portions of those materials must be attached to or submitted with the motion.

(c)(3) If the motion is for relief authorized by Rule 12(b) or 12(c), Rule 56 or Rule 65A, the motion may not exceed 25 pages, not counting the attachments, unless a longer motion is permitted by the court. Other motions may not exceed 15 pages, not counting the attachments, unless a longer motion is permitted by the court.

(d) Name and content of memorandum opposing the motion.

(d)(1) A nonmoving party may file a memorandum opposing the motion within 14 days after the motion is filed. The nonmoving party must title the memorandum substantially as: "Memorandum opposing motion [short phrase describing the relief requested]." The memorandum must include under appropriate headings and in the following order:

(d)(1)(A) a concise statement of the party's preferred disposition of the motion and the grounds supporting that disposition;

(d)(1)(B) one or more sections that include a concise statement of the relevant facts claimed by the nonmoving party and argument citing authority for that disposition; and

(d)(1)(C) objections to evidence in the motion, citing authority for the objection.

(d)(2) If the non-moving party cites documents, interrogatory answers, deposition testimony, or other discovery materials, relevant portions of those materials must be attached to or submitted with the memorandum.

(d)(3) If the motion is for relief authorized by Rule 12(b) or 12(c), Rule 56 or Rule 65A, the memorandum opposing the motion may not exceed 25 pages, not counting the attachments, unless a longer memorandum is permitted by the court. Other opposing

memoranda may not exceed 15 pages, not counting the attachments, unless a longer memorandum is permitted by the court.

(e) Name and content of reply memorandum.

(e)(1) Within 7 days after the memorandum opposing the motion is filed, the moving party may file a reply memorandum, which must be limited to rebuttal of new matters raised in the memorandum opposing the motion. The moving party must title the memorandum substantially as "Reply memorandum supporting motion [short phrase describing the relief requested]." The memorandum must include under appropriate headings and in the following order:

(e)(1)(A) a concise statement of the new matter raised in the memorandum opposing the motion;

(e)(1)(B) one or more sections that include a concise statement of the relevant facts claimed by the moving party not previously set forth that respond to the opposing party's statement of facts and argument citing authority rebutting the new matter;

(e)(1)(C) objections to evidence in the memorandum opposing the motion, citing authority for the objection; and

(e)(1)(D) response to objections made in the memorandum opposing the motion, citing authority for the response.

(e)(2) If the moving party cites documents, interrogatory answers, deposition testimony, or other discovery materials, relevant portions of those materials must be attached to or submitted with the memorandum.

(e)(3) If the motion is for relief authorized by Rule 12(b) or 12(c), Rule 56 or Rule 65A, the reply memorandum may not exceed 15 pages, not counting the attachments, unless a longer memorandum is permitted by the court. Other reply memoranda may not exceed 10 pages, not counting the attachments, unless a longer memorandum is permitted by the court.

(f) Objection to evidence in the reply memorandum; response. If the reply memorandum includes an objection to evidence, the nonmoving party may file a response to the objection no later than 7 days after the reply memorandum is filed. If the reply memorandum includes evidence not previously set forth, the nonmoving party may file an objection to the evidence no later than 7 days after the reply memorandum is filed, and the moving party may file a response to the objection no later than 7 days after the objection is filed. The objection or response may not be more than 3 pages.

(g) Request to submit for decision. When briefing is complete or the time for briefing has expired, either party may file a "Request to Submit for Decision," but, if no party files a request, the motion will not be submitted for decision. The request to submit for decision must state whether a hearing has been requested and the dates on which the following documents were filed:

(g)(1) the motion;

(g)(2) the memorandum opposing the motion, if any;

(g)(3) the reply memorandum, if any; and

(g)(4) the response to objections in the reply memorandum, if any.

(h) Hearings. The court may hold a hearing on any motion. A party may request a hearing in the motion, in a memorandum or in the request to submit for decision. A request for hearing must be separately identified in the caption of the document containing the request. The court must grant a request for a hearing on a motion under Rule 56 or a motion that would dispose of the action or any claim or defense in the action unless the court finds that the motion or opposition to the motion is frivolous or the issue has been authoritatively decided.

(i) Notice of supplemental authority. A party may file notice of citation to significant authority that comes to the party's attention after the party's motion or memorandum has been filed or after oral argument but before decision. The notice may not exceed 2 pages. The notice must state the citation to the authority, the page of the motion or memorandum or the point orally argued to which the authority applies, and the reason the authority is relevant. Any other party may promptly file a response, but the court may act on the motion without waiting for a response. The response may not exceed 2 pages.

(j) Orders.

(j)(1) Decision complete when signed; entered when recorded. However designated, the court's decision on a motion is complete when signed by the judge. The decision is entered when recorded in the docket.

(j)(2) Preparing and serving a proposed order. Within 14 days of being directed by the court to prepare a proposed order confirming the court's decision, a party must serve the proposed order on the other parties for review and approval as to form. If the party directed to prepare a proposed order fails to timely serve the order, any other party may prepare a proposed order confirming the court's decision and serve the proposed order on the other parties for review and approval as to form.

(j)(3) Effect of approval as to form. A party's approval as to form of a proposed order certifies that the proposed order accurately reflects the court's decision. Approval as to form does not waive objections to the substance of the order.

(j)(4) Objecting to a proposed order. A party may object to the form of the proposed order by filing an objection within 7 days after the order is served.

(j)(5) Filing proposed order. The party preparing a proposed order must file it:

(j)(5)(A) after all other parties have approved the form of the order (The party preparing the proposed order must indicate the means by which approval was received: in person; by telephone; by signature; by email; etc.);

(j)(5)(B) after the time to object to the form of the order has expired (The party preparing the proposed order must also file a certificate of service of the proposed order.); or

(j)(5)(C) within 7 days after a party has objected to the form of the order (The party preparing the proposed order may also file a response to the objection.).

(j)(6) Proposed order before decision prohibited; exceptions. A party may not file a proposed order concurrently with a motion or a memorandum or a request to submit for decision, but a proposed order must be filed with:

(j)(6)(A) a stipulated motion;

(j)(6)(B) a motion that can be acted on without waiting for a response;

(j)(6)(C) an ex parte motion;

(j)(6)(D) a statement of discovery issues under Rule 37(a); and

(j)(6)(E) the request to submit for decision a motion in which a memorandum opposing the motion has not been filed.

(j)(7) Orders entered without a response; ex parte orders. An order entered on a motion under paragraph (l) or (m) can be vacated or modified by the judge who made it with or without notice.

(j)(8) Order to pay money. An order to pay money can be enforced in the same manner as if it were a judgment.

(k) Stipulated motions. A party seeking relief that has been agreed to by the other parties may file a stipulated motion which must:

(k)(1) be titled substantially as: "Stipulated motion [short phrase describing the relief requested]";

(k)(2) include a concise statement of the relief requested and the grounds for the relief requested;

(k)(3) include a signed stipulation in or attached to the motion and;

(k)(4) be accompanied by a request to submit for decision and a proposed order that has been approved by the other parties.

(l) Motions that may be acted on without waiting for a response.

(l)(1) The court may act on the following motions without waiting for a response:

(l)(1)(A) motion to permit an over-length motion or memorandum;

(l)(1)(B) motion for an extension of time if filed before the expiration of time;

(l)(1)(C) motion to appear pro hac vice; and

(l)(1)(D) other similar motions.

(l)(2) A motion that can be acted on without waiting for a response must:

(l)(2)(A) be titled as a regular motion;

(l)(2)(B) include a concise statement of the relief requested and the grounds for the relief requested;

(l)(2)(C) cite the statute or rule authorizing the motion to be acted on without waiting for a response; and

(l)(2)(D) be accompanied by a request to submit for decision and a proposed order.

(m) Ex parte motions. If a statute or rule permits a motion to be filed without serving the motion on the other parties, the party seeking relief may file an ex parte motion which must:

(m)(1) be titled substantially as: “Ex parte motion [short phrase describing the relief requested]”;

(m)(2) include a concise statement of the relief requested and the grounds for the relief requested;

(m)(3) cite the statute or rule authorizing the ex parte motion;

(m)(4) be accompanied by a request to submit for decision and a proposed order.

(n) Motion in opposing memorandum or reply memorandum prohibited. A party may not make a motion in a memorandum opposing a motion or in a reply memorandum. A party who objects to evidence in another party’s motion or memorandum may not move to strike that evidence. Instead, the party must include in the subsequent memorandum an objection to the evidence.

(o) Overlength motion or memorandum. The court may permit a party to file an overlength motion or memorandum upon a showing of good cause. An overlength motion or memorandum must include a table of contents and a table of authorities with page references.

(p) Limited statement of facts and authority. No statement of facts and legal authorities beyond the concise statement of the relief requested and the grounds for the relief requested required in paragraph (c) is required for the following motions:

(p)(1) motion to allow an over-length motion or memorandum;

(p)(2) motion to extend the time to perform an act, if the motion is filed before the time to perform the act has expired;

(p)(3) motion to continue a hearing;

(p)(4) motion to appoint a guardian ad litem;

(p)(5) motion to substitute parties;

(p)(6) motion to refer the action to or withdraw it from alternative dispute resolution under Rule 4-510.05;

(p)(7) motion for a conference under Rule 16; and

(p)(8) motion to approve a stipulation of the parties.

(q) Limit on order to show cause. An application to the court for an order to show cause shall be made only for enforcement of an existing order or for sanctions for violating an existing order. An application for an order to show cause must be supported by an affidavit sufficient to show cause to believe a party has violated a court order. Nothing in this rule is intended to limit or alter the inherent power of the court to initiate order to show cause proceedings to assess whether cases should be dismissed for failure to prosecute or to otherwise manage the court’s docket.

Rule 7

Advisory Committee Notes

The 2015 changes to Rule 7 repeal and reenact the rule. Many of the provisions from the former Rule 7 are preserved in the 2015 version, but there are many changes as well. The committee's intent is to bring more regularity to motion practice. Some of these features are found in Rule 7-1 of the U.S. District Court for the District of Utah:

- integrate the memorandum supporting a motion with the motion itself;
- describe more uniform motion titles;
- describe more uniform content in the memoranda;
- regulate the process for citing supplemental authority;
- prohibit proposed orders before a decision, except for specified motions;
- move the special requirements for a motion for summary judgment to Rule 56;
- allow a limited statement of facts for specified motions;
- require an objection to evidence, rather than a motion to strike evidence; and
- require a counter-motion rather than a motion in the opposing memorandum.

The 2015 amendments in this rule, as well as in Rule 54 and Rule 58A, respond to the Supreme Court's directive to the committee in Central Utah Water Conservancy District v. King, 2013 UT 13 ¶27. In that case the Supreme Court directed the committee to address the problem of undue delay when the parties fail to comply with former Rule 7(f)(2). A major objective of the 2015 amendments is to continue the policy of clear expectations of the parties established in:

- *Butler v. Corporation of The President of The Church of Jesus Christ of Latter-Day Saints*, 2014 UT 41
- *Central Utah Water Conservancy District v. King*, 2013 UT 13;
- *Giusti v. Sterling Wentworth Corp.*, 2009 UT 2;
- *Houghton v. Dep't of Health*, 2008 UT 86; and
- *Code v. Dep't of Health*, 2007 UT 43.

However, the 2015 amendments do so in a manner simpler than the "magic words" required under the former Rule 7(f)(2).

In these cases, the Supreme Court established a policy favoring a clear indication of whether a further document would be required from the parties after a judge's decision. The parties should not be required to guess what, if anything, should come next.

There were three ways to meet the test: a proposed order was submitted with the supporting or opposing memorandum; an order was prepared at the direction of the judge; the decision included an express indication that a further order was not required. The 2015 amendments remove a proposed order from the process in most circumstances. The trend under the former rule was to include in every order an indication that nothing further was required, sometimes even when the order expressly directed a party to prepare a further order. In other cases orders were prepared in some manner other than as described in the rule, yet the order did not expressly state that nothing further was required. The order technically was not complete, but everyone proceeded as if it were.

The 2015 amendments continue the policy of a bright-line test for a completed decision but do not rely on conditions that might or might not be met. The one condition that can be counted on is the judge's signature. Under the former rule, a completed decision was imposed by

operation of law when the order was prepared in one of the recognized ways. The 2015 rule imposes a completed decision by operation of law when the document memorializing the decision is signed. Under the former rule, the judge's silence meant that something further was required, unless the order was prepared in one of the ways described in Rule 7. The presumption in the 2015 amendments is the opposite: silence means that nothing further is required from the parties. Judges can expressly require an order confirming a decision if one is needed in a particular case.

The committee recognizes the many different forms a judge's decision might take, and discussed defining "order," but decided against the attempt. There are too many variations. If written, the document might be titled "order," "ruling," "opinion," "decision," "memorandum decision," etc. The decision might not be written; an oral directive is an order. A clerk's minute entry of an oral decision is, when signed by the judge, treated the same as a written order. The committee decided instead to modify a phrase of long standing from Rule 54(b)—"a decision, however designated"—in this rule and in Rule 58A. In this rule, however a judge's decision may be designated, that decision is complete when the judge signs the document memorializing the decision. Whether there is a right to appeal is determined by whether the decision—or subsequent order confirming the decision—is a judgment. That analysis is governed by Rule 54. When the judgment is entered is governed by Rule 58A. If the order is not a judgment, the time in which to petition for permission to appeal under Rule of Appellate Procedure 5 is calculated from the date on which an order confirming an earlier decision is entered, but only if the judge directs that a confirming order be prepared. If the judge does not direct that a confirming order be prepared, the time is calculated from the date on which the decision, however designated, is entered.

The 2017 amendments to Rule 7 return pre-2015 paragraph (b)(2) language addressing limits on orders to show cause to new paragraph (q) and also clarify the discretion the court retains to manage its docket. Paragraph (q) is directed only at limitations on order to show cause proceedings initiated by parties.

Rule 8. General rules of pleadings.

(a) Claims for relief. An original claim, counterclaim, cross-claim or third-party claim must contain a short and plain: (1) statement of the claim showing that the party is entitled to relief; and (2) demand for judgment for specified relief. Relief in the alternative or of several different types may be demanded. A party who claims damages but does not plead an amount must plead that the damages are such as to qualify for a specified tier defined by Rule 26(c)(3). A pleading that qualifies for tier 1 or tier 2 discovery constitutes a waiver of any right to recover damages above the tier limits specified in Rule 26(c)(3), unless the pleading is amended under Rule 15.

(b) Defenses; form of denials. A party must state in simple, short and plain terms any defenses to each claim asserted and must admit or deny the statements in the claim. A party without knowledge or information sufficient to form a belief about the truth of a statement must so state, and this has the effect of a denial. Denials must fairly meet the substance of the statements denied. A party may deny all of the statements in a claim by general denial. A party

may specify the statement or part of a statement that is admitted and deny the rest. A party may specify the statement or part of a statement that is denied and admit the rest.

(c) Affirmative defenses. An affirmative defense must contain a short and plain: (1) statement of the affirmative defense; and (2) a demand for relief. A party must set forth affirmatively in a responsive pleading accord and satisfaction, arbitration and award, assumption of risk, comparative fault, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. If a party mistakenly designates a defense as a counterclaim or a counterclaim as a defense, the court, on terms, may treat the pleadings as if the defense or counterclaim had been properly designated.

(d) Effect of failure to deny. Statements in a pleading to which a responsive pleading is required, other than statements of the amount of damage, are admitted if not denied in the responsive pleading. Statements in a pleading to which no responsive pleading is required or permitted are deemed denied or avoided.

(e) Consistency. A party may state a claim or defense alternately or hypothetically, either in one count or defense or in separate counts or defenses. If statements are made in the alternative and one of them is sufficient, the pleading is not made insufficient by the insufficiency of an alternative statement. A party may state legal and equitable claims or legal and equitable defenses regardless of consistency.

(f) Construction of pleadings. All pleadings will be construed to do substantial justice.

URCP 8.

Advisory Committee Notes

The pleading standard under Rule 8 remains “notice pleading” as exemplified by the official forms appended to the Rules. But parties are encouraged to plead facts that entitle them to relief or establish affirmative defenses because more expansive pleadings will trigger broader disclosures from the opponent under Rule 26. This encouragement is consistent with the general approach of the 2011 amendments which require each party to disclose its affirmative case early in the process so that the adversary might evaluate its merits and focus the need for discovery.

The amount of damages pled will determine the amount of standard discovery available under Rule 26(c)(3). It would be unfair for a party to plead a smaller amount of damages in order to take advantage of the streamlined discovery and then seek to recover greater damages. Thus, Rule 8 provides that a party waives its right to recover damages in excess of the maximums provided for that tier unless the pleading is amended. The trial court may determine if the amendment requires further discovery.

Rule 8. General rules of pleadings.

(a) Claims for relief. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim or third-party claim, shall contain (1) a short and plain statement of the

claim showing that the pleader is entitled to relief; and (2) a demand for judgment for the relief to which he deems himself entitled. Relief in the alternative or of several different types may be demanded.

(b) Defenses; form of denials. A party shall state in short and plain terms his defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If he is without knowledge or information sufficient to form a belief as to the truth of an averment, he shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, he shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, he may make his denials as specific denials of designated averments or paragraphs, or he may generally deny all the averments except such designated averments or paragraphs as he expressly admits; but, when he does so intend to controvert all its averments, he may do so by general denial subject to the obligations set forth in Rule 11.

(c) Affirmative defenses. In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleadings as if there had been a proper designation.

(d) Effect of failure to deny. Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

(e) Pleading to be concise and direct; consistency.

(e)(1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required.

(e)(2) A party may set forth two or more statements of a claim or defense alternately or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as he has regardless of consistency and whether based on legal or on equitable grounds or on both. All statements shall be made subject to the obligations set forth in Rule 11.

(f) Construction of pleadings. All pleadings shall be so construed as to do substantial justice.

Rule 9. Pleading special matters.

(a) Capacity or Authority to Sue; Legal Existence.

(1) In General. Except when required to show that the court has jurisdiction, a pleading need not allege:

(A) a party's capacity to sue or be sued;

(B) a party's authority to sue or be sued in a representative capacity; or

(C) the legal existence of an organized association of persons that is made a party.

(2) Raising Those Issues. To raise any of those issues, a party must do so by a specific denial, which must state any supporting facts that are peculiarly within the party's knowledge.

(b) Unknown parties.

(b)(1) Designation. When a party does not know the name of an opposing party, it may state that fact in the pleadings, and designate the opposing party in a pleading by any name. When the true name of the opposing party becomes known, the pleading must be amended.

(b)(2) Descriptions of interest in quiet title actions. If one or more parties in an action to quiet title are designated in the caption as "unknown," the pleadings may describe the unknown persons as "all other persons unknown, claiming any right, title, estate or interest in, or lien upon the real property described in the pleading adverse to the complainant's ownership, or clouding its title."

(c) Fraud, mistake, condition of the mind. In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally.

(d) Conditions precedent. In pleading conditions precedent, it is sufficient to allege generally that all conditions precedent have been performed or have occurred. When denying that a condition precedent has been performed or has occurred, a party must do so with particularity.

(e) Official document or act. In pleading an official document or official act it is sufficient to allege that the document was legally issued or the act was legally done.

(f) Judgment. In pleading a judgment or decision of a domestic or foreign court, a judicial or quasi-judicial tribunal, or a board or officer, it is sufficient to plead the judgment or decision without showing jurisdiction to render it.

(g) Time and place. An allegation of time or place is material when testing the sufficiency of a pleading.

(h) Special damage. If an item of special damage is claimed, it must be specifically stated.

(i) Statute of limitations. In pleading the statute of limitations it is not necessary to state the facts showing the defense but it may be alleged generally that the cause of action is barred by the statute, referring to or describing the statute by section number, subsection designation, if any, or designating the provision relied on sufficiently to identify it.

(j) Private statutes; ordinances. In pleading a private statute, an ordinance, or a right derived from a statute or ordinance, it is sufficient to refer to the statute or ordinance by its title and the day of its passage or by its section number or other designation in any official publication of the statute or ordinance. The court will take judicial notice of the statute or ordinance.

(k) Libel and slander.

(k)(1) Pleading defamatory matter. In an action for libel or slander it is sufficient to allege generally that the defamatory matter out of which the action arose was published or spoken concerning the plaintiff. If the allegation is denied, the party alleging the defamatory matter must establish at trial that it was published or spoken.

(k)(2) Pleading defense. The defendant may allege the truth of the matter charged as defamatory and any mitigating circumstances to reduce the amount of damages. Whether or not justification is proved, the defendant may give evidence of the mitigating circumstances.

(l) Allocation of fault.

(l)(1) A party seeking to allocate fault to a non-party under Title 78B, Chapter 5, Part 8 must file:

(l)(1)(A) a description of the factual and legal basis on which fault can be allocated; and

(l)(1)(B) information known or reasonably available to the party identifying the non-party, including name, address, telephone number and employer. If the identity of the non-party is unknown, the party must so state.

(l)(2) The information specified in paragraph (l)(1) must be included in the party's responsive pleading if then known or must be included in a supplemental notice filed within a reasonable time after the party discovers the factual and legal basis on which fault can be allocated. The court, upon motion and for good cause shown, may permit a party to file the information specified in paragraph (l)(1) after the expiration of any period permitted by this rule, but in no event later than 90 days before trial.

(l)(3) A party must not seek to allocate fault to another except by compliance with this rule.

Rule 9. Pleading special matters.

Advisory Committee Note

The 2016 amendments deleted former paragraph (k) on renewing judgments because it was superfluous. The Renewal of Judgment Act (Utah Code Sections 78B-6-1801 through 78B-6-1804) allows a domestic judgment to be renewed by motion, and Section 78B 5 302 governs domesticating a foreign judgment, which can then be renewed by motion.

The process for renewing a judgment by motion is governed by Rule 58C.

Issues of capacity, conditions precedent, and statutes of limitation in paragraphs (a), (e), and (j) should be decided along with other claims and defenses.

Rule 10. Form of pleadings and other papers.

(a) Caption; names of parties; other necessary information.

(a)(1) All pleadings and other papers filed with the court must contain a caption setting forth the name of the court, the title of the action, the file number, if known, the name of the pleading or other paper, and the name, if known, of the judge (and commissioner if applicable) to whom the case is assigned. A party filing a claim for relief, whether by original claim, counterclaim, cross-claim or third-party claim, must include in the caption the discovery tier for the case as determined under Rule 26.

(a)(2) In the complaint, the title of the action must include the names of all the parties, but other pleadings and papers need only state the name of the first party on each side with an indication that there are other parties. A party whose name is not known must be designated by any name and the words "whose true name is unknown." In an action in rem, unknown

parties must be designated as "all unknown persons who claim any interest in the subject matter of the action."

(a)(3) Every pleading and other paper filed with the court must state in the top left hand corner of the first page the name, address, email address, telephone number and bar number of the attorney or party filing the paper, and, if filed by an attorney, the party for whom it is filed.

Comment [JM18]:

Comment [JM19]:

(a)(4) A party filing a claim for relief, whether by original claim, counterclaim, cross-claim or third-party claim, must also file a completed cover sheet substantially similar in form and content to the cover sheet approved by the Judicial Council. The clerk may destroy the coversheet after recording the information it contains.

(b) Paragraphs; separate statements. All statements of claim or defense must be made in numbered paragraphs. Each paragraph must be limited as far as practicable to a single set of circumstances; and a paragraph may be adopted by reference in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence and each defense other than denials must be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

(c) Adoption by reference; exhibits. Statements in a paper may be adopted by reference in a different part of the same or another paper. An exhibit to a paper is a part thereof for all purposes.

(d) Paper format. All pleadings and other papers, other than exhibits and court-approved forms, must be 8½ inches wide x 11 inches long, on white background, with a top margin of not less than 1½ inches and a right, left and bottom margin of not less than 1 inch . All text or images must be clearly legible, must be double spaced, except for matters customarily single spaced, must be on one side only and must not be smaller than 12-point size.

(e) Signature line. The name of the person signing must be typed or printed under that person’s signature. If a proposed document ready for signature by a court official is electronically filed, the order must not include the official’s signature line and must, at the end of the document, indicate that the signature appears at the top of the first page.

(f) Non-conforming papers. The clerk of the court may examine the pleadings and other papers filed with the court. If they are not prepared in conformity with paragraphs (a) - (e), the clerk must accept the filing but may require counsel to substitute properly prepared papers for nonconforming papers. The clerk or the court may waive the requirements of this rule for parties appearing pro se. For good cause shown, the court may relieve any party of any requirement of this rule.

Comment [JM20]:

(g) Replacing lost pleadings or papers. If an original pleading or paper filed in any action or proceeding is lost, the court may, upon motion, with or without notice, authorize a copy thereof to be filed and used in lieu of the original.

(h) No improper content. The court may strike and disregard all or any part of a pleading or other paper that contains redundant, immaterial, impertinent or scandalous matter.

(i) Electronic papers.

(i)(1) Any reference in these rules to a writing, recording or image includes the electronic version thereof.

(i)(2) A paper electronically signed and filed is the original.

(i)(3) An electronic copy of a paper, recording or image may be filed as though it were the original. Proof of the original, if necessary, is governed by the Utah Rules of Evidence.

(i)(4) An electronic copy of a paper must conform to the format of the original.

(i)(5) An electronically filed paper may contain links to other papers filed simultaneously or already on file with the court and to electronically published authority.

URCP 10.

Advisory Committee Notes

As a general matter, Rule 10 deals with the form of papers filed with the court - both "pleadings" as defined in Rule 7(a) and "other papers filed with the court," including motions, memoranda, discovery responses, and orders. The changes in the present rule were promulgated to clarify ambiguities in the prior rule and to address specific problems encountered by the courts. Paragraph (b), (c) and (e) of the rule were not changed, except that paragraph (e) was redesignated as (g) and new paragraphs (e) and (f) were added.

Paragraph (a). This paragraph specifies requirements for captions in every paper filed with the court. In addition to the other requirements, the caption must contain the name of the judge to whom the case is assigned, if the judge's name is known at the time the paper is filed. In the top left-hand corner of the first page, each paper must state identifying information concerning the attorney representing the party filing the paper. Finally, every pleading must state the name and current address of the party for whom it is filed; this information should appear on the lower left-hand corner of the last page. This information need not be set forth in papers other than pleadings.

Comment [JM21]:

Paragraph (d). The changes in this paragraph make it clear that papers filed with the court must be "typewritten, printed or photocopied in black type." The Advisory Committee considered suggestions from groups that so-call "dox matrix" printing be specifically prohibited. The Advisory Committee, however, settled on the requirements that "typing or [printing shall be clearly legible . . . and shall not be smaller than pica size. If typing or printing on papers filed with the court complies with these standards, the papers should not be deemed to violate the rule merely because they were prepared in a dox matrix printer. As currently written, this paragraph also removes any confusion concerning the top margin and left margin requirements (now 2 inches and 1 inch respectively), and this paragraph imposes new requirements for right and bottom margins (both one-half inch).

Paragraph (e). This paragraph, which is an addition to the rule, requires typed signature lines and signature lines and signatures in permanent black or blue ink.

Paragraph (f). The changes in this paragraph make it clear that the clerk must accept all papers for filing, even though they may violate the rule, but the clerk may require counsel to substitute conforming for nonconforming papers. The clerk is given discretion to waive requirements of the rule for parties who are not represented by counsel; for good cause shown, the court may relieve parties of the obligation to comply with the rule or any part of it.

Comment [JM22]:

Comment [JM23]:

Rule 11. Signing of pleadings, motions, affidavits, and other papers; representations to court; sanctions.

(a) Signature.

(a)(1) Every pleading, written motion, and other paper must be signed by at least one attorney of record, or, if the party is not represented, by the party.

Comment [JM24]:

(a)(2) A person may sign a paper using any form of signature recognized by law as binding. Unless required by statute, a paper need not be accompanied by affidavit or have a notarized, verified or acknowledged signature. If a rule requires an affidavit or a notarized, verified or acknowledged signature, the person may submit a declaration pursuant to Utah Code Section 78B-5-705. If an affidavit or a paper with a notarized, verified or acknowledged signature is filed, the party must comply with Rule 5(f).

(a)(3) An unsigned paper will be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

Comment [JM25]:

(b) Representations to court. By presenting a pleading, written motion, or other paper to the court (whether by signing, filing, submitting, or advocating), an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,

Comment [JM26]:

(b)(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(b)(2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(b)(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(b)(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(c) Sanctions. If, after notice and a reasonable opportunity to respond, the court determines that paragraph (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated paragraph (b) or are responsible for the violation.

Comment [JM27]:

(c)(1) How initiated.

(c)(1)(A) By motion. A motion for sanctions under this rule must be made separately from other motions or requests and must describe the specific conduct alleged to violate paragraph (b). It must be served as provided in Rule 5, but may not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney fees incurred in presenting or opposing the motion. In appropriate circumstances, a law firm may be held jointly responsible for violations committed by its partners, members, and employees.

Comment [JM28]:

(c)(1)(B) On court's initiative. On its own initiative, the court may enter an order describing the specific conduct that appears to violate paragraph (b) and directing an attorney, law firm, or party to show cause why it has not violated paragraph (b) with respect thereto.

Comment [JM29]:

(c)(2) Nature of sanction; limitations. A sanction imposed for violation of this rule must be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in paragraphs (c)(2)(A) and (c)(2)(B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorney fees and other expenses incurred as a direct result of the violation.

(c)(2)(A) Monetary sanctions may not be awarded against a represented party for a violation of paragraph (b)(2).

(c)(2)(B) Monetary sanctions may not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.

Comment [JM30]:

(c)(3) Order. When imposing sanctions, the court will describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.

URCP 011

Advisory Committee Notes

The 1997 amendments conform state Rule 11 with federal Rule 11. One difference between the rules concerns holding a law firm jointly responsible for violations by a member of the firm. Federal Rule 11(c)(1)(A) states: "Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees." Under the federal rule, joint responsibility is presumed unless the judge determines not to impose joint responsibility. State Rule 11(c)(1)(A) provides: "In appropriate circumstances, a law firm may be held jointly responsible for violations committed by its partners, members, and employees." Under the state rule, joint responsibility is not presumed, and the judge may impose joint responsibility in appropriate circumstances. What constitutes appropriate circumstances is left to the discretion of the judge, but might include: repeated violations, especially after earlier sanctions; firm-wide sanctionable practices; or a sanctionable practice approved by a supervising attorney and committed by a subordinate.

Comment [JM31]:

Rule 12. Defenses and objections.

(a) When presented. Unless otherwise provided by statute or order of the court, a defendant shall serve an answer within 21 days after the service of the summons and complaint is complete within the state and within 30 days after service of the summons and complaint is complete outside the state. A party served with a pleading stating a cross-claim shall serve an answer thereto within 21 days after the service. The plaintiff shall serve a reply to a counterclaim in the answer within 21 days after service of the answer or, if a reply is ordered by the court, within 21 days after service of the order, unless the order otherwise directs. The service of a motion under this rule alters these periods of time as follows, unless a different time is fixed by order of the

court, but a motion directed to fewer than all of the claims in a pleading does not affect the time for responding to the remaining claims:

(a)(1) If the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 14 days after notice of the court's action;

(a)(2) If the court grants a motion for a more definite statement, the responsive pleading shall be served within 14 days after the service of the more definite statement.

(b) How presented. Every defense, in law or fact, to claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join an indispensable party. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion or by further pleading after the denial of such motion or objection. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the adverse party may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

(c) Motion for judgment on the pleadings. After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

(d) Preliminary hearings. The defenses specifically enumerated (1) - (7) in subdivision (b) of this rule, whether made in a pleading or by motion, and the motion for judgment mentioned in subdivision (c) of this rule shall be heard and determined before trial on application of any party, unless the court orders that the hearings and determination thereof be deferred until the trial.

(e) Motion for more definite statement. If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement before interposing a responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within 14 days after notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

(f) Motion to strike. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 21 days

after the service of the pleading, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

(g) Consolidation of defenses. A party who makes a motion under this rule may join with it the other motions herein provided for and then available. If a party makes a motion under this rule and does not include therein all defenses and objections then available which this rule permits to be raised by motion, the party shall not thereafter make a motion based on any of the defenses or objections so omitted, except as provided in subdivision (h) of this rule.

(h) Waiver of defenses. A party waives all defenses and objections not presented either by motion or by answer or reply, except (1) that the defense of failure to state a claim upon which relief can be granted, the defense of failure to join an indispensable party, and the objection of failure to state a legal defense to a claim may also be made by a later pleading, if one is permitted, or by motion for judgment on the pleadings or at the trial on the merits, and except (2) that, whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action. The objection or defense, if made at the trial, shall be disposed of as provided in Rule 15(b) in the light of any evidence that may have been received.

(i) Pleading after denial of a motion. The filing of a responsive pleading after the denial of any motion made pursuant to these rules shall not be deemed a waiver of such motion.

(j) Security for costs of a nonresident plaintiff. When the plaintiff in an action resides out of this state, or is a foreign corporation, the defendant may file a motion to require the plaintiff to furnish security for costs and charges which may be awarded against such plaintiff. Upon hearing and determination by the court of the reasonable necessity therefor, the court shall order the plaintiff to file a $300.00 undertaking with sufficient sureties as security for payment of such costs and charges as may be awarded against such plaintiff. No security shall be required of any officer, instrumentality, or agency of the United States.

(k) Effect of failure to file undertaking. If the plaintiff fails to file the undertaking as ordered within 30 days of the service of the order, the court shall, upon motion of the defendant, enter an order dismissing the action.

Rule 13. Counterclaim and crossclaim.

(a) Compulsory counterclaim.

(a)(1) A pleading must state as a counterclaim any claim that—at the time of its service—the pleader has against an opposing party if the claim:

(a)(1)(A) arises out of the transaction or occurrence that is the subject matter of the opposing party's claim; and

(a)(1)(B) does not require adding another party over whom the court cannot acquire jurisdiction.

(a)(2) The pleader need not state the claim if:

(a)(2)(A) when the action was commenced, the claim was the subject of another pending action, or

(a)(2)(B) the opposing party sued on its claim by attachment or other process that did not establish personal jurisdiction over the pleader on that claim, and the pleader does not assert any counterclaim under this rule.

(b) Permissive counterclaim. A pleading may state as a counterclaim against an opposing party any claim that is not compulsory.

(c) Relief sought in a counterclaim. A counterclaim need not diminish or defeat the recovery sought by the opposing party. It may request relief that exceeds in amount or differs in kind from the relief sought by the opposing party.

(d) Counterclaim maturing or acquired after pleading. The court may permit a party to file a supplemental pleading asserting a counterclaim that matured or was acquired by the party after serving an earlier pleading.

(e) Crossclaim against coparty. A pleading may state as a crossclaim any claim by one party against a coparty if the claim arises out of the transaction or occurrence that is the subject matter of the original action or of a counterclaim, or if the claim relates to any property that is the subject matter of the original action. The crossclaim may include a claim that the coparty is or may be liable to the crossclaimant for all or part of a claim asserted in the action against the crossclaimant.

(f) Joining additional parties. Rules 19 and 20 govern the addition of a person as a party to a counterclaim or crossclaim.

(g) Separate trials; separate judgments. If the court orders separate trials under Rule 42, it may enter judgment on a counterclaim or crossclaim under Rule 54(b) when it has jurisdiction to do so, even if the opposing party's claims have been dismissed or otherwise resolved.

Rule 14. Third-party practice.

(a) When defendant may bring in third party. At any time after commencement of the action a defendant, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to him for all or part of the plaintiff's claim against him. The third-party plaintiff need not obtain leave to make the service if he files the third-party complaint not later than 14 days after he serves his original answer. Otherwise he must obtain leave on motion upon notice to all parties to the action. The person served with the summons and third-party complaint, hereinafter called the third-party defendant, shall make his defenses to the third-party plaintiff's claim as provided in Rule 12 and his counterclaims against the third-party plaintiff and cross-claims against other third-party defendants as provided in Rule 13. The third-party defendant may assert against the plaintiff any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant thereupon shall assert his defenses as provided in Rule 12 and his counterclaims and cross-claims as provided in Rule 13. A third-party defendant may proceed under this rule against any person not a party to the action who is or may be liable to him for all or part of the claim made in the action against the third-party defendant.

(b) When plaintiff may bring in third party. When a counterclaim is asserted against a plaintiff, he may cause a third party to be brought in under circumstances which under this rule would entitle a defendant to do so.

Rule 15. Amended and supplemental pleadings.

(a) Amendments before trial.

(a)(1) A party may amend its pleading once as a matter of course within:

(a)(1)(A) 21 days after serving it; or

(a)(1)(B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

(a)(2) In all other cases, a party may amend its pleading only with the court's permission or the opposing party's written consent. The party must attach its proposed amended pleading to the motion to permit an amended pleading. The court should freely give permission when justice requires.

(a)(3) Any required response to an amended pleading must be filed within the time remaining to respond to the original pleading or within 14 days after service of the amended pleading, whichever is later.

(b) Amendments during and after trial.

(b)(1) When an issue not raised in the pleadings is tried by the parties' express or implied consent, it must be treated in all respects as if raised in the pleadings. A party may move—at any time, even after judgment—to amend the pleadings to conform them to the evidence and to raise an unpleaded issue. But failure to amend does not affect the result of the trial of that issue.

(b)(2) If, at trial, a party objects that evidence is not within the issues raised in the pleadings, the court may permit the pleadings to be amended. The court should freely permit an amendment when doing so will aid in presenting the merits and the objecting party fails to satisfy the court that the evidence would prejudice that party's action or defense on the merits. The court may grant a continuance to enable the objecting party to meet the evidence.

(c) Relation back of amendments. An amendment to a pleading relates back to the date of the original pleading when:

(c)(1) the law that provides the applicable statute of limitations allows relation back;

(c)(2) the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out—or attempted to be set out—in the original pleading; or

(c)(3) the amendment adds a party, substitutes a party, or changes the name of the party against whom a claim is asserted, if paragraph (c)(2) is satisfied and if, within the period provided by Rule 4(b) for serving the summons and complaint, the party to be brought in by amendment:

(c)(3)(A) received such notice of the action that it will not be prejudiced in defending on the merits; and

(c)(3)(B) knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party's identity.

(d) Supplemental pleadings. On motion and reasonable notice, the court may, on just terms, permit a party to file a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented. The court may permit supplementation even though the original pleading is defective in stating a claim or defense. The court may order that the opposing party respond to the supplemental pleading within a specified time.

Rule 16. Pretrial conferences.

(a) Pretrial conferences. The court, in its discretion or upon motion, may direct the attorneys and, when appropriate, the parties to appear for such purposes as:

(a)(1) expediting the disposition of the action;

(a)(2) establishing early and continuing control so that the case will not be protracted for lack of management;

(a)(3) discouraging wasteful pretrial activities;

(a)(4) improving the quality of the trial through more thorough preparation;

(a)(5) facilitating mediation or other ADR processes for the settlement of the case;

(a)(6) considering all matters as may aid in the disposition of the case;

(a)(7) establishing the time to join other parties and to amend the pleadings;

(a)(8) establishing the time to file motions;

(a)(9) establishing the time to complete discovery;

(a)(10) extending fact discovery;

(a)(11) setting the date for pretrial and final pretrial conferences and trial;

(a)(12) provisions providing for the preservation, disclosure or discovery of electronically stored information;

(a)(13) considering any agreements the parties reach for asserting claims of privilege or of protection as trial-preparation material after production; and

(a)(14) considering any other appropriate matters.

(b) Trial settings. Unless an order sets the trial date, any party may and the plaintiff shall, at the close of all discovery, certify to the court that discovery is complete, that any required mediation or other ADR processes have been completed or excused and that the case is ready for trial. The court shall schedule the trial as soon as mutually convenient to the court and parties. The court shall notify parties of the trial date and of any final pretrial conference.

(c) Final pretrial conferences. The court, in its discretion or upon motion, may direct the attorneys and, when appropriate, the parties to appear for such purposes as settlement and trial management. The conference shall be held as close to the time of trial as reasonable under the circumstances.

(d) Sanctions. If a party or a party's attorney fails to obey an order, if a party or a party's attorney fails to attend a conference, if a party or a party's attorney is substantially unprepared to participate in a conference, or if a party or a party's attorney fails to participate in good faith, the court, upon motion or its own initiative, may take any action authorized by Rule 37(b).

Comment [JM32]:

Comment [JM33]:

Comment [JM34]:

Comment [JM35]:

Comment [JM36]:

Comment [JM37]:

URCP 16.

Advisory Committee Notes

For the purposes of this rule, “ADR” is as defined in CJA Rule 4-510.01.

Part IV Parties

Rule 17. Parties plaintiff and defendant.

(a) Real party in interest. Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in that person's name without joining the party for whose benefit the action is brought; and when a statute so provides, an action for the use or benefit of another shall be brought in the name of the state of Utah. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

(b) Minors or incompetent persons. An unemancipated minor or an insane or incompetent person who is a party must appear either by a general guardian or by a guardian ad litem appointed in the particular case by the court in which the action is pending. A guardian ad litem may be appointed in any case when it is deemed by the court in which the action or proceeding is prosecuted expedient to represent the minor, insane or incompetent person in the action or proceeding, notwithstanding that the person may have a general guardian and may have appeared by the guardian. In an action in rem it shall not be necessary to appoint a guardian ad litem for any unknown party who might be a minor or an incompetent person.

(c) Guardian ad litem; how appointed. A guardian ad litem appointed by a court must be appointed as follows:

(c)(1) When the minor is plaintiff, upon the application of the minor, if the minor is of the age of fourteen years, or if under that age, upon the application of a relative or friend of the minor.

(c)(2) When the minor is defendant, upon the application of the minor if the minor is of the age of fourteen years and applies within 21 days after the service of the summons, or if under that age or if the minor neglects so to apply, then upon the application of a relative or friend of the minor, or of any other party to the action.

(c)(3) When a minor defendant resides out of this state, the plaintiff, upon motion therefor, shall be entitled to an order designating some suitable person to be guardian ad litem for the minor defendant, unless the defendant or someone in behalf of the defendant within 21 days after service of notice of such motion shall cause to be appointed a guardian for such minor. Service of such notice may be made upon the defendant's general or testamentary guardian located in the defendant's state; if there is none, such notice, together with the summons in the action, shall be served in the manner provided for publication of summons upon such minor, if over fourteen years of age, or, if under fourteen years of age, by such service on the person with whom the minor resides. The guardian ad litem for such

nonresident minor defendant shall have 21 days after appointment in which to plead to the action.

(c)(4) When an insane or incompetent person is a party to an action or proceeding, upon the application of a relative or friend of such insane or incompetent person, or of any other party to the action or proceeding.

(d) Associates may sue or be sued by common name. When two or more persons associated in any business either as a joint-stock company, a partnership or other association, not a corporation, transact such business under a common name, whether it comprises the names of such associates or not, they may sue or be sued by such common name. Any judgment obtained against the association shall bind the joint property of all the associates in the same manner as if all had been named parties and had been sued upon their joint liability. The separate property of an individual member of the association may not be bound by the judgment unless the member is named as a party and the court acquires jurisdiction over the member.

(e) Action against a nonresident doing business in this state. When a nonresident person is associated in and conducts business within the state of Utah in one or more places in that person's own name or a common trade name, and the business is conducted under the supervision of a manager, superintendent or agent the person may be sued in the person's name in any action arising out of the conduct of the business.

(f) As used in these rules, the term plaintiff shall include a petitioner, and the term defendant shall include a respondent.

URCP 017

Advisory Committee Notes

Paragraph (d) has been changed to conform to the holding in Cottonwood Mall Co. v. Sine, 767 P.2d 499 (Utah 1988), which allows an unincorporated association to sue in its own name. The rule continues to allow an unincorporated association to be sued in its own name. The final sentence of paragraph (d) was added to confirm that the separate property of an individual member of an association may not be bound by the judgment unless the member is made a party.

Technical changes in all paragraphs of the rule make the terminology gender neutral. In part (c) the word "minor" has replaced the word "infant," in order to maintain consistency with recent changes made in Rule 4(e)(2). In Rule 4 an infant is defined as a person under the age of 14 years, whereas the intent of Rule 17(c) is to include persons under the age of 18 years.

Rule 18. Joinder of claims and remedies.

(a) Joinder of claims. The plaintiff in his complaint or in a reply setting forth a counterclaim and the defendant in an answer setting forth a counterclaim may join either as independent or as alternate claims as many claims either legal or equitable or both as he may have against an opposing party. There may be a like joinder of claims when there are multiple parties if the requirements of Rules 19, 20, and 22 are satisfied. There may be a like joinder of cross-claims or third-party claims if the requirements of Rules 13 and 14 respectively are satisfied.

(b) Joinder of remedies; fraudulent conveyances. Whenever a claim is one heretofore cognizable only after another claim has been prosecuted to a conclusion, the two claims may be joined in a single action; but the court shall grant relief in that action only in accordance with the

relative substantive rights of the parties. In particular, a plaintiff may state a claim for money and a claim to have set aside a conveyance fraudulent as to him, without first having obtained a judgment establishing the claim for money.

Rule 19. Joinder of persons needed for just adjudication.

(a) Persons to be joined if feasible. A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party. If he should join as a plaintiff but refuses to do so, he may be made a defendant, or, in a proper case, an involuntary plaintiff. If the joined party objects to venue and his joinder would render the venue of the action improper, he shall be dismissed from the action.

(b) Determination by court whenever joinder not feasible. If a person as described in Subdivision (a)(1)-(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measure, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

(c) Pleading reasons for nonjoinder. A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons as described in Subdivision (a)(1)-(2) hereof who are not joined, and the reasons why they are not joined.

(d) Exception of class actions. This rule is subject to the provisions of Rule 23.

Rule 20. Permissive joinder of parties.

(a) Permissive joinder. All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all of them will arise in the action. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all of them will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

(b) Separate trials. The court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom he asserts no claim and who asserts no claim against him, and may order separate trials or make other orders to prevent delay or prejudice.

Rule 21. Misjoinder and non-joinder of parties.

Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately.

Rule 22. Interpleader.

Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not ground for objecting to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that he is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of cross-claim or counterclaim. The provisions of this rule supplement and do not in any way limit the joinder of parties permitted in Rule 20.

Rule 23. Class actions.

(a) Prerequisites to a class action. One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

(b) Class actions maintainable. An action may be maintained as a class action if the prerequisites of Subdivision (a) are satisfied, and in addition:

(b)(1) The prosecution of separate actions by or against individual members of the class would create a risk of:

(b)(1)(A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or

(b)(1)(B) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or

(b)(2) The party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(b)(3) The court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (A) the interest of members of the

class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of a class action.

(c) Determination by order whether class action to be maintained; notice; judgment; actions conducted partially as class actions.

(c)(1) As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be maintained. An order under this subdivision may be conditional, and may be altered or amended before the decision on the merits.

(c)(2) In any class action maintained under Subdivision (b)(3), the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice shall advise each member that (A) the court will exclude him from the class if he so requests by a specified date; (B) the judgment, whether favorable or not, will include all members who do not request exclusion; and (C) any member who does not request exclusion may, if he desires, enter an appearance through his counsel.

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(c)(3) The judgment in an action maintained as a class action under Subdivision (b)(1) or (b)(2), whether or not favorable to the class, shall include and describe those whom the court finds to be members of the class. The judgment in an action maintained as a class action under Subdivision (b)(3), whether or not favorable to the class, shall include and specify or describe those to whom the notice provided in Subdivision (c)(2) was directed, and who have not requested exclusion, and whom the court finds to be members of the class.

(c)(4) When appropriate (A) an action may be brought or maintained as a class action with respect to particular issues, or (B) a class may be divided into subclasses and each subclass treated as a class, and the provisions of this rule shall then be construed and applied accordingly.

(d) Orders in conduct of actions. In the conduct of actions to which this rule applies, the court may make appropriate orders: (1) determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument; (2) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action; (3) imposing conditions on the representative parties or on intervenors; (4) requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly; (5) dealing with similar procedural matters. The orders may be combined with an order under Rule 16, and may be altered or amended as may be desirable from time to time.

(e) Dismissal or compromise. A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.

Rule 23A. Derivative actions by shareholders.

(a) The complaint in a derivative action brought by one or more shareholders or members to enforce a right of a corporation or of an unincorporated association shall be verified and shall allege:

(a)(1) the right that the corporation or association could have enforced and did not;

(a)(2) that the plaintiff was a shareholder or member at the time of the transaction complained of or that the plaintiff's share or membership thereafter devolved to the plaintiff by operation of law;

(a)(3) that the action is not a collusive one to confer jurisdiction on the court that it would not otherwise have;

(a)(4) with particularity, the plaintiff's efforts, if any, to obtain the desired action; and

(a)(5) the reasons for the failure to obtain the action or for not making the effort.

(b) The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association.

(c) The action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to shareholders or members in such manner as the court directs.

Rule 24. Intervention.

(a) Intervention of right. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(b) Permissive intervention. Upon timely application anyone may be permitted to intervene in an action: (1) when a statute confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a governmental officer or agency or upon any regulation, order, requirement, or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(c) Procedure. A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motions shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought.

(d) Constitutionality of statutes and ordinances.

(d)(1) If a party challenges the constitutionality of a statute in an action in which the Attorney General has not appeared, the party raising the question of constitutionality shall notify the Attorney General of such fact. The court shall permit the state to be heard upon timely application.

(d)(2) If a party challenges the constitutionality of a county or municipal ordinance in an action in which the county or municipal attorney has not appeared, the party raising the question of constitutionality shall notify the county or municipal attorney of such fact. The court shall permit the county or municipality to be heard upon timely application.

(d)(3) Failure of a party to provide notice as required by this rule is not a waiver of any constitutional challenge otherwise timely asserted.

Rule 25. Substitution of parties.

(a) Death.

(a)(1) If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party. The moving party shall serve the motion and any notice of hearing on the parties as provided in Rule 5 and upon persons not parties in the manner provided in Rule 4 for the service of a summons. Unless the motion for substitution is made not later than ninety days after the death is suggested upon the record by service of a statement of the fact of the death as provided herein for the service of the motion, the action shall be dismissed as to the deceased party.

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(a)(2) In the event of the death of one or more of the plaintiffs or of one or more of the defendants in an action in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action does not abate. The death shall be suggested upon the record and the action shall proceed in favor of or against the surviving parties.

(b) Incompetency. If a party becomes incompetent, the court upon motion served as provided in Subdivision (a) of this rule may allow the action to be continued by or against his representative.

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(c) Transfer of interest. In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Service of the motion shall be made as provided in Subdivision (a) of this rule.

(d) Public officers; death or separation from office. When a public officer is a party to an action and during its pendency dies, resigns, or otherwise ceases to hold office, the action may be continued and maintained by or against his successor, if within 6 months after the successor takes office, it is satisfactorily shown to the court that there is a substantial need for so

continuing and maintaining it. Substitution pursuant to this rule may be made when it is shown by supplemental pleading that the successor of an officer adopts or continues or threatens to adopt or continue the action of his predecessor. Before a substitution is made, the party or officer to be affected, unless expressly assenting thereto, shall be given reasonable notice of the application therefor and accorded an opportunity to object.

Part V Depositions and Discovery

Rule 26. General provisions governing disclosure and discovery.

(a) Disclosure. This rule applies unless changed or supplemented by a rule governing disclosure and discovery in a practice area.

(a)(1) Initial disclosures. Except in cases exempt under paragraph (a)(3), a party shall, without waiting for a discovery request, serve on the other parties:

(a)(1)(A) the name and, if known, the address and telephone number of:

(a)(1)(A)(i) each individual likely to have discoverable information supporting its claims or defenses, unless solely for impeachment, identifying the subjects of the information; and

(a)(1)(A)(ii) each fact witness the party may call in its case-in-chief and, except for an adverse party, a summary of the expected testimony;

(a)(1)(B) a copy of all documents, data compilations, electronically stored information, and tangible things in the possession or control of the party that the party may offer in its case-in-chief, except charts, summaries and demonstrative exhibits that have not yet been prepared and must be disclosed in accordance with paragraph (a)(5);

(a)(1)(C) a computation of any damages claimed and a copy of all discoverable documents or evidentiary material on which such computation is based, including materials about the nature and extent of injuries suffered;

(a)(1)(D) a copy of any agreement under which any person may be liable to satisfy part or all of a judgment or to indemnify or reimburse for payments made to satisfy the judgment; and

(a)(1)(E) a copy of all documents to which a party refers in its pleadings.

(a)(2) Timing of initial disclosures. The disclosures required by paragraph (a)(1) shall be served on the other parties:

(a)(2)(A) by the plaintiff within 14 days after filing of the first answer to the complaint; and

(a)(2)(B) by the defendant within 42 days after filing of the first answer to the complaint or within 28 days after that defendant’s appearance, whichever is later.

(a)(3) Exemptions.

(a)(3)(A) Unless otherwise ordered by the court or agreed to by the parties, the requirements of paragraph (a)(1) do not apply to actions:

(a)(3)(A)(i) for judicial review of adjudicative proceedings or rule making proceedings of an administrative agency;

(a)(3)(A)(ii) governed by Rule 65B or Rule 65C;

(a)(3)(A)(iii) to enforce an arbitration award;

(a)(3)(A)(iv) for water rights general adjudication under Title 73, Chapter 4, Determination of Water Rights.

(a)(3)(B) In an exempt action, the matters subject to disclosure under paragraph (a)(1) are subject to discovery under paragraph (b).

(a)(4) Expert testimony.

(a)(4)(A) Disclosure of expert testimony. A party shall, without waiting for a discovery request, serve on the other parties the following information regarding any person who may be used at trial to present evidence under Rule 702 of the Utah Rules of Evidence and who is retained or specially employed to provide expert testimony in the case or whose duties as an employee of the party regularly involve giving expert testimony: (i) the expert's name and qualifications, including a list of all publications authored within the preceding 10 years, and a list of any other cases in which the expert has testified as an expert at trial or by deposition within the preceding four years, (ii) a brief summary of the opinions to which the witness is expected to testify, (iii) all data and other information that will be relied upon by the witness in forming those opinions, and (iv) the compensation to be paid for the witness's study and testimony.

(a)(4)(B) Limits on expert discovery. Further discovery may be obtained from an expert witness either by deposition or by written report. A deposition shall not exceed four hours and the party taking the deposition shall pay the expert's reasonable hourly fees for attendance at the deposition. A report shall be signed by the expert and shall contain a complete statement of all opinions the expert will offer at trial and the basis and reasons for them. Such an expert may not testify in a party's case-in-chief concerning any matter not fairly disclosed in the report. The party offering the expert shall pay the costs for the report.

(a)(4)(C) Timing for expert discovery.

(a)(4)(C)(i) The party who bears the burden of proof on the issue for which expert testimony is offered shall serve on the other parties the information required by paragraph (a)(4)(A) within seven days after the close of fact discovery. Within seven days thereafter, the party opposing the expert may serve notice electing either a deposition of the expert pursuant to paragraph (a)(4)(B) and Rule 30, or a written report pursuant to paragraph (a)(4)(B). The deposition shall occur, or the report shall be served on the other parties, within 28 days after the election is served on the other parties. If no election is served on the other parties, then no further discovery of the expert shall be permitted.

(a)(4)(C)(ii) The party who does not bear the burden of proof on the issue for which expert testimony is offered shall serve on the other parties the information required by paragraph (a)(4)(A) within seven days after the later of (A) the date on which the election under paragraph (a)(4)(C)(i) is due, or (B) receipt of the written report or the taking of the expert's deposition pursuant to paragraph (a)(4)(C)(i). Within seven days thereafter, the party opposing the expert may serve notice electing either a deposition of the expert pursuant to paragraph (a)(4)(B) and Rule 30, or a

written report pursuant to paragraph (a)(4)(B). The deposition shall occur, or the report shall be served on the other parties, within 28 days after the election is served on the other parties. If no election is served on the other parties, then no further discovery of the expert shall be permitted.

(a)(4)(C)(iii) If the party who bears the burden of proof on an issue wants to designate rebuttal expert witnesses it shall serve on the other parties the information required by paragraph (a)(4)(A) within seven days after the later of (A) the date on which the election under paragraph (a)(4)(C)(ii) is due, or (B) receipt of the written report or the taking of the expert's deposition pursuant to paragraph (a)(4)(C)(ii). Within seven days thereafter, the party opposing the expert may serve notice electing either a deposition of the expert pursuant to paragraph (a)(4)(B) and Rule 30, or a written report pursuant to paragraph (a)(4)(B). The deposition shall occur, or the report shall be served on the other parties, within 28 days after the election is served on the other parties. If no election is served on the other parties, then no further discovery of the expert shall be permitted.

(a)(4)(D) Multiparty actions. In multiparty actions, all parties opposing the expert must agree on either a report or a deposition. If all parties opposing the expert do not agree, then further discovery of the expert may be obtained only by deposition pursuant to paragraph (a)(4)(B) and Rule 30.

(a)(4)(E) Summary of non-retained expert testimony. If a party intends to present evidence at trial under Rule 702 of the Utah Rules of Evidence from any person other than an expert witness who is retained or specially employed to provide testimony in the case or a person whose duties as an employee of the party regularly involve giving expert testimony, that party must serve on the other parties a written summary of the facts and opinions to which the witness is expected to testify in accordance with the deadlines set forth in paragraph (a)(4)(C). A deposition of such a witness may not exceed four hours.

(a)(5) Pretrial disclosures.

(a)(5)(A) A party shall, without waiting for a discovery request, serve on the other parties:

(a)(5)(A)(i) the name and, if not previously provided, the address and telephone number of each witness, unless solely for impeachment, separately identifying witnesses the party will call and witnesses the party may call;

(a)(5)(A)(ii) the name of witnesses whose testimony is expected to be presented by transcript of a deposition and a copy of the transcript with the proposed testimony designated; and

(a)(5)(A)(iii) a copy of each exhibit, including charts, summaries and demonstrative exhibits, unless solely for impeachment, separately identifying those which the party will offer and those which the party may offer.

(a)(5)(B) Disclosure required by paragraph (a)(5) shall be served on the other parties at least 28 days before trial. At least 14 days before trial, a party shall serve and file counter designations of deposition testimony, objections and grounds for the objections to the use of a deposition and to the admissibility of exhibits. Other than objections under

Rules 402 and 403 of the Utah Rules of Evidence, objections not listed are waived unless excused by the court for good cause.

(b) Discovery scope.

(b)(1) In general. Parties may discover any matter, not privileged, which is relevant to the claim or defense of any party if the discovery satisfies the standards of proportionality set forth below. Privileged matters that are not discoverable or admissible in any proceeding of any kind or character include all information in any form provided during and created specifically as part of a request for an investigation, the investigation, findings, or conclusions of peer review, care review, or quality assurance processes of any organization of health care providers as defined in the Utah Health Care Malpractice Act for the purpose of evaluating care provided to reduce morbidity and mortality or to improve the quality of medical care, or for the purpose of peer review of the ethics, competence, or professional conduct of any health care provider.

(b)(2) Proportionality. Discovery and discovery requests are proportional if:

(b)(2)(A) the discovery is reasonable, considering the needs of the case, the amount in controversy, the complexity of the case, the parties' resources, the importance of the issues, and the importance of the discovery in resolving the issues;

(b)(2)(B) the likely benefits of the proposed discovery outweigh the burden or expense;

(b)(2)(C) the discovery is consistent with the overall case management and will further the just, speedy and inexpensive determination of the case;

(b)(2)(D) the discovery is not unreasonably cumulative or duplicative;

(b)(2)(E) the information cannot be obtained from another source that is more convenient, less burdensome or less expensive; and

(b)(2)(F) the party seeking discovery has not had sufficient opportunity to obtain the information by discovery or otherwise, taking into account the parties' relative access to the information.

(b)(3) Burden. The party seeking discovery always has the burden of showing proportionality and relevance. To ensure proportionality, the court may enter orders under Rule 37.

(b)(4) Electronically stored information. A party claiming that electronically stored information is not reasonably accessible because of undue burden or cost shall describe the source of the electronically stored information, the nature and extent of the burden, the nature of the information not provided, and any other information that will enable other parties to evaluate the claim.

(b)(5) Trial preparation materials. A party may obtain otherwise discoverable documents and tangible things prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including the party's attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials and that the party is unable without undue hardship to obtain substantially equivalent materials by other means. In ordering discovery of

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such materials, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party.

(b)(6) Statement previously made about the action. A party may obtain without the showing required in paragraph (b)(5) a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement about the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order under Rule 37. A statement previously made is (A) a written statement signed or approved by the person making it, or (B) a stenographic, mechanical, electronic, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(b)(7) Trial preparation; experts.

(b)(7)(A) Trial-preparation protection for draft reports or disclosures. Paragraph (b)(5) protects drafts of any report or disclosure required under paragraph (a)(4), regardless of the form in which the draft is recorded.

(b)(7)(B) Trial-preparation protection for communications between a party's attorney and expert witnesses. Paragraph (b)(5) protects communications between the party's attorney and any witness required to provide disclosures under paragraph (a)(4), regardless of the form of the communications, except to the extent that the communications:

(b)(7)(B)(i) relate to compensation for the expert's study or testimony;

(b)(7)(B)(ii) identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed; or

(b)(7)(B)(iii) identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions to be expressed.

(b)(7)(C) Expert employed only for trial preparation. Ordinarily, a party may not, by interrogatories or otherwise, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or to prepare for trial and who is not expected to be called as a witness at trial. A party may do so only:

(b)(7)(C)(i) as provided in Rule 35(b); or

(b)(7)(C)(ii) on showing exceptional circumstances under which it is impracticable for the party to obtain facts or opinions on the same subject by other means.

(b)(8) Claims of privilege or protection of trial preparation materials.

(b)(8)(A) Information withheld. If a party withholds discoverable information by claiming that it is privileged or prepared in anticipation of litigation or for trial, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced in a manner that, without revealing the information itself, will enable other parties to evaluate the claim.

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(b)(8)(B) Information produced. If a party produces information that the party claims is privileged or prepared in anticipation of litigation or for trial, the producing party may notify any receiving party of the claim and the basis for it. After being notified, a receiving party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The producing party must preserve the information until the claim is resolved.

(c) Methods, sequence and timing of discovery; tiers; limits on standard discovery; extraordinary discovery.

(c)(1) Methods of discovery. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; requests for admission; and subpoenas other than for a court hearing or trial.

(c)(2) Sequence and timing of discovery. Methods of discovery may be used in any sequence, and the fact that a party is conducting discovery shall not delay any other party's discovery. Except for cases exempt under paragraph (a)(3), a party may not seek discovery from any source before that party's initial disclosure obligations are satisfied.

(c)(3) Definition of tiers for standard discovery. Actions claiming $50,000 or less in damages are permitted standard discovery as described for Tier 1. Actions claiming more than $50,000 and less than $300,000 in damages are permitted standard discovery as described for Tier 2. Actions claiming $300,000 or more in damages are permitted standard discovery as described for Tier 3. Absent an accompanying damage claim for more than $300,000, actions claiming non-monetary relief are permitted standard discovery as described for Tier 2.

(c)(4) Definition of damages. For purposes of determining standard discovery, the amount of damages includes the total of all monetary damages sought (without duplication for alternative theories) by all parties in all claims for relief in the original pleadings.

(c)(5) Limits on standard fact discovery. Standard fact discovery per side (plaintiffs collectively, defendants collectively, and third-party defendants collectively) in each tier is as follows. The days to complete standard fact discovery are calculated from the date the first defendant's first disclosure is due and do not include expert discovery under paragraphs(a)(4)(C) and (D).

Tier	Amount of Damages	Total Fact Deposition Hours	Rule 33 Interrogatories including all discrete subparts	Rule 34 Requests for Production	Rule 36 Requests for Admission	Days to Complete Standard Fact Discovery
1	$50,000	3	0	5	5	120

	or less					
2	More than $50,000 and less than $300,000 or non-monetary relief	15	10	10	10	180
3	$300,000 or more	30	20	20	20	210

(c)(6) Extraordinary discovery. To obtain discovery beyond the limits established in paragraph (c)(5), a party shall file:

(c)(6)(A) before the close of standard discovery and after reaching the limits of standard discovery imposed by these rules, a stipulated statement that extraordinary discovery is necessary and proportional under paragraph (b)(2) and that each party has reviewed and approved a discovery budget; or

(c)(6)(B) before the close of standard discovery and after reaching the limits of standard discovery imposed by these rules, a request for extraordinary discovery under Rule 37(a).

(d) Requirements for disclosure or response; disclosure or response by an organization; failure to disclose; initial and supplemental disclosures and responses.

(d)(1) A party shall make disclosures and responses to discovery based on the information then known or reasonably available to the party.

(d)(2) If the party providing disclosure or responding to discovery is a corporation, partnership, association, or governmental agency, the party shall act through one or more officers, directors, managing agents, or other persons, who shall make disclosures and responses to discovery based on the information then known or reasonably available to the party.

(d)(3) A party is not excused from making disclosures or responses because the party has not completed investigating the case or because the party challenges the sufficiency of another party's disclosures or responses or because another party has not made disclosures or responses.

(d)(4) If a party fails to disclose or to supplement timely a disclosure or response to discovery, that party may not use the undisclosed witness, document or material at any hearing or trial unless the failure is harmless or the party shows good cause for the failure.

(d)(5) If a party learns that a disclosure or response is incomplete or incorrect in some important way, the party must timely serve on the other parties the additional or correct information if it has not been made known to the other parties. The supplemental disclosure or response must state why the additional or correct information was not previously provided.

(e) Signing discovery requests, responses, and objections. Every disclosure, request for discovery, response to a request for discovery and objection to a request for discovery shall be in writing and signed by at least one attorney of record or by the party if the party is not represented. The signature of the attorney or party is a certification under Rule 11. If a request or response is not signed, the receiving party does not need to take any action with respect to it. If a certification is made in violation of the rule, the court, upon motion or upon its own initiative, may take any action authorized by Rule 11 or Rule 37(b).

Comment [JM48]:

Comment [JM49]:

(f) Filing. Except as required by these rules or ordered by the court, a party shall not file with the court a disclosure, a request for discovery or a response to a request for discovery, but shall file only the certificate of service stating that the disclosure, request for discovery or response has been served on the other parties and the date of service.

URCP 26.

Advisory Committee Notes

Disclosure requirements and timing. Rule 26(a)(1). The 2011 amendments seek to reduce discovery costs by requiring each party to produce, at an early stage in the case, and without a discovery request, all of the documents and physical evidence the party may offer in its case-in-chief and the names of witnesses the party may call in its case-in-chief, with a description of their expected testimony. In this respect, the amendments build on the initial disclosure requirements of the prior rules. In addition to the disclosures required by the prior version of Rule 26(a)(1), a party must disclose each fact witness the party may call in its case-in-chief and a summary of the witness's expected testimony, a copy of all documents the party may offer in its case-in-chief, and all documents to which a party refers in its pleadings.

Not all information will be known at the outset of a case. If discovery is serving its proper purpose, additional witnesses, documents, and other information will be identified. The scope and the level of detail required in the initial Rule 26(a)(1) disclosures should be viewed in light of this reality. A party is not required to interview every witness it ultimately may call at trial in order to provide a summary of the witness's expected testimony. As the information becomes known, it should be disclosed. No summaries are required for adverse parties, including management level employees of business entities, because opposing lawyers are unable to interview them and their testimony is available to their own counsel. For uncooperative or hostile witnesses any summary of expected testimony would necessarily be limited to the subject areas the witness is reasonably expected to testify about. For example, defense counsel may be unable to interview a treating physician, so the initial summary may only disclose that the witness will be questioned concerning the plaintiff's diagnosis, treatment and prognosis. After medical records have been obtained, the summary may be expanded or refined.

Comment [JM50]:

Comment [JM51]:

Comment [JM52]:

Subject to the foregoing qualifications, the summary of the witness's expected testimony should be just that – a summary. The rule does not require prefiled testimony or detailed descriptions of everything a witness might say at trial. On the other hand, it requires more than the broad, conclusory statements that often were made under the prior version of Rule 26(a)(1)(e.g., "The witness will testify about the events in question" or "The witness will testify on causation."). The intent of this requirement is to give the other side basic information concerning the subjects about which the witness is expected to testify at trial, so that the other

side may determine the witness's relative importance in the case, whether the witness should be interviewed or deposed, and whether additional documents or information concerning the witness should be sought. This information is important because of the other discovery limits contained in the 2011 amendments, particularly the limits on depositions.

Likewise, the documents that should be provided as part of the Rule 26(a)(1) disclosures are those that a party reasonably believes it may use at trial, understanding that not all documents will be available at the outset of a case. In this regard, it is important to remember that the duty to provide documents and witness information is a continuing one, and disclosures must be promptly supplemented as new evidence and witnesses become known as the case progresses.

The amendments also require parties to provide more information about damages early in the case. Too often, the subject of damages is deferred until late in the case. Early disclosure of damages information is important. Among other things, it is a critical factor in determining proportionality. The committee recognizes that damages often require additional discovery, and typically are the subject of expert testimony. The Rule is not intended to require expert disclosures at the outset of a case. At the same time, the subject of damages should not simply be deferred until expert discovery. Parties should make a good faith attempt to compute damages to the extent it is possible to do so and must in any event provide all discoverable information on the subject, including materials related to the nature and extent of the damages.

The penalty for failing to make timely disclosures is that the evidence may not be used in the party's case-in-chief. To make the disclosure requirement meaningful, and to discourage sandbagging, parties must know that if they fail to disclose important information that is helpful to their case, they will not be able to use that information at trial. The courts will be expected to enforce them unless the failure is harmless or the party shows good cause for the failure.

The 2011 amendments also change the time for making these required disclosures. Because the plaintiff controls when it brings the action, plaintiffs must make their disclosures within 14 days after service of the first answer. A defendant is required to make its disclosures within 28 days after the plaintiff's first disclosure or after that defendant's appearance, whichever is later. The purpose of early disclosure is to have all parties present the evidence they expect to use to prove their claims or defenses, thereby giving the opposing party the ability to better evaluate the case and determine what additional discovery is necessary and proportional.

The time periods for making Rule 26(a)(1) disclosures, and the presumptive deadlines for completing fact discovery, are keyed to the filing of an answer. If a defendant files a motion to dismiss or other Rule 12(b) motion in lieu of an answer, these time periods normally would be not begin to run until that motion is resolved.

Finally, the 2011 amendments eliminate two categories of actions that previously were exempt from the mandatory disclosure requirements. Specifically, the amendments eliminate the prior exemption for contract actions in which the amount claimed is $20,000 or less, and actions in which any party is proceeding pro se. In the committee's view, these types of actions will benefit from the early disclosure requirements and the overall reduced cost of discovery.

Expert disclosures and timing. Rule 26(a)(3). Expert discovery has become an ever-increasing component of discovery cost. The prior rules sought to eliminate some of these costs by requiring the written disclosure of the expert's opinions and other background information. However, because the expert was not required to sign these disclosures, and because experts

often were allowed to deviate from the opinions disclosed, attorneys typically would take the expert's deposition to ensure the expert would not offer "surprise" testimony at trial, thereby increasing rather than decreasing the overall cost. The amendments seek to remedy this and other costs associated with expert discovery by, among other things, allowing the opponent to choose either a deposition of the expert or a written report, but not both; in the case of written reports, requiring more comprehensive disclosures, signed by the expert, and making clear that experts will not be allowed to testify beyond what is fairly disclosed in a report, all with the goal of making reports a reliable substitute for depositions; and incorporating a rule that protects from discovery most communications between an attorney and retained expert. Discovery of expert opinions and testimony is automatic under Rule 26(a)(3) and parties are not required to serve interrogatories or use other discovery devices to obtain this information.

Comment [JM53]:

Comment [JM54]:

Disclosures of expert testimony are made in sequence, with the party who bears the burden of proof on the issue for which expert testimony will be offered going first. Within seven days after the close of fact discovery, that party must disclose: (i) the expert's curriculum vitae identifying the expert's qualifications, publications, and prior testimony; (ii) compensation information; (iii) a brief summary of the opinions the expert will offer; and (iv) a complete copy of the expert's file for the case. The file should include all of the facts and data that the expert has relied upon in forming the expert's opinions. If the expert has prepared summaries of data, spreadsheets, charts, tables, or similar materials, they should be included. If the expert has used software programs to make calculations or otherwise summarize or organize data, that information and underlying formulas should be provided in native form so it can be analyzed and understood. To the extent the expert is relying on depositions or materials produced in discovery, then a list of the specific materials relied upon is sufficient. The committee recognizes that experts frequently will prepare demonstrative exhibits or other aids to illustrate the expert's testimony at trial, and the costs for preparing these materials can be substantial. For that reason, these types of demonstrative aids may be prepared and disclosed later, as part of the Rule 26(a)(4) pretrial disclosures when trial is imminent.

Within seven days after this disclosure, the party opposing the retained expert may elect either a deposition or a written report from the expert. A deposition is limited to four hours, which is not included in the deposition hours under Rule 26(c)(5), and the party taking it must pay the expert's hourly fee for attending the deposition. If a party elects a written report, the expert must provide a signed report containing a complete statement of all opinions the expert will express and the basis and reasons for them. The intent is not to require a verbatim transcript of exactly what the expert will say at trial; instead the expert must fairly disclose the substance of and basis for each opinion the expert will offer. The expert may not testify in a party's case in chief concerning any matter that is not fairly disclosed in the report. To achieve the goal of making reports a reliable substitute for depositions, courts are expected to enforce this requirement. If a party elects a deposition, rather than a report, it is up to the party to ask the necessary questions to "lock in" the expert's testimony. But the expert is expected to be fully prepared on all aspects of his/her trial testimony at the time of the deposition and may not leave the door open for additional testimony by qualifying answers to deposition questions.

The report or deposition must be completed within 28 days after the election is made. After this, the party who does not bear the burden of proof on the issue for which expert testimony is offered must make its corresponding disclosures and the opposing party may then elect either a deposition or a written report. Under the deadlines contained in the rules, expert discovery

should take less than three months to complete. However, as with the other discovery rules, these deadlines can be altered by stipulation of the parties or order of the court.

The amendments also address the issue of testimony from non-retained experts, such as treating physicians, police officers, or employees with special expertise, who are not retained or specially employed to provide expert testimony, or whose duties as an employee do not regularly involve giving expert testimony. This issue was addressed by the Supreme Court in Drew v. Lee, 2011 UT 15, wherein the court held that reports under the prior version of Rule 26(a)(3) are not required for treating physicians.

There are a number of difficulties inherent in disclosing expert testimony that may be offered from fact witnesses. First, there is often not a clear line between fact and expert testimony. Many fact witnesses have scientific, technical or other specialized knowledge, and their testimony about the events in question often will cross into the area of expert testimony. The rules are not intended to erect artificial barriers to the admissibility of such testimony. Second, many of these fact witnesses will not be within the control of the party who plans to call them at trial. These witnesses may not be cooperative, and may not be willing to discuss opinions they have with counsel. Where this is the case, disclosures will necessarily be more limited. On the other hand, consistent with the overall purpose of the 2011 amendments, a party should receive advance notice if their opponent will solicit expert opinions from a particular witness so they can plan their case accordingly. In an effort to strike an appropriate balance, the rules require that such witnesses be identified and the information about their anticipated testimony should include that which is required under Rule 26(a)(1)(A)(ii), which should include any opinion testimony that a party expects to elicit from them at trial. If a party has disclosed possible opinion testimony in its Rule 26(a)(1)(A)(ii) disclosures, that party is not required to prepare a separate Rule 26(a)(4)(E) disclosure for the witness. And if that disclosure is made in advance of the witness's deposition, those opinions should be explored in the deposition and not in a separate expert deposition. Otherwise, the timing for disclosure of non-retained expert opinions is the same as that for retained experts under Rule 26(a)(4)(C) and depends on whether the party has the burden of proof or is responding to another expert. Rules 26(a)(4)(E) and 26(a)(1)(A)(ii) are not intended to elevate form over substance—all they require is that a party fairly inform its opponent that opinion testimony may be offered from a particular witness. And because a party who expects to offer this testimony normally cannot compel such a witness to prepare a written report, further discovery must be done by interview or by deposition.

Comment [JM55]:

Finally, the amendments include a new Rule 26(b)(7) that protects from discovery draft expert reports and, with limited exception, communications between an attorney and an expert. These changes are modeled after the recent changes to the Federal Rules of Civil Procedure and are intended to address the unnecessary and costly procedures that often were employed in order to protect such information from discovery, and to reduce "satellite litigation" over such issues.

Comment [JM56]:

Scope of discovery—Proportionality. Rule 26(b). Proportionality is the principle governing the scope of discovery. Simply stated, it means that the cost of discovery should be proportional to what is at stake in the litigation.

In the past, the scope of discovery was governed by "relevance" or the "likelihood to lead to discovery of admissible evidence." These broad standards may have secured just results by allowing a party to discover all facts relevant to the litigation. However, they did little to advance two equally important objectives of the rules of civil procedure—the speedy and inexpensive

resolution of every action. Accordingly, the former standards governing the scope of discovery have been replaced with the proportionality standards in subpart (b)(1).

The concept of proportionality is not new. The prior rule permitted the Court to limit discovery methods if it determined that "the discovery was unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation." The Federal Rules of Civil Procedure contains a similar provision. See Fed. R. Civ. P. 26(b)(2)(C). This method of limiting discovery, however, was rarely invoked either under the Utah rules or federal rules.

Under the prior rule, the party objecting to the discovery request had the burden of proving that a discovery request was not proportional. The new rule changes the burden of proof. Today, the party seeking discovery beyond the scope of "standard" discovery has the burden of showing that the request is "relevant to the claim or defense of any party" and that the request satisfies the standards of proportionality. As before, ultimate admissibility is not an appropriate objection to a discovery request so long as the proportionality standard and other requirements are met.

The 2011 amendments establish three tiers of standard discovery in Rule 26(c). Ideally, rules of procedure should be crafted to promote predictability for litigants. Rules should limit the need to resort to judicial oversight. Tiered standard discovery seeks to achieve these ends. The "one-size-fits-all" system is rejected. Tiered discovery signals to judges, attorneys, and parties the amount of discovery which by rule is deemed proportional for cases with different amounts in controversy.

Comment [JM57]:

Any system of rules which permits the facts and circumstances of each case to inform procedure cannot eliminate uncertainty. Ultimately, the trial court has broad discretion in deciding whether a discovery request is proportional. The proportionality standards in subpart (b)(2) and the discovery tiers in subpart (c) mitigate uncertainty by guiding that discretion. The proper application of the proportionality standards will be defined over time by trial and appellate courts.

Standard and extraordinary discovery. Rule 26(c). As a counterpart to requiring more detailed disclosures under Rule 26(a), the 2011 amendments place new limitations on additional discovery the parties may conduct. Because the committee expects the enhanced disclosure requirements will automatically permit each party to learn the witnesses and evidence the opposing side will offer in its case-in-chief, additional discovery should serve the more limited function of permitting parties to find witnesses, documents, and other evidentiary materials that are harmful, rather than helpful, to the opponent's case.

Rule 26(c) provides for three separate "tiers" of limited, "standard" discovery that are presumed to be proportional to the amount and issues in controversy in the action, and that the parties may conduct as a matter of right. An aggregation of all damages sought by all parties in an action dictates the applicable tier of standard discovery, whether such damages are sought by way of a complaint, counterclaim, or otherwise. The tiers of standard discovery are set forth in a chart that is embedded in the body of the rule itself. "Tier 1" describes a minimal amount of standard discovery that is presumed proportional for cases involving damages of $50,000 or less. "Tier 2" sets forth larger limits on standard discovery that are applicable in cases involving damages above $50,000 but less than $300,000. Finally, "Tier 3" prescribes still greater standard discovery for actions involving damages in excess of $300,000. Deposition hours are charged to a side for the time spent asking questions of the witness. In a particular deposition, one side may

use two hours while the other side uses only 30 minutes. The tiers also provide presumptive limitations on the time within which standard discovery should be completed, which limitations similarly increase with the amount of damages at issue. A statement of discovery issues will not toll the period. Parties are expected to be reasonable and accomplish as much as they can during standard discovery. A statement of discovery issues may result in additional discovery and sanctions at the expense of a party who unreasonably fails to respond or otherwise frustrates discovery. After the expiration of the applicable time limitation, a case is presumed to be ready for trial. Actions for non-monetary relief, such as injunctive relief, are subject to the standard discovery limitations of Tier 2, absent an accompanying monetary claim of $300,000 or more, in which case Tier 3 applies. The committee determined these standard discovery limitations based on the expectation that for the majority of cases filed in the Utah State Courts, the magnitude of available discovery and applicable time parameters available under the three-tiered system should be sufficient for cases involving the respective amounts of damages.

Despite the expectation that standard discovery according to the applicable tier should be adequate in the typical case, the 2011 amendments contemplate there will be some cases for which standard discovery is not sufficient or appropriate. In such cases, parties may conduct additional discovery that is shown to be consistent with the principle of proportionality. There are two ways to obtain such additional discovery. The first is by stipulation. If the parties can agree additional discovery is necessary, they may stipulate to as much additional discovery as they desire, provided they stipulate the additional discovery is proportional to what is at stake in the litigation and counsel for each party certifies that the party has reviewed and approved a budget for additional discovery. Such a stipulation should be filed before the close of the standard discovery time limit, but only after reaching the limits for that type of standard discovery available under the rule. If these conditions are met, the Court will not second-guess the parties and their counsel and must approve the stipulation.

Comment [JM58]:

Comment [JM59]:

The second method to obtain additional discovery is by a statement of discovery issues. The committee recognizes there will be some cases in which additional discovery is appropriate, but the parties cannot agree to the scope of such additional discovery. These may include, among other categories, large and factually complex cases and cases in which there is a significant disparity in the parties' access to information, such that one party legitimately has a greater need than the other party for additional discovery in order to prepare properly for trial. To prevent a party from taking advantage of this situation, the 2011 amendments allow any party to request additional discovery. As with stipulations for extraordinary discovery, a party requesting extraordinary discovery should do so before the close of the standard discovery time limit, but only after the party has reached the limits for that type of standard discovery available to it under the rule. By taking advantage of this discovery, counsel should be better equipped to articulate for the court what additional discovery is needed and why. The requesting party must demonstrate that the additional discovery is proportional and certify that the party has reviewed and approved a discovery budget. The burden to show the need for additional discovery, and to demonstrate relevance and proportionality, always falls on the party seeking additional discovery. However, cases in which such additional discovery is appropriate do exist, and it is important for courts to recognize they can and should permit additional discovery in appropriate cases, commensurate with the complexity and magnitude of the dispute.

Comment [JM60]:

Protective order language moved to Rule 37. The 2011 amendments delete in its entirety the prior language of Rule 26(c) governing motions for protective orders. The substance of that

language is now found in Rule 37. The committee determined it was preferable to cover requests for an order to compel, for a protective order, and sanctions in a single rule, rather than two separate rules.

Consequences of failure to disclose. Rule 26(d). If a party fails to disclose or to supplement timely its discovery responses, that party cannot use the undisclosed witness, document, or material at any hearing or trial, absent proof that non-disclosure was harmless or justified by good cause. More complete disclosures increase the likelihood that the case will be resolved justly, speedily, and inexpensively. Not being able to use evidence that a party fails properly to disclose provides a powerful incentive to make complete disclosures. This is true only if trial courts hold parties to this standard. Accordingly, although a trial court retains discretion to determine how properly to address this issue in a given case, the usual and expected result should be exclusion of the evidence.

URCP 26

Legislative Note.

(1) The amended language in paragraph (b)(1) is intended to incorporate long-standing protections against discovery and admission into evidence of privileged matters connected to medical care review and peer review into the Utah Rules of Civil Procedure. These privileges, found in both Utah common law and statute, include Sections 26-25-3, 58-13-4, and 58-13-5, UCA, 1953. The language is intended to ensure the confidentiality of peer review, care review, and quality assurance processes and to ensure that the privilege is limited only to documents and information created specifically as part of the processes. It does not extend to knowledge gained or documents created outside or independent of the processes. The language is not intended to limit the court's existing ability, if it chooses, to review contested documents in camera in order to determine whether the documents fall within the privilege. The language is not intended to alter any existing law, rule, or regulation relating to the confidentiality, admissibility, or disclosure of proceedings before the Utah Division of Occupational and Professional Licensing. The Legislature intends that these privileges apply to all pending and future proceedings governed by court rules, including administrative proceedings regarding licensing and reimbursement.

(2) The Legislature does not intend that the amendments to this rule be construed to change or alter a final order concerning discovery matters entered on or before the effective date of this amendment.

(3) The Legislature intends to give the greatest effect to its amendment, as legally permissible, in matters that are pending on or may arise after the effective date of this amendment, without regard to when the case was filed.

Rule 26.1. Disclosure and discovery in domestic relations actions.

(a) Scope. This rule applies to the following domestic relations actions: divorce; temporary separation; separate maintenance; parentage; custody; child support; and modification. This rule does not apply to adoptions, enforcement of prior orders, cohabitant abuse protective orders, child protective orders, civil stalking injunctions, or grandparent visitation.

(b) Time for disclosure. In addition to the disclosures required in Rule 26, in all domestic relations actions, the documents required in this rule must be served on the other parties:

(b)(1) by the plaintiff within 14 days after filing of the first answer to the complaint; and

(b)(2) by the defendant within 42 days after filing of the first answer to the complaint or within 28 days after that defendant's appearance, whichever is later.

(c) Financial declaration. Each party must disclose to all other parties a fully completed court-approved Financial Declaration and attachments. Each party must attach to the Financial Declaration the following:

(c)(1) For every item and amount listed in the Financial Declaration, excluding monthly expenses, copies of statements verifying the amounts listed on the Financial Declaration that are reasonably available to the party.

(c)(2) For the two tax years before the petition was filed, complete federal and state income tax returns, including Form W-2 and supporting tax schedules and attachments, filed by or on behalf of that party or by or on behalf of any entity in which the party has a majority or controlling interest, including, but not limited to, Form 1099 and Form K-1 with respect to that party.

(c)(3) Pay stubs and other evidence of all earned and un-earned income for the 12 months before the petition was filed.

(c)(4) All loan applications and financial statements prepared or used by the party within the 12 months before the petition was filed.

(c)(5) Documents verifying the value of all real estate in which the party has an interest, including, but not limited to, the most recent appraisal, tax valuation and refinance documents.

(c)(6) All statements for the 3 months before the petition was filed for all financial accounts, including, but not limited to checking, savings, money market funds, certificates of deposit, brokerage, investment, retirement, regardless of whether the account has been closed including those held in that party's name, jointly with another person or entity, or as a trustee or guardian, or in someone else's name on that party's behalf.

(c)(7) If the foregoing documents are not reasonably available or are in the possession of the other party, the party disclosing the Financial Declaration must estimate the amounts entered on the Financial Declaration, the basis for the estimation and an explanation why the documents are not available.

(d) Certificate of service. Each party must file a Certificate of Service with the court certifying that he or she has provided the Financial Declaration and attachments to the other party.

(e) Exempted agencies. Agencies of the State of Utah are not subject to these disclosure requirements.

(f) Sanctions. Failure to fully disclose all assets and income in the Financial Declaration and attachments may subject the non-disclosing party to sanctions under Rule 37 including an award of non-disclosed assets to the other party, attorney's fees or other sanctions deemed appropriate by the court.

(g) Failure to comply. Failure of a party to comply with this rule does not preclude any other party from obtaining a default judgment, proceeding with the case, or seeking other relief from the court.

(h) Notice of requirements. Notice of the requirements of this rule must be served on the Respondent and all joined parties with the initial petition.

URCP 26.1

Advisory Committee Note

Rule 26.1 was developed by the Family Law Section of the Utah State Bar. It represents the type of discovery or disclosure rule that the advisory committee anticipated when drafting proposed Rule 26(a).

Rule 26.2. Disclosures in personal injury actions.

(a) Scope. This rule applies to all actions seeking damages arising out of personal physical injuries or physical sickness.

(b) Plaintiff's additional initial disclosures. Except to the extent that plaintiff moves for a protective order, plaintiff's Rule 26(a) disclosures shall also include:

(b)(1) A list of all health care providers who have treated or examined the plaintiff for the injury at issue, including the name, address, approximate dates of treatment, and a general description of the reason for the treatment.

(b)(2) A list of all other health care providers who treated or examined the plaintiff for any reason in the 5 years before the event giving rise to the claim, including the name, address, approximate dates of treatment, and a general description of the reason for the treatment.

(b)(3) Plaintiff's Social Security number (SSN) or Medicare health insurance claim number (HICN), full name, and date of birth. The SSN and HICN may be used only for the purposes of the action, including compliance with the Medicare, Medicaid, and SCHIP Extension Act of 2007, unless otherwise ordered by the court.

(b)(4) A description of all disability or income-replacement benefits received if loss of wages or loss of earning capacity is claimed, including the amounts, payor's name and address, and the duration of the benefits.

(b)(5) A list of plaintiff's employers for the 5 years preceding the event giving rise to the claim if loss of wages or loss of earning capacity is claimed, including the employer's name and address and plaintiff's job description, wage, and benefits.

(b)(6) Copies of all bills, statements, or receipts for medical care, prescriptions, or other out-of-pocket expenses incurred as a result of the injury at issue.

(b)(7) Copies of all investigative reports prepared by any public official or agency and in the possession of plaintiff or counsel that describe the event giving rise to the claim.

Comment [JM61]:

(b)(8) Except as protected by Rule 26(b)(5), copies of all written or recorded statements of individuals, in the possession of plaintiff or counsel, regarding the event giving rise to the claim or the nature or extent of the injury.

Comment [JM62]:

(c) Defendant's additional disclosures. Defendant's Rule 26(a) disclosures shall also include:

(c)(1) A statement of the amount of insurance coverage applicable to the claim, including any potential excess coverage, and any deductible, self-insured retention, or reservations of rights, giving the name and address of the insurer.

(c)(2) Unless the plaintiff makes a written request for a copy of an entire insurance policy to be disclosed under Rule 26(a)(1)(D), it is sufficient for the defendant to disclose a copy of the declaration page or coverage sheet for any policy covering the claim.

(c)(3) Copies of all investigative reports, prepared by any public official or agency and in the possession of defendant, defendant's insurers, or counsel, that describe the event giving rise to the claim.

Comment [JM63]:

(c)(4) Except as protected by Rule 26(b)(5), copies of all written or recorded statements of individuals, in the possession of defendant, defendant's insurers, or counsel, regarding the event giving rise to the claim or the nature or extent of the injury.

Comment [JM64]:

(c)(5) The information required by Rule 9(l).

URCP 26.2

Advisory Committee Note

This rule requires disclosure of the key fact elements that are typically requested in initial interrogatories in personal injury actions. The Medicare information disclosure, including Social Security numbers, is designed to facilitate compliance with the requirements for insurers under 42 U.S.C. § 1395y(b)(8)(C). See, Hackley v. Garofano, 2010 WL 3025597 (Conn.Super.) and Seger v. Tank Connection, 2010 WL 1665253 (D.Neb.).

The committee anticipates full disclosures in most cases as a matter of course. However, there may be rare circumstances warranting a protective order in which a party would otherwise have to disclose particularly sensitive information wholly unrelated to the injury at issue, such as a particularly sensitive healthcare procedure or treatment. Information and documents not included in the application for a protective order must be provided within the timeframe of this rule.

This rule is intended to apply to actions based on personal injury and personal sickness using the broad definitions under 26 U.S.C. Sec. 104(a)(2). This includes wrongful death actions, in which case the disclosures will usually be of the decedent's records rather than of the plaintiff's, and emotional distress accompanied by physical injury or physical sickness.

Rule 26.3. Disclosure in unlawful detainer actions.

(a) Scope. This rule applies to all actions for eviction or damages arising out of an unlawful detainer under Title 78B, Chapter 6, Part 8, Forcible Entry and Detainer when the tenant is not a commercial tenant.

(b) Plaintiff's disclosures.

(b)(1) Disclosures served with complaint and summons. Instead of the disclosures and timing of disclosures required by Rule 26(a), and unless included in the complaint, the plaintiff must serve on the defendant with the summons and complaint:

(b)(1)(A) any written rental agreement;

(b)(1)(B) the eviction notice that was served;

(b)(1)(C) an itemized calculation of rent past due, damages, costs and attorney fees at the time of filing;

(b)(1)(D) an explanation of the factual basis for the eviction; and

(b)(1)(E) notice to the defendant of the defendant's obligation to serve the disclosures required by paragraph (c).

(b)(2) Disclosures for occupancy hearing.

(b)(2)(A) If the plaintiff requests an evidentiary hearing to determine occupancy under Section 78B-6-810, the plaintiff must serve on the defendant with the request:

(b)(2)(A)(i) any document not yet disclosed that the plaintiff will offer at the hearing; and

(b)(2)(A)(ii) the name and, if known, the address and telephone number of each fact witness the plaintiff may call at the occupancy hearing and, except for an adverse party, a summary of the expected testimony.

(b)(2)(B) If the defendant requests an evidentiary hearing to determine occupancy, the plaintiff must serve the disclosures required by paragraph (b)(2)(A) on the defendant no less than 2 days before the hearing. The plaintiff must serve the disclosures by the method most likely to be promptly received.

(c) Defendant's disclosures for occupancy hearing.

(c)(1) If the defendant requests an evidentiary hearing to determine occupancy under Section 78B-6-810, the defendant must serve on the plaintiff with the request:

(c)(1)(A) any document not yet disclosed that the defendant will offer at the hearing; and

(c)(1)(B) the name and, if known, the address and telephone number of each fact witness the defendant may call at the occupancy hearing and, except for an adverse party, a summary of the expected testimony.

(c)(2) If the plaintiff requests an evidentiary hearing to determine occupancy, the defendant must serve the disclosures required by paragraph (c)(1) on the plaintiff no less than 2 days before the hearing. The defendant must serve the disclosures by the method most likely to be promptly received.

(d) Pretrial disclosures; objections. No later than 14 days before trial, the parties must serve the disclosures required by Rule 26(a)(5)(A). No later than 7 days before trial, each party must serve and file counter designations of deposition testimony, objections and grounds for the objections to the use of a deposition and to the admissibility of exhibits.

Rule 27. Depositions before action or pending appeal.

(a) Before action.

(a)(1) Petition. A person who desires to perpetuate testimony regarding any matter that may be cognizable in any court of this state may file a verified petition in the district court of the county in which any expected adverse party may reside. The petition shall be entitled in the name of the petitioner and shall state: (1) that the petitioner expects to be a party to an action cognizable in a court of this state but is presently unable to bring it or cause it to be brought, (2) the subject matter of the expected action and the petitioner's interest therein, (3) the facts to be established by the proposed testimony and the reasons to perpetuate it, (4) the names or a description of the persons expected to be adverse parties and their addresses so far as known, and (5) the names and addresses of the persons to be examined and the substance of the testimony expected to be elicited from each, and shall ask for an order authorizing the petitioner to take the depositions of the persons to be examined named in the petition, for the purpose of perpetuating their testimony.

(a)(2) Notice and service. The petitioner shall thereafter serve a notice upon each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the court, at a time and place named therein, for the order described in the petition. At least 21 days before the date of hearing the notice shall be served either within or without the district or state in the manner provided inRule 4(d) for service of summons; but if such service cannot with due diligence be made upon any expected adverse party named in the petition, the court may make such order as is just for service by publication or otherwise, and shall appoint, for persons not served in the manner provided in Rule 4(d), an attorney who shall represent them, and, in case they are not otherwise represented, shall cross-examine the deponent. If any expected adverse party is a minor or incompetent the provisions of Rule 17(c) apply.

Comment [JM65]:

(a)(3) Order and examination. If the court is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice, it shall make an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and whether the depositions shall be taken upon oral examination or written interrogatories. The depositions may then be taken in accordance with these rules; and the court may make orders of the character provided for by Rules 34 and 35. For the purpose of applying these rules to depositions for perpetuating testimony, each reference therein to the court in which the action is pending shall be deemed to refer to the court in which the petition for such deposition was filed.

(a)(4) Use of deposition. If a deposition to perpetuate testimony is taken under these rules or if, although not so taken, it would be admissible in evidence in the courts of the state in which it is taken, it may be used in any action involving the same subject matter subsequently brought in any court of this state, in accordance with the provisions of Rule 32(a).

(b) Pending appeal. If an appeal has been taken from a judgment of a district court or before the taking of an appeal if the time therefor has not expired, the district court in which the judgment was rendered may allow the taking of the depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in such court. In such case the party who desires to perpetuate the testimony may make a motion in the district court for leave to take the depositions, upon the same notice and service thereof as if the action was pending in the district court. The motion shall show (1) the names and addresses of persons to be examined and the substance of the testimony which expected to be elicited from each; and (2) the reasons for

perpetuating their testimony. If the court finds that the perpetuation of the testimony is proper to avoid a failure or delay of justice, it may make an order allowing the depositions to be taken and may make orders of the character provided for by Rules 34 and 35, and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in these rules for depositions taken in actions pending in the district court.

(c) Perpetuation by action. This rule does not limit the power of a court to entertain an action to perpetuate testimony.

URCP 027

Advisory Committee Notes

For a complete explanation of the 1999 amendments to this rule and the interrelationship of these amendments with the other discovery changes, see the advisory committee note appended to Rule 26. The Supreme Court order approving the amendments directed that the new procedures be applicable only to cases filed on or after November 1, 1999.

Rule 28. Persons before whom depositions may be taken.

(a) Within the United States. Within the United States or within a territory or insular possession subject to the jurisdiction of the United States, depositions shall be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held, or before a person appointed by the court in which the action is pending. A person so appointed has power to administer oaths and take testimony. The term "officer" as used in Rules 30, 31, and 32 includes a person appointed by the court or designated by the parties under Rule 29.

(b) In foreign countries. In a foreign country, depositions may be taken (1) on notice before a person authorized to administer oaths in the place in which the examination is held, either by the law thereof or by the law of the United States, or (2) before a person commissioned by the court, and a person so commissioned shall have the power by virtue of his commission to administer any necessary oath and take testimony, or (3) pursuant to a letter rogatory. A commission or a letter rogatory shall be issued on application and notice and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter rogatory that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter rogatory may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. A letter rogatory may be addressed "To the Appropriate Authority in [here name of country]." Evidence obtained in response to a letter rogatory need not be excluded merely for the reason that it is not a verbatim transcript or that the testimony was not taken under oath or for any similar departure from the requirements for depositions taken within the United States under these rules.

(c) Disqualification for interest. No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action.

Rule 29. Stipulations regarding disclosure and discovery procedure.

Comment [JM66]:

Comment [JM67]:

Comment [JM68]:

Comment [JM69]:

The parties may modify the limits and procedures for disclosure and discovery by filing, before the close of standard discovery and after reaching the limits of standard discovery imposed by these rules, a stipulated statement that the extraordinary discovery is necessary and proportional under Rule 26(b)(2) and that each party has reviewed and approved a discovery budget. Stipulations extending the time for disclosure or discovery do not require a statement regarding proportionality or discovery budgets. Stipulations extending the time for or limits of disclosure or discovery require court approval only if the extension would interfere with a court order for completion of discovery or with the date of a hearing or trial.

Rule 30. Depositions upon oral questions.

(a) When depositions may be taken; when leave required. A party may depose a party or witness by oral questions. A witness may not be deposed more than once in standard discovery. An expert who has prepared a report disclosed under Rule 26(a)(4)(B) may not be deposed.

(b) Notice of deposition; general requirements; special notice; non-stenographic recording; production of documents and things; deposition of organization; deposition by telephone.

(b)(1) The party deposing a witness shall give reasonable notice in writing to every other party. The notice shall state the date, time and place for the deposition and the name and address of each witness. If the name of a witness is not known, the notice shall describe the witness sufficiently to identify the person or state the class or group to which the person belongs. The notice shall designate any documents and tangible things to be produced by a witness. The notice shall designate the officer who will conduct the deposition.

(b)(2) The notice shall designate the method by which the deposition will be recorded. With prior notice to the officer, witness and other parties, any party may designate a recording method in addition to the method designated in the notice. Depositions may be recorded by sound, sound-and-visual, or stenographic means, and the party designating the recording method shall bear the cost of the recording. The appearance or demeanor of witnesses or attorneys shall not be distorted through recording techniques.

Comment [JM70]:

(b)(3) A deposition shall be conducted before an officer appointed or designated under Rule 28 and shall begin with a statement on the record by the officer that includes (A) the officer's name and business address; (B) the date, time and place of the deposition; (C) the name of the witness; (D) the administration of the oath or affirmation to the witness; and (E) an identification of all persons present. If the deposition is recorded other than stenographically, the officer shall repeat items (A) through (C) at the beginning of each unit of the recording medium. At the end of the deposition, the officer shall state on the record that the deposition is complete and shall state any stipulations.

(b)(4) The notice to a party witness may be accompanied by a request under Rule 34 for the production of documents and tangible things at the deposition. The procedure of Rule 34 shall apply to the request. The attendance of a nonparty witness may be compelled by subpoena under Rule 45. Documents and tangible things to be produced shall be stated in the subpoena.

(b)(5) A deposition may be taken by remote electronic means. A deposition taken by remote electronic means is considered to be taken at the place where the witness is located.

(b)(6) A party may name as the witness a corporation, a partnership, an association, or a governmental agency, describe with reasonable particularity the matters on which questioning is requested, and direct the organization to designate one or more officers, directors, managing agents, or other persons to testify on its behalf. The organization shall state, for each person designated, the matters on which the person will testify. A subpoena shall advise a nonparty organization of its duty to make such a designation. The person so designated shall testify as to matters known or reasonably available to the organization.

(c) Examination and cross-examination; objections.

(c)(1) Questioning of witnesses may proceed as permitted at the trial under the Utah Rules of Evidence, except Rules 103 and 615.

(c)(2) All objections shall be recorded, but the questioning shall proceed, and the testimony taken subject to the objections. Any objection shall be stated concisely and in a non-argumentative and non-suggestive manner. A person may instruct a witness not to answer only to preserve a privilege, to enforce a limitation on evidence directed by the court, or to present a motion for a protective order under Rule 37. Upon demand of the objecting party or witness, the deposition shall be suspended for the time necessary to make a motion. The party taking the deposition may complete or adjourn the deposition before moving for an order to compel discovery under Rule 37.

(d) Limits. During standard discovery, oral questioning of a nonparty shall not exceed four hours, and oral questioning of a party shall not exceed seven hours.

(e) Submission to witness; changes; signing. Within 28 days after being notified by the officer that the transcript or recording is available, a witness may sign a statement of changes to the form or substance of the transcript or recording and the reasons for the changes. The officer shall append any changes timely made by the witness.

(f) Record of deposition; certification and delivery by officer; exhibits; copies.

(f)(1) The officer shall record the deposition or direct another person present to record the deposition. The officer shall sign a certificate, to accompany the record, that the witness was under oath or affirmation and that the record is a true record of the deposition. The officer shall keep a copy of the record. The officer shall securely seal the record endorsed with the title of the action and marked "Deposition of (name). Do not open." and shall promptly send the sealed record to the attorney or the party who designated the recording method. An attorney or party receiving the record shall store it under conditions that will protect it against loss, destruction, tampering, or deterioration.

Comment [JM71]:

Comment [JM72]:

(f)(2) Every party may inspect and copy documents and things produced for inspection and must have a fair opportunity to compare copies and originals. Upon the request of a party, documents and things produced for inspection shall be marked for identification and added to the record. If the witness wants to retain the originals, that person shall offer the originals to be copied, marked for identification and added to the record.

(f)(3) Upon payment of reasonable charges, the officer shall furnish a copy of the record to any party or to the witness.

(g) Failure to attend or to serve subpoena; expenses. If the party giving the notice of a deposition fails to attend or fails to serve a subpoena upon a witness who fails to attend, and

another party attends in person or by attorney, the court may order the party giving the notice to pay to the other party the reasonable costs, expenses and attorney fees incurred.

Comment [JM73]:

(h) Deposition in action pending in another state. Any party to an action in another state may take the deposition of any person within this state in the same manner and subject to the same conditions and limitations as if such action were pending in this state. Notice of the deposition shall be filed with the clerk of the court of the county in which the person whose deposition is to be taken resides or is to be served. Matters required to be submitted to the court shall be submitted to the court in the county where the deposition is being taken.

(i) Stipulations regarding deposition procedures. The parties may by written stipulation provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions.

Rule 31. Depositions upon written questions.

(a) Serving questions; notice.

(a)(1) A party may take the testimony of any person, including a party, by deposition upon written questions without leave of court except as provided in paragraph (2). The attendance of witnesses may be compelled by the use of subpoena as provided in Rule 45.

(a)(2) A party must obtain leave of court, which shall be granted to the extent consistent with the principles stated in Rule 26(b)(2), if the person to be examined is confined in prison or if, without the written stipulation of the parties,

(a)(2)(A) a proposed deposition would result in more than ten depositions being taken under this rule or Rule 30 by the plaintiffs, or by the defendants, or by third-party defendants;

(a)(2)(B) the person to be examined has already been deposed in the case; or

(a)(2)(C) a party seeks to take a deposition before the time specified in Rule 26(d).

(a)(3) A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating (1) the name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs, and (2) the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of Rule 30(b)(6).

(a)(4) Within 14 days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within 7 days after being served with cross questions, a party may serve redirect questions upon all other parties. Within 7 days after being served with redirect questions, a party may serve recross questions upon all other parties. The court may for cause shown enlarge or shorten the time.

(b) Officer to take responses and prepare record. A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice,

who shall proceed promptly, in the manner provided by Rule 30(c), (e), and (f), attaching to the deposition the copy of the notice and the questions received.

URCP 031

Advisory Committee Notes

For a complete explanation of the 1999 amendments to this rule and the interrelationship of these amendments with the other discovery changes, see the advisory committee note appended to Rule 26. The Supreme Court order approving the amendments directed that the new procedures be applicable only to cases filed on or after November 1, 1999.

Rule 32. Use of depositions in court proceedings.

(a) Use of depositions. At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(a)(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of a deponent as a witness or for any other purpose permitted by the Utah Rules of Evidence.

(a)(2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party may be used by an adverse party for any purpose.

(a)(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds:

(a)(3)(A) that the witness is dead; or

(a)(3)(B) that the witness is at a greater distance than 100 miles from the place of trial or hearing, or is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition; or

(a)(3)(C) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or

(a)(3)(D) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

(a)(3)(E) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

(a)(4) If only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

Substitution of parties pursuant to Rule 25 does not affect the right to use depositions previously taken; and when an action has been brought in any court of the United States or of any state and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefor. A deposition previously taken may also be used as permitted by the Utah Rules of Evidence.

Comment [JM74]:

(b) Objections to admissibility. Subject to the provisions of Rule 28(b) and Subdivision (c)(3) of this rule, objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(c) Effect of errors and irregularities.

(c)(1) As to notice. All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(c)(2) As to disqualification of officer. Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(c)(3) As to taking of deposition.

(c)(3)(A) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(c)(3)(B) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented are waived unless seasonable objection thereto is made at the taking of the deposition.

(c)(3)(C) Objections to the form of written questions submitted under Rule 31 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within 5 days after service of the last questions authorized.

(c)(4) As to completion and return of deposition. Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the officer under Rules 30 and 31 are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

(d) Publication of deposition. Use of a deposition under Subsection (a) of this rule shall have the effect of publishing the deposition unless the court orders otherwise in response to objections.

(e) Except as otherwise directed by the court, a party offering deposition testimony pursuant to this rule may offer it in stenographic or nonstenographic form, but, if in nonstenographic form, the party shall also provide the court with a transcript of the portions so offered.

URCP 032

Advisory Committee Notes

For a complete explanation of the 1999 amendments to this rule and the interrelationship of these amendments with the other discovery changes, see the advisory committee note appended to Rule 26. The Supreme Court order approving the amendments directed that the new procedures be applicable only to cases filed on or after November 1, 1999.

Rule 33. Interrogatories to parties.

(a) Availability; procedures for use. During standard discovery, any party may serve written interrogatories upon any other party, subject to the limits of Rule 26(c)(5). Each interrogatory shall be separately stated and numbered.

(b) Answers and objections. The responding party shall serve a written response within 28 days after service of the interrogatories. The responding party shall restate each interrogatory before responding to it. Each interrogatory shall be answered separately and fully in writing under oath or affirmation, unless it is objected to. If an interrogatory is objected to, the party shall state the reasons for the objection. Any reason not stated is waived unless excused by the court for good cause. An interrogatory is not objectionable merely because an answer involves an opinion or argument that relates to fact or the application of law to fact. The party shall answer any part of an interrogatory that is not objectionable.

(c) Scope; use at trial. Interrogatories may relate to any discoverable matter. Answers may be used as permitted by the Rules of Evidence.

(d) Option to produce business records. If the answer to an interrogatory may be found by inspecting the answering party's business records, including electronically stored information, and the burden of finding the answer is substantially the same for both parties, the answering party may identify the records from which the answer may be found. The answering party must give the asking party reasonable opportunity to inspect the records and to make copies, compilations, or summaries. The answering party must identify the records in sufficient detail to permit the asking party to locate and to identify them as readily as the answering party.

Rule 34. Production of documents and things and entry upon land for inspection and other purposes.

(a) Scope.

(a)(1) Any party may serve on any other party a request to produce and permit the requesting party to inspect, copy, test or sample any designated discoverable documents, electronically stored information or tangible things (including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations stored in any medium from which information can be obtained, translated, if necessary, by the respondent into reasonably usable form) in the possession or control of the responding party.

(a)(2) Any party may serve on any other party a request to permit entry upon designated property in the possession or control of the responding party for the purpose of inspecting,

measuring, surveying, photographing, testing, or sampling the property or any designated discoverable object or operation on the property.

(b) Procedure and limitations.

(b)(1) The request must identify the items to be inspected by individual item or by category, and describe each item and category with reasonable particularity. The request must specify a reasonable date, time, place, and manner of making the inspection and performing the related acts. The request may specify the form or forms in which electronically stored information is to be produced.

(b)(2) The responding party must serve a written response within 28 days after service of the request. The responding party must restate each request before responding to it. The response must state, with respect to each item or category, that inspection and related acts will be permitted as requested, or that the request is objected to. If the party objects to a request, the party must state the reasons for the objection with specificity. Any reason not stated is waived unless excused by the court for good cause. An objection must state by individual item or by category whether any responsive items are being withheld on the basis of that objection. An objection that states the terms that have controlled a search for responsive items qualifies as a statement that items outside of the search terms may have been withheld. The party must identify and permit inspection of items responsive to any part of a request that is not objectionable. If the party objects to the requested form or forms for producing electronically stored information—or if no form was specified in the request—the responding party must state the form or forms it intends to use.

(c) Form of documents and electronically stored information.

(c)(1) A party who produces documents for inspection must produce them as they are kept in the usual course of business or must organize and label them to correspond with the categories in the request.

(c)(2) If a request does not specify the form or forms for producing electronically stored information, a responding party must produce the information in a form or forms in which it is ordinarily maintained or in a form or forms that are reasonably usable.

(c)(3) A party need not produce the same electronically stored information in more than one form.

URCP 034

Advisory Committee Notes

The 2017 amendments to paragraph (b)(2) adopt 1) the specificity requirement in the 2015 amendments to Federal Rule of Civil Procedure 34(b)(2)(B), 2) a portion of Federal Rule 34(b)(2)(C) dealing with the basis for an objection to production, and 3) some clarifying language from the federal note.

Rule 35. Physical and mental examination of persons.

(a) Order for examination. When the mental or physical condition or attribute of a party or of a person in the custody or control of a party is in controversy, the court may order the party to submit to a physical or mental examination by a suitably licensed or certified examiner or to produce for examination the person in the party's custody or control. The order may be made only on motion for good cause shown. All papers related to the motion and notice of any hearing must be served on a nonparty to be examined. The order must specify the time, place, manner, conditions, and scope of the examination and the person by whom the examination is to be made. The person being examined may record the examination by audio or video means unless the party requesting the examination shows that the recording would unduly interfere with the examination.

(b) Report. The party requesting the examination must disclose a detailed written report of the examiner within the shorter of 60 days after the examination or 7 days prior to the close of fact discovery, setting out the examiner's findings, including results of all tests performed, diagnoses, and other matters that would routinely be included in an examination record generated by a medical professional. If the party requesting the examination wishes to call the examiner as an expert witness, the party must disclose the examiner as an expert in the time and manner as required by Rule 26(a)(4), but need not provide a separate Rule 26(a)(4) report if the report under this rule contains all the information required by Rule 26(a)(4).

(c) Sanctions. If a party or a person in the custody or under the legal control of a party fails to obey an order entered under paragraph (a), the court on motion may take any action authorized by Rule 37(b), except that the failure cannot be treated as contempt of court.

Rule 35

Advisory Committee Notes

Rule 35 has been substantially revised. A medical examination is not a matter of right, but should only be permitted by the trial court upon a showing of good cause. Rule 35 has always provided, and still provides, that the proponent of an examination must demonstrate good cause for the examination. And, as before, the motion and order should detail the specifics of the proposed examination.

The parties and the trial court should refrain from the use of the phrase "independent medical examiner," using instead the neutral appellation "medical examiner," "Rule 35 examiner," or the like.

The committee has determined that the benefits of recording generally outweigh the downsides in a typical case. The amended rule therefore provides that recording shall be permitted as a matter of course unless the person moving for the examination demonstrates the recording would unduly interfere with the examination.

Nothing in the rule requires that the recording be conducted by a professional, and it is not the intent of the committee that this extra cost should be necessary. The committee also recognizes that recording may require the presence of a third party to manage the recording equipment, but this must be done without interference and as unobtrusively as possible.

The former requirement of Rule 35(c) providing for the production of prior reports on other examinees by the examiner was a source of great confusion and controversy. It is the committee's view that this provision is better eliminated, and in the amended rule there is no longer an automatic requirement for the production of prior reports of other examinations.

A report must be provided for all examinations under this rule. The Rule 35 report is expected to include the same type of content and observations that would be included in a medical record generated by a competent medical professional following an examination of a patient, but need not otherwise include the matters required to be included in a Rule 26(a)(4) expert report. If the examiner is going to be called as an expert witness at trial, then the designation and disclosures under Rule 26(a)(4) are also required, and the opposing party has the option of requiring, in addition to the Rule 35(b) report, the expert's report or deposition under Rule 26(a)(4)(C). The rule permits a party who furnishes a report under Rule 35 to include within it the expert disclosures required under Rule 26(a)(4) in order to avoid the potential need to generate a separate Rule 26(a)(4) report later if the opposing party elects a report rather than a deposition. But submitting such a combined report will not limit the opposing party's ability to elect a deposition if the Rule 35 examiner is designated as an expert.

Rule 36. Request for admission.

(a) Request for admission. A party may serve upon any other party a written request to admit the truth of any discoverable matter set forth in the request, including the genuineness of any document. The matter must relate to statements or opinions of fact or of the application of law to fact. Each matter shall be separately stated and numbered. A copy of the document shall be served with the request unless it has already been furnished or made available for inspection and copying. The request shall notify the responding party that the matters will be deemed admitted unless the party responds within 28 days after service of the request.

(b) Answer or objection.

(b)(1) The matter is admitted unless, within 28 days after service of the request, the responding party serves upon the requesting party a written response.

(b)(2) The answering party shall restate each request before responding to it. Unless the answering party objects to a matter, the party must admit or deny the matter or state in detail the reasons why the party cannot truthfully admit or deny. A party may identify the part of a matter which is true and deny the rest. A denial shall fairly meet the substance of the request. Lack of information is not a reason for failure to admit or deny unless, after reasonable inquiry, the information known or reasonably available is insufficient to enable an admission or denial. A party who considers the subject of a request for admission to be a genuine issue for trial may not object on that ground alone but may, subject to Rule 37(c), deny the matter or state the reasons for the failure to admit or deny.

(b)(3) If the party objects to a matter, the party shall state the reasons for the objection. Any reason not stated is waived unless excused by the court for good cause. The party shall admit or deny any part of a matter that is not objectionable. It is not grounds for objection that the truth of a matter is a genuine issue for trial.

(c) Effect of admission. Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. The court may permit withdrawal or amendment if the presentation of the merits of the action will be promoted and withdrawal or amendment will not prejudice the requesting party. Any admission under this rule is for the purpose of the pending action only. It is not an admission for any other purpose, nor may it be used in any other action.

Rule 37. Statement of discovery issues; Sanctions; Failure to admit, to attend deposition or to preserve evidence.

(a) Statement of discovery issues.

(a)(1) A party or the person from whom discovery is sought may request that the judge enter an order regarding any discovery issue, including:

(a)(1)(A) failure to disclose under Rule 26;

(a)(1)(B) extraordinary discovery under Rule 26;

(a)(1)(C) a subpoena under Rule 45;

(a)(1)(D) protection from discovery; or

(a)(1)(E) compelling discovery from a party who fails to make full and complete discovery.

(a)(2) Statement of discovery issues length and content. The statement of discovery issues must be no more than 4 pages, not including permitted attachments, and must include in the following order:

(a)(2)(A) the relief sought and the grounds for the relief sought stated succinctly and with particularity;

(a)(2)(B) a certification that the requesting party has in good faith conferred or attempted to confer with the other affected parties in person or by telephone in an effort to resolve the dispute without court action;

(a)(2)(C) a statement regarding proportionality under Rule 26(b)(2); and

(a)(2)(D) if the statement requests extraordinary discovery, a statement certifying that the party has reviewed and approved a discovery budget.

(a)(3) Objection length and content. No more than 7 days after the statement is filed, any other party may file an objection to the statement of discovery issues. The objection must be no more than 4 pages, not including permitted attachments, and must address the issues raised in the statement.

(a)(4) Permitted attachments. The party filing the statement must attach to the statement only a copy of the disclosure, request for discovery or the response at issue.

(a)(5) Proposed order. Each party must file a proposed order concurrently with its statement or objection.

(a)(6) Decision. Upon filing of the objection or expiration of the time to do so, either party may and the party filing the statement must file a Request to Submit for Decision under Rule 7(g). The court will promptly:

(a)(6)(A) decide the issues on the pleadings and papers;

(a)(6)(B) conduct a hearing by telephone conference or other electronic communication; or

(a)(6)(C) order additional briefing and establish a briefing schedule.

(a)(7) Orders. The court may enter orders regarding disclosure or discovery or to protect a party or person from discovery being conducted in bad faith or from annoyance, embarrassment, oppression, or undue burden or expense, or to achieve proportionality under Rule 26(b)(2), including one or more of the following:

(a)(7)(A) that the discovery not be had or that additional discovery be had;

(a)(7)(B) that the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(a)(7)(C) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(a)(7)(D) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

(a)(7)(E) that discovery be conducted with no one present except persons designated by the court;

(a)(7)(F) that a deposition after being sealed be opened only by order of the court;

(a)(7)(G) that a trade secret or other confidential information not be disclosed or be disclosed only in a designated way;

(a)(7)(H) that the parties simultaneously deliver specified documents or information enclosed in sealed envelopes to be opened as directed by the court;

(a)(7)(I) that a question about a statement or opinion of fact or the application of law to fact not be answered until after designated discovery has been completed or until a pretrial conference or other later time;

(a)(7)(J) that the costs, expenses and attorney fees of discovery be allocated among the parties as justice requires; or

(a)(7)(K) that a party pay the reasonable costs, expenses and attorney fees incurred on account of the statement of discovery issues if the relief requested is granted or denied, or if a party provides discovery or withdraws a discovery request after a statement of discovery issues is filed and if the court finds that the party, witness, or attorney did not act in good faith or asserted a position that was not substantially justified.

Comment [JM75]:

(a)(8) Request for sanctions prohibited. A statement of discovery issues or an objection may include a request for costs, expenses and attorney fees but not a request for sanctions.

(a)(9) Statement of discovery issues does not toll discovery time. A statement of discovery issues does not suspend or toll the time to complete standard discovery.

(b) Motion for sanctions. Unless the court finds that the failure was substantially justified, the court, upon motion, may impose appropriate sanctions for the failure to follow its orders, including the following:

(b)(1) deem the matter or any other designated facts to be established in accordance with the claim or defense of the party obtaining the order;

(b)(2) prohibit the disobedient party from supporting or opposing designated claims or defenses or from introducing designated matters into evidence;

(b)(3) stay further proceedings until the order is obeyed;

(b)(4) dismiss all or part of the action, strike all or part of the pleadings, or render judgment by default on all or part of the action;

(b)(5) order the party or the attorney to pay the reasonable costs, expenses, and attorney fees, caused by the failure;

Comment [JM76]:

(b)(6) treat the failure to obey an order, other than an order to submit to a physical or mental examination, as contempt of court; and

(b)(7) instruct the jury regarding an adverse inference.

(c) Motion for costs, expenses and attorney fees on failure to admit. If a party fails to admit the genuineness of a document or the truth of a matter as requested under Rule 36, and if the party requesting the admissions proves the genuineness of the document or the truth of the matter, the party requesting the admissions may file a motion for an order requiring the other party to pay the reasonable costs, expenses and attorney fees incurred in making that proof. The court must enter the order unless it finds that:

(c)(1) the request was held objectionable pursuant to Rule 36(a);

(c)(2) the admission sought was of no substantial importance;

(c)(3) there were reasonable grounds to believe that the party failing to admit might prevail on the matter;

(c)(4) that the request was not proportional under Rule 26(b)(2); or

(c)(5) there were other good reasons for the failure to admit.

(d) Motion for sanctions for failure of party to attend deposition. If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) to testify on behalf of a party fails to appear before the officer taking the deposition after service of the notice, any other party may file a motion for sanctions under paragraph (b). The failure to appear may not be excused on the ground that the discovery sought is objectionable unless the party failing to appear has filed a statement of discovery issues under paragraph (a).

(e) Failure to preserve evidence. Nothing in this rule limits the inherent power of the court to take any action authorized by paragraph (b) if a party destroys, conceals, alters, tampers with or fails to preserve a document, tangible item, electronic data or other evidence in violation of a duty. Absent exceptional circumstances, a court may not impose sanctions under these rules on a party for failing to provide electronically stored information lost as a result of the routine, good-faith operation of an electronic information system.

URCP 37.

Advisory Committee Notes

The 2011 amendments to Rule 37 make two principal changes. First, the amended Rule 37 consolidates provisions for motions for a protective order (formerly set forth in Rule 26(c)) with provisions for motions to compel. By consolidating the standards for these two motions in a single rule, the Advisory Committee sought to highlight some of the parallels and distinctions between the two types of motions and to present them in a single rule.

Second, the amended Rule 37 incorporates the new Rule 26 standard of "proportionality" as a principal criterion on which motions to compel or for a protective order should be evaluated. As to motions to compel, Rule 37(a)(3) requires that a party moving to compel discovery certify to the court "that the discovery being sought is proportional under Rule 26(b)(2)." Rule 37(b) makes clear that a lack of proportionality may be raised as ground for seeking a protective order, indicating that "the party seeking the discovery has the burden of demonstrating that the information being sought is proportional."

Paragraph (h) and its predecessors have long authorized the court to take the drastic steps authorized by paragraph (e)(2) for failure to disclose as required by the rules or for failure to amend a response to discovery. The federal counterpart to this provision is similar. Yet the courts historically have limited those more drastic sanctions to circumstances in which a party fails to comply with a court order, persists in dilatory conduct, or acts in bad faith.

The 2011 amendments have brought new attention to paragraph (h). Those amendments, which emphasized greater and earlier disclosure, also emphasized the enforcement of that requirement by prohibiting the party from using the undisclosed information as evidence at a hearing. The committee intends that courts should impose sanctions under (e)(2) for failure to disclose in only the most egregious circumstances. In most circumstances exclusion of the evidence seems an adequate sanction for failure to disclose or failure to amend discovery.

2015 Amendments.

Paragraph (a) adopts the expedited procedures for statements of discovery issues formerly found in Rule 4-502 of the Code of Judicial Administration. Statements of discovery issues replace discovery motions, and paragraph (a) governs unless the judge orders otherwise.

Former paragraph (a)(2), which directed a motion for a discovery order against a nonparty witness to be filed in the judicial district where the subpoena was served or deposition was to be taken, has been deleted. A statement of discovery issues related to a nonparty must be filed in the court in which the action is pending.

Former paragraph (h), which prohibited a party from using at a hearing information not disclosed as required, was deleted because the effect of non-disclosure is adequately governed by Rule 26(d). See also *The Townhomes At Pointe Meadows Owners Association v. Pointe Meadows Townhomes, LLC*, 2014 UT App 52 ¶14. The process for resolving disclosure issues is included in paragraph (a).

Part VI Trials

Rule 38. Jury trial of right.

(a) Right preserved. The right of trial by jury as declared by the constitution or as given by statute shall be preserved to the parties.

(b) Demand. Any party may demand a trial by jury of any issue triable of right by a jury by paying the statutory jury fee and serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than 14 days after the service of the last pleading directed to such issue. Such demand may be endorsed upon a pleading of the party.

(c) Same: specification of issues. In his demand a party may specify the issues which he wishes so tried; otherwise he shall be deemed to have demanded trial by jury for all the issues so triable. If he has demanded trial by jury for only some of the issues, any other party, within 14 days after service of the demand or such lesser time as the court may order, may serve a demand for trial by jury of any other or all of the issues of fact in the action.

(d) Waiver. The failure of a party to pay the statutory fee, to serve a demand as required by this rule and to file it as required by Rule 5(d) constitutes a waiver by him of trial by jury. A demand for trial by jury made as herein provided may not be withdrawn without the consent of the parties.

Rule 39. Trial by jury or by the court.

(a) By jury. When trial by jury has been demanded as provided in Rule 38, the action shall be designated upon the register of actions as a jury action. The trial of all issues so demanded shall be by jury, unless

(a)(1) The parties or their attorneys of record, by written stipulation filed with the court or by an oral stipulation made in open court and entered in the record, consent to trial by the court sitting without a jury, or

Comment [JM77]:

(a)(2) The court upon motion or of its own initiative finds that a right of trial by jury of some or all of those issues does not exist, or

(a)(3) Either party to the issue fails to appear at the trial.

(b) By the court. Issues not demanded for trial by jury as provided in Rule 38 shall be tried by the court; but, notwithstanding the failure of a party to demand a jury in an action in which such a demand might have been made of right, the court in its discretion upon motion may order a trial by a jury of any or all issues.

(c) Advisory jury and trial by consent. In all actions not triable of right by a jury the court upon motion or of its own initiative may try any issue with an advisory jury or, with the consent of both parties, may order a trial with a jury whose verdict has the same effect as if trial by jury had been a matter of right.

Rule 40. Scheduling and postponing a trial.

(a) Scheduling a trial. Until a case is certified in accordance with Rule 16, the court may but is not required to schedule a trial.

(b) Postponement. The court may postpone a trial for good cause upon such terms as are just, including the payment of costs.

(c) Preserving testimony of witnesses. If requested, the court may conduct a hearing to examine and cross-examine any witness present, and the testimony may be read at the trial with the same effect as and subject to the same objections to a deposition under Rule 32.

Rule 41. Dismissal of actions.

(a) Voluntary dismissal; effect.

(a)(1) By the plaintiff.

(a)(1)(A) Subject to Rule 23(e) and any applicable statute, the plaintiff may dismiss an action without a court order by filing:

(a)(1)(A)(i) a notice of dismissal before the opposing party serves an answer or a motion for summary judgment; or

(a)(1)(A)(ii) a stipulation of dismissal signed by all parties who have appeared.

(a)(1)(B) Unless the notice or stipulation states otherwise, the dismissal is without prejudice. But if the plaintiff previously dismissed any federal- or state-court action based on or including the same claim, a notice of dismissal operates as an adjudication on the merits.

(a)(2) By court order. Except as provided in paragraph (a)(1), an action may be dismissed at the plaintiff's request by court order only on terms the court considers proper. If a defendant has pleaded a counterclaim before being served with the plaintiff's motion to dismiss, the action may be dismissed over the defendant's objection only if the counterclaim can remain pending for independent adjudication by the court. Unless the order states otherwise, a dismissal under this paragraph is without prejudice.

(b) Involuntary dismissal; effect. If the plaintiff fails to prosecute or to comply with these rules or any court order, a defendant may move to dismiss the action or any claim against it. Unless the dismissal order otherwise states, a dismissal under this paragraph and any dismissal not under this rule, other than a dismissal for lack of jurisdiction, improper venue, or failure to join a party under Rule 19, operates as an adjudication on the merits.

(c) Dismissal of counterclaim, crossclaim, or third-party claim. This rule applies to the dismissal of any counterclaim, crossclaim, or third-party claim. A claimant's voluntary dismissal under paragraph (a)(1) must be made before a responsive pleading is served or, if there is no responsive pleading, before evidence is introduced at a trial or hearing.

(d) Costs of previously-dismissed action. If a plaintiff who previously dismissed an action in any court files an action based on or including the same claim against the same defendant, the court may order the plaintiff to pay all or part of the costs of the previous action and may stay the proceedings until the plaintiff has complied.

(e) Bond or undertaking to be delivered to opposing party. If a party dismisses a complaint, counterclaim, crossclaim, or third-party claim, under paragraph (a)(1) after a provisional remedy has been allowed the party, the bond or undertaking filed in support of the provisional remedy must be delivered to the party against whom the provisional remedy was obtained.

Rule 41. Dismissal of actions.

Advisory Committee Note

The 2016 amendments adopt the plain language style of Federal Rule of Civil Procedure 41. And, like the federal rule, the 2016 amendments move a central provision of paragraph (b) from this rule to Rule 52(e). Formerly, if a plaintiff had presented its case and the evidence did not support the claim, the court—in a trial by the court—could find for the defendant without having to hear the defendant's evidence. The equivalent provision now found in Rule 52(e) extends that principle to claims other than the plaintiff's and, if a party's evidence on any particular element of the cause of action is complete but insufficient, allows the court to make findings and conclusions and enter judgment accordingly.

In these circumstances the court's action goes beyond simple dismissal; the court is finding for a party on the merits. This principle more properly belongs in the rule on findings and conclusions than in the rule on dismissing an action.

Rule 42. Consolidation; separate trials.

(a) Consolidation. When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

(a)(1) A motion to consolidate cases shall be heard by the judge assigned to the first case filed. Notice of a motion to consolidate cases shall be given to all parties in each case. The order denying or granting the motion shall be filed in each case.

(a)(2) If a motion to consolidate is granted, the case number of the first case filed shall be used for all subsequent papers and the case shall be heard by the judge assigned to the first case. The presiding judge may assign the case to another judge for good cause.

(b) Separate trials. The court in furtherance of convenience or to avoid prejudice may order a separate trial of any claim, cross claim, counterclaim, or third party claim, or of any separate issue or of any number of claims, cross claims, counterclaims, third party claims, or issues.

Rule 43. Evidence.

(a) Form. In all trials, the testimony of witnesses shall be taken in open court, unless otherwise provided by these rules, the Utah Rules of Evidence, or a statute of this state. For good cause and with appropriate safeguards, the court may permit testimony in open court by contemporaneous transmission from a different location.

(b) Evidence on motions. When a motion is based on facts not in the record, the court may hear the matter on affidavits, declarations, oral testimony or depositions.

Advisory Committee Note

Federal Rule of Civil Procedure 43 has permitted testimony by contemporaneous transmission since 1996. State court judges have been conducting telephone conferences for many decades. These range from simple scheduling conferences to resolution of discovery disputes to status conferences to pretrial conferences. These conferences tend not to involve testimony, although judges sometimes permit testimony by telephone or more recently by video

conference with the consent of the parties. The 2016 amendments are part of a coordinated effort by the Supreme Court and the Judicial Council to authorize a convenient practice that is more frequently needed in an increasingly connected society and to bring a level of quality to that practice suitable for a court record. As technology evolves the methods of contemporaneous transmission will change.

Rule 44. Proof of official record.

(a) Authentication of copy. An official record or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and in the absence of judicial knowledge or competent evidence, accompanied with a certificate that such officer has the custody. If the office in which the record is kept is within the United States or within a territory or insular possession subject to the dominion of the United States, the certificate may be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, or may be made by any public officer having a seal of office and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of his office. If the office in which the record is kept is in a foreign state or country, the certificate may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the United States stationed in the foreign state or country in which the record is kept, and authenticated by the seal of his office.

(b) Proof of lack of record. A written statement signed by an officer having the custody of an official record or by his deputy that after diligent search no record or entry of a specified tenor is found to exist in the records of his office, accompanied by a certificate as above provided, is admissible as evidence that the records of his office contain no such record or entry.

(c) Other proof. This rule does not prevent the proof of official records or of entry or lack of entry therein by any method authorized by any applicable statute or by the rules of evidence at common law.

(d) Certified copy of record read in evidence. A copy of any official record, or entry therein, in the custody of a public officer of this state, or of the United States, certified by the officer having custody thereof, to be a full, true and correct copy of the original in his custody, may be read in evidence in an action or proceeding in the courts of this state, in like manner and with like effect as the original could be if produced.

(e) Official record defined. As used in this rule "official record" shall mean all public writings, including laws, judicial records, all official documents, and public records of private writings.

(f) Proof of the law of another state, territory or foreign country. A printed copy of a statute, or other written law of another state, or of a territory, or of a foreign country, or a printed copy of a proclamation, edict, decree or ordinance by the executive power thereof, contained in a book or publication purporting or proved to have been published by the authority thereof, or proved to be commonly admitted as evidence of the existing law of the judicial tribunals thereof, is presumptive evidence of the statute, law, proclamation, edict, decree or ordinance. The unwritten or common law of another state, or of a territory, or of a foreign country, may be

proved as a fact by oral evidence. The books of reports of cases adjudged in the courts thereof must also be admitted as presumptive evidence of the unwritten or common law thereof. The law of such state or territory or foreign country is to be determined by the court or master and included in the findings of the court or master or instructions to the jury, as the case may be. Such finding or instruction is subject to review. In determining such law, neither the trial court nor the Supreme Court shall be limited to the evidence produced on the trial by the parties, but may consult any of the written authorities above named in this subdivision, with the same force and effect as if the same had been admitted in evidence.

Rule 45. Subpoena.

(a) Form; issuance.

(a)(1) Every subpoena shall:

(a)(1)(A) issue from the court in which the action is pending;

(a)(1)(B) state the title and case number of the action, the name of the court from which it is issued, and the name and address of the party or attorney responsible for issuing the subpoena;

Comment [JM78]:

(a)(1)(C) command each person to whom it is directed

(a)(1)(C)(i) to appear and give testimony at a trial, hearing or deposition, or

(a)(1)(C)(ii) to appear and produce for inspection, copying, testing or sampling documents, electronically stored information or tangible things in the possession, custody or control of that person, or

(a)(1)(C)(iii) to copy documents or electronically stored information in the possession, custody or control of that person and mail or deliver the copies to the party or attorney responsible for issuing the subpoena before a date certain, or

Comment [JM79]:

(a)(1)(C)(iv) to appear and to permit inspection of premises;

(a)(1)(D) if an appearance is required, specify the date, time and place for the appearance; and

(a)(1)(E) include a notice to persons served with a subpoena in a form substantially similar to the approved subpoena form. A subpoena may specify the form or forms in which electronically stored information is to be produced.

(a)(2) The clerk shall issue a subpoena, signed but otherwise in blank, to a party requesting it, who shall complete it before service. An attorney admitted to practice in Utah may issue and sign a subpoena as an officer of the court.

Comment [JM80]:

(b) Service; fees; prior notice.

(b)(1) A subpoena may be served by any person who is at least 18 years of age and not a party to the case. Service of a subpoena upon the person to whom it is directed shall be made as provided in Rule 4(d).

(b)(2) If the subpoena commands a person's appearance, the party or attorney responsible for issuing the subpoena shall tender with the subpoena the fees for one day's attendance and the mileage allowed by law. When the subpoena is issued on behalf of the United States, or this state, or any officer or agency of either, fees and mileage need not be tendered.

Comment [JM81]:

(b)(3) If the subpoena commands a person to copy and mail or deliver documents or electronically stored information, to produce documents, electronically stored information or tangible things for inspection, copying, testing or sampling or to permit inspection of premises, the party or attorney responsible for issuing the subpoena shall serve each party with the subpoena by delivery or other method of actual notice before serving the subpoena.

Comment [JM82]:

(c) Appearance; resident; non-resident.

(c)(1) A person who resides in this state may be required to appear:

(c)(1)(A) at a trial or hearing in the county in which the case is pending; and

(c)(1)(B) at a deposition, or to produce documents, electronically stored information or tangible things, or to permit inspection of premises only in the county in which the person resides, is employed, or transacts business in person, or at such other place as the court may order.

(c)(2) A person who does not reside in this state but who is served within this state may be required to appear:

(c)(2)(A) at a trial or hearing in the county in which the case is pending; and

(c)(2)(B) at a deposition, or to produce documents, electronically stored information or tangible things, or to permit inspection of premises only in the county in which the person is served or at such other place as the court may order.

(d) Payment of production or copying costs. The party or attorney responsible for issuing the subpoena shall pay the reasonable cost of producing or copying documents, electronically stored information or tangible things. Upon the request of any other party and the payment of reasonable costs, the party or attorney responsible for issuing the subpoena shall provide to the requesting party copies of all documents, electronically stored information or tangible things obtained in response to the subpoena or shall make the tangible things available for inspection.

Comment [JM83]:

Comment [JM84]:

(e) Protection of persons subject to subpoenas; objection.

(e)(1) The party or attorney responsible for issuing a subpoena shall take reasonable steps to avoid imposing an undue burden or expense on the person subject to the subpoena. The court shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney fee.

Comment [JM85]:

Comment [JM86]:

(e)(2) A subpoena to copy and mail or deliver documents or electronically stored information, to produce documents, electronically stored information or tangible things, or to permit inspection of premises shall comply with Rule 34(a) and (b)(1), except that the person subject to the subpoena must be allowed at least 14 days after service to comply.

(e)(3) The person subject to the subpoena or a non-party affected by the subpoena may object under Rule 37 if the subpoena:

(e)(3)(A) fails to allow reasonable time for compliance;

(e)(3)(B) requires a resident of this state to appear at other than a trial or hearing in a county in which the person does not reside, is not employed, or does not transact business in person;

(e)(3)(C) requires a non-resident of this state to appear at other than a trial or hearing in a county other than the county in which the person was served;

(e)(3)(D) requires the person to disclose privileged or other protected matter and no exception or waiver applies;

(e)(3)(E) requires the person to disclose a trade secret or other confidential research, development, or commercial information;

(e)(3)(F) subjects the person to an undue burden or cost;

(e)(3)(G) requires the person to produce electronically stored information in a form or forms to which the person objects;

(e)(3)(H) requires the person to provide electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost; or

(e)(3)(I) requires the person to disclose an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study that was not made at the request of a party.

(e)(4)(A) If the person subject to the subpoena or a non-party affected by the subpoena objects, the objection must be made before the date for compliance.

(e)(4)(B) The objection shall be stated in a concise, non-conclusory manner.

(e)(4)(C) If the objection is that the information commanded by the subpoena is privileged or protected and no exception or waiver applies, or requires the person to disclose a trade secret or other confidential research, development, or commercial information, the objection shall sufficiently describe the nature of the documents, communications, or things not produced to enable the party or attorney responsible for issuing the subpoena to contest the objection.

Comment [JM87]:

(e)(4)(D) If the objection is that the electronically stored information is from sources that are not reasonably accessible because of undue burden or cost, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost.

(e)(4)(E) The objection shall be served on the party or attorney responsible for issuing the subpoena. The party or attorney responsible for issuing the subpoena shall serve a copy of the objection on the other parties.

Comment [JM88]:

Comment [JM89]:

(e)(5) If objection is made, or if a party requests a protective order, the party or attorney responsible for issuing the subpoena is not entitled to compliance but may request an order to compel compliance under Rule 37(a). The objection or request shall be served on the other parties and on the person subject to the subpoena. An order compelling compliance shall protect the person subject to or affected by the subpoena from significant expense or harm. The court may quash or modify the subpoena. If the party or attorney responsible for issuing the subpoena shows a substantial need for the information that cannot be met without undue hardship, the court may order compliance upon specified conditions.

Comment [JM90]:

Comment [JM91]:

(f) Duties in responding to subpoena.

(f)(1) A person commanded to copy and mail or deliver documents or electronically stored information or to produce documents, electronically stored information or tangible things shall serve on the party or attorney responsible for issuing the subpoena a declaration under penalty of law stating in substance:

Comment [JM92]:

(f)(1)(A) that the declarant has knowledge of the facts contained in the declaration;

(f)(1)(B) that the documents, electronically stored information or tangible things copied or produced are a full and complete response to the subpoena;

(f)(1)(C) that the documents, electronically stored information or tangible things are the originals or that a copy is a true copy of the original; and

(f)(1)(D) the reasonable cost of copying or producing the documents, electronically stored information or tangible things.

(f)(2) A person commanded to copy and mail or deliver documents or electronically stored information or to produce documents, electronically stored information or tangible things shall copy or produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the subpoena.

(f)(3) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in the form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(f)(4) If the information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party who received the information of the claim and the basis for it. After being notified, the party must promptly return, sequester, or destroy the specified information and any copies of it and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve the information. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt. Failure by any person without adequate excuse to obey a subpoena served upon that person is punishable as contempt of court.

(h) Procedure when witness evades service or fails to attend. If a witness evades service of a subpoena or fails to attend after service of a subpoena, the court may issue a warrant to the sheriff of the county to arrest the witness and bring the witness before the court.

(i) Procedure when witness is an inmate. If the witness is an inmate confined in an institution, a party may move for an order to examine the witness in the institution or to produce the witness before the court or officer for the purpose of being orally examined.

(j) Subpoena unnecessary. A person present in court or before a judicial officer may be required to testify in the same manner as if the person were in attendance upon a subpoena.

URCP 45

Advisory Committee Notes

The process to request a protective order is governed by Rule 37(a), Statement of discovery issues.

The form subpoena formerly part of the Appendix of Forms described in Rule 81 has been replaced by forms approved by the Board of District Court Judges found on the court website at http://www.utcourts.gov/resources/forms/subpoena/. The website includes information and forms for domestic subpoenas and subpoenas from other states. Utah has adopted the Uniform Interstate Depositions and Discovery Act, and the act differentiates between the requirements for

a subpoena issued by a state that also has adopted the uniform act and the requirements for a subpoena issued by a state that has not.

Rule 46. Exceptions unnecessary.

Formal exceptions to rulings or orders of the court are unnecessary. It is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which he desires the court to take or his objection to the action of the court and his grounds therefor; and, if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice him.

Rule 47. Jurors.

(a) Examination of jurors. The court may permit the parties or their attorneys to conduct the examination of prospective jurors or may itself conduct the examination. In the latter event, the court shall permit the parties or their attorneys to supplement the examination by such further inquiry as is material and proper or shall itself submit to the prospective jurors such additional questions of the parties or their attorneys as is material and proper. Prior to examining the jurors, the court may make a preliminary statement of the case. The court may permit the parties or their attorneys to make a preliminary statement of the case, and notify the parties in advance of trial.

Comment [JM93]:

Comment [JM94]:

Comment [JM95]:

Comment [JM96]:

(b) Alternate jurors. The court may direct that alternate jurors be impaneled. Alternate jurors, in the order in which they are called, shall replace jurors who, prior to the time the jury retires to consider its verdict, become unable or disqualified to perform their duties. Alternate jurors shall be selected at the same time and in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, and privileges as principal jurors. An alternate juror who does not replace a principal juror shall be discharged when the jury retires to consider its verdict unless the parties stipulate otherwise and the court approves the stipulation. The court may withhold from the jurors the identity of the alternate jurors until the jurors begin deliberations..

(c) Challenge defined; by whom made. A challenge is an objection made to the trial jurors and may be directed (1) to the panel or (2) to an individual juror.

(d) Challenge to panel; time and manner of taking; proceedings. A challenge to the panel can be founded only on a material departure from the forms prescribed in respect to the drawing and return of the jury, or on the intentional omission of the proper officer to summon one or more of the jurors drawn. It must be taken before a juror is sworn. It must be in writing or be stated on the record, and must specifically set forth the facts constituting the ground of challenge. If the challenge is allowed, the court must discharge the jury so far as the trial in question is concerned.

(e) Challenges to individual jurors; number of peremptory challenges. The challenges to individual jurors are either peremptory or for cause. Each party shall be entitled to three peremptory challenges. Several defendants or several plaintiffs shall be considered as a single party for the purposes of making peremptory challenges unless there is a substantial controversy between them, in which case the court shall allow as many additional peremptory challenges as

is just. If one or two alternate jurors are called, each party is entitled to one peremptory challenge in addition to those otherwise allowed.

(f) Challenges for cause. A challenge for cause is an objection to a particular juror and shall be heard and determined by the court. The juror challenged and any other person may be examined as a witness on the hearing of such challenge. A challenge for cause may be taken on one or more of the following grounds. On its own motion the court may remove a juror upon the same grounds.

(f)(1) A want of any of the qualifications prescribed by law to render a person competent as a juror.

(f)(2) Consanguinity or affinity within the fourth degree to either party, or to an officer of a corporation that is a party.

(f)(3) Standing in the relation of debtor and creditor, guardian and ward, master and servant, employer and employee or principal and agent, to either party, or united in business with either party, or being on any bond or obligation for either party; provided, that the relationship of debtor and creditor shall be deemed not to exist between a municipality and a resident thereof indebted to such municipality by reason of a tax, license fee, or service charge for water, power, light or other services rendered to such resident.

(f)(4) Having served as a juror, or having been a witness, on a previous trial between the same parties for the same cause of action, or being then a witness therein.

(f)(5) Pecuniary interest on the part of the juror in the result of the action, or in the main question involved in the action, except interest as a member or citizen of a municipal corporation.

(f)(6) Conduct, responses, state of mind or other circumstances that reasonably lead the court to conclude the juror is not likely to act impartially. No person may serve as a juror, if challenged, unless the judge is convinced the juror can and will act impartially and fairly.

(g) Selection of jury. The judge shall determine the method of selecting the jury and notify the parties at a pretrial conference or otherwise prior to trial. The following methods for selection are not exclusive.

(g)(1) Strike and replace method. The court shall summon the number of jurors that are to try the cause plus such an additional number as will allow for any alternates, for all peremptory challenges permitted, and for all challenges for cause that may be granted. At the direction of the judge, the clerk shall call jurors in random order. The judge may hear and determine challenges for cause during the course of questioning or at the end thereof. The judge may and, at the request of any party, shall hear and determine challenges for cause outside the hearing of the jurors. After each challenge for cause sustained, another juror shall be called to fill the vacancy , and any such new juror may be challenged for cause. When the challenges for cause are completed, the clerk shall provide a list of the jurors remaining, and each side, beginning with the plaintiff, shall indicate thereon its peremptory challenge to one juror at a time in regular turn until all peremptory challenges are exhausted or waived. The clerk shall then call the remaining jurors, or so many of them as shall be necessary to constitute the jury, including any alternate jurors, and the persons whose names are so called shall constitute the jury. If alternate jurors have been selected, the last jurors called shall be the alternates, unless otherwise ordered by the court prior to voir dire.

(g)(2) Struck method. The court shall summon the number of jurors that are to try the cause plus such an additional number as will allow for any alternates, for all peremptory challenges permitted and for all challenges for cause that may be granted. At the direction of the judge, the clerk shall call jurors in random order. The judge may hear and determine challenges for cause during the course of questioning or at the end thereof. The judge may and, at the request of any party, shall hear and determine challenges for cause outside the hearing of the jurors. When the challenges for cause are completed, the clerk shall provide a list of the jurors remaining, and each side, beginning with the plaintiff, shall indicate thereon its peremptory challenge to one juror at a time in regular turn until all peremptory challenges are exhausted or waived. The clerk shall then call the remaining jurors, or so many of them as shall be necessary to constitute the jury, including any alternate jurors, and the persons whose names are so called shall constitute the jury. If alternate jurors have been selected, the last jurors called shall be the alternates, unless otherwise ordered by the court prior to voir dire.

(g)(3) In courts using lists of prospective jurors generated in random order by computer, the clerk may call the jurors in that random order.

(h) Oath of jury. As soon as the jury is selected an oath must be administered to the jurors, in substance, that they and each of them will well and truly try the matter in issue between the parties, and render a true verdict according to the evidence and the instructions of the court.

(i) Proceedings when juror discharged. If, after impaneling the jury and before verdict, a juror becomes unable or disqualified to perform the duties of a juror and there is no alternate juror, the parties may agree to proceed with the other jurors, or to swear a new juror and commence the trial anew. If the parties do not so agree the court shall discharge the jury and the case shall be tried with a new jury.

(j) Questions by jurors. A judge may invite jurors to submit written questions to a witness as provided in this section.

(j)(1) If the judge permits jurors to submit questions, the judge shall control the process to ensure the jury maintains its role as the impartial finder of fact and does not become an investigative body. The judge may disallow any question from a juror and may discontinue questions from jurors at any time.

(j)(2) If the judge permits jurors to submit questions, the judge should advise the jurors that they may write the question as it occurs to them and submit the question to the bailiff for transmittal to the judge. The judge should advise the jurors that some questions might not be allowed.

(j)(3) The judge shall review the question with counsel and unrepresented parties and rule upon any objection to the question. The judge may disallow a question even though no objection is made. The judge shall preserve the written question in the court file. If the question is allowed, the judge shall ask the question or permit counsel or an unrepresented party to ask it. The question may be rephrased into proper form. The judge shall allow counsel and unrepresented parties to examine the witness after the juror's question.

Comment [JM97]:

Comment [JM98]:

Comment [JM99]:

(k) View by jury. When in the opinion of the court it is proper for the jury to have a view of the property which is the subject of litigation, or of the place in which any material fact occurred, it may order them to be conducted in a body under the charge of an officer to the place, which

shall be shown to them by some person appointed by the court for that purpose. While the jury are thus absent no person other than the person so appointed shall speak to them on any subject connected with the trial.

(l) Communication with jurors. There shall be no off-the-record communication between jurors and lawyers, parties, witnesses or persons acting on their behalf. Jurors shall not communicate with any person regarding a subject of the trial. Jurors may communicate with court personnel and among themselves about topics other than a subject of the trial. It is the duty of jurors not to form or express an opinion regarding a subject of the trial except during deliberation. The judge shall so admonish the jury at the beginning of trial and remind them as appropriate.

Comment [JM100]:

(m) Deliberation of jury. When the case is finally submitted to the jury they may decide in court or retire for deliberation. If they retire they must be kept together in some convenient place under charge of an officer until they agree upon a verdict or are discharged, unless otherwise ordered by the court. Unless by order of the court, the officer having charge of them must not make or allow to be made any communication to them with respect to the action, except to ask them if they have agreed upon their verdict, and the officer must not, before the verdict is rendered, communicate to any person the state of deliberations or the verdict agreed upon.

(n) Exhibits taken by jury; notes. Upon retiring for deliberation the jury may take with them the instructions of the court and all exhibits which have been received as evidence in the cause, except exhibits that should not, in the opinion of the court, be in the possession of the jury, such as exhibits of unusual size, weapons or contraband. The court shall permit the jury to view exhibits upon request. Jurors are entitled to take notes during the trial and to have those notes with them during deliberations. As necessary, the court shall provide jurors with writing materials and instruct the jury on taking and using notes.

(o) Additional instructions of jury. After the jury have retired for deliberation, if there is a disagreement among them as to any part of the testimony, or if they desire to be informed on any point of law arising in the cause, they may require the officer to conduct them into court. Upon their being brought into court the information required must be given in the presence of, or after notice to, the parties or counsel. Such information must be given in writing or stated on the record.

Comment [JM101]:

(p) New trial when no verdict given. If a jury is discharged or prevented from giving a verdict for any reason, the action shall be tried anew.

(q) Court deemed in session pending verdict; verdict may be sealed. While the jury is absent the court may be adjourned from time to time in respect to other business, but it shall be open for every purpose connected with the cause submitted to the jury, until a verdict is rendered or the jury discharged. The court may direct the jury to bring in a sealed verdict at the opening of the court, in case of an agreement during a recess or adjournment for the day.

(r) Declaration of verdict. When the jury or three-fourths of them, or such other number as may have been agreed upon by the parties pursuant to Rule 48, have agreed upon a verdict they must be conducted into court, their names called by the clerk, and the verdict rendered by their foreperson; the verdict must be in writing, signed by the foreperson, and must be read by the clerk to the jury, and the inquiry made whether it is their verdict. Either party may require the jury to be polled, which shall be done by the court or clerk asking each juror if it is the juror's

verdict. If, upon such inquiry or polling there is an insufficient number of jurors agreeing therewith, the jury must be sent out again; otherwise the verdict is complete and the jury shall be discharged from the cause.

(s) Correction of verdict. If the verdict rendered is informal or insufficient, it may be corrected by the jury under the advice of the court, or the jury may be sent out again.

URCP 047

Advisory Committee Notes

Paragraph (a) The preliminary statement of the case does not serve the same purpose as the opening statement presented after the jury is selected. The preliminary statement of the case serves only to provide a brief context in which the jurors might more knowledgeably answer questions during voir dire. A preliminary opening statement is not required and may serve no useful purpose in short trials or trials with relatively simple issues. The judge should be particularly attuned to prevent argument or posturing at this early stage of the trial.

Paragraph (f)(6). The Utah Supreme Court has noted a tendency of trial court judges to rule against a challenge for cause in the face of legitimate questions about a juror's biases. The Supreme Court limited the following admonition to capital cases, but it is a sound philosophy even in trials of lesser consequence.

[W]e take this opportunity to address an issue of growing concern to this court. We are perplexed by the trial courts' frequent insistence on passing jurors for cause in death penalty cases when legitimate concerns about their suitability have been raised during voir dire. While the abuse-of-discretion standard of review affords trial courts wide latitude in making their for-cause determinations, we are troubled by their tendency to "push the edge of the envelope," especially when capital voir dire panels are so large and the death penalty is at issue. Moreover, capital cases are extremely costly, in terms of both time and money. Passing questionable jurors increases the drain on the state's resources and jeopardizes an otherwise valid conviction and/or sentence. ... If a party raises legitimate questions as to a potential juror's beliefs, biases, or physical ability to serve, the potential juror should be struck for cause, even where it would not be legally erroneous to refuse. State v. Carter, 888 P.2d 629 (Utah 1995).

In determining challenges for cause, the task of the judge is to find the proper balance. It is not the judge's duty to seat a jury from a too-small venire panel or to seat a jury as quickly as possible. Although thorough questioning of a juror to determine the existence, nature and extent of a bias is appropriate, it is not the judge's duty to extract the "right" answer from or to "rehabilitate" a juror. The judge should accept honest answers to understood questions and, based on that evidence, make the sometimes difficult decision to seat only those jurors the judge is convinced will act fairly and impartially. This higher duty demands a sufficient venire panel and sufficient voir dire. The trial court judge enjoys considerable discretion in limiting voir dire when there is no apparent link between a question and potential bias, but "when proposed voir dire questions go directly to the existence of an actual bias, that discretion disappears. The trial court must allow such inquiries." The court should ensure the parties have a meaningful opportunity to explore grounds for challenges for cause and to ask follow-up questions, either through direct questioning or questioning by the court.

The objective of a challenge for cause is to remove from the venire panel persons who cannot act impartially in deliberating upon a verdict. The lack of impartiality may be due to some bias for or against one of the parties; it may be due to an opinion about the subject matter of the action or about the action itself. The civil rules of procedure have a few - and the criminal rules many more - specific circumstances, usually a relationship with a party or a circumstance of the juror, from which the bias of the juror is inferred. In addition to these enumerated grounds for a challenge for cause, both the civil rules and the criminal rules close with the following grounds: formulation by the juror of a state of mind that will prevent the juror from acting impartially. However, the rules go on to provide that no person shall be disqualified as a juror by reason of having formed an opinion upon the matter if it satisfactorily appears to the court that the person will, notwithstanding that opinion, act impartially.

The amendments focus on the "state of mind" clause. In determining whether a person can act impartially, the court should focus not only on that person's state of mind but should consider the totality of the circumstances. These circumstances might include the experiences, conduct, statements, opinions, or associations of the juror. Rather than determining that the juror is "prevented" from acting impartially, the court should determine whether the juror "is not likely to act impartially." These amendments conform to the directive of the Supreme Court: If there is a legitimate question about the ability of a person to act impartially, the court should remove that person from the panel.

There is no need to modify this determination with the statement that a juror who can set aside an opinion based on public journals, rumors or common notoriety and act impartially should not be struck. Having read or heard of the matter and even having an opinion about the matter do not meet the standard of the rule. Well-informed and involved citizens are not automatically to be disqualified from jury service. Sound public policy supports knowledgeable, involved citizens as jurors. The challenge for the court is to evaluate the impact of this extra-judicial information on the ability of the person to act impartially. Information and opinions about the case remain relevant to but not determinative of the question: "Will the person be a fair and impartial juror?"

In stating that no person may serve as a juror unless the judge is "convinced" the juror will act impartially, the Committee uses the term "convinced" advisedly. The term is not intended to suggest the application of a clear and convincing standard of proof in determining juror impartiality, such a high standard being contrary to the Committee's objectives. Nor is the term intended to undermine the long-held presumption that potential jurors who satisfy the basic requirements imposed by statutes and rules are qualified to serve. Rather, the term is intended to encourage the trial judge to be thorough and deliberative in evaluating challenges for cause. Although not an evidentiary standard at all, the term "convinced" implies a high standard for judicial decision-making. Review of the decision should remain limited to an abuse of discretion.

This new standard for challenges for cause represents a balance more easily stated than achieved. These amendments encourage judges to exercise greater care in evaluating challenges for cause and to resolve legitimate doubts in favor of removal. This may mean some jurors now removed by peremptory challenge will be removed instead for cause. It may also mean the court will have to summon more prospective jurors for voir dire. Whether lawyers will use fewer peremptory challenges will have to await the judgment of experience.

Comment [JM102]:

Paragraph (m). The committee recommends amending paragraph (m) to establish the right of jurors to take notes and to have those notes with them during deliberations. The committee recommends removing depositions from the paragraph not in order to permit the jurors to have depositions but to recognize that depositions are not evidence. Depositions read into evidence will be treated as any other oral testimony. These amendments and similar amendments to the Rules of Criminal Procedure will make the two provisions identical.

Advisory Committee Note. Paragraph (j) The committee intends neither to encourage nor to discourage the practice of inviting jurors to submit written questions of witnesses, but only to regulate and make uniform the procedure by which it occurs should the judge exercise discretion in favor of the practice. In exercising that discretion, the committee encourages the judge to discuss the matter beforehand, at the pretrial conference if possible, and consider points in favor of or opposed to the practice. In instructing the jurors and to promote restraint among them, the committee encourages the judge to remind jurors that lawyers are trained to elicit the evidence necessary to decide the case.

Comment [JM103]:

Rule 48. Juries of less than eight - Majority verdict.

The parties may stipulate that the jury shall consist of any number less than eight or that a verdict or a finding of a stated majority of the jurors shall be taken as the verdict or finding of the jury.

Rule 49. Special verdicts and interrogatories.

(a) Special verdicts. The court may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact. In that event the court may submit to the jury written interrogatories susceptible of categorical or other brief answer or may submit written forms of the several special findings which might properly be made under the pleadings and evidence; or it may use such other method of submitting the issues and requiring the written findings thereon as it deems most appropriate. The court shall give to the jury such explanation and instruction concerning the matter thus submitted as may be necessary to enable the jury to make its findings upon each issue. If in so doing the court omits any issue of fact raised by the pleadings or by the evidence, each party waives his right to a trial by jury of the issue so omitted unless before the jury retires he demands its submission to the jury. As to an issue omitted without such demand the court may make a finding; or, if it fails to do so, it shall be deemed to have made a finding in accord with the judgment on the special verdict.

(b) General verdict accompanied by answer to interrogatories. The court may submit to the jury, together with appropriate forms for a general verdict, written interrogatories upon one or more issues of fact the decision of which is necessary to a verdict. The court shall give such explanation or instruction as may be necessary to enable the jury both to make answers to the interrogatories and to render a general verdict, and the court shall direct the jury both to make written answers and to render a general verdict. When the general verdict and the answers are harmonious, the appropriate judgment upon the verdict and answers shall be entered pursuant to Rule 58A. When the answers are consistent with each other but one or more is inconsistent with the general verdict, judgment may be entered pursuant to Rule 58A in accordance with the answers, notwithstanding the general verdict, or the court may return the jury for further consideration of its answers and verdict or may order a new trial. When the answers are

inconsistent with each other and one or more is likewise inconsistent with the general verdict, judgment shall not be entered, but the court shall return the jury for further consideration of its answers and verdict or shall order a new trial.

Rule 50. Judgment as a matter of law in a jury trial; related motion for a new trial; conditional ruling.

(a) Judgment as a matter of law.

(a)(1) If a party has been fully heard on an issue during a jury trial and the court finds that a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on that issue, the court may:

(a)(1)(A) resolve the issue against the party; and

(a)(1)(B) grant a motion for judgment as a matter of law against the party on a claim or defense that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue.

(a)(2) A motion for judgment as a matter of law may be made at any time before the case is submitted to the jury. The motion must specify the judgment sought and the law and facts that entitle the moving party to the judgment.

(b) Motion for judgment notwithstanding the verdict. If the court does not grant a motion for judgment as a matter of law made under paragraph (a), the court is considered to have submitted the action to the jury subject to the court later deciding the legal questions raised by the motion. No later than 28 days after entry of judgment— or if the motion addresses a jury issue not decided by a verdict, no later than 28 days after the jury was discharged, the moving party may file a renewed motion for judgment as a matter of law and may include an alternative or joint request for a new trial under Rule 59. In ruling on the renewed motion the court may:

(b)(1) allow judgment on the verdict if the jury returned a verdict;

(b)(2) order a new trial; or

(b)(3) direct the entry of judgment as a matter of law.

(c) Granting the renewed motion; conditional ruling on a motion for new trial.

(c)(1) If the court grants a renewed motion for judgment as a matter of law, it must also conditionally rule on any motion for a new trial by determining whether a new trial should be granted if the judgment is later vacated or reversed. The court must state the grounds for conditionally granting or denying the motion for a new trial.

(c)(2) Conditionally granting the motion for a new trial does not affect the judgment's finality; if the judgment is reversed, the new trial must proceed unless the appellate court orders otherwise. If the motion for a new trial is conditionally denied, the appellee may assert error in that denial; if the judgment is reversed, the case must proceed as the appellate court orders.

(d) Time for losing party's new-trial motion. Any motion for a new trial under Rule 59 by a party against whom judgment as a matter of law is rendered must be filed no later than 28 days after entry of the judgment as a matter of law.

(e) Denying the motion for judgment as a matter of law; reversal on appeal. If the court denies the motion for judgment as a matter of law, the prevailing party may, as appellee, assert

grounds entitling it to a new trial if the appellate court concludes that the trial court erred in denying the motion. If the appellate court reverses the judgment, it may order a new trial, direct the trial court to determine whether a new trial should be granted, or direct the entry of judgment.

Rule 50

Advisory Committee Notes

The 2016 amendments adopt the plain-language style of Federal Rule of Civil Procedure 50. We also borrow heavily from the 1991 federal Advisory Committee Note, which explains the changes and the reasoning behind them:

> The revision abandons the familiar terminology of "direction of verdict" for several reasons. The term is misleading as a description of the relationship between judge and jury. It is also freighted with anachronisms some of which are the subject of the text of former subdivision (a) of this rule that is deleted in this revision. Thus, it should not be necessary to state in the text of this rule that a motion made pursuant to it is not a waiver of the right to jury trial, and only the antiquities of directed verdict practice suggest that it might have been. The term "judgment as a matter of law" is an almost equally familiar term and appears in the text of Rule 56; its use in Rule 50 calls attention to the relationship between the two rules. Finally, the change enables the rule to refer to preverdict and post-trial motions with a terminology that does not conceal the common identity of two motions made at different times in the proceeding.
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> ….
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> Paragraph (a)(1) articulates the standard for the granting of a motion for judgment as a matter of law. It effects no change in the existing standard. …. The expressed standard makes clear that action taken under the rule is a performance of the court's duty to assure enforcement of the controlling law and is not an intrusion on any responsibility for factual determinations conferred on the jury …. Because this standard is also used as a reference point for entry of summary judgment under 56(a), it serves to link the two related provisions.
>
> The revision authorizes the court to perform its duty to enter judgment as a matter of law at any time during the trial, as soon as it is apparent that either party is unable to carry a burden of proof that is essential to that party's case. Thus, the second sentence of paragraph (a)(1) authorizes the court to consider a motion for judgment as a matter of law as soon as a party has completed a presentation on a fact essential to that party's case. Such early action is appropriate when economy and expedition will be served. In no event, however, should the court enter judgment against a party who has not been apprised of the materiality of the dispositive fact and been afforded an opportunity to present any available evidence bearing on that fact. . . .

As in the federal rule, the time for filing the motion has been extended to 28 days after entry of judgment. Finally, in accordance with the 2006 federal amendment, the amended rule removes

the technical requirement that the motion be renewed at the close of all the evidence, a requirement that the committee determined was an unnecessary trap for the unwary.

Rule 51. Instructions to jury; objections.

(a) Preliminary instructions. After the jury is sworn and before opening statements, the court may instruct the jury concerning the jurors' duties and conduct, the order of proceedings, the elements and burden of proof for the cause of action, and the definition of terms. The court may instruct the jury concerning any matter stipulated to by the parties and agreed to by the court and any matter the court in its discretion believes will assist the jurors in comprehending the case.

(b) Interim instructions. During the course of the trial, the court may instruct the jury on the law if the instruction will assist the jurors in comprehending the case. A party may request an interim instruction.

(c) Final instructions. The court shall instruct the jury at the conclusion of the evidence as may be needed.

(d) Request for instructions. Parties shall file requested jury instructions at the final pretrial conference or at any other time directed by the court. If a party relies on a statute, rule or case to support or object to a requested instruction, the party shall provide a citation to or a copy of the statute, rule or case. The court shall provide the parties with a copy of the approved instructions, unless the parties waive this requirement.

(e) Written instructions. Whenever practical, jury instructions should be in writing. At least one written copy shall be provided to the jury. The court shall provide a written copy to any juror who requests one.

(f) Objections to instructions. Objections to written instructions shall be made before the instructions are given to the jury. Objections to oral instructions may be made after they are given to the jury, but before the jury retires to consider its verdict. The court shall provide an opportunity to make objections outside the hearing of the jury. Unless a party objects to an instruction or the failure to give an instruction, the instruction may not be assigned as error except to avoid a manifest injustice. In objecting to the giving of an instruction, a party shall identify the matter to which the objection is made and the grounds for the objection.

(g) Arguments. Arguments for the respective parties shall be made after the court has given the jury its final instructions. The court shall not comment on the evidence in the case, and if the court states any of the evidence, it must instruct the jurors that they are the exclusive judges of all questions of fact.

Rule 52. Findings and conclusions by the court; amended findings; waiver of findings and conclusions; correction of the record; judgment on partial findings.

(a)Findings and conclusions.

(a)(1) In all actions tried upon the facts without a jury or with an advisory jury, the court must find the facts specially and state separately its conclusions of law. The findings and

conclusions must be made part of the record and may be stated in writing or orally following the close of the evidence. Judgment must be entered separately under Rule 58A.

(a)(2) In granting or refusing interlocutory injunctions the court must similarly set forth the findings of fact and conclusions of law that support its action.

(a)(3) A party may later question the sufficiency of the evidence supporting the findings, whether or not the party requested findings, objected to them, moved to amend them, or moved for partial findings.

(a)(4) Findings of fact, whether based on oral or other evidence, must not be set aside unless clearly erroneous, and the reviewing court must give due regard to the trial court's opportunity to judge the credibility of the witnesses.

(a)(5) The findings of a master, to the extent that the court adopts them, must be considered as the findings of the court.

(a)(6) The trial court need not enter findings of fact and conclusions of law in rulings on motions granted under Rules 12(b), 50, 56, and 59, but, when the motion is based on more than one ground, the court must issue a brief written statement of the ground for its decision

(b)Amended or additional findings. Upon motion of a party filed no later than 28 days after entry of judgment the court may amend its findings or make additional findings and may amend the judgment accordingly. The motion may accompany a motion for a new trial under Rule 59.

(c) Waiver of findings of fact and conclusions of law. Except in actions for divorce, the parties may waive findings of fact and conclusions of law:

(c)(1) by default or by failing to appear at the trial;

(c)(2) by consent in writing, filed in the action;

(c)(3) by oral consent in open court, entered in the minutes.

(d) Correction of the record. If anything material is omitted from or misstated in the transcript of an audio or video record of a hearing or trial, or if a disagreement arises as to whether the record accurately discloses what occurred in the proceeding, a party may move to correct the record. The motion must be filed within 14 days after the transcript of the hearing is filed, unless good cause is shown. The omission, misstatement or disagreement will be resolved by the court and the record made to accurately reflect the proceeding.

(e) Judgment on partial findings. If a party has been fully heard on an issue during a nonjury trial and the court finds against the party on that issue, the court may enter non-final judgment against the party on a claim or defense that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue. The court may, however, decline to render any judgment until the close of the evidence. A non-final judgment on partial findings must be supported by findings of fact and conclusions of law as required by paragraph (a).

Rule 52

Advisory Committee Notes

The 2016 amendments adopt the plain-language style of Federal Rule of Civil Procedure 52. And, like the federal rule, the 2016 amendments move a provision found in Rule 41(b) to this rule. Formerly, if a plaintiff had presented its case and the evidence did not support the claim, the court—in a trial by the court—could find for the defendant without having to hear the

defendant's evidence. The equivalent provision now found in paragraph (e) extends that principle to claims other than the plaintiff's and, if a party's evidence on any particular element of the cause of action is complete but insufficient, allows the court to make findings and conclusions and enter judgment accordingly.

Rule 53. Masters.

(a) Appointment and compensation. Any or all of the issues in an action may be referred by the court to a master upon the written consent of the parties, or the court may appoint a master in an action, in accordance with the provisions of Subdivision (b) of this rule. As used in these rules the word "master" includes a referee, an auditor, and an examiner. The compensation to be allowed to a master shall be fixed by the court, and shall be charged upon such of the parties or paid out of any fund or subject matter of the action, which is in the custody and control of the court as the court may direct. The master shall not retain his report as security for his compensation; but when the party ordered to pay the compensation allowed by the court does not pay it after notice and within the time prescribed by the court, the master is entitled to a writ of execution against the delinquent party.

(b) Reference. A reference to a master shall be the exception and not the rule. In actions to be tried by a jury, a reference shall be made only when the issues are complicated; in actions to be tried without a jury, save in matters of account, a reference shall, in the absence of the written consent of the parties, be made only upon a showing that some exceptional condition requires it.

(c) Powers. The order of reference to the master may specify or limit his powers and may direct him to report only upon particular issues or to do or perform particular acts or to receive and report evidence only and may fix the time and place for beginning and closing the hearings and for the filing of the master's report. Subject to the specifications and limitations stated in the order, the master has and shall exercise the power to regulate all proceedings in every hearing before him and to do all acts and take all measures necessary or proper for the efficient performance of his duties under the order. He may require the production before him of evidence upon all matters embraced in the reference, including the production of all books, papers, vouchers, documents, and writings applicable thereto. He may rule upon the admissibility of evidence unless otherwise directed by the order of reference and has the authority to put witnesses on oath and may himself examine them and may call the parties to the action and examine them upon oath. When a party so requests, the master shall make a record of the evidence offered and excluded in the same manner and subject to the same limitations as provided in the Utah Rules of Evidence for a court sitting without a jury.

(d) Proceedings.

(d)(1) Meetings. When a reference is made, the clerk shall forthwith furnish the master with a copy of the order of reference. Upon receipt thereof unless the order of reference otherwise provides, the master shall forthwith set a time and place for the first meeting of the parties or their attorneys to be held within 21 days after the date of the order of reference and shall notify the parties or their attorneys. It is the duty of the master to proceed with all reasonable diligence. Either party, on notice to the parties and master, may apply to the court for an order requiring the master to speed the proceedings and to make his report. If a party fails to appear at the time and place appointed, the master may proceed ex parte or, in his discretion, adjourn the proceedings to a future day, giving notice to the absent party of the adjournment.

Comment [JM104]:

Comment [JM105]:

(d)(2) Witnesses. The parties may procure the attendance of witnesses before the master by the issuance and service of subpoenas as provided in Rule 45. If without adequate excuse a witness fails to appear or give evidence, he may be punished as for a contempt and be subjected to the consequences, penalties, and remedies provided in Rules 37 and 45.

(d)(3) Statement of accounts. When matters of accounting are in issue before the master, he may prescribe the form in which the accounts shall be submitted and in any proper case may require or receive in evidence a statement by a certified public accountant who is called as a witness. Upon objection of a party to any of the items thus submitted or upon a showing that the form of statement is insufficient, the master may require a different form of statement to be furnished, or the accounts or specific items thereof to be proved by oral examination of the accounting parties or upon written interrogatories or in such other manner as he directs.

(e) Report.

(e)(1) Contents and filing. The master shall prepare a report upon the matters submitted to him by the order of reference and, if required to make findings of fact and conclusions of law, he shall set them forth in the report. He shall file the report with the clerk of the court and in an action to be tried without a jury, unless otherwise directed by the order of reference, shall file with it a transcript of the proceedings and of the evidence and the original exhibits. The clerk shall forthwith mail to all parties notice of the filing.

(e)(2) In non-jury actions. In an action to be tried without a jury the court shall accept the master's findings of fact unless clearly erroneous. Within 14 days after being served with notice of the filing of the report any party may serve written objections thereto upon the other parties. Application to the court for action upon the report and upon objections thereto shall be by motion and upon notice as prescribed in Rule 6(d). The court after hearing may adopt the report or may modify it or may reject it in whole or in part or may receive further evidence or may recommit it with instructions.

(e)(3) In jury actions. In an action to be tried by a jury the master shall not be directed to report the evidence. His findings upon the issues submitted to him are admissible as evidence of the matters found and may be read to the jury, subject to the ruling of the court upon any objections in point of law which may be made to the report.

(e)(4) Stipulation as to findings. The effect of a master's report is the same whether or not the parties have consented to the reference; but, when the parties stipulate that a master's findings of fact shall be final, only questions of law arising upon the report shall thereafter be considered.

(e)(5) Draft report. Before filing his report a master may submit a draft thereof to counsel for all parties for the purpose of receiving their suggestions.

Comment [JM106]:

(f) Objections to appointment of master. A party may object to the appointment of any person as a master on the same grounds as a party may challenge for cause any prospective trial juror in the trial of a civil action. Such objections must be heard and disposed of by the court in the same manner as a motion.

Part VII Judgment

Rule 54. Judgments; costs.

(a) Definition; form. "Judgment" as used in these rules includes a decree or order that adjudicates all claims and the rights and liabilities of all parties or any other order from which an appeal of right lies. A judgment should not contain a recital of pleadings, the report of a master, or the record of prior proceedings.

(b) Judgment upon multiple claims and/or involving multiple parties. When an action presents more than one claim for relief—whether as a claim, counterclaim, cross claim, or third party claim—and/or when multiple parties are involved, the court may enter judgment as to one or more but fewer than all of the claims or parties only if the court expressly determines that there is no just reason for delay. Otherwise, any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties, and may be changed at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

(c) Demand for judgment. A default judgment must not differ in kind from, or exceed in amount, what is demanded in the pleadings. Every other judgment should grant the relief to which each party is entitled, even if the party has not demanded that relief in its pleadings.

(d) Costs.

(d)(1) To whom awarded. Unless a statute, these rules, or a court order provides otherwise, costs should be allowed to the prevailing party. Costs against the state of Utah, its officers and agencies may be imposed only to the extent permitted by law.

(d)(2) How assessed. The party who claims costs must not later than 14 days after the entry of judgment file and serve a verified memorandum of costs. A party dissatisfied with the costs claimed may, within 7 days after service of the memorandum of costs, object to the claimed costs.

(d)(3) Memorandum filed before judgment. A memorandum of costs served and filed after the verdict, or at the time of or subsequent to the service and filing of the findings of fact and conclusions of law, but before the entry of judgment, is deemed served and filed on the date judgment is entered.

(e) Amending the judgment to add costs or attorney fees. If the court awards costs under paragraph (d) or attorney fees under Rule 73 after the judgment is entered, the prevailing party must file and serve an amended judgment including the costs or attorney fees. The court will enter the amended judgment unless another party objects within 7 days after the amended judgment is filed.

Rule 54

Advisory Committee Notes

In *Butler v. Corporation of The President of the Church of Jesus Christ of Latter-Day Saints*, 2014 UT 41, the Supreme Court established the requirements of a judgment entered by means of a Rule 54(b) certification:

First, it must be entered in an action involving multiple claims or multiple parties. Second, it must have been entered on an order that would otherwise be appealable but for the fact that other claims or parties remain in the action. …. Third, the trial court, in its discretion, must make a determination that there is no just reason for delay of the appeal. *Id*. ¶28

To satisfy the second requirement, the Supreme Court in *Butler* included, in addition to the other requirements of appealability, the principle that the order must include one of the three indicia of finality imposed by former Rule 7(f)(2): a proposed order submitted with the supporting or opposing memorandum; an order prepared at the direction of the judge; an express indication that a further order was not required. The 2015 amendments to Rule 7 replace these indicia with the judge's signature. The 2015 amendments of Rule 7, Rule 54 and Rule 58A do not disturb the principles established in Butler; they do make simpler the task of satisfying the requirement that the interlocutory order be complete under Rule 7 before it can be certified under Rule 54.

2016 amendments

Paragraph (e) describes the process by which the determination of costs or fees becomes part of the judgment. If there is legal error in entering judgment for costs or attorney fees, that error is reviewable on appeal just like any other.

Rule 55. Default.

(a) Entry. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear the clerk shall enter the default of that party.

(b) Judgment. Judgment by default may be entered as follows:

(b)(1) By the clerk. When the plaintiff's claim against a defendant is for a sum certain, upon request of the plaintiff the clerk shall enter judgment for the amount claimed and costs against the defendant if:

(b)(1)(A) the default of the defendant is for failure to appear;

(b)(1)(B) the defendant is not an infant or incompetent person;

(b)(1)(C) the defendant has been personally served pursuant to Rule 4(d)(1); and

(b)(1)(D) the plaintiff, through a verified complaint, an affidavit or a declaration under Section 78B-5-705 submitted in support of the default judgment, sets forth facts necessary to establish the amount of the claim, after deducting all credits to which the defendant is entitled, and verifies the amount is warranted by information in the plaintiff's possession.

(b)(2) By the court. In all other cases the party entitled to a judgment by default shall apply to the court therefor. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper.

(c) Setting aside default. For good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b).

(d) Plaintiffs, counterclaimants, cross-claimants. The provisions of this rule apply whether the party entitled to the judgment by default is a plaintiff, a third-party plaintiff, or a party who has pleaded a cross-claim or counterclaim. In all cases a judgment by default is subject to the limitations of Rule 54(c).

(e) Judgment against the state or officer or agency thereof. No judgment by default shall be entered against the state of Utah or against an officer or agency thereof unless the claimant establishes his claim or right to relief by evidence satisfactory to the court.

Rule 56. Summary judgment.

(a) Motion for summary judgment or partial summary judgment. A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought. The court shall grant summary judgment if the moving party shows that there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion. The motion and memoranda must follow Rule 7 as supplemented below.

(a)(1) Instead of a statement of the facts under Rule 7, a motion for summary judgment must contain a statement of material facts claimed not to be genuinely disputed. Each fact must be separately stated in numbered paragraphs and supported by citing to materials in the record under paragraph (c)(1) of this rule.

(a)(2) Instead of a statement of the facts under Rule 7, a memorandum opposing the motion must include a verbatim restatement of each of the moving party's facts that is disputed with an explanation of the grounds for the dispute supported by citing to materials in the record under paragraph (c)(1) of this rule. The memorandum may contain a separate statement of additional materials facts in dispute, which must be separately stated in numbered paragraphs and similarly supported.

(a)(3) The motion and the memorandum opposing the motion may contain a concise statement of facts, whether disputed or undisputed, for the limited purpose of providing background and context for the case, dispute and motion.

(a)(4) Each material fact set forth in the motion or in the memorandum opposing the motion under paragraphs (a)(1) and (a)(2) that is not disputed is deemed admitted for the purposes of the motion.

(b) Time to file a motion. A party seeking to recover upon a claim, counterclaim or cross-claim or to obtain a declaratory judgment may move for summary judgment at any time after service of a motion for summary judgment by the adverse party or after 21 days from the commencement of the action. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may move for summary judgment at any time. Unless the court orders otherwise, a party may file a motion for summary judgment at any time no later than 28 days after the close of all discovery.

(c) Procedures.

(c)(1) Supporting factual positions. A party asserting that a fact cannot be genuinely disputed or is genuinely disputed must support the assertion by:

(c)(1)(A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or

(c)(1)(B) showing that the materials cited do not establish the absence or presence of a genuine dispute.

(c)(2) Objection that a fact is not supported by admissible evidence. A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.

(c)(3) Materials not cited. The court need consider only the cited materials, but it may consider other materials in the record.

(c)(4) Affidavits or declarations. An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, must set out facts that would be admissible in evidence, and must show that the affiant or declarant is competent to testify on the matters stated.

(d) When facts are unavailable to the nonmoving party. If a nonmoving party shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:

(d)(1) defer considering the motion or deny it without prejudice;

(d)(2) allow time to obtain affidavits or declarations or to take discovery; or

(d)(3) issue any other appropriate order.

(e) Failing to properly support or address a fact. If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by paragraph (c), the court may:

(e)(1) give an opportunity to properly support or address the fact;

(e)(2) consider the fact undisputed for purposes of the motion;

(e)(3) grant summary judgment if the motion and supporting materials—including the facts considered undisputed—show that the moving party is entitled to it; or

(e)(4) issue any other appropriate order.

(f) Judgment independent of the motion. After giving notice and a reasonable time to respond, the court may:

(f)(1) grant summary judgment for a nonmoving party;

(f)(2) grant the motion on grounds not raised by a party; or

(f)(3) consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute.

(g) Failing to grant all the requested relief. If the court does not grant all the relief requested by the motion, it may enter an order stating any material fact—including an item of damages or other relief—that is not genuinely in dispute and treating the fact as established in the case.

(h) Affidavit or declaration submitted in bad faith. If satisfied that an affidavit or declaration under this rule is submitted in bad faith or solely for delay, the court—after notice and a reasonable time to respond—may order the submitting party to pay the other party the reasonable expenses, including attorney's fees, it incurred as a result. The court may also hold an offending party or attorney in contempt or order other appropriate sanctions.

Comment [JM107]:

Rule 56

Advisory Committee Notes

The objective of the 2015 amendments is to adopt the style of Federal Rule of Civil Procedure 56 without changing the substantive Utah law. The 2015 amendments also move to this rule the special briefing requirements of motions for summary judgment formerly found in Rule 7. Nothing in these changes should be interpreted as changing the line of Utah cases regarding the burden of proof in motions for summary judgment.

Rule 57. Declaratory judgments.

The procedure for obtaining a declaratory judgment pursuant to Utah Code Title 78B, Chapter 6, Part 4, shall be in accordance with these rules, and the right to trial by jury may be demanded under the circumstances and in the manner provided in Rules 38 and 39. The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar.

Rule 58A. Entry of judgment; abstract of judgment.

(a) Separate document required. Every judgment and amended judgment must be set out in a separate document ordinarily titled “Judgment”—or, as appropriate, “Decree.”

(b) Separate document not required. A separate document is not required for an order disposing of a post-judgment motion:

(b)(1) for judgment under Rule 50(b);

(b)(2) to amend or make additional findings under Rule 52(b);

(b)(3) for a new trial, or to alter or amend the judgment, under Rule 59;

(b)(4) for relief under Rule 60; or

(b)(5) for attorney fees under Rule 73.

(c) Preparing a judgment.

(c)(1) Preparing and serving a proposed judgment. The prevailing party or a party directed by the court must prepare and serve on the other parties a proposed judgment for review and approval as to form. The proposed judgment shall be served within 14 days after

the jury verdict or after the court's decision. If the prevailing party or party directed by the court fails to timely serve a proposed judgment, any other party may prepare a proposed judgment and serve it on the other parties for review and approval as to form.

(c)(2) Effect of approval as to form. A party's approval as to form of a proposed judgment certifies that the proposed judgment accurately reflects the verdict or the court's decision. Approval as to form does not waive objections to the substance of the judgment.

(c)(3) Objecting to a proposed judgment. A party may object to the form of the proposed judgment by filing an objection within 7 days after the judgment is served.

(c)(4) Filing proposed judgment. The party preparing a proposed judgment must file it:

(c)(4)(A) after all other parties have approved the form of the judgment; (The party preparing the proposed judgment must indicate the means by which approval was received: in person; by telephone; by signature; by email; etc.)

(c)(4)(B) after the time to object to the form of the judgment has expired; (The party preparing the proposed judgment must also file a certificate of service of the proposed judgment.) or

(c)(4)(C) within 7 days after a party has objected to the form of the judgment. (The party preparing the proposed judgment may also file a response to the objection.)

(d) Judge's signature; judgment filed with the clerk. Except as provided in paragraph (h) and Rule 55(b)(1), all judgments must be signed by the judge and filed with the clerk. The clerk must promptly record all judgments in the docket.

(e) Time of entry of judgment.

(e)(1) If a separate document is not required, a judgment is complete and is entered when it is signed by the judge and recorded in the docket.

(e)(2) If a separate document is required, a judgment is complete and is entered at the earlier of these events:

(e)(2)(A) the judgment is set out in a separate document signed by the judge and recorded in the docket; or

(e)(2)(B) 150 days have run from the clerk recording the decision, however designated, that provides the basis for the entry of judgment.

(f) Award of attorney fees. A motion or claim for attorney fees does not affect the finality of a judgment for any purpose, but under Rule of Appellate Procedure 4, the time in which to file the notice of appeal runs from the disposition of the motion or claim.

(g) Notice of judgment. The party preparing the judgment shall promptly serve a copy of the signed judgment on the other parties in the manner provided in Rule 5 and promptly file proof of service with the court. Except as provided in Rule of Appellate Procedure 4(g), the time for filing a notice of appeal is not affected by this requirement.

(h) Judgment after death of a party. If a party dies after a verdict or decision upon any issue of fact and before judgment, judgment may nevertheless be entered.

(i) Judgment by confession. If a judgment by confession is authorized by statute, the party seeking the judgment must file with the clerk a statement, verified by the defendant, as follows:

(i)(1) If the judgment is for money due or to become due, the statement must concisely state the claim and that the specified sum is due or to become due.

(i)(2) If the judgment is for the purpose of securing the plaintiff against a contingent liability, the statement must state concisely the claim and that the specified sum does not exceed the liability.

(i)(3) The statement must authorize the entry of judgment for the specified sum.

The clerk must sign the judgment for the specified sum.

(j) Abstract of judgment. The clerk may abstract a judgment by a signed writing under seal of the court that:

(j)(1) identifies the court, the case name, the case number, the judge or clerk that signed the judgment, the date the judgment was signed, and the date the judgment was recorded in the registry of actions and the registry of judgments;

(j)(2) states whether the time for appeal has passed and whether an appeal has been filed;

(j)(3) states whether the judgment has been stayed and when the stay will expire; and

(j)(4) if the language of the judgment is known to the clerk, quotes verbatim the operative language of the judgment or attaches a copy of the judgment.

Rule 58A

Advisory Committee Notes

2015 amendments

The 2015 amendments to Rule 58A adopt the requirement, found in Rule 58 of the Federal Rules of Civil Procedure, that a judgment be set out in a separate document. In the past, problems have arisen when the district court entered a decision with dispositive language, but without the other formal elements of a judgment, resulting in uncertainty about whether the decision started the time for appeals. This problem was compounded by uncertainty under Rule 7 about whether the decision was the court's final ruling on the matter or whether the prevailing party was expected to prepare an order confirming the decision.

The 2015 amendments of Rule 7, Rule 54 and Rule 58A are intended to reduce this confusion by requiring "that there be a judgment set out on a separate document—distinct from any opinion or memorandum—which provides the basis for the entry of judgment." See Advisory Committee Notes to 1963 Amendments to Fed. R. Civ. P. 58. Courts and practitioners are encouraged to use appropriate titles with separate documents intended to operate as judgments, such as "Judgment" or "Decree," and to avoid using such titles on documents that are not appealable. The parties should consider the form of judgment included in the Appendix of Forms. On the question of what constitutes a separate document, the Committee refers courts and practitioners to existing case law interpreting Fed. R. Civ. P. 58. For example, *In re Cendant Corp.*, 454 F.3d 235, 242-244 (3d Cir. 2006) offers three criteria:

1) the judgment must be set forth in a document that is independent of the court's opinion or decision;

2) it must contain ordering clauses stating the relief to which the prevailing party is entitled, and not merely refer to orders made in other documents or state that a motion has been granted; and

3) it must substantially omit recitation of facts, procedural history, and the reasons for disposing of the parties' claims.

While "some trivial departures" from these criteria—such as a one-sentence explanation of reasoning, a single citation to authority, or a reference to a separate memorandum decision—"must be tolerated in the name of common sense," any explanation must be "very sparse." *Kidd v. District of Columbia*, 206 F.3d 35, 39 (D.C. Cir. 2000).

The concurrent amendments to Rule 7 remove the separate document requirement formerly applicable to interlocutory orders. Henceforward, the separate document requirement will apply only to judgments, a change that should reduce the tendency to confuse judgments with other orders. Rule 7 has also been amended to modify the process by which orders on motions are prepared. The process for preparing judgments is the same.

Under amended Rule 7(j), a written decision, however designated, is complete—is the judge's last word on the motion—when it is signed, unless the court expressly requests a party to prepare an order confirming the decision. But this should not be confused with the need to prepare a separate judgment when the decision has the effect of disposing of all clams in the case. If a decision disposes of all claims in the action, a separate judgment is required whether or not the court directs a party to prepare an order confirming the decision.

State Rule 58A is similar to Fed. R. Civ. P. 58 in determining the time of entry of judgment when a separate document is required but not prepared. This situation involves the "hanging appeals" problem that the Supreme Court asked this Committee to address in *Central Utah Water Conservancy District v. King*, 2013 UT 13, ¶27. Under the 2015 amendments, if a separate document is required but is not prepared, judgment is deemed to have been entered 150 days from the date the decision—or the order confirming the decision—was entered on the docket.

2016 amendments

The 2016 amendments in paragraphs (b) and (f) are part of a coordinated effort with the Advisory Committee on the Rules of Appellate Procedure to change the effect of a motion for attorney fees on the appealability of a judgment. The combined amendments of this rule and Rule of Appellate Procedure 4 effectively overturn *ProMax Development Corp. v. Raile*, 2000 UT 4, 998 P.2d 254 and *Meadowbrook, LLC v. Flower*, 959 P.2d 115 (Utah 1998). Paragraph (f) also addresses any doubts about the enforceability of a judgment while a motion for attorney fees is pending.

Under *ProMax* and *Meadowbrook* a judgment was not final until the claim for attorney fees had been resolved. An appeal filed before a claim for attorney fees had been resolved was premature and would be dismissed. Under the 2016 amendments, the time to appeal runs from the order disposing of a timely motion for attorney fees, just as it does timely motions under Rules 50, 52 and 59. The 2016 amendments to appellate Rule 4(b) also add a motion under Rule 60(b), but only if the motion is filed within 28 days after the judgment.

If a notice of appeal is filed before the order resolving the timely motion, the appeal is not dismissed; it is treated as filed on the day the order ultimately is entered, although the party must file an amended notice of appeal to appeal from the order disposing of the motion.

Although this change overturns *ProMax* and *Meadowbrook*, it is not the same as the federal rule. Under Federal Rule of Civil Procedure 58(e):

> Ordinarily, the entry of judgment may not be delayed, nor the time for appeal extended, in order to tax costs or award fees. But if a timely motion for attorney's fees is made under Rule 54(d)(2), the court may act before a notice of appeal has been filed and become effective to order that the motion have the same effect under Federal Rule of Appellate Procedure 4 (a)(4) as a timely motion under Rule 59.

In other words, a motion for attorney fees extends the time to appeal, but only if the trial court judge rules that it does. In the 2016 amendment of the state rules, a timely motion for attorney fees automatically has that effect.

Although the 2016 amendments change a policy of long standing in the Utah state courts, the amendments will help to protect the appellate rights of parties and avoid the cost of premature appeals.

Rule 58B. Satisfaction of judgment.

(a) Satisfaction by acknowledgment. Within 28 days after full satisfaction of the judgment, the owner or the owner's attorney must file an acknowledgment of satisfaction in the court in which the judgment was entered. If the owner is not the original judgment creditor, the owner or owner's attorney must also file proof of ownership. If the satisfaction is for part of the judgment or for fewer than all of the judgment debtors, it must state the amount paid or name the debtors who are released.

Comment [JM108]:

Comment [JM109]:

(b) Satisfaction by order of court. The court in which the judgment was first entered may, upon motion and satisfactory proof, enter an order declaring the judgment satisfied.

(c) Effect of satisfaction. Satisfaction of a judgment, whether by acknowledgement or order, discharges the judgment, and the judgment ceases to be a lien as to the debtors named and to the extent of the amount paid. A writ of execution or a writ of garnishment issued after partial satisfaction must include the partial satisfaction and must direct the officer to collect only the balance of the judgment, or to collect only from the judgment debtors remaining liable.

(d) Filing certificate of satisfaction in other counties. After satisfaction of a judgment, whether by acknowledgement or order, has been entered in the court in which the judgment was first entered, a certificate by the clerk showing the satisfaction may be filed with the clerk of the district court in any other county where the judgment has been entered.

Rule 58C. Motion to renew judgment.

(a) Motion. A judgment creditor may renew a judgment by filing a motion under Rule 7 in the original action before the statute of limitations on the original judgment expires. A copy of the judgment must be filed with the motion.

(b) Affidavit. The motion must be supported by an affidavit:

(b)(1) accounting for the original judgment and all post-judgment payments, credits, and other adjustments provided for by law or contained in the original judgment; and

(b)(2) affirming that notice was sent to the most current address known for the judgment debtor, stating what efforts the creditor has made to determine whether it is the debtor's correct address.

(c) Effective date of renewed judgment. If the court grants the motion, the court will enter an order renewing the original judgment from the date of entry of the order or from the scheduled expiration date of the original judgment, whichever occurs first. The statute of limitations on the renewed judgment runs from the date the order is signed and entered.

Rule 58C. Motion to renew judgment.

Advisory Committee Note

The Renewal of Judgment Act (Utah Code Sections 78B-6-1801 through 78B-6-1804) allows a domestic judgment to be renewed by motion, and Section 78B-5-302 governs domesticating a foreign judgment, which can then be renewed by motion. The statute of limitations on an action for failure to pay a judgment is governed by Section 78B-2-311.

Rule 59. New trial; altering or amending a judgment.

(a) Grounds. Except as limited by Rule 61, a new trial may be granted to any party on any issue for any of the following reasons:

(a)(1) irregularity in the proceedings of the court, jury or opposing party, or any order of the court, or abuse of discretion by which a party was prevented from having a fair trial;

(a)(2) misconduct of the jury, which may be proved by the affidavit or declaration of any juror;

(a)(3) accident or surprise that ordinary prudence could not have guarded against;

(a)(4) newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the trial;

(a)(5) excessive or inadequate damages that appear to have been given under the influence of passion or prejudice;

(a)(6) insufficiency of the evidence to justify the verdict or other decision; or

(a)(7) that the verdict or decision is contrary to law or based on an error in law.

(b) Time for motion. A motion for a new trial must be filed no later than 28 days after entry of the judgment. When the motion for a new trial is filed under paragraph (a)(1), (2), (3), or (4), it must be supported by affidavits or declarations. If a motion for a new trial is supported by affidavits or declarations, they must be served with the motion.

(c) Further action after non-jury trial. After a nonjury trial, the court may, on motion for a new trial, open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new ones, and direct entry of a new judgment.

(d) New trial on initiative of court or for reasons not in the motion. No later than 28 days after entry of the judgment the court, on its own, may order a new trial for any reason that would justify a new trial on motion of a party. After giving the parties notice and an opportunity to be heard, the court may grant a timely motion for a new trial for a reason not stated in the motion. The order granting a new trial must state the reasons for the new trial.

(e) Motion to alter or amend a judgment. A motion to alter or amend the judgment must be filed no later than 28 days after entry of the judgment.

Rule 60. Relief from judgment or order.

(a) Clerical mistakes. The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice. After a notice of appeal has been filed and while the appeal is pending, the mistake may be corrected only with leave of the appellate court.

(b) Mistakes; inadvertence; excusable neglect; newly discovered evidence; fraud, etc. On motion and upon just terms, the court may relieve a party or its legal representative from a judgment, order, or proceeding for the following reasons:

Comment [JM110]:

(b)(1) mistake, inadvertence, surprise, or excusable neglect;

(b)(2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);

(b)(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation or other misconduct of an opposing party;

(b)(4) the judgment is void;

(b)(5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or vacated, or it is no longer equitable that the judgment should have prospective application; or

(b)(6) any other reason that justifies relief.

(c) Timing and effect of the motion. A motion under paragraph (b) must be filed within a reasonable time and for reasons in paragraph (b)(1), (2), or (3), not more than 90 days after entry of the judgment or order or, if there is no judgment or order, from the date of the proceeding. The motion does not affect the finality of a judgment or suspend its operation.

(d) Other power to grant relief. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order or proceeding or to set aside a judgment for fraud upon the court. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

URCP 060

Advisory Committee Notes

The 1998 amendment eliminates as grounds for a motion the following: "(4) when, for any cause, the summons in an action has not been personally served upon the defendant as required by Rule 4(e) and the defendant has failed to appear in said action." This basis for a motion is not found in the federal rule. The committee concluded the clause was ambiguous and possibly in conflict with rule permitting service by means other than personal service.

2016 amendments

The deadlines for a motion are as stated in this rule, but if a motion under paragraph (b) is filed within 28 days after the judgment, it will have the same effect on the time to appeal as a motion under Rule 50, 52, or 59. See the 2016 amendments to Rule of Appellate Procedure 4(b).

Rule 61. Harmless error.

No error in either the admission or the exclusion of evidence, and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties, is ground for granting a new trial or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

Rule 62. Stay of proceedings to enforce a judgment.

(a) Delay in execution. No execution or other writ to enforce a judgment may issue until the expiration of 14 days after entry of judgment, unless the court in its discretion otherwise directs.

(b) Stay on motion for new trial or for judgment. In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of, or any proceedings to enforce, a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment made pursuant to Rule 59, or of a motion for relief from a judgment or order made pursuant to Rule 60, or of a motion for judgment in accordance with a motion for a directed verdict made pursuant to Rule 50, or of a motion for amendment to the findings or for additional findings made pursuant to Rule 52(b).

(c) Injunction pending appeal. When an appeal is taken from an interlocutory order or final judgment granting, dissolving, or denying an injunction, the court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such conditions as it considers proper for the security of the rights of the adverse party.

(d) Stay upon appeal. When an appeal is taken, the appellant by giving a supersedeas bond may obtain a stay, unless such a stay is otherwise prohibited by law or these rules. The bond may be given at or after the time of filing the notice of appeal. The stay is effective when the supersedeas bond is approved by the court.

(e) Stay in favor of the state, or agency thereof. When an appeal is taken by the United States, the state of Utah, or an officer or agency of either, or by direction of any department of either, and the operation or enforcement of the judgment is stayed, no bond, obligation, or other security shall be required from the appellant.

(f) Stay in quo warranto proceedings. Where the defendant is adjudged guilty of usurping, intruding into or unlawfully holding public office, civil or military, within this state, the execution of the judgment shall not be stayed on an appeal.

(g) Power of appellate court not limited. The provisions in this rule do not limit any power of an appellate court or of a judge or justice thereof to stay proceedings or to suspend, modify, restore, or grant an injunction, or extraordinary relief or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.

(h) Stay of judgment upon multiple claims. When a court has ordered a final judgment on some but not all of the claims presented in the action under the conditions stated in Rule 54(b), the court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

(i) Form of supersedeas bond; deposit in lieu of bond; waiver of bond; jurisdiction over sureties to be set forth in undertaking.

(i)(1) A supersedeas bond given under Subdivision (d) may be either a commercial bond having a surety authorized to transact insurance business under Title 31A, or a personal bond having one or more sureties who are residents of Utah having a collective net worth of at least twice the amount of the bond, exclusive of property exempt from execution. Sureties on personal bonds shall make and file an affidavit setting forth in reasonable detail the assets and liabilities of the surety.

(i)(2) Upon motion and good cause shown, the court may permit a deposit of money in court or other security to be given in lieu of giving a supersedeas bond under Subdivision (d).

(i)(3) The parties may by written stipulation waive the requirement of giving a supersedeas bond under Subdivision (d) or agree to an alternate form of security.

(i)(4) A supersedeas bond given pursuant to Subdivision (d) shall provide that each surety submits to the jurisdiction of the court and irrevocably appoints the clerk of the court as the surety's agent upon whom any papers affecting the surety's liability on the bond may be served, and that the surety's liability may be enforced on motion and upon such notice as the court may require without the necessity of an independent action.

(j) Amount of supersedeas bond.

(j)(1) Except as provided in subsection (j)(2), a court shall set the supersedeas bond in an amount that adequately protects the judgment creditor against loss or damage occasioned by the appeal and assures payment in the event the judgment is affirmed. In setting the amount, the court may consider any relevant factor, including:

(j)(1)(A) the judgment debtor's ability to pay the judgment;

(j)(1)(B) the existence and value of security;

(j)(1)(C) the judgment debtor's opportunity to dissipate assets;

(j)(1)(D) the judgment debtor's likelihood of success on appeal; and

(j)(1)(E) the respective harm to the parties from setting a higher or lower amount.

(j)(2) Notwithstanding subsection (j)(1):

(j)(2)(A) the presumptive amount of a bond for compensatory damages is the amount of the compensatory damages plus costs and attorney fees, as applicable, plus 3 years of interest at the applicable interest rate;

(j)(2)(B) the bond for compensatory damages shall not exceed $25 million in an action by plaintiffs certified as a class under Rule 23 or in an action by multiple plaintiffs in which compensatory damages are not proved for each plaintiff individually; and

(j)(2)(C) no bond shall be required for punitive damages.

(j)(3) If the court permits a bond that is less than the presumptive amount of compensatory damages, the court may also enter such orders as are necessary to protect the judgment creditor during the appeal.

(j)(4) If the court finds that the judgment debtor has violated an order or has otherwise dissipated assets, the court may set the bond under subsection (j)(1) without regard to the limits in subsection (j)(2).

(k) Objecting to sufficiency or amount of security. Any party whose judgment is stayed or sought to be stayed pursuant to Subdivision (d) may object to the sufficiency of the sureties on the supersedeas bond or the amount thereof, or to the sufficiency or amount of other security given to stay the judgment by filing and giving notice of such objection. The party so objecting shall be entitled to a hearing thereon upon five days notice or such shorter time as the court may order. The burden of justifying the sufficiency of the sureties or other security and the amount of the bond or other security, shall be borne by the party seeking the stay, unless the objecting party seeks a bond greater than the presumed limits of this rule. The fact that a supersedeas bond, its surety or other security is generally permitted under this rule shall not be conclusive as to its sufficiency or amount.

URCP 062

Advisory Committee Notes

The 1995 amendments to this rule eliminated references to writs of mandate and prohibition in Subdivision (g) since the extraordinary relief procedure of Rule 65B has eliminated the concept of the "writ." Subdivision (i) was substantially rewritten to define the requirements for both commercial and personal supersedeas bonds and to allow the court to permit a cash deposit or other form of security in lieu of a supersedeas bond. The committee concluded that individual circumstances will determine the degree to which a particular form of security may be affected by bankruptcy, financial instability or other uncertainty, and that the court should be given broad discretion to permit such forms of security as the facts may require. Subdivision (j) was amended to allow a party whose judgment is stayed to object to the amount or sufficiency of the security. The rule does not specify a time within which a party must object to security; thus a party may respond appropriately to changing circumstances affecting the sufficiency or form of security originally approved by the court.

2005 Amendment. In considering conditions for setting a bond of less than the presumed amount under paragraph (j)(1), the judge's objective is to protect both a judgment creditor's interest in collecting a judgment affirmed on appeal and to afford a judgment debtor a reasonable opportunity to prosecute an appeal without unduly and unnecessarily affecting the judgment debtor's operations. Among the options the judge might consider are to:

(1) require periodic financial reports;

(2) appoint a receiver or master;

(3) require the debtor to abstract the judgment to all jurisdictions in which the debtor has significant assets;

(4) require the debtor's corporate officers to personally acknowledge receiving the judgment and to consent to personal jurisdiction for the purpose of enforcing the judgment;

(5) limit loans other than in the ordinary course of business;

(6) limit transfer or disposition of assets other than in the ordinary course of business; and

(7) limit payment of dividends.

Rule 63. Disability or disqualification of a judge.

(a) Substitute judge; Prior testimony. If the judge to whom an action has been assigned is unable to perform his or her duties, then any other judge of that district or any judge assigned pursuant to Judicial Council rule is authorized to perform those duties. The judge to whom the case is reassigned may rehear the evidence or some part of it.

(b) Motion to disqualify; affidavit or declaration.

(b)(1) A party to an action or the party's attorney may file a motion to disqualify a judge. The motion must be accompanied by a certificate that the motion is filed in good faith and must be supported by an affidavit or declaration under penalty of Utah Code Section 78B-5-705 stating facts sufficient to show bias, prejudice or conflict of interest. The motion must also be accompanied by a request to submit for decision.

Comment [JM111]:

(b)(2)) The motion must be filed after commencement of the action, but not later than 21 days after the last of the following:

(b)(2)(A) assignment of the action or hearing to the judge;

(b)(2)(B) appearance of the party or the party's attorney; or

Comment [JM112]:

(b)(2)(C) the date on which the moving party knew or should have known of the grounds upon which the motion is based.

If the last event occurs fewer than 21 days before a hearing, the motion must be filed as soon as practicable.

(b)(3) Signing the motion or affidavit or declaration constitutes a certificate under Rule 11 and subjects the party or attorney to the procedures and sanctions of Rule 11.

Comment [JM113]:

(b)(4) No party may file more than one motion to disqualify in an action, unless the second or subsequent motion is based on grounds that the party did not know of and could not have known of at the time of the earlier motion.

(b)(5) If timeliness of the motion is determined under paragraph (b)(2)(C) or paragraph (b)(4), the affidavit or declaration supporting the motion must state when and how the party came to know of the reason for disqualification.

(c) Reviewing judge.

(c)(1) The judge who is the subject of the motion must, without further hearing or a response from another party, enter an order granting the motion or certifying the motion and affidavit or declaration to a reviewing judge. The judge must take no further action in the case until the motion is decided. If the judge grants the motion, the order will direct the presiding judge of the court or, if the court has no presiding judge, the presiding officer of the Judicial Council to assign another judge to the action or hearing. The presiding judge of the court, any judge of the district, any judge of a court of like jurisdiction, or the presiding officer of the Judicial Council may serve as the reviewing judge.

(c)(2) If the reviewing judge finds that the motion and affidavit or declaration are timely filed, filed in good faith and legally sufficient, the reviewing judge shall assign another judge to the action or hearing or request the presiding judge or the presiding officer of the Judicial Council to do so.

(c)(3) In determining issues of fact or of law, the reviewing judge may consider any part of the record of the action and may request of the judge who is the subject of the motion an affidavit or declaration responding to questions posed by the reviewing judge.

(c)(4) The reviewing judge may deny a motion not filed in a timely manner.

Rule 63A. Change of judge as a matter of right.

(a) Notice of change. Except in actions with only one party, all parties joined in the action may, by unanimous agreement and without cause, change the judge assigned to the action by filing a notice of change of judge. The parties shall send a copy of the notice to the assigned judge and the presiding judge. The notice shall be signed by all parties and shall state: (1) the name of the assigned judge; (2) the date on which the action was commenced; (3) that all parties joined in the action have agreed to the change; (4) that no other persons are expected to be named as parties; and (5) that a good faith effort has been made to serve all parties named in the pleadings. The notice shall not specify any reason for the change of judge. Under no circumstances shall more than one change of judge be allowed under this rule in an action.

(b) Time. Unless extended by the court upon a showing of good cause, the notice must be filed within 90 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.

(c) 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 associate presiding judge, to another judge of the district, or to any judge of a court of like jurisdiction, who shall determine whether the notice is proper and, if so, shall reassign the action.

(d) Nondisclosure to court. No party shall communicate to the court, or cause another to communicate to the court, the fact of any party's seeking consent to a notice of change.

(e) Rule 63 unaffected. This rule does not affect any rights under Rule 63.

Part VIII Provisional and Final Remedies and Special Proceedings

Rule 64. Writs in general.

(a) Definitions. As used in Rules 64, 64A, 64B, 64C, 64D, 64E, 69A, 69B and 69C:

(a)(1) "Claim" means a claim, counterclaim, cross claim, third party claim or any other claim.

(a)(2) "Defendant" means the party against whom a claim is filed or against whom judgment has been entered.

(a)(3) "Deliver" means actual delivery or to make the property available for pick up and give to the person entitled to delivery written notice of availability.

(a)(4) "Disposable earnings" means that part of earnings for a pay period remaining after the deduction of all amounts required by law to be withheld.

(a)(5) "Earnings" means compensation, however denominated, paid or payable to an individual for personal services, including periodic payments pursuant to a pension or retirement program. Earnings accrue on the last day of the period in which they were earned.

(a)(6) "Notice of exemptions" means a form that advises the defendant or a third person that certain property is or may be exempt from seizure under state or federal law. The notice shall list examples of exempt property and indicate that other exemptions may be available. The notice shall instruct the defendant of the deadline for filing a reply and request for hearing.

(a)(7) "Officer" means any person designated by the court to whom the writ is issued, including a sheriff, constable, deputy thereof or any person appointed by the officer to hold the property.

(a)(8) "Plaintiff" means the party filing a claim or in whose favor judgment has been entered.

(a)(9) "Property" means the defendant's property of any type not exempt from seizure. Property includes but is not limited to real and personal property, tangible and intangible property, the right to property whether due or to become due, and an obligation of a third person to perform for the defendant.

(a)(10) "Serve" with respect to parties means any method of service authorized by Rule 5 and with respect to non-parties means any manner of service authorized by Rule 4.

(b) Security.

(b)(1) Amount. When security is required of a party, the party shall provide security in the sum and form the court deems adequate. For security by the plaintiff the amount should be sufficient to reimburse other parties for damages, costs and attorney fees incurred as a result of a writ wrongfully obtained. For security by the defendant, the amount should be equivalent to the amount of the claim or judgment or the value of the defendant's interest in the property. In fixing the amount, the court may consider any relevant factor. The court may relieve a party from the necessity of providing security if it appears that none of the parties will incur damages, costs or attorney fees as a result of a writ wrongfully obtained or if there exists some other substantial reason for dispensing with security. The amount of security does not establish or limit the amount of damages, costs or attorney fees recoverable if the writ is wrongfully obtained.

(b)(2) Jurisdiction over surety. A surety submits to the jurisdiction of the court and irrevocably appoints the clerk of the court as agent upon whom papers affecting the surety's liability may be served. The surety shall file with the clerk of the court the address to which the clerk may mail papers. The surety's liability may be enforced on motion without the necessity of an independent action. If the opposing party recovers judgment or if the writ is wrongfully obtained, the surety will pay the judgment, damages, costs and attorney fees not to exceed the sum specified in the contract. The surety is responsible for return of property ordered returned.

(b)(3) Objection. The court may issue additional writs upon the original security subject to the objection of the opposing party. The opposing party may object to the sufficiency of the security or the sufficiency of the sureties within five days after service of the writ. The burden to show the sufficiency of the security and the sufficiency of the sureties is on the proponent of the security.

(b)(4) Security of governmental entity. No security is required of the United States, the State of Utah, or an officer, agency, or subdivision of either, nor when prohibited by law.

(c) Procedures in aid of writs.

(c)(1) Referee. The court may appoint a referee to monitor hearings under this subsection.

(c)(2) Hearing; witnesses; discovery. The court may conduct hearings as necessary to identify property and to apply the property toward the satisfaction of the judgment or order. Witnesses may be subpoenaed to appear, testify and produce records. The court may permit discovery.

(c)(3) Restraint. The court may forbid any person from transferring, disposing or interfering with the property.

(d) Issuance of writ; service

(d)(1) Clerk to issue writs. The clerk of the court shall issue writs. A court in which a transcript or abstract of a judgment or order has been filed has the same authority to issue a writ as the court that entered the judgment or order. If the writ directs the seizure of real property, the clerk of the court shall issue the writ to the sheriff of the county in which the real property is located. If the writ directs the seizure of personal property, the clerk of the court may issue the writ to an officer of any county.

(d)(2) Content. The writ may direct the officer to seize the property, to keep the property safe, to deliver the property to the plaintiff, to sell the property, or to take other specified actions. If the writ is to enforce a judgment or order for the payment of money, the writ shall specify the amount ordered to be paid and the amount due.

(d)(2)(A) If the writ is issued ex parte before judgment, the clerk shall attach to the writ plaintiff's affidavit, detailed description of the property, notice of hearing, order authorizing the writ, notice of exemptions and reply form.

(d)(2)(B) If the writ is issued before judgment but after a hearing, the clerk shall attach to the writ plaintiff's affidavit and detailed description of the property.

(d)(2)(C) If the writ is issued after judgment, the clerk shall attach to the writ plaintiff's application, detailed description of the property, the judgment, notice of exemptions and reply form.

(d)(3) Service.

(d)(3)(A) Upon whom; effective date. The officer shall serve the writ and accompanying papers on the defendant, and, as applicable, the garnishee and any person named by the plaintiff as claiming an interest in the property. The officer may simultaneously serve notice of the date, time and place of sale. A writ is effective upon service.

(d)(3)(B) Limits on writs of garnishment.

(d)(3)(B)(i) A writ of garnishment served while a previous writ of garnishment is in effect is effective upon expiration of the previous writ; otherwise, a writ of garnishment is effective upon service.

(d)(3)(B)(ii) Only one writ of garnishment of earnings may be in effect at one time. One additional writ of garnishment of earnings for a subsequent pay period may be served on the garnishee while an earlier writ of continuing garnishment is in effect.

(d)(3)(C) Return; inventory. Within 14 days after service, the officer shall return the writ to the court with proof of service. If property has been seized, the officer shall include an inventory of the property and whether the property is held by the officer or the officer's designee. If a person refuses to give the officer an affidavit describing the property, the officer shall indicate the fact of refusal on the return, and the court may require that person to pay the costs of any proceeding taken for the purpose of obtaining such information.

(d)(3)(D) Service of writ by publication. The court may order service of a writ by publication upon a person entitled to notice in circumstances in which service by publication of a summons and complaint would be appropriate under Rule 4.

(d)(3)(D)(i) If service of a writ is by publication, substantially the following shall be published under the caption of the case:

To _____, [Defendant/Garnishee/Claimant]:

A writ of _____ has been issued in the above-captioned case commanding the officer of _____ County as follows:

[Quoting body of writ]

Your rights may be adversely affected by these proceedings. Property in which you have an interest may be seized to pay a judgment or order. You have the right to claim property exempt from seizure under statutes of the United States or this state, including Utah Code, Title 78B, Chapter 5, Part 5.

(d)(3)(D)(ii) The notice shall be published in a newspaper of general circulation in each county in which the property is located at least 14 days prior to the due date for the reply or at least 14 days prior to the date of any sale, or as the court orders. The date of publication is the date of service.

(e) Claim to property by third person.

(e)(1) Claimant's rights. Any person claiming an interest in the property has the same rights and obligations as the defendant with respect to the writ and with respect to providing and objecting to security. Any claimant named by the plaintiff and served with the writ and accompanying papers shall exercise those rights and obligations within the same time allowed the defendant. Any claimant not named by the plaintiff and not served with the writ and accompanying papers may exercise those rights and obligations at any time before the property is sold or delivered to the plaintiff.

(e)(2) Join claimant as defendant. The court may order any named claimant joined as a defendant in interpleader. The plaintiff shall serve the order on the claimant. The claimant is

thereafter a defendant to the action and shall answer within 14 days, setting forth any claim or defense. The court may enter judgment for or against the claimant to the limit of the claimant's interest in the property.

(e)(3) Plaintiff's security. If the plaintiff requests that an officer seize or sell property claimed by a person other than the defendant, the officer may request that the court require the plaintiff to file security.

(f) Discharge of writ; release of property.

(f)(1) By defendant. At any time before notice of sale of the property or before the property is delivered to the plaintiff, the defendant may file security and a motion to discharge the writ. The plaintiff may object to the sufficiency of the security or the sufficiency of the sureties within 7 days after service of the motion. At any time before notice of sale of the property or before the property is delivered to the plaintiff, the defendant may file a motion to discharge the writ on the ground that the writ was wrongfully obtained. The court shall give the plaintiff reasonable opportunity to correct a defect. The defendant shall serve the order to discharge the writ upon the officer, plaintiff, garnishee and any third person claiming an interest in the property.

(f)(2) By plaintiff. The plaintiff may discharge the writ by filing a release and serving it upon the officer, defendant, garnishee and any third person claiming an interest in the property.

(f)(3) Disposition of property. If the writ is discharged, the court shall order any remaining property and proceeds of sales delivered to the defendant.

(f)(4) Copy filed with county recorder. If an order discharges a writ upon property seized by filing with the county recorder, the officer or a party shall file a certified copy of the order with the county recorder.

(f)(5) Service on officer; disposition of property. If the order discharging the writ is served on the officer:

(f)(5)(A) before the writ is served, the officer shall return the writ to the court;

(f)(5)(B) while the property is in the officer's custody, the officer shall return the property to the defendant; or

(f)(5)(C) after the property is sold, the officer shall deliver any remaining proceeds of the sale to the defendant.

Rule 64A. Prejudgment writs in general.

(a) Availability. A writ of replevin, attachment or garnishment is available after the claim has been filed and before judgment only upon written order of the court.

(b) Motion; affidavit. To obtain a writ of replevin, attachment or garnishment before judgment, plaintiff shall file a motion, security as ordered by the court and an affidavit stating facts showing the grounds for relief and other information required by these rules. If the plaintiff cannot by due diligence determine the facts necessary to support the affidavit, the plaintiff shall explain in the affidavit the steps taken to determine the facts and why the facts could not be

determined. The affidavit supporting the motion shall state facts in simple, concise and direct terms that are not conclusory.

(c) Grounds for prejudgment writ. Grounds for a prejudgment writ include, in addition to the grounds for the specific writ, all of the requirements listed in subsections (c)(1) through (c)(3) and at least one of the requirements listed in subsections (c)(4) through (c)(10):

(c)(1) that the property is not earnings and not exempt from execution; and

(c)(2) that the writ is not sought to hinder, delay or defraud a creditor of the defendant; and

(c)(3) a substantial likelihood that the plaintiff will prevail on the merits of the underlying claim; and

(c)(4) that the defendant is avoiding service of process; or

(c)(5) that the defendant has assigned, disposed of or concealed, or is about to assign, dispose of or conceal, the property with intent to defraud creditors; or

(c)(6) that the defendant has left or is about to leave the state with intent to defraud creditors; or

(c)(7) that the defendant has fraudulently incurred the obligation that is the subject of the action; or

(c)(8) that the property will materially decline in value; or

(c)(9) that the plaintiff has an ownership or special interest in the property; or

(c)(10) probable cause of losing the remedy unless the court issues the writ.

(d) Statement. The affidavit supporting the motion shall state facts sufficient to show the following information:

(d)(1) if known, the nature, location, account number and estimated value of the property and the name, address and phone number of the person holding the property;

(d)(2) that the property has not been taken for a tax, assessment or fine;

(d)(3) that the property has not been seized under a writ against the property of the plaintiff or that it is exempt from seizure;

(d)(4) the name and address of any person known to the plaintiff to claim an interest in the property; and, if the motion is for a writ of garnishment,

(d)(5) the name and address of the garnishee; and

(d)(6) that the plaintiff has attached the garnishee fee established by Utah Code Section 78A-2-216.

(e) Notice, hearing. The court may order that a writ of replevin, attachment or garnishment be issued before judgment after notice to the defendant and opportunity to be heard.

(f) Method of service. The affidavit for the prejudgment writ shall be served on the defendant and any person named by the plaintiff as claiming an interest in the property. The affidavit shall be served in a manner directed by the court that is reasonably calculated to expeditiously give actual notice of the hearing.

(g) Reply. The defendant may file a reply to the affidavit for a prejudgment writ at least 24 hours before the hearing. The reply may:

(g)(1) challenge the issuance of the writ;

(g)(2) object to the sufficiency of the security or the sufficiency of the sureties;

(g)(3) request return of the property;

(g)(4) claim the property is exempt; or

(g)(5) claim a set off.

(h) Burden of proof. The burden is on the plaintiff to prove the facts necessary to support the writ.

(i) Ex parte writ before judgment. If the plaintiff seeks a prejudgment writ prior to a hearing, the plaintiff shall file an affidavit stating facts showing irreparable injury to the plaintiff before the defendant can be heard or other reason notice should not be given. If a writ is issued without notice to the defendant and opportunity to be heard, the court shall set a hearing for the earliest reasonable time, and the writ and the order authorizing the writ shall:

(i)(1) state the grounds for issuance without notice;

(i)(2) designate the date and time of issuance and the date and time of expiration;

(i)(3) designate the date, time and place of the hearing;

(i)(4) forthwith be filed in the clerk's office and entered of record;

(i)(5) expire 14 days after issuance unless the court establishes an earlier expiration date, the defendant consents that the order and writ be extended or the court extends the order and writ after hearing;

(i)(6) be served on the defendant and any person named by the plaintiff as claiming an interest in the property in a manner directed by the court that is reasonably calculated to expeditiously give actual notice of the hearing.

Rule 64B. Writ of replevin.

(a) Availability. A writ of replevin is available to compel delivery to the plaintiff of specific personal property held by the defendant.

(b) Grounds. In addition to the grounds required in Rule 64A, the grounds for a writ of replevin require all of the following:

(b)(1) that the plaintiff is entitled to possession; and

(b)(2) that the defendant wrongfully detains the property.

Rule 64C. Writ of attachment.

(a) Availability. A writ of attachment is available to seize property in the possession or under the control of the defendant.

(b) Grounds. In addition to the grounds required in Rule 64A, the grounds for a writ of attachment require all of the following:

(b)(1) that the defendant is indebted to the plaintiff;

(b)(2)(i) that the action is upon a contract or is against a defendant who is not a resident of this state or is against a foreign corporation not qualified to do business in this state; or

(b)(2)(ii) the writ is authorized by statute; and

(b)(3) that payment of the claim has not been secured by a lien upon property in this state.

Rule 64D. Writ of garnishment.

(a) Availability. A writ of garnishment is available to seize property of the defendant in the possession or under the control of a person other than the defendant. A writ of garnishment is available after final judgment or after the claim has been filed and prior to judgment. The maximum portion of disposable earnings of an individual subject to seizure is the lesser of:

(a)(1) 50% of the defendant's disposable earnings for a writ to enforce payment of a judgment for failure to support dependent children or 25% of the defendant's disposable earnings for any other judgment; or

(a)(2) the amount by which the defendant's disposable earnings for a pay period exceeds the number of weeks in that pay period multiplied by thirty times the federal minimum hourly wage prescribed by the Fair Labor Standards Act in effect at the time the earnings are payable.

(b) Grounds for writ before judgment. In addition to the grounds required in Rule 64A, the grounds for a writ of garnishment before judgment require all of the following:

(b)(1) that the defendant is indebted to the plaintiff;

(b)(2) that the action is upon a contract or is against a defendant who is not a resident of this state or is against a foreign corporation not qualified to do business in this state;

(b)(3) that payment of the claim has not been secured by a lien upon property in this state;

(b)(4) that the garnishee possesses or controls property of the defendant; and

(b)(5) that the plaintiff has attached the garnishee fee established by Utah Code Section 78A-2-216.

(c) Statement. The application for a post-judgment writ of garnishment shall state:

(c)(1) if known, the nature, location, account number and estimated value of the property and the name, address and phone number of the person holding the property;

(c)(2) whether any of the property consists of earnings;

(c)(3) the amount of the judgment and the amount due on the judgment;

(c)(4) the name, address and phone number of any person known to the plaintiff to claim an interest in the property; and

(c)(5) that the plaintiff has attached or will serve the garnishee fee established by Utah Code Section 78A-2-216.

(d) Defendant identification. The plaintiff shall submit with the affidavit or application a copy of the judgment information statement described in Utah Code Section 78B-5-201 or the defendant's name and address and, if known, the last four digits of the defendant's social security number and driver license number and state of issuance.

(e) Interrogatories. The plaintiff shall submit with the affidavit or application interrogatories to the garnishee inquiring:

(e)(1) whether the garnishee is indebted to the defendant and the nature of the indebtedness;

(e)(2) whether the garnishee possesses or controls any property of the defendant and, if so, the nature, location and estimated value of the property;

(e)(3) whether the garnishee knows of any property of the defendant in the possession or under the control of another, and, if so, the nature, location and estimated value of the property and the name, address and phone number of the person with possession or control;

(e)(4) whether the garnishee is deducting a liquidated amount in satisfaction of a claim against the plaintiff or the defendant, a designation as to whom the claim relates, and the amount deducted;

(e)(5) the date and manner of the garnishee's service of papers upon the defendant and any third persons;

(e)(6) the dates on which previously served writs of continuing garnishment were served; and

(e)(7) any other relevant information plaintiff may desire, including the defendant's position, rate and method of compensation, pay period, and the computation of the amount of defendant's disposable earnings.

(f) Content of writ; priority. The writ shall instruct the garnishee to complete the steps in subsection (g) and instruct the garnishee how to deliver the property. Several writs may be issued at the same time so long as only one garnishee is named in a writ. Priority among writs of garnishment is in order of service. A writ of garnishment of earnings applies to the earnings accruing during the pay period in which the writ is effective.

(g) Garnishee's responsibilities. The writ shall direct the garnishee to complete the following within seven business days of service of the writ upon the garnishee:

(g)(1) answer the interrogatories under oath or affirmation;

(g)(2) serve the answers on the plaintiff; and

(g)(3) serve the writ, answers, notice of exemptions and two copies of the reply form upon the defendant and any other person shown by the records of the garnishee to have an interest in the property.

The garnishee may amend answers to interrogatories to correct errors or to reflect a change in circumstances by serving the amended answers in the same manner as the original answers.

(h) Reply to answers; request for hearing.

(h)(1) The plaintiff or defendant may file and serve upon the garnishee a reply to the answers, a copy of the garnishee's answers, and a request for a hearing. The reply shall be

filed and served within 14 days after service of the answers or amended answers, but the court may deem the reply timely if filed before notice of sale of the property or before the property is delivered to the plaintiff. The reply may:

(h)(1)(A) challenge the issuance of the writ;

(h)(1)(B) challenge the accuracy of the answers;

(h)(1)(C) claim the property or a portion of the property is exempt; or

(h)(1)(D) claim a set off.

(h)(2) The reply is deemed denied, and the court shall conduct an evidentiary hearing as soon as possible and not to exceed 14 days.

(h)(3) If a person served by the garnishee fails to reply, as to that person:

(h)(3)(A) the garnishee's answers are deemed correct; and

(h)(3)(B) the property is not exempt, except as reflected in the answers.

(i) Delivery of property. A garnishee shall not deliver property until the property is due the defendant. Unless otherwise directed in the writ, the garnishee shall retain the property until 21 days after service by the garnishee under subsection (g). If the garnishee is served with a reply within that time, the garnishee shall retain the property and comply with the order of the court entered after the hearing on the reply. Otherwise, the garnishee shall deliver the property as provided in the writ.

(j) Liability of garnishee.

(j)(1) A garnishee who acts in accordance with this rule, the writ or an order of the court is released from liability, unless answers to interrogatories are successfully controverted.

(j)(2)(A) If the garnishee fails to comply with this rule, the writ or an order of the court, the court may order the garnishee to appear and show cause why the garnishee should not be ordered to pay such amounts as are just, including the value of the property or the balance of the judgment, whichever is less, and reasonable costs and attorney fees incurred by parties as a result of the garnishee's failure. If the garnishee shows that the steps taken to secure the property were reasonable, the court may excuse the garnishee's liability in whole or in part.

(j)(2)(B) The creditor must attach to the motion for an order to show cause a statement that the creditor has in good faith conferred or attempted to confer with the garnishee in an effort to settle the issue without court action.

(j)(3) No person is liable as garnishee by reason of having drawn, accepted, made or endorsed any negotiable instrument that is not in the possession or control of the garnishee at the time of service of the writ.

(j)(4) Any person indebted to the defendant may pay to the officer the amount of the debt or so much as is necessary to satisfy the writ, and the officer's receipt discharges the debtor for the amount paid.

(j)(5) A garnishee may deduct from the property any liquidated claim against the plaintiff or defendant.

(k) Property as security.

(k)(1) If property secures payment of a debt to the garnishee, the property need not be applied at that time but the writ remains in effect, and the property remains subject to being applied upon payment of the debt. If property secures payment of a debt to the garnishee, the plaintiff may obtain an order authorizing the plaintiff to buy the debt and requiring the garnishee to deliver the property.

(k)(2) If property secures an obligation that does not require the personal performance of the defendant and that can be performed by a third person, the plaintiff may obtain an order authorizing the plaintiff or a third person to perform the obligation and requiring the garnishee to deliver the property upon completion of performance or upon tender of performance that is refused.

(l) Writ of continuing garnishment.

(l)(1) After final judgment, the plaintiff may obtain a writ of continuing garnishment against any non-exempt periodic payment. All provisions of this rule apply to this subsection, but this subsection governs over a contrary provision.

(l)(2) A writ of continuing garnishment applies to payments to the defendant from the effective date of the writ until the earlier of the following:

(l)(2)(A) one year;

(l)(2)(B) 120 days after service of a second or subsequent writ of continuing garnishment;

(l)(2)(C) the last periodic payment;

(l)(2)(D) the judgment is stayed, vacated or satisfied in full; or

(l)(2)(E) the writ is discharged.

(l)(3) Within seven days after the end of each payment period, the garnishee shall with respect to that period:

(l)(3)(A) answer the interrogatories under oath or affirmation;

(l)(3)(B) serve the answers to the interrogatories on the plaintiff, the defendant and any other person shown by the records of the garnishee to have an interest in the property; and

(l)(3)(C) deliver the property as provided in the writ.

(l)(4) Any person served by the garnishee may reply as in subsection (g), but whether to grant a hearing is within the judge's discretion.

(l)(5) A writ of continuing garnishment issued in favor of the Office of Recovery Services or the Department of Workforce Services of the state of Utah to recover overpayments:

(l)(5)(A) is not limited to 120 days;

(l)(5)(B) has priority over other writs of continuing garnishment; and

(l)(5)(C) if served during the term of another writ of continuing garnishment, tolls that term and preserves all priorities until the expiration of the state's writ.

Rule 64E. Writ of execution.

(a) Availability. A writ of execution is available to seize property in the possession or under the control of the defendant following entry of a final judgment or order requiring the delivery of property or the payment of money.

(b) Application. To obtain a writ of execution, the plaintiff shall file an application stating:

(b)(1) the amount of the judgment or order and the amount due on the judgment or order;

(b)(2) the nature, location and estimated value of the property; and

(b)(3) the name and address of any person known to the plaintiff to claim an interest in the property.

(c) Death of plaintiff. If the plaintiff dies, a writ of execution may be issued upon the affidavit of an authorized executor or administrator or successor in interest.

(d) Reply to writ; request for hearing.

(d)(1) The defendant may reply to the writ and request a hearing. The reply shall be filed and served within 14 days after service of the writ and accompanying papers upon the defendant.

(d)(2) The court shall set the matter for an evidentiary hearing as soon as possible and not to exceed 14 days. If the court determines that the writ was wrongfully obtained, or that property is exempt from seizure, the court shall enter an order directing the officer to release the property. If the court determines that the writ was properly issued and the property is not exempt, the court shall enter an order directing the officer to sell or deliver the property. If the date of sale has passed, notice of the rescheduled sale shall be given. No sale may be held until the court has decided upon the issues presented at the hearing.

(d)(3) If a reply is not filed, the officer shall proceed to sell or deliver the property.

(e) Mortgage foreclosure governed by statute. Utah Code Title 78B, Chapter 6, Part 9, Mortgage Foreclosure, governs mortgage foreclosure proceedings notwithstanding contrary provisions of these rules.

Rule 65A. Injunctions.

(a) **Preliminary injunctions.**

(a)(1) **Notice.** No preliminary injunction shall be issued without notice to the adverse party.

(a)(2) **Consolidation of hearing.** Before or after the commencement of the hearing of an application for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application. Even when this consolidation is not ordered, any evidence received upon an application for a preliminary injunction which would be admissible at the trial on the merits becomes part of the trial

record and need not be repeated at the trial. This subdivision (a)(2) shall be so construed and applied as to save to the parties any rights they may have to trial by jury.

(b) **Temporary restraining orders.**

(b)(1) **Notice.** No temporary restraining order shall be granted without notice to the adverse party or that party's attorney unless (A) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition, and (B) the applicant or the applicant's attorney certifies to the court in writing as to the efforts, if any, that have been made to give notice and the reasons supporting the claim that notice should not be required.

Comment [JM114]:

Comment [JM115]:

Comment [JM116]:

(b)(2) **Form of order.** Every temporary restraining order shall be endorsed with the date and hour of issuance and shall be filed forthwith in the clerk's office and entered of record. The order shall define the injury and state why it is irreparable. The order shall expire by its terms within such time after entry, not to exceed 14 days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record.

(b)(3) **Priority of hearing.** If a temporary restraining order is granted, the motion for a preliminary injunction shall be scheduled for hearing at the earliest possible time and takes precedence over all other civil matters except older matters of the same character. When the motion comes on for hearing, the party who obtained the temporary restraining order shall have the burden to show entitlement to a preliminary injunction; if the party does not do so, the court shall dissolve the temporary restraining order.

(b)(4) **Dissolution or modification.** On 48 hours' notice to the party who obtained the temporary restraining order without notice, or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its dissolution or modification. In that event the court shall proceed to hear and determine the motion as expeditiously as the ends of justice require.

(c) **Security.**

(c)(1) **Requirement.** The court shall condition issuance of the order or injunction on the giving of security by the applicant, in such sum and form as the court deems proper, unless it appears that none of the parties will incur or suffer costs, attorney fees or damage as the result of any wrongful order or injunction, or unless there exists some other substantial reason for dispensing with the requirement of security. No such security shall be required of the United States, the State of Utah, or of an officer, agency, or subdivision of either; nor shall it be required when it is prohibited by law.

(c)(2) **Amount not a limitation.** The amount of security shall not establish or limit the amount of costs, including reasonable attorney fees incurred in connection with the restraining order or preliminary injunction, or damages that may be awarded to a party who is found to have been wrongfully restrained or enjoined.

(c)(3) **Jurisdiction over surety.** A surety upon a bond or undertaking under this rule submits to the jurisdiction of the court and irrevocably appoints the clerk of the court as agent upon whom any papers affecting the surety's liability on the bond or undertaking may be served. The surety's liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court who shall forthwith mail copies to the persons giving the security if their addresses are known.

(d) **Form and scope.** Every restraining order and order granting an injunction shall set forth the reasons for its issuance. It shall be specific in terms and shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained. It shall be binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive notice, in person or through counsel, or otherwise, of the order. If a restraining order is granted without notice to the party restrained, it shall state the reasons justifying the court's decision to proceed without notice.

Comment [JM117]:

Comment [JM118]:

(e) **Grounds.** A restraining order or preliminary injunction may issue only upon a showing by the applicant that:

(e)(1) The applicant will suffer irreparable harm unless the order or injunction issues;

(e)(2) The threatened injury to the applicant outweighs whatever damage the proposed order or injunction may cause the party restrained or enjoined;

(e)(3) The order or injunction, if issued, would not be adverse to the public interest; and

(e)(4) There is a substantial likelihood that the applicant will prevail on the merits of the underlying claim, or the case presents serious issues on the merits which should be the subject of further litigation.

(f) **Domestic relations cases.** Nothing in this rule shall be construed to limit the equitable powers of the courts in domestic relations cases.

URCP 065A

Advisory Committee Notes

Rule 65A has been materially revised from the former rule. Some of the changes in the rule are the result of suggestions from Utah's judges, all of whom were asked for their comments on specific ways to improve injunction practice. Although most paragraphs have been changed, there are two major revisions. First, under paragraph (b) of the present rule, the court now has explicit authority to order the consolidation of trial on the merits with the hearing on a preliminary injunction. Second, the grounds for the issuance of temporary restraining orders and preliminary injunctions have been modernized and clarified in paragraph (e). Portions of the rule have been reorganized for purposes of clarity.

Paragraph (a). Subparagraph (a)(1) is identical to paragraph (a) of the former rule. It is also identical to the corresponding subparagraph in Rule 65, Federal Rules of Civil Procedure. Subparagraph (a)(2) is entirely new to the Utah rules. It is borrowed from subparagraph (a)(2) of

the federal rule. It allows the court, in its discretion, to adjudicate the entire case at the time of the preliminary injunction hearing. If the court decides not to consolidate the trial on the merits with the preliminary injunction hearing, admissible evidence received at the preliminary injunction hearing nevertheless becomes part of the trial record and need not be introduced again.

Paragraph (b). This paragraph is similar to paragraph (b) of the former rule. It has been reorganized for clarity and has been modernized in other respects. Subparagraph (1) prohibits the issuance of a temporary restraining order unless two conditions are met. First, as in the former rule, the record must disclose that irreparable injury, loss, or damage will result if the court does not intervene. Second, the applicant or the applicant's attorney must provide written certification of any effort to give notice and the reasons for which notice should not be required. The latter requirement is new. The language in subparagraphs (3) and (4) has been modernized and clarified.

Comment [JM119]:

Paragraph (c). This paragraph has been revised to reflect developments in the case law and a new rule in this state on damages for wrongfully issued injunctions. Subparagraph (1) makes it clear that the court may decline to require security if it appears that none of the parties will suffer expense or damages from a wrongful temporary restraining order or preliminary injunction, or if, in the particular case, there is some other substantial reason for dispensing with the requirement of security. See Corporation of President of Church of Jesus Christ of Latter-Day Saints v. Wallace, 573 P.2d 1285, 1286-87 (Utah 1978). Otherwise, the court should require security in an appropriate amount. Subparagraph (2), which is new, makes it clear that the amount of the security required by the court does not limit the recovery that may be awarded to a wrongfully restrained party. This provision represents a change in Utah law. Compare with Mountain States Tel. & Tel. Co. v. Atkin, Wright & Mills, 681 P.2d 1258 (Utah 1984). In the committee's view, the prior rule was unfair to the wrongfully enjoined party whose damages from the injunction may far exceed the amount of security estimated at the outset of the case. Subparagraph (2) also explicitly allows a wrongfully enjoined party to recover attorney fees. Subparagraph (3) is closely similar to language in a portion of the former rule's paragraph (c).

Paragraph (d). This paragraph is similar to the corresponding paragraph in the former rule. Borrowing a concept from paragraph (b) of the former rule, it requires the court to state its reasons for granting a temporary restraining order without notice.

Paragraph (e). This paragraph completely revises the corresponding paragraph of the former rule. The committee sought to modernize the grounds for the issuance of injunctive orders by incorporating standards consistent with national trends. There is little case law in Utah interpreting the grounds for injunctive orders, and the committee was divided as to whether the development of grounds should be left entirely to the courts. A majority of the committee believed, however, that courts and litigants would benefit from explicit standards drawn from sound authority. The standards set forth in paragraph (e) are derived from Tri-State Generation & Transmission Ass'n. v. Shoshone River Power, Inc., 805 F.2d 351, 355 (10th Cir. 1986), and Otero Savings & Loan Ass'n. v. Federal Reserve Bank, 665 F.2d 275, 278 (10th Cir. 1981). Federal courts require proof of compliance with each of the four standards, but the weight given to each standard may vary. The substantial body of federal case authority in this area should assist the Utah courts in developing the law under paragraph (e).

Paragraph (f). This paragraph is new. It acknowledges that in domestic relations cases courts must occasionally enter prohibitory or mandatory orders under circumstances that do not permit compliance with the procedures in Rule 65A. The committee believed that this rule should not be construed to limit the authority of the court in domestic relations cases.

Rule 65B. Extraordinary relief.

(a) Availability of remedy. Where no other plain, speedy and adequate remedy is available, a person may petition the court for extraordinary relief on any of the grounds set forth in paragraph (b) (involving wrongful restraint on personal liberty), paragraph (c) (involving the wrongful use of public or corporate authority) or paragraph (d) (involving the wrongful use of judicial authority, the failure to exercise such authority, and actions by the Board of Pardons and Parole). There shall be no special form of writ. Except for instances governed by Rule 65C, the procedures in this rule shall govern proceedings on all petitions for extraordinary relief. To the extent that this rule does not provide special procedures, proceedings on petitions for extraordinary relief shall be governed by the procedures set forth elsewhere in these rules.

(b) Wrongful restraints on personal liberty.

(b)(1) Scope. Except for instances governed by Rule 65C, this paragraph shall govern all petitions claiming that a person has been wrongfully restrained of personal liberty, and the court may grant relief appropriate under this paragraph.

(b)(2) Commencement. The proceeding shall be commenced by filing a petition with the clerk of the court in the district in which the petitioner is restrained or the respondent resides or in which the alleged restraint is occurring.

(b)(3) Contents of the petition and attachments. The petition shall contain a short, plain statement of the facts on the basis of which the petitioner seeks relief. It shall identify the respondent and the place where the person is restrained. It shall state the cause or pretense of the restraint, if known by the petitioner. It shall state whether the legality of the restraint has already been adjudicated in a prior proceeding and, if so, the reasons for the denial of relief in the prior proceeding. The petitioner shall attach to the petition any legal process available to the petitioner that resulted in restraint. The petitioner shall also attach to the petition a copy of the pleadings filed by the petitioner in any prior proceeding that adjudicated the legality of the restraint.

(b)(4) Memorandum of authorities. The petitioner shall not set forth argument or citations or discuss authorities in the petition, but these may be set out in a separate memorandum, two copies of which shall be filed with the petition.

(b)(5) Dismissal of frivolous claims. On review of the petition, if it is apparent to the court that the legality of the restraint has already been adjudicated in a prior proceeding, or if for any other reason any claim in the petition shall appear frivolous on its face, the court shall forthwith issue an order dismissing the claim, stating that the claim is frivolous on its face and the reasons for this conclusion. The order need not state findings of fact or conclusions of law. The order shall be sent by mail to the petitioner. Proceedings on the claim shall terminate with the entry of the order of dismissal.

(b)(6) Responsive pleadings. If the petition is not dismissed as being frivolous on its face, the court shall direct the clerk of the court to serve a copy of the petition and a copy of any

memorandum upon the respondent by mail. At the same time, the court may issue an order directing the respondent to answer or otherwise respond to the petition, specifying a time within which the respondent must comply. If the circumstances require, the court may also issue an order directing the respondent to appear before the court for a hearing on the legality of the restraint. An answer to a petition shall state plainly whether the respondent has restrained the person alleged to have been restrained, whether the person so restrained has been transferred to any other person, and if so, the identity of the transferee, the date of the transfer, and the reason or authority for the transfer. Nothing in this paragraph shall be construed to prohibit the court from ruling upon the petition based upon a dispositive motion.

(b)(7) Temporary relief. If it appears that the person alleged to be restrained will be removed from the court's jurisdiction or will suffer irreparable injury before compliance with the hearing order can be enforced, the court shall issue a warrant directing the sheriff to bring the respondent before the court to be dealt with according to law. Pending a determination of the petition, the court may place the person alleged to have been restrained in the custody of such other persons as may be appropriate.

(b)(8) Alternative service of the hearing order. If the respondent cannot be found, or if it appears that a person other than the respondent has custody of the person alleged to be restrained, the hearing order and any other process issued by the court may be served on the person having custody in the manner and with the same effect as if that person had been named as respondent in the action.

(b)(9) Avoidance of service by respondent. If anyone having custody of the person alleged to be restrained avoids service of the hearing order or attempts wrongfully to remove the person from the court's jurisdiction, the sheriff shall immediately arrest the responsible person. The sheriff shall forthwith bring the person arrested before the court to be dealt with according to law.

(b)(10) Hearing or other proceedings. In the event that the court orders a hearing, the court shall hear the matter in a summary fashion and shall render judgment accordingly. The respondent or other person having custody shall appear with the person alleged to be restrained or shall state the reasons for failing to do so. The court may nevertheless direct the respondent to bring before it the person alleged to be restrained. If the petitioner waives the right to be present at the hearing, the court shall modify the hearing order accordingly. The hearing order shall not be disobeyed for any defect of form or any misdescription in the order or the petition, if enough is stated to impart the meaning and intent of the proceeding to the respondent.

(c) Wrongful use of or failure to exercise public authority.

(c)(1) Who may petition the court; security. The attorney general may, and when directed to do so by the governor shall, petition the court for relief on the grounds enumerated in this paragraph. Any person who is not required to be represented by the attorney general and who is aggrieved or threatened by one of the acts enumerated in subparagraph (2) of this paragraph may petition the court under this paragraph if (A) the person claims to be entitled to an office unlawfully held by another or (B) if the attorney general fails to file a petition under this paragraph after receiving notice of the person's claim. A petition filed by a person other than the attorney general under this paragraph shall be brought in the name of the petitioner, and the petition shall be accompanied by an undertaking with sufficient sureties to pay any judgment for

costs and damages that may be recovered against the petitioner in the proceeding. The sureties shall be in the form for bonds on appeal provided for in Rule 73.

(c)(2) Grounds for relief. Appropriate relief may be granted: (A) where a person usurps, intrudes into, or unlawfully holds or exercises a public office, whether civil or military, a franchise, or an office in a corporation created by the authority of the state of Utah; (B) where a public officer does or permits any act that results in a forfeiture of the office; (C) where persons act as a corporation in the state of Utah without being legally incorporated; (D) where any corporation has violated the laws of the state of Utah relating to the creation, alteration or renewal of corporations; or (E) where any corporation has forfeited or misused its corporate rights, privileges or franchises.

(c)(3) Proceedings on the petition. On the filing of a petition, the court may require that notice be given to adverse parties before issuing a hearing order, or may issue a hearing order requiring the adverse party to appear at the hearing on the merits. The court may also grant temporary relief in accordance with the terms of Rule 65A.

(d) Wrongful use of judicial authority or failure to comply with duty; actions by board of pardons and parole.

(d)(1) Who may petition. A person aggrieved or whose interests are threatened by any of the acts enumerated in this paragraph may petition the court for relief.

(d)(2) Grounds for relief. Appropriate relief may be granted: (A) where an inferior court, administrative agency, or officer exercising judicial functions has exceeded its jurisdiction or abused its discretion; (B) where an inferior court, administrative agency, corporation or person has failed to perform an act required by law as a duty of office, trust or station; (C) where an inferior court, administrative agency, corporation or person has refused the petitioner the use or enjoyment of a right or office to which the petitioner is entitled; or (D) where the Board of Pardons and Parole has exceeded its jurisdiction or failed to perform an act required by constitutional or statutory law.

(d)(3) Proceedings on the petition. On the filing of a petition, the court may require that notice be given to adverse parties before issuing a hearing order, or may issue a hearing order requiring the adverse party to appear at the hearing on the merits. The court may direct the inferior court, administrative agency, officer, corporation or other person named as respondent to deliver to the court a transcript or other record of the proceedings. The court may also grant temporary relief in accordance with the terms of Rule 65A.

(d)(4) Scope of review. Where the challenged proceedings are judicial in nature, the court's review shall not extend further than to determine whether the respondent has regularly pursued its authority.

URCP 065B

Advisory Committee Notes

This rule represents a complete reorganization of the former rule. This rule also revises parts of the former rule dealing with habeas corpus and post-conviction remedies. The rule applies generally to proceedings that are necessitated by the absence of another plain, speedy and

adequate remedy in the court. After the rule's introductory paragraph, each subsequent paragraph is intended to deal with a separate type of proceeding. Thus, subparagraph (b) deals with proceedings involving wrongful restraint on personal liberty other than those governed by Rule 65C; paragraph (c) deals with proceedings involving the wrongful use of public or corporate authority; and paragraph (d) deals with proceedings involving the wrongful use of judicial authority or the failure to exercise such authority. Paragraph (d) also deals with petitions challenging actions by the Board of Pardons and Parole and the failure of the Board to perform a required act. To the extent that the special procedures set forth in these paragraphs do not cover specific procedural issues that arise during a proceeding, the normal rules of civil procedure will apply.

This rule effectively eliminates the concept of the "writ" from extraordinary relief procedure. In the view of the advisory committee, the concept was used inconsistently and confusingly in the former rule, and there was disagreement among judges and lawyers as to what it meant in actual practice. The concept has been replaced with terms such as "hearing order" and "relief" that are more descriptive of the procedural reality.

Comment [JM120]:

Paragraph (b). This paragraph governs all petitions claiming that a person has been wrongfully restrained of personal liberty other than those specifically governed by paragraph Rule 65C. It replaces paragraph (f) of the former rule. Paragraph (b) endeavors to simplify the procedure in habeas corpus cases and provides for a means of summary dismissal of frivolous claims. Thus, if it is apparent to the court that the claim is "frivolous on its face", the court may issue an order dismissing the claim, which terminates the proceeding. Apart from this significant change from former practice, paragraph (b) is patterned after the former rule.

Paragraphs (c) and (d) replace paragraph (b) of the former rule. The committee's general purpose in drafting these paragraphs was to simplify and clarify the requirements of the preexisting paragraph.

Paragraph (c). Paragraph (c) replaces paragraph (b)(1) of the former rule. This paragraph deals generally with proceedings for the unlawful use of public office or corporate franchises. As a general matter, the attorney general may seek relief on grounds enumerated in the paragraph. Any other person, including a governmental officer or entity not required to be represented by the attorney general, may also seek relief under paragraph (c) if the person claims to be entitled to an office unlawfully held by another or if the attorney general fails to file a petition under paragraph (c) after receiving notice of the person's claim. In allowing appropriate governmental entities and officers to proceed under this paragraph, the rule eliminates a procedural barrier that previously prevented anyone other than the attorney general and "private" persons to seek relief. Although the rule removes the procedural barrier, it was not intended to modify the substantive rules that limit the authority or standing of any governmental entity or officer. Nor was the rule intended to modify the constitutional or statutory authority of the attorney general. Since paragraph (c) provides only a general outline of procedures to be used in such proceedings, litigants should look to the other rules of civil procedure for guidance on specific questions not covered by paragraph (c). In proceedings under this paragraph and paragraph (d), parties seeking temporary relief in advance of a hearing on the merits should comply with the requirements of Rule 65A.

Paragraph (d). This paragraph governs relatively unusual proceedings in which the normal rules of appellate procedure are inadequate to provide redress for an abuse by a court, administrative agency, or officer exercising judicial or administrative functions. This paragraph replaces subparagraph (2), (3) and (4) of paragraph (b) of the former rule. This paragraph allows the court wide discretion in the manner in which such proceedings are handled. Like the former rule, the scope of review under this paragraph is limited to determining whether the respondent has regularly pursued its authority.

1992 Revisions.

These revisions harmonize parallel provisions of the rule and address technical problems relating to venue and the content of memoranda and orders in habeas corpus and post-conviction proceedings.

Paragraph (b). Changes to this paragraph affect the venue requirements for one category of extraordinary relief petition. The general rule established in the paragraph is that petitions governed by paragraph (b) must be commenced in the district court in the county in which the commitment leading to confinement was issued. Challenges to parole violation proceedings, however, should be filed in the district court in the county in which the petitioner is located.

Paragraph (c). The changes to this paragraph enlarge the discretion of the court in dealing with those petitions for wrongful restraint that the paragraph governs. In dismissing claims that are frivolous on their face, the court is relieved of the responsibility to state findings of fact or conclusions of law. This change harmonizes paragraph (c) with the parallel requirements of paragraph (b)(7) of the rule. Other changes allow the court more discretion in ordering a hearing concerning unlawful restraints. The remaining changes in this paragraph clarify the contents of pleadings and memoranda filed with the court.

Rule 65C. Post-conviction relief.

(a) Scope. This rule governs proceedings in all petitions for post-conviction relief filed under the Post-Conviction Remedies Act, Utah Code Title 78B, Chapter 9. The Act sets forth the manner and extent to which a person may challenge the legality of a criminal conviction and sentence after the conviction and sentence have been affirmed in a direct appeal under Article I, Section 12 of the Utah Constitution, or the time to file such an appeal has expired.

(b) Procedural defenses and merits review. Except as provided in paragraph (h), if the court comments on the merits of a post-conviction claim, it shall first clearly and expressly determine whether that claim is independently precluded under Section 78B-9-106.

(c) Commencement and venue. The proceeding shall be commenced by filing a petition with the clerk of the district court in the county in which the judgment of conviction was entered. The petition should be filed on forms provided by the court. The court may order a change of venue on its own motion if the petition is filed in the wrong county. The court may order a change of venue on motion of a party for the convenience of the parties or witnesses.

(d) Contents of the petition. The petition shall set forth all claims that the petitioner has in relation to the legality of the conviction or sentence. The petition shall state:

(d)(1) whether the petitioner is incarcerated and, if so, the place of incarceration;

(d)(2) the name of the court in which the petitioner was convicted and sentenced and the dates of proceedings in which the conviction was entered, together with the court's case number for those proceedings, if known by the petitioner;

(d)(3) in plain and concise terms, all of the facts that form the basis of the petitioner's claim to relief;

(d)(4) whether the judgment of conviction, the sentence, or the commitment for violation of probation has been reviewed on appeal, and, if so, the number and title of the appellate proceeding, the issues raised on appeal, and the results of the appeal;

(d)(5) whether the legality of the conviction or sentence has been adjudicated in any prior post-conviction or other civil proceeding, and, if so, the case number and title of those proceedings, the issues raised in the petition, and the results of the prior proceeding; and

(d)(6) if the petitioner claims entitlement to relief due to newly discovered evidence, the reasons why the evidence could not have been discovered in time for the claim to be addressed in the trial, the appeal, or any previous post-conviction petition.

(e) Attachments to the petition. If available to the petitioner, the petitioner shall attach to the petition:

(e)(1) affidavits, copies of records and other evidence in support of the allegations;

(e)(2) a copy of or a citation to any opinion issued by an appellate court regarding the direct appeal of the petitioner's case;

(e)(3) a copy of the pleadings filed by the petitioner in any prior post-conviction or other civil proceeding that adjudicated the legality of the conviction or sentence; and

(e)(4) a copy of all relevant orders and memoranda of the court.

(f) Memorandum of authorities. The petitioner shall not set forth argument or citations or discuss authorities in the petition, but these may be set out in a separate memorandum, two copies of which shall be filed with the petition.

(g) Assignment. On the filing of the petition, the clerk shall promptly assign and deliver it to the judge who sentenced the petitioner. If the judge who sentenced the petitioner is not available, the clerk shall assign the case in the normal course.

(h)(1) Summary dismissal of claims. The assigned judge shall review the petition, and, if it is apparent to the court that any claim has been adjudicated in a prior proceeding, or if any claim in the petition appears frivolous on its face, the court shall forthwith issue an order dismissing the claim, stating either that the claim has been adjudicated or that the claim is frivolous on its face. The order shall be sent by mail to the petitioner. Proceedings on the claim shall terminate with the entry of the order of dismissal. The order of dismissal need not recite findings of fact or conclusions of law.

(h)(2) A claim is frivolous on its face when, based solely on the allegations contained in the pleadings and attachments, it appears that:

(h)(2)(A) the facts alleged do not support a claim for relief as a matter of law;

(h)(2)(B) the claim has no arguable basis in fact; or

(h)(2)(C) the claim challenges the sentence only and the sentence has expired prior to the filing of the petition.

(h)(3) If a claim is not frivolous on its face but is deficient due to a pleading error or failure to comply with the requirements of this rule, the court shall return a copy of the

petition with leave to amend within 21 days. The court may grant one additional 21-day period to amend for good cause shown.

(h)(4) The court shall not review for summary dismissal the initial post-conviction petition in a case where the petitioner is sentenced to death.

(i) Service of petitions. If, on review of the petition, the court concludes that all or part of the petition should not be summarily dismissed, the court shall designate the portions of the petition that are not dismissed and direct the clerk to serve a copy of the petition, attachments and memorandum by mail upon the respondent. If the petition is a challenge to a felony conviction or sentence, the respondent is the state of Utah represented by the Attorney General. In all other cases, the respondent is the governmental entity that prosecuted the petitioner.

(j) Appointment of pro bono counsel. If any portion of the petition is not summarily dismissed, the court may, upon the request of an indigent petitioner, appoint counsel on a pro bono basis to represent the petitioner in the post-conviction court or on post-conviction appeal. In determining whether to appoint counsel the court shall consider whether the petition or the appeal contains factual allegations that will require an evidentiary hearing and whether the petition involves complicated issues of law or fact that require the assistance of counsel for proper adjudication.

Comment [JM121]:

Comment [JM122]:

Comment [JM123]:

(k) Answer or other response. Within 30 days after service of a copy of the petition upon the respondent, or within such other period of time as the court may allow, the respondent shall answer or otherwise respond to the portions of the petition that have not been dismissed and shall serve the answer or other response upon the petitioner in accordance with Rule 5(b). Within 30 days (plus time allowed for service by mail) after service of any motion to dismiss or for summary judgment, the petitioner may respond by memorandum to the motion. No further pleadings or amendments will be permitted unless ordered by the court.

(l) Hearings. After pleadings are closed, the court shall promptly set the proceeding for a hearing or otherwise dispose of the case. The court may also order a prehearing conference, but the conference shall not be set so as to delay unreasonably the hearing on the merits of the petition. At the prehearing conference, the court may:

(l)(1) consider the formation and simplification of issues;

(l)(2) require the parties to identify witnesses and documents; and

(l)(3) require the parties to establish the admissibility of evidence expected to be presented at the evidentiary hearing.

(m) Presence of the petitioner at hearings. The petitioner shall be present at the prehearing conference if the petitioner is not represented by counsel. The prehearing conference may be conducted by means of telephone or video conferencing. The petitioner shall be present before the court at hearings on dispositive issues but need not otherwise be present in court during the proceeding. The court may conduct any hearing at the correctional facility where the petitioner is confined.

Comment [JM124]:

(n) Discovery; records.

(n)(1) Discovery under Rules 26 through 37 shall be allowed by the court upon motion of a party and a determination that there is good cause to believe that discovery is necessary to provide a party with evidence that is likely to be admissible at an evidentiary hearing.

(n)(2) The court may order either the petitioner or the respondent to obtain any relevant transcript or court records.

(n)(3) All records in the criminal case under review, including the records in an appeal of that conviction, are deemed part of the trial court record in the petition for post-conviction relief. A record from the criminal case retains the security classification that it had in the criminal case.

(o) Orders; stay.

(o)(1) If the court vacates the original conviction or sentence, it shall enter findings of fact and conclusions of law and an appropriate order. If the petitioner is serving a sentence for a felony conviction, the order shall be stayed for 7 days. Within the stay period, the respondent shall give written notice to the court and the petitioner that the respondent will pursue a new trial, pursue a new sentence, appeal the order, or take no action. Thereafter the stay of the order is governed by these rules and by the Rules of Appellate Procedure.

(o)(2) If the respondent fails to provide notice or gives notice that no action will be taken, the stay shall expire and the court shall deliver forthwith to the custodian of the petitioner the order to release the petitioner.

(o)(3) If the respondent gives notice that the petitioner will be retried or resentenced, the trial court may enter any supplementary orders as to arraignment, trial, sentencing, custody, bail, discharge, or other matters that may be necessary and proper.

(p) Costs. The court may assign the costs of the proceeding, as allowed under Rule 54(d), to any party as it deems appropriate. If the petitioner is indigent, the court may direct the costs to be paid by the governmental entity that prosecuted the petitioner. If the petitioner is in the custody of the Department of Corrections, Utah Code Title 78A, Chapter 2, Part 3 governs the manner and procedure by which the trial court shall determine the amount, if any, to charge for fees and costs.

(q) Appeal. Any final judgment or order entered upon the petition may be appealed to and reviewed by the Court of Appeals or the Supreme Court of Utah in accord with the statutes governing appeals to those courts.

URCP 065C

Advisory Committee Notes

This rule replaces former paragraph (b) of Rule 65B. It governs proceedings challenging a conviction or sentence, regardless whether the claim relates to an original commitment, a commitment for violation of probation, or a sentence other than commitment. Claims relating to the terms or conditions of confinement are governed by paragraph (b) of the Rule 65B. This rule, as a general matter, simplifies the pleading requirements and contains two significant changes from procedure under the former rule. First, the paragraph requires the clerk of court to assign post-conviction relief to the judge who sentenced the petitioner if that judge is available. Second, the rule allows the court to dismiss frivolous claims before any answer or other response is required. This provision is patterned after the federal practice pursuant to 28 U.S.C. § 2254. The advisory committee adopted the summary procedures set forth as a means of balancing the

requirements of fairness and due process on the one hand against the public's interest in the efficient adjudication of the enormous volume of post-conviction relief cases.

The requirement in paragraph (l) for a determination that discovery is necessary to discover relevant evidence that is likely to be admissible at an evidentiary hearing is a higher standard than is normally used in determining motions for discovery.

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The requirement in paragraph (m) for a determination that discovery is necessary to discover relevant evidence that is likely to be admissible at an evidentiary hearing is a higher standard than is normally used in determining motions for discovery.

The 2009 amendments embrace Utah's Post-Conviction Remedies Act as the law governing post-conviction relief. It provides an independent and adequate procedural basis for dismissal without the necessity of a merits review. See Gardner v. Galetka, 568 F.3d 862, 884-85 (10th Cir. 2009). It is the committee's view that the added restrictions which the Act places on post-conviction petitions do not amount to a suspension of the writ of habeas corpus. See Felker v. Turpin, 518 U.S. 651, 664 (1996) (relying on McCleskey v. Zant, 499 U.S. 467, 489 (1991)).

Section 78B-9-202 governs the payment of counsel in death penalty cases.

Comment [JM125]:

Rule 66. Receivers.

(a) **Grounds for appointment.** The court may appoint a receiver:

(a)(1) in any action in which property is in danger of being lost, removed, damaged or is insufficient to satisfy a judgment, order or claim;

(a)(2) to carry the judgment into effect, to dispose of property according to the judgment and to preserve property during the pendency of an appeal;

(a)(3) when a writ of execution has been returned unsatisfied or when the judgment debtor refuses to apply property in satisfaction of the judgment;

(a)(4) when a corporation has been dissolved or is insolvent or in imminent danger of insolvency or has forfeited its corporate rights; or

(a)(5) in all other cases in which receivers have been appointed by courts of equity.

(b) **Appointment of receiver.** No party or attorney to the action, nor any person who is not impartial and disinterested as to all the parties and the subject matter of the action may be appointed receiver without the written consent of all interested parties.

Comment [JM126]:

(c) The court may require security from a receiver in accordance with Rule 64.

(d) **Oath.** A receiver shall swear or affirm to perform duties faithfully.

(e) **Powers of receivers.** A receiver has, under the direction of the court, power to bring and defend actions, to seize property, to collect, pay and compromise debts, to invest funds, to make transfers and to take other action as the court may authorize.

(f) **Payment of taxes before sale or pledge of personal property.** Before the receiver may sell, transfer or pledge personal property, the receiver shall pay applicable taxes and shall file receipts showing payment of taxes. If there are insufficient assets to pay the taxes, the court may authorize the sale, transfer or pledge with the proceeds to be used to pay taxes. Within 14 days after payment, the receiver shall file receipts showing payment of taxes.

(g) **Real property.** Before a receiver is vested with real property, the receiver shall file a certified copy of the appointment order in the office of the county recorder of the county in which the real property is located.

Rule 67. Deposit in court.

When it is admitted by the pleadings, or shown upon the examination of a party, that he has in his possession or under his control any money or other thing capable of delivery, which, being the subject of litigation, is held by him as trustee for another party, or which belongs or is due to another party, the court may order the same, upon motion, to be deposited in court or delivered to such party upon such conditions as may be just, subject to the further direction of the court; provided that if money is paid into court under this rule it shall be deposited and withdrawn in accordance with Utah Code Section 78B-5-804 or any like statute.

Rule 68. Settlement offers.

(a) Unless otherwise specified, an offer made under this rule is an offer to resolve all claims in the action between the parties to the date of the offer, including costs, interest and, if attorney fees are permitted by law or contract, attorney fees.

(b) If the adjusted award is not more favorable than the offer, the offeror is not liable for costs, prejudgment interest or attorney fees incurred by the offeree after the offer, and the offeree shall pay the offeror's costs incurred after the offer. The court may suspend the application of this rule to prevent manifest injustice.

(c) An offer made under this rule shall:

(c)(1) be in writing;

(c)(2) expressly refer to this rule;

(c)(3) be made more than 14 days before trial;

(c)(4) remain open for at least 14 days; and

(c)(5) be served on the offeree under Rule 5.

Acceptance of the offer shall be in writing and served on the offeror under Rule 5. Upon acceptance, either party may file the offer and acceptance with a proposed judgment under Rule 58A.

(d) "Adjusted award" means the amount awarded by the finder of fact and, unless excluded by the offer, the offeree's costs and interest incurred before the offer, and, if attorney fees are permitted by law or contract and not excluded by the offer, the offeree's reasonable attorney fees incurred before the offer. If the offeree's attorney fees are subject to a contingency fee agreement, the court shall determine a reasonable attorney fee for the period preceding the offer.

Rule 68

Advisory Committee Note

Under Section 78B-5-824 a party will not be awarded prejudgment interest on special damages in a Tier 1 action for personal injury or wrongful death arising on or after July 1, 2014 if:

(1) the party does not make a settlement offer;

(2) the settlement offer is tendered less than 60 days before trial; or

(3) the settlement offer is greater than or equal to one and one-third times the judgment awarded at trial.

Although the statute does not directly affect settlement offers made under Rule 68, parties should be aware of the limitation a settlement offer has on prejudgment interest in some cases.

Rule 69A. Seizure of property.

Unless otherwise directed by the writ, the officer shall seize property as follows:

(a) Debtor's preference. When there is more property than necessary to satisfy the amount due, the officer shall seize such part of the property as the defendant may indicate. If the defendant does not indicate a preference, the officer shall first seize personal property, and if sufficient personal property cannot be found, then the officer shall seize real property.

(b) Real property. Real property shall be seized by filing the writ and a description of the property with the county recorder and leaving the writ and description with an occupant of the property. If there is no occupant of the property, the officer shall post the writ and description in a conspicuous place on the property. If another person claims an interest in the real property, the officer shall serve the writ and description on the other person.

(c) Personal property.

(c)(1) Farm products, as that term is defined in Utah Code Section 70A-9a-102, may be seized by filing the writ and description of the property with the central filing system established by Utah Code Section 70A-9a-320.

(c)(2) Securities shall be seized as provided in Utah Code Section 70A-8-111.

(c)(3) In the discretion of the officer, property of extraordinary size or bulk, property that would be costly to take into custody or to store and property not capable of delivery may be seized by serving the writ and a description of the property on the person holding the property. The officer shall request of the person holding the property an affidavit describing the nature, location and estimated value of the property.

(c)(4) Otherwise, personal property shall be seized by serving the writ and a description of the property on the person holding the property and taking the property into custody.

Rule 69B. Sale of property; delivery of property.

(a) Sale before judgment. The officer may sell the property before judgment if it is perishable or likely to decline speedily in value. The court may order the officer to sell the property before judgment if the court finds that the interest of the parties will be served by sale. The officer shall keep safe the proceeds of the sale subject to further order of the court.

(b) Notice of sale. The officer shall set the date, time and place for sale and serve notice thereof on the defendant and on any third party named by the plaintiff or garnishee. Service shall be not later than the initial publication of notice of the sale. The officer shall publish notice of the date, time and place of sale as follows:

(b)(1) If the property is perishable or likely to decline speedily in value, the officer shall post written notice of the date, time and place of sale and a general description of the property to be sold (A) in the courthouse from which the writ was issued and (B) in at least three other public places in the county or city in which the sale is to take place. The officer shall post the notice for such time as the officer determines is reasonable, considering the character and condition of the property.

(b)(2) If the property is personal property, the officer shall post written notice of the date, time and place of sale and a general description of the property to be sold (A) in the courthouse from which the writ was issued and (B) in at least three other public places in the county or city in which the sale is to take place. The officer shall post the notice for at least seven days and publish the notice at least one time not less than one day preceding the sale in a newspaper of general circulation, if there is one, in the county in which the sale is to take place.

(b)(3) If the property is real property, the officer shall post written notice of the date, time and place of sale and a particular description of the property to be sold (A) on the property, (B) at the place of sale, (C) at the district courthouse of the county in which the real property is located, and (D) in at least three other public places in the county or city in which the real property is located. The officer shall post the notice for at least 21 days and publish the notice at least once a week for three successive weeks immediately preceding the sale in a newspaper of general circulation, if there is one, in the county in which the real property is located.

(c) Postponement. If the officer finds sufficient cause, the officer may postpone the sale. The officer shall declare the postponement at the time and place set for the sale. If the postponement is longer than 72 hours, notice of the rescheduled sale shall be given in the same manner as the original notice of sale.

(d) Conduct of sale. All sales shall be at auction to the highest bidder, Monday through Saturday, legal holidays excluded, between the hours of 9 o'clock a.m. and 8 o'clock p.m. at a place reasonably convenient to the public. Real property shall be sold at the district courthouse of the county in which the property is located. The officer shall sell only so much property as is necessary to satisfy the amount due. The officer shall not purchase property or be interested in any purchase. Property capable of delivery shall be within view of those who attend the sale. The property shall be sold in such parcels as are likely to bring the highest price. Severable lots of real property shall be sold separately. Real property claimed by a third party shall be sold separately if requested by the third party. The defendant may direct the order in which the property is sold.

(e) Accounting. Upon request of the defendant, the plaintiff shall deliver an accounting of the sale. The officer is entitled to recover the reasonable and necessary costs of seizing, transporting, storing and selling the property. The officer shall apply the property in the following order up to the amount due or the value of the property, whichever is less:

(e)(1) pay the reasonable and necessary costs of seizing, transporting, storing and selling the property;

(e)(2) deliver to the plaintiff the remaining proceeds of the sale;

(e)(3) deliver to the defendant the remaining property and proceeds of the sale.

(f) Purchaser refusing to pay. Every bid is an irrevocable offer. If a person refuses to pay the amount bid, the person is liable for the difference between the amount bid and the ultimate sale price. If a person refuses to pay the amount bid, the officer may:

(f)(1) offer the property to the next highest bidder;

(f)(2) renew bidding on the property; and

(f)(3) reject any other bid of such person.

(g) Property capable of delivery. Upon payment of the amount bid, the officer shall deliver to the purchaser of property capable of delivery the property and a certificate of sale stating that all right, title and interest which the defendant had in the property is transferred to the purchaser.

(h) Property not capable of delivery. Upon payment of the amount bid, the officer shall deliver to the purchaser of property not capable of delivery a certificate of sale describing the property and stating that all right, title and interest which the defendant had in the property is transferred to the purchaser. The officer shall serve a duplicate of the certificate on the person controlling the property.

(i) Real property. Upon payment of the amount bid, the officer shall deliver to the purchaser of real property a certificate of sale for each parcel containing:

(i)(1) a description of the real property;

(i)(2) the price paid;

(i)(3) a statement that all right, title, interest of the defendant in the property is conveyed to the purchaser; and

(i)(4) a statement whether the sale is subject to redemption.

The officer shall file a duplicate of the certificate in the office of the county recorder.

(j) The officer shall deliver the property as directed by the writ.

Rule 69C. Redemption of real property after sale.

(a) **Right of redemption.** Real property may be redeemed unless the estate is less than a leasehold of a two-years' unexpired term, in which case the sale is absolute.

(b) **Who may redeem.** Real property subject to redemption may be redeemed by the defendant or by a creditor having a lien on the property junior to that on which the property was sold or by their successors in interest. If the defendant redeems, the effect of the sale is terminated and the defendant is restored to the defendant's estate. If the property is redeemed by a creditor, any other creditor having a right of redemption may redeem.

(c) **How made.** To redeem, the redemptioner shall pay the amount required to the purchaser and shall serve on the purchaser:

(c)(1) a certified copy of the judgment or lien under which the redemptioner claims the right to redeem;

(c)(2) an assignment, properly acknowledged if necessary to establish the claim; and

(c)(3) an affidavit showing the amount due on the judgment or lien.

(d) **Time for redemption.** The property may be redeemed within 180 days after the sale.

(e) **Redemption price.** The price to redeem is the sale price plus six percent. The price for a subsequent redemption is the redemption price plus three percent. If the purchaser or redemptioner files with the county recorder notice of the amounts paid for taxes, assessments, insurance, maintenance, repair or any lien other than the lien on which the redemption was based, the price to redeem includes such amounts plus six percent for an initial redemption or three percent for a subsequent redemption. Failure to file notice of the amounts with the county recorder waives the right to claim such amounts.

(f) **Dispute regarding price.** If there is a dispute about the redemption price, the redemptioner shall within 21 days of the redemption pay into court the amount necessary for redemption less the amount in dispute and file and serve upon the purchaser a petition setting forth the items to which the redemptioner objects and the grounds for the objection. The petition is deemed denied. The court may permit discovery. The court shall conduct an evidentiary hearing and enter an order determining the redemption price. The redemptioner shall pay to the clerk any additional amount within seven days after the court's order.

(g) **Certificate of redemption.** The purchaser shall promptly execute and deliver to the redemptioner, or the redemptioner to a subsequent redemptioner, a certificate of redemption containing:

(g)(1) a detailed description of the real property;

(g)(2) the price paid;

(g)(3) a statement that all right, title, interest of the purchaser in the property is conveyed to the redemptioner; and

(g)(4) if known, whether the sale is subject to redemption.

The redemptioner or subsequent redemptioner shall file a duplicate of the certificate with the county recorder.

(h) **Conveyance.** The purchaser or last redemptioner is entitled to conveyance upon the expiration of the time permitted for redemption.

(i) **Rents and profits, request for accounting, extension of time for redemption.**

(i)(1) Subject to a superior claim, the purchaser is entitled to the rents of the property or the value of the use and occupation of the property from the time of sale until redemption. Subject to a superior claim, a redemptioner is entitled to the rents of the property or the value of the use and occupation of the property from the time of redemption until a subsequent redemption. Rents and profits are a credit upon the redemption price.

(i)(2) Upon written request served on the purchaser before the time for redemption expires, the purchaser shall prepare and serve on the requester a written and verified account of rents and profits. The period for redemption is extended to 7 days after the accounting is served. If the purchaser fails to serve the accounting within 30 days after the request, the redemptioner may, within 60 days after the request, bring an action to compel an accounting. The period for redemption is extended to 21 days after the order of the court.

(j) **Remedies.**

(j)(1) **For waste.** A purchaser or redemptioner may file a motion requesting the court to restrain the commission of waste on the property. After the estate has become absolute, the purchaser or redemptioner may file an action to recover damages for waste.

(j)(2) **Failure to obtain property.**

(j)(2)(A) A purchaser or redemptioner who fails to obtain the property or who is evicted from the property because the judgment against the defendant is reversed or discharged may file a motion for judgment against the plaintiff for the purchase price plus amounts paid for taxes, assessments, insurance, maintenance and repair plus interest.

(j)(2)(B) A purchaser or redemptioner who fails to obtain the property or who is evicted from the property because of an irregularity in the sale or because the property is exempt may file a motion for judgment against the plaintiff or the defendant for the purchase price plus amounts paid for taxes, assessments, insurance, maintenance and

repair plus interest. If the court enters judgment against the plaintiff, the court shall revive the plaintiff's judgment against defendant for the amount of the judgment against plaintiff.

(j)(2)(C) Interest on a judgment in favor of a purchaser or redemptioner is governed by Utah Code Section 15-1-4. Interest on a revived judgment in favor of the plaintiff against the defendant is at the rate of the original judgment. The effective date of a revived judgment in favor of plaintiff against defendant is the date of the original judgment except as to an intervening purchaser in good faith.

(k) **Contribution and reimbursement.** A defendant may claim contribution or reimbursement from other defendants by filing a motion.

Rule 70. Judgment for specific acts; vesting title.

If a judgment directs a party to execute a conveyance of land or to deliver deeds or other documents or to perform any other specific act and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court and the act when so done has like effect as if done by the party. On application of the party entitled to performance and upon order of the court, the clerk shall issue a writ of attachment or sequestration against the property of the disobedient party to compel obedience to the judgment. The court may also in proper cases adjudge the party in contempt. If real or personal property is within the state, the court in lieu of directing a conveyance thereof may enter a judgment divesting the title of any party and vesting it in others and such judgment has the effect of a conveyance executed in due form of law. When any order or judgment is for the delivery of possession, the party in whose favor it is entered is entitled to a writ of execution or assistance upon application to the clerk.

Rule 71. Process in behalf of and against persons not parties.

When an order is made in favor of a person who is not a party to the action, that person may enforce obedience to the order by the same process as a party. When obedience to an order may be lawfully enforced against a person who is not a party, that person is liable to the same process for enforcing obedience as a party.

Rule 72. Property bonds.

(a) A real property bond posted with the court shall:

(a)(1) be signed by all owners of record;

(a)(2) contain the complete legal description of the property and the property tax identification number;

(a)(3) be acknowledged before a notary public;

(a)(4) be accompanied by a copy of the document vesting title in the owners;

(a)(5) be accompanied by a copy of the property tax statement for the current or previous year;

(a)(6) be accompanied by a current title report, a current foreclosure report, or such other information as required by the court; and

(a)(7) be accompanied by a written statement from each lien holder stating:

(a)(7)(A) the current balance of the lien;

(a)(7)(B) the date the most recent payment was made;

(a)(7)(C) that the debt is not in default; and

(a)(7)(D) that the lien holder will notify the court if a default occurs or if a foreclosure process is commenced during the period the property bond is in effect.

(b) The bond is not effective until recorded with the county recorder of the county in which the property is located. Proof of recording shall be filed with the court.

(c) Upon exoneration of the bond, the property owner shall present a release of property bond to the court for approval.

Part IX Attorneys

Rule 73. Attorney fees.

(a) Time in which to claim. Attorney fees must be claimed by filing a motion for attorney fees no later than 14 days after the judgment is entered unless the party claims attorney fees in accordance with the schedule in paragraph (f) or in accordance with Utah Code Section 75-3-718 and no objection to the fee has been made.

(b) Content of motion. The motion must:

(b)(1) specify the judgment and the statute, rule, contract, or other basis entitling the party to the award;

(b)(2) disclose, if the court orders, the terms of any agreement about fees for the services for which the claim is made;

(b)(3) specify factors showing the reasonableness of the fees, if applicable;

(b)(4) specify the amount of attorney fees claimed and any amount previously awarded; and

(b)(5) disclose if the attorney fees are for services rendered to an assignee or a debt collector, the terms of any agreement for sharing the fee and a statement that the attorney will not share the fee in violation of Rule of Professional Conduct 5.4.

Comment [JM127]:

(c) Supporting affidavit. The motion must be supported by an affidavit or declaration that reasonably describes the time spent and work performed, including for each item of work the name, position (such as attorney, paralegal, administrative assistant, etc.) and hourly rate of the persons who performed the work.

Comment [JM128]:

(d) Liability for fees. The court may decide issues of liability for fees before receiving submissions on the value of services. If the court has established liability for fees, the party claiming them may file an affidavit and a proposed order. The court will enter an order for the claimed amount unless another party objects within 7 days after the affidavit and proposed order are filed.

(e) Fees claimed in complaint. If a party claims attorney fees under paragraph (f), the complaint must state the basis for attorney fees, state the amount of attorney fees allowed by the schedule, cite the law or attach a copy of the contract authorizing the award, and, if the attorney fees are for services rendered to an assignee or a debt collector, a statement that the attorney will not share the fee in violation of Rule of Professional Conduct 5.4.

Comment [JM129]:

(f) Schedule of fees. Attorney fees awarded under the schedule may be augmented only for considerable additional efforts in collecting or defending the judgment and only after further order of the court.

Amount of Damages, Exclusive of Costs, Attorney Fees and Post-Judgment Interest, Between	and:	Attorney Fees Allowed
0.00	1,500.00	250.00
1,500.01	2,000.00	325.00
2,000.01	2,500.00	400.00
2,500.01	3,000.00	475.00
3,000.01	3,500.00	550.00
3,500.01	4,000.00	625.00
4,000.01	4,500.00	700.00
4,500.01	or more	775.00

URCP 073

Advisory Committee Notes

The schedule does not limit the amount of a reasonable attorney fee if an affidavit is submitted. The schedule of attorney fees includes amounts for routine orders supplemental to the judgment and routine collection writs. For attorney fees for collection efforts beyond such routine steps, the lawyer should apply to the court under subsections (a) and (b).

Comment [JM130]:

Rule 74. Withdrawal of counsel.

(a) **Notice of withdrawal.** An attorney may withdraw from the case by filing with the court and serving on all parties a notice of withdrawal. The notice of withdrawal shall include the address of the attorney's client and a statement that no motion is pending and no hearing or trial has been set. If a motion is pending or a hearing or trial has been set, an attorney may not withdraw except upon motion and order of the court. The motion to withdraw shall describe the nature of any pending motion and the date and purpose of any scheduled hearing or trial.

Comment [JM131]:

Comment [JM132]:

Comment [JM133]:

(b) **Withdrawal of limited appearance.** An attorney who has entered a limited appearance under Rule 75 shall withdraw from the case upon the conclusion of the purpose or proceeding identified in the Notice of Limited Appearance:

Comment [JM134]:

(b)(1) by filing and serving a notice of withdrawal; or

(b)(2) if permitted by the judge, by orally announcing the withdrawal on the record in a proceeding.

An attorney who seeks to withdraw before the conclusion of the purpose or proceeding shall proceed under subdivision (a).

(c) **Notice to Appear or Appoint Counsel.** If an attorney withdraws other than under subdivision (b), dies, is suspended from the practice of law, is disbarred, or is removed from the case by the court, the opposing party shall serve a Notice to Appear or Appoint Counsel on the unrepresented party, informing the party of the responsibility to appear personally or appoint counsel. A copy of the Notice to Appear or Appoint Counsel must be filed with the court. No further proceedings shall be held in the case until 21 days after filing the Notice to Appear or Appoint Counsel unless the unrepresented party waives the time requirement or unless otherwise ordered by the court.

(d) **Substitution of counsel.** An attorney may replace the counsel of record by filing and serving a notice of substitution of counsel signed by former counsel, new counsel and the client. Court approval is not required if new counsel certifies in the notice of substitution that counsel will comply with the existing hearing schedule and deadlines.

Rule 75. Limited appearance.

(a) **Purposes.** An attorney acting pursuant to an agreement with a party for limited representation that complies with the Utah Rules of Professional Conduct may enter an appearance limited to one or more of the following purposes:

(a)(1) filing a pleading or other paper;

(a)(2) acting as counsel for a specific motion;

(a)(3) acting as counsel for a specific discovery procedure;

(a)(4) acting as counsel for a specific hearing, including a trial, pretrial conference, or an alternative dispute resolution proceeding; or

(a)(5) any other purpose with leave of the court.

(b) **Notice.** Before commencement of the limited appearance the attorney shall file a Notice of Limited Appearance signed by the attorney and the party or, if permitted by the judge, orally announce the limited appearance on the record in a proceeding. The Notice shall specifically describe the purpose and scope of the appearance and state that the party remains responsible for all matters not specifically described in the Notice. The clerk shall enter on the docket the attorney's name and a brief statement of the limited appearance. The Notice of Limited Appearance and all actions taken pursuant to it are subject to Rule 11.

(c) **Motion to clarify.** Any party may move to clarify the description of the purpose and scope of the limited appearance.

(d) **Party remains responsible.** A party on whose behalf an attorney enters a limited appearance remains responsible for all matters not specifically described in the Notice.

Comment [JM135]:
Comment [JM136]:
Comment [JM137]:
Comment [JM138]:
Comment [JM139]:
Comment [JM140]:
Comment [JM141]:
Comment [JM142]:
Comment [JM143]:
Comment [JM144]:
Comment [JM145]:
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Comment [JM149]:
Comment [JM150]:
Comment [JM151]:
Comment [JM152]:
Comment [JM153]:
Comment [JM154]:
Comment [JM155]:

Rule 76. Notice of contact information change.

An attorney and unrepresented party must promptly notify the court in writing of any change in that person's address, e-mail address, phone number or fax number.

Comment [JM156]:

Part X District courts and clerks

Rule 77. District courts and clerks.

(a) District courts always open. The district courts shall be deemed always open for the purpose of filing any pleading or other proper paper, of issuing and returning mesne and final process, and of making and directing all interlocutory motions, orders, and rules.

(b) Trials and hearings; orders in chambers. All trials upon the merits shall be conducted in open court and so far as convenient in a regular courtroom. All other acts or proceedings may be done or conducted by a judge in chambers without the attendance of the clerk or other court officials and at any place within the state, either within or without the district; but no hearing, other than one ex parte, shall be conducted outside the county wherein the matter is pending without the consent of all the parties to the action affected thereby.

(c) Clerk's office and orders by clerk. The clerk's office with the clerk or a deputy in attendance shall be open during business hours on all days except Saturdays, Sundays, and legal holidays. All motions and applications in the clerk's office for issuing mesne process, for issuing final process to enforce and execute judgments, for entering defaults or judgments by default, and for other proceedings which do not require allowance or order of the court are grantable of course by the clerk; but such action may be suspended or altered or rescinded by the court upon cause shown.

URCP 077

Advisory Committee Notes

Subdivision (d), deleted by the 1999 amendment, prohibited the sheriff, constable and clerk from charging a fee for a certified copy when the copy was furnished by the person requesting the copy. The subdivision was deleted on two grounds:

(1) The Supreme Court has no authority to regulate fees charged by a sheriff or constable.

(2) In order to certify a document as a true copy of an original, the clerk must either copy the original or compare, word-by-word, the copy to the original. The latter is much more difficult, time consuming and costly than the former, yet it was in the latter case that the fee was waived.

Part XI General Provisions

Rule 81. Applicability of rules in general.

(a) Special statutory proceedings. These rules shall apply to all special statutory proceedings, except insofar as such rules are by their nature clearly inapplicable. Where a statute provides for procedure by reference to any part of the former Code of Civil Procedure, such procedure shall be in accordance with these rules.

(b) Probate and guardianship. These rules shall not apply to proceedings in uncontested probate and guardianship matters, but shall apply to all proceedings subsequent to the joinder of issue therein, including the enforcement of any judgment or order entered.

(c) Application to small claims. These rules shall not apply to small claims proceedings except as expressly incorporated in the Small Claims Rules.

(d) On appeal from or review of a ruling or order of an administrative board or agency. These rules shall apply to the practice and procedure in appealing from or obtaining a review of any order, ruling or other action of an administrative board or agency, except insofar as the specific statutory procedure in connection with any such appeal or review is in conflict or inconsistent with these rules.

(e) Application in criminal proceedings. These rules of procedure shall also govern in any aspect of criminal proceedings where there is no other applicable statute or rule, provided, that any rule so applied does not conflict with any statutory or constitutional requirement.

Rule 82. Jurisdiction and venue unaffected.

These rules shall not be construed to extend or limit the jurisdiction of the courts of this state or the venue of actions therein.

Rule 83. Vexatious litigants.

(a) Definitions.

(a)(1) The court may find a person to be a "vexatious litigant" if the person, including an attorney acting pro se, without legal representation, does any of the following:

Comment [JM157]:

(a)(1)(A) In the immediately preceding seven years, the person has filed at least five claims for relief, other than small claims actions, that have been finally determined against the person, and the person does not have within that time at least two claims, other than small claims actions, that have been finally determined in that person’s favor.

(a)(1)(B) After a claim for relief or an issue of fact or law in the claim has been finally determined, the person two or more additional times re-litigates or attempts to re-litigate the claim, the issue of fact or law, or the validity of the determination against the same party in whose favor the claim or issue was determined.

(a)(1)(C) In any action, the person three or more times does any one or any combination of the following:

(a)(1)(C)(i) files unmeritorious pleadings or other papers,

(a)(1)(C)(ii) files pleadings or other papers that contain redundant, immaterial, impertinent or scandalous matter,

(a)(1)(C)(iii) conducts unnecessary discovery or discovery that is not proportional to what is at stake in the litigation, or

(a)(1)(C)(iv) engages in tactics that are frivolous or solely for the purpose of harassment or delay.

(a)(1)(D) The person purports to represent or to use the procedures of a court other than a court of the United States, a court created by the Constitution of the United States or by Congress under the authority of the Constitution of the United States, a tribal court recognized by the United States, a court created by a state or territory of the United States, or a court created by a foreign nation recognized by the United States.

(a)(2) "Claim" and "claim for relief" mean a petition, complaint, counterclaim, cross claim or third-party complaint.

(b) Vexatious litigant orders. The court may, on its own motion or on the motion of any party, enter an order requiring a vexatious litigant to:

(b)(1) furnish security to assure payment of the moving party's reasonable expenses, costs and, if authorized, attorney fees incurred in a pending action;

(b)(2) obtain legal counsel before proceeding in a pending action;

Comment [JM158]:

(b)(3) obtain legal counsel before filing any future claim for relief;

Comment [JM159]:

(b)(4) abide by a prefiling order requiring the vexatious litigant to obtain leave of the court before filing any paper, pleading, or motion in a pending action;

(b)(5) abide by a prefiling order requiring the vexatious litigant to obtain leave of the court before filing any future claim for relief; or

(b)(6) take any other action reasonably necessary to curb the vexatious litigant's abusive conduct.

(c) Necessary findings and security.

(c)(1) Before entering an order under subparagraph (b), the court must find by clear and convincing evidence that:

(c)(1)(A) the party subject to the order is a vexatious litigant; and

(c)(1)(B) there is no reasonable probability that the vexatious litigant will prevail on the claim.

(c)(2) A preliminary finding that there is no reasonable probability that the vexatious litigant will prevail is not a decision on the ultimate merits of the vexatious litigant's claim.

(c)(3) The court shall identify the amount of the security and the time within which it is to be furnished. If the security is not furnished as ordered, the court shall dismiss the vexatious litigant's claim with prejudice.

(d) Prefiling orders in a pending action.

(d)(1) If a vexatious litigant is subject to a prefiling order in a pending action requiring leave of the court to file any paper, pleading, or motion, the vexatious litigant shall submit any proposed paper, pleading, or motion to the judge assigned to the case and must:

(d)(1)(A) demonstrate that the paper, pleading, or motion is based on a good faith dispute of the facts;

(d)(1)(B) demonstrate that the paper, pleading, or motion is warranted under existing law or a good faith argument for the extension, modification, or reversal of existing law;

(d)(1)(C) include an oath, affirmation or declaration under criminal penalty that the proposed paper, pleading or motion is not filed for the purpose of harassment or delay and contains no redundant, immaterial, impertinent or scandalous matter;

(d)(2) A prefiling order in a pending action shall be effective until a final determination of the action on appeal, unless otherwise ordered by the court.

(d)(3) After a prefiling order has been effective in a pending action for one year, the person subject to the prefiling order may move to have the order vacated. The motion shall be decided by the judge to whom the pending action is assigned. In granting the motion, the judge may impose any other vexatious litigant orders permitted in paragraph (b).

(d)(4) All papers, pleadings, and motions filed by a vexatious litigant subject to a prefiling order under this paragraph (d) shall include a judicial order authorizing the filing and any required security. If the order or security is not included, the clerk or court shall reject the paper, pleading, or motion.

(e) Prefiling orders as to future claims.

(e)(1) A vexatious litigant subject to a prefiling order restricting the filing of future claims shall, before filing, obtain an order authorizing the vexatious litigant to file the claim. The presiding judge of the judicial district in which the claim is to be filed shall decide the application. In granting an application, the presiding judge may impose in the pending action any of the vexatious litigant orders permitted under paragraph (b).

(e)(2) To obtain an order under paragraph (e)(1), the vexatious litigant's application must:

(e)(2)(A) demonstrate that the claim is based on a good faith dispute of the facts;

(e)(2)(B) demonstrate that the claim is warranted under existing law or a good faith argument for the extension, modification, or reversal of existing law;

(e)(2)(C) include an oath, affirmation, or declaration under criminal penalty that the proposed claim is not filed for the purpose of harassment or delay and contains no redundant, immaterial, impertinent or scandalous matter;

(e)(2)(D) include a copy of the proposed petition, complaint, counterclaim, cross-claim, or third party complaint; and

(e)(2)(E) include the court name and case number of all claims that the applicant has filed against each party within the preceding seven years and the disposition of each claim.

(e)(3) A prefiling order limiting the filing of future claims is effective indefinitely unless the court orders a shorter period.

(e)(4) After five years a person subject to a pre-filing order limiting the filing of future claims may file a motion to vacate the order. The motion shall be filed in the same judicial district from which the order entered and be decided by the presiding judge of that district.

(e)(5) A claim filed by a vexatious litigant subject to a prefiling order under this paragraph (e) shall include an order authorizing the filing and any required security. If the order or security is not included, the clerk of court shall reject the filing.

(f) Notice of vexatious litigant orders.

(f)(1) The clerks of court shall notify the Administrative Office of the Courts that a pre-filing order has been entered or vacated.

(f)(2) The Administrative Office of the Courts shall disseminate to the clerks of court a list of vexatious litigants subject to a prefiling order.

(g) Statute of limitations or time for filing tolled. Any applicable statute of limitations or time in which the person is required to take any action is tolled until 7 days after notice of the decision on the motion or application for authorization to file.

(h) Contempt sanctions. Disobedience by a vexatious litigant of a pre-filing order may be punished as contempt of court.

(i) Other authority. This rule does not affect the authority of the court under other statutes and rules or the inherent authority of the court.

Rule 85. Title.

These rules may be known and cited as the Utah Rules of Civil Procedure, or abbreviated U.R.C.P.

Part XII Family Law

Rule 100. Coordination of cases pending in district court and juvenile court.

(a) Notice to the court. In a case in which child custody, child support or parent time is an issue, all parties have a continuing duty to notify the court:

(a)(1) of a case in which a party or the party's child is a party to or the subject of a petition or order involving child custody, child support or parent time;

(a)(2) of a criminal or delinquency case in which a party or the party's child is a defendant or respondent;

(a)(3) of a protective order case involving a party regardless whether a child of the party is involved.

The notice shall be filed with a party's initial pleading or as soon as practicable after the party becomes aware of the other case. The notice shall include the case caption, file number and name of the judge or commissioner in the other case.

(b) Communication among judges and commissioners. The judge or commissioner assigned to a case in which child custody, child support or parent time is an issue shall communicate and consult with any other judge or commissioner assigned to any other pending case involving the same issues and the same parties or their children. The objective of the communication is to consider the feasibility of consolidating the cases before one judge or commissioner or of coordinating hearings and orders.

(c) Participation of parties. The judges and commissioners may allow the parties to participate in the communication. If the parties have not participated in the communication, the parties shall be given notice and the opportunity to present facts and arguments before a decision to consolidate the cases.

(d) Consolidation of cases.

(d)(1) The court may consolidate cases within a county under Rule 42.

(d)(2) The court may transfer a case to the court of another county with venue or to the court of any county in accordance with Utah Code Section 78B-3-309.

(d)(3) If the district court and juvenile court have concurrent jurisdiction over cases, either court may transfer a case to the other court upon the agreement of the judges or commissioners assigned to the cases.

(e) Judicial reassignment. A judge may hear and determine a case in another court or district upon assignment in accordance with CJA Rule 3-108(3).

Rule 101. Motion practice before court commissioners.

(a) Written motion required. An application to a court commissioner for an order must be by motion which, unless made during a hearing, must be made in accordance with this rule. A motion must be in writing and state succinctly and with particularity the relief sought and the grounds for the relief sought. Any evidence necessary to support the moving party's position must be presented by way of one or more affidavits or declarations or other admissible evidence. The moving party may also file a supporting memorandum.

(b) Time to file and serve. The moving party must file the motion and any supporting papers with the clerk of the court and obtain a hearing date and time. The moving party must serve the responding party with the motion and supporting papers, together with notice of the hearing at least 28 days before the hearing. If service is more than 90 days after the date of entry of the most recent appealable order, service may not be made through counsel.

Comment [JM160]:

(c) Response. Any other party may file a response, consisting of any responsive memorandum, affidavit(s) or declaration(s). The response must be filed and served on the moving party at least 14 days before the hearing.

(d) Reply. The moving party may file a reply, consisting of any reply memorandum, affidavit(s) or declaration(s). The reply must be filed and served on the responding party at least

7 days before the hearing. The contents of the reply must be limited to rebuttal of new matters raised in the response to the motion.

(e) Counter motion. Responding to a motion is not sufficient to grant relief to the responding party. A responding party may request affirmative relief by way of a counter motion. A counter motion need not be limited to the subject matter of the original motion. All of the provisions of this rule apply to counter motions except that a counter motion must be filed and served with the response. Any response to the counter motion must be filed and served no later than the reply to the motion. Any reply to the response to the counter motion must be filed and served at least 3 business days before the hearing. The reply must be served in a manner that will cause the reply to be actually received by the party responding to the counter motion (i.e. hand-delivery, fax or other electronic delivery as allowed by rule or agreed by the parties) at least 3 business days before the hearing. A separate notice of hearing on counter motions is not required.

(f) Necessary documentation. Motions and responses regarding temporary orders concerning alimony, child support, division of debts, possession or disposition of assets, or litigation expenses, must be accompanied by verified financial declarations with documentary income verification attached as exhibits, unless financial declarations and documentation are already in the court's file and remain current. Attachments for motions and responses regarding child support and child custody must also include a child support worksheet.

(g) No other papers. No moving or responding papers other than those specified in this rule are permitted.

(h) Exhibits; objection to failure to attach.

(h)(1) Except as provided in paragraph (h)(3) of this rule, any documents such as tax returns, bank statements, receipts, photographs, correspondence, calendars, medical records, forms, or photographs must be supplied to the court as exhibits to one or more affidavits (as appropriate) establishing the necessary foundational requirements. Copies of court papers such as decrees, orders, minute entries, motions, or affidavits, already in the court's case file, may not be filed as exhibits. Court papers from cases other than that before the court, such as protective orders, prior divorce decrees, criminal orders, information or dockets, and juvenile court orders (to the extent the law does not prohibit their filing), may be submitted as exhibits.

(h)(2) If papers or exhibits referred to in a motion or necessary to support the moving party’s position are not served with the motion, the responding party may file and serve an objection to the defect with the response. If papers or exhibits referred to in the response or necessary to support the responding party’s position are not served with the response, the moving party may file and serve an objection to the defect with the reply. The defect must be cured within 2 business days after notice of the defect or at least 3 business days before the hearing, whichever is earlier.

(h)(3) Voluminous exhibits which cannot conveniently be examined in court may not be filed as exhibits, but the contents of such documents may be presented in the form of a summary, chart or calculation under Rule 1006 of the Utah Rules of Evidence. Unless they have been previously supplied through discovery or otherwise and are readily identifiable, copies of any such voluminous documents must be supplied to the other parties at the time of

the filing of the summary, chart or calculation. The originals or duplicates of the documents must be available at the hearing for examination by the parties and the commissioner. Collections of documents, such as bank statements, checks, receipts, medical records, photographs, e-mails, calendars and journal entries, that collectively exceed ten pages in length must be presented in summary form. Individual documents with specific legal significance, such as tax returns, appraisals, financial statements and reports prepared by an accountant, wills, trust documents, contracts, or settlement agreements must be submitted in their entirety.

(i) Length. Initial and responding memoranda may not exceed 10 pages of argument without leave of the court. Reply memoranda may not exceed 5 pages of argument without leave of the court. The total number of pages submitted to the court by each party may not exceed 25 pages, including affidavits, attachments and summaries, but excluding financial declarations and income verification. The court commissioner may permit the party to file an over-length memorandum upon ex parte application and showing of good cause.

(j) Late filings; sanctions. If a party files or serves papers beyond the time required in this rule, the court commissioner may hold or continue the hearing, reject the papers, impose costs and attorney fees caused by the failure and by the continuance, and impose other sanctions as appropriate.

(k) Limit on order to show cause. An application to the court for an order to show cause may be made only for enforcement of an existing order or for sanctions for violating an existing order. An application for an order to show cause must be supported by affidavit or other evidence sufficient to show cause to believe a party has violated a court order.

(l) Hearings.

(l)(1) The court commissioner may not hold a hearing on a motion for temporary orders before the deadline for an appearance by the respondent under Rule 12.

(l)(2) Unless the court commissioner specifically requires otherwise, when the statement of a person is set forth in an affidavit, declaration or other document accepted by the commissioner, that person need not be present at the hearing. The statements of any person not set forth in an affidavit, declaration or other acceptable document may not be presented by proffer unless the person is present at the hearing and the commissioner finds that fairness requires its admission.

(m) Motions to judge. The following motions must be to the judge to whom the case is assigned: motion for alternative service; motion to waive 90-day waiting period; motion to waive divorce education class; motion for leave to withdraw after a case has been certified as ready for trial; and motions in limine. A court may provide that other motions be considered by the judge.

(n) Objection to court commissioner's recommendation. A recommendation of a court commissioner is the order of the court until modified by the court. A party may object to the recommendation by filing an objection under Rule 108.

Rule 102. Motion and order for payment of costs and fees.

(a) In an action under Utah Code Section 30-3-3(1), either party may move the court for an order requiring the other party to provide costs, attorney fees, and witness fees, including expert

witness fees, to enable the moving party to prosecute or defend the action. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amount requested. The motion may include a request for costs or fees incurred:

(a)(1) prior to the commencement of the action;

(a)(2) during the action; or

(a)(3) after entry of judgment for the costs of enforcement of the judgment.

(b) The court may grant the motion if the court finds that:

(b)(1) the moving party lacks the financial resources to pay the costs and fees;

(b)(2) the non moving party has the financial resources to pay the costs and fees;

(b)(3) the costs and fees are necessary for the proper prosecution or defense of the action; and

(b)(4) the amount of the costs and fees are reasonable.

(c) The court may deny the motion or award limited payment of costs and fees if the court finds that one or more of the grounds in paragraph (b) is missing or enters in the record the reason for denial of the motion.

(d) The order shall specify the costs and fees to be paid within 30 days of entry of the order or the court shall enter findings of fact that a delay in payment will not create an undue hardship to the moving party and will not impair the ability of the moving party to prosecute or defend the action. The order shall specify the amount to be paid. The court may order the amount to be paid in a lump sum or in periodic payments. The court may order the fees to be paid to the moving party or to the provider of the services for which the fees are awarded.

Rule 104. Divorce decree upon affidavit.

A party in a divorce case may apply for entry of a decree without a hearing in cases in which the opposing party fails to make a timely appearance after service of process or other appropriate notice, waives notice, stipulates to the withdrawal of the answer, or stipulates to the entry of the decree or entry of default. An affidavit in support of the decree shall accompany the application. The affidavit shall contain evidence sufficient to support necessary findings of fact and a final judgment.

Rule 105. Shortening 90 day waiting period in domestic matters.

A motion for a hearing less than 90 days from the date the petition was filed shall be accompanied by an affidavit setting forth the date on which the petition for divorce was filed and the facts constituting extraordinary circumstances.

Rule 106. Modification of final domestic relations order.

(a) Commencement; service; answer. Except as provided in Utah Code Section 30-3-37, proceedings to modify a divorce decree or other final domestic relations order shall be commenced by filing a petition to modify. Service of the petition, or motion under Section 30-3-

37, and summons upon the opposing party shall be in accordance with Rule 4. The responding party shall serve the answer within the time permitted by Rule 12.

(b) Temporary orders.

(b)(1) The judgment, order or decree sought to be modified remains in effect during the pendency of the petition. The court may make the modification retroactive to the date on which the petition was served. During the pendency of a petition to modify, the court:

(b)(1)(A) may order a temporary modification of child support as part of a temporary modification of custody or parent-time; and

(b)(1)(B) may order a temporary modification of custody or parent-time to address an immediate and irreparable harm or to ratify changes made by the parties, provided that the modification serves the best interests of the child.

(b)(2) Nothing in this rule limits the court's authority to enter temporary orders under Utah Code Section 30-3-3.

Rule 107. Decree of adoption; Petition to open adoption records.

(a) An adoptive parent or adult adoptee may obtain a certified copy of the adoption decree upon request and presentation of positive identification.

(b) A petition to open the court's adoption records shall identify the type of information sought and shall state good cause for access, and, in the following circumstances, shall provide the information indicated below:

(b)(1) If the petition seeks health, genetic or social information, the petition shall state why the health history, genetic history or social history of the Bureau of Vital Statistics is insufficient for the purpose.

(b)(2) If the petition seeks identifying information, the petition shall state why the voluntary adoption registry of the Bureau of Vital Statistics is insufficient for the purpose.

(c) The court may order the petition served on any person having an interest in the petition, including the placement agency, the attorney handling a private placement, or the birth parents. If the court orders the petition served on any person whose identity is confidential, the court shall proceed in a manner that gives that person notice and the opportunity to be heard without revealing that person's identity or location.

Comment [JM161]:

(d) The court shall determine whether the petitioner has shown good cause and whether the reasons for disclosure outweigh the reasons for non-disclosure.

(e) If the court grants the petition, the court shall permit the petitioner to inspect and copy only those records that serve the purpose of the petition. The order shall expressly permit the petitioner to inspect and copy such records.

(f) The clerk of the court shall reseal the records after the petitioner has inspected and copied them.

Rule 108. Objection to court commissioner's recommendation.

(a) A recommendation of a court commissioner is the order of the court until modified by the court. A party may file a written objection to the recommendation within 14 days after the recommendation is made in open court or, if the court commissioner takes the matter under advisement, within 14 days after the minute entry of the recommendation is served. A judge's counter-signature on the commissioner's recommendation does not affect the review of an objection.

(b) The objection must identify succinctly and with particularity the findings of fact, the conclusions of law, or the part of the recommendation to which the objection is made and state the relief sought. The memorandum in support of the objection must explain succinctly and with particularity why the findings, conclusions, or recommendation are incorrect. The time for filing, length and content of memoranda, affidavits, and request to submit for decision are as stated for motions in Rule 7.

(c) If there has been a substantial change of circumstances since the commissioner's recommendation, the judge may, in the interests of judicial economy, consider new evidence. Otherwise, any evidence, whether by proffer, testimony or exhibit, not presented to the commissioner shall not be presented to the judge.

(d)(1) The judge may hold a hearing on any objection.

(d)(2) If the hearing before the commissioner was held under Utah Code Title 62A, Chapter 15, Part 6, Utah State Hospital and Other Mental Health Facilities, Utah Code Title 78B, Chapter 7, Protective Orders, or on an order to show cause for the enforcement of a judgment, any party has the right, upon request, to present testimony and other evidence on genuine issues of material fact.

(d)(3) If the hearing before the commissioner was in a domestic relations matter other than a cohabitant abuse protective order, any party has the right, upon request:

(d)(3)(A) to present testimony and other evidence on genuine issues of material fact relevant to custody; and

(d)(3)(B) to a hearing at which the judge may require testimony or proffers of testimony on genuine issues of material fact relevant to issues other than custody.

(e) If a party does not request a hearing, the judge may hold a hearing or review the record of evidence, whether by proffer, testimony or exhibit, before the commissioner.

(f) The judge will make independent findings of fact and conclusions of law based on the evidence, whether by proffer, testimony or exhibit, presented to the judge, or, if there was no hearing before the judge, based on the evidence presented to the commissioner.

UTAH RULES OF EVIDENCE – LAWYER SEARCH

Rule 410. Pleas, Plea Discussions, and Related Statements

(a) Prohibited Uses. In a civil or criminal case, evidence of the following is not admissible against the defendant who made the plea or participated in the plea discussions:

(1) a guilty plea that was later withdrawn;

(2) a nolo contendere plea;

(3) a statement made during a proceeding on either of those pleas under Federal Rule of Criminal Procedure 11 or a comparable state procedure; or

(4) a statement made during plea discussions with an attorney for the prosecuting authority if the discussions did not result in a guilty plea or they resulted in a later-withdrawn guilty plea.

ADVISORY COMMITTEE NOTE

This rule is the federal rule, verbatim. There was no comparable rule in the Utah Rules of Evidence (1971). However, withdrawn pleas of guilty have been ruled inadmissible by the Utah Supreme Court. State v. Jensen, 74 Utah 299, 279 P. 506 (1929).

Rule 410(4) does not cover plea negotiations with public officials other than prosecuting attorneys. There are still constitutional limitations on the use of statements obtained from suspects. See Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966); Massiah v. United States, 377 U.S. 201, 84 S. Ct. 1199, 12 L. Ed. 2d 246 (1964).

Rule 501. Privilege in General

(3) The statutory privileges most often invoked are the traditional ones dealt with in other sections of Article V. The other statutory privileges are relied on rarely, if at all, so that their perpetuation will have almost no impact on court proceedings. If problems involving these more exotic privileges do arise, that is the time for the Court to deal with them.

Rule 501 acknowledges the existence of other privileges created by federal and state constitutions, such as the exclusion of the fruits of unreasonable searches and seizures, of coerced confessions, and of compulsory self-incrimination.

Rule 501 also accepts all pre-existing statutory privileges, except those inconsistent with these rules. In particular, Utah Code Ann. § 78-24-8, insofar as it defines privileges relating to spouses, attorneys, clergy, and physicians, § 58-25a-8, with respect to psychologists, and § 58-35-10, with respect to social workers, are made ineffectual by the adoption of rules specifically redefining those privileges.

The Supreme Court has the power to create rules of privilege formally. It can also create or reshape privileges by its decisions in concrete cases. However, the language of 501, that there are no non-rule, non-statutory privileges, serves as a declaration by the Court that it intends to operate normally through formal rule-making procedures.

The Committee made an effort to identify all the statutes in effect in 1989 that specifically provided for a privilege. Other than privileges dealt with in other rules, they are listed below. Statutes that merely imply the existence of a privilege are also included, marked by asterisks. Even though the Committee's own search was augmented by Judge Michael L. Hutchings' article "Privileges in Utah Law," Utah Bar Journal 2:3:34 (Mar. 1989), there may be still other such provisions.

Rule 504. Lawyer - Client.

(a) Definitions.

(1) "Client" means a person, public officer, corporation, association, or other organization or entity, either public or private, who is rendered professional legal services by a lawyer or who consults a lawyer with a view to obtaining professional legal services.

(2) "Lawyer" means a person authorized, or reasonably believed by the client to be authorized, to practice law in any state or nation.

(3) "Representative of the lawyer" means a person or entity employed to assist the lawyer in a rendition of professional legal services.

(4) "Representative of the client" means a person or entity having authority:

(A) to obtain professional legal services;

(B) to act on advice rendered pursuant to legal services on behalf of the client; or

(C) person or entity specifically authorized to communicate with the lawyer concerning a legal matter.

(5) "Communication" includes:

(A) advice given by the lawyer in the course of representing the client; and

(B) disclosures of the client and the client's representatives to the lawyer or the lawyer's representatives incidental to the professional relationship.

(6) "Confidential communication" means a communication not intended to be disclosed to third persons other than those to whom disclosure is in furtherance of rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.

(b) Statement of the Privilege. A client has a privilege to refuse to disclose, and to prevent any other person from disclosing, confidential communications:

(1) made for the purpose of facilitating the rendition of professional legal services to the client; and

(2) the communications were between:

(A) the client and the client's representatives, lawyers, lawyer's representatives, and lawyers representing others in matters of common interest; or

(B) among the client's representatives, lawyers, lawyer's representatives, and lawyers representing others in matters of common interest.

(c) Who May Claim the Privilege. The privilege may be claimed by:

(1) the client;

(2) the client's guardian or conservator;

(3) the personal representative of a client who is deceased;

(4) the successor, trustee, or similar representative of a client that was a corporation, association, or other organization, whether or not in existence; and

(5) the lawyer on behalf of the client.

(d) Exceptions to the Privilege. Privilege does not apply in the following circumstances:

(1) Furtherance of the Crime or Fraud. If the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud;

(2) Claimants through Same Deceased Client. As to a communication relevant to an issue between parties who claim through the same deceased client, regardless of whether the claims are by testate or intestate succession or by inter vivos transaction;

(3) Breach of Duty by Lawyer or Client. As to a communication relevant to an issue of breach of duty by the lawyer to the client;

(4) Document Attested by Lawyer. As to a communication relevant to an issue concerning a document to which the lawyer was an attesting witness; or

(5) Joint Clients. As to the communication relevant to a matter of common interest between two or more clients if the communication was made by any of them to a lawyer retained or consulted in common, when offered in an action between any of the clients.

2011 Advisory Committee Note. – The language of this rule has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

ADVISORY COMMITTEE NOTE

Rule 504 is based upon proposed Rule 503 of the United States Supreme Court. Rule 504 would replace and supersede Utah Code Ann. § 78-24-8(2) and is intended to be consistent with the ethical obligations of confidentiality set forth in Rule 1.6 of the Utah Rules of Professional Conduct.

The Committee revised the proposed rule of the United States Supreme Court to address the issues raised in Upjohn Co. v. United States, 449 U.S. 383, 101 S. Ct. 677 (1981), as to when communications involving representatives of a corporation are protected by the privilege. The Committee rejected limiting the privilege to members of the "control group" and added as subparagraph (a)(4) a definition for "representative of the client" that includes within the privilege disclosures not only of the client and the client's formal spokesperson, but also employees who are specifically authorized to communicate to the lawyer concerning a legal matter. The word "specifically" is intended to preclude a general authorization from the client for the client's employees to communicate under the cloak of the privilege, but is intended to allow the client, as related to a specific matter, to authorize the client's employees as "representatives" to disclose information to the lawyer as to that specific matter with confidence that the disclosures will remain within the lawyer-client privilege.

A "representative" of the lawyer need not be directly paid by the lawyer as long as the representative meets the requirement of being engaged to assist the lawyer in providing legal services. Thus, a person paid directly by the client but working under the control and direction of the lawyer for the purposes of providing legal services satisfies the requirements of subparagraph (a)(3). Similarly, a representative of the client who may be an independent contractor, such as an independent accountant, consultant or person providing other services, is a representative of the client for purposes of subparagraph (a)(5) if such person has been engaged to provide services reasonably related to the subject matter of the legal services or whose service is necessary to provide such service.

The client is entitled not only to refuse to disclose the confidential communication, but also to prevent disclosure by the lawyer or others who were involved in the conference or learned, without the knowledge of the client, the content of the confidential communication. Problems of waiver are dealt with by Rule 507.

Under subparagraph (b) communications among the various people involved in the legal matter, relating to the providing of legal services, are all privileged, except for communications between clients. Those are privileged only if they are part of a conference with others involved in legal services.

Subparagraph (c) allows the "successor, trustee, or similar representative of a corporation, association, or other organization, whether or not in existence" to claim the privilege. Where there is a dispute as to which of several persons has claims to the rights of a previously existing entity, the court will be required to determine from the facts which entity's claim is most consistent with the purposes of this rule.

The Committee considered and rejected an exception to the rule for communications in furtherance of a tort. Disallowing the privilege where the lawyer's services are sought in furtherance of a crime or fraud is consistent with the trend in other states. The Committee considered extending the exception to include "intentional torts," but concluded that because of the broad range of conduct that may be found to be an intentional tort, such an exception would create undesirable ambiguities and uncertainties as to when the privilege applies.

The Committee felt that exceptions to the privilege should be specifically enumerated, and further endorsed the concept that in the area of exceptions, the rule should simply state that no privilege existed, rather than expressing the exception in terms of a "waiver" of the privilege. The Committee wanted to avoid any possible clashes with the common law concepts of "waiver."

Rule 505. Government Informer.

(a) Definitions.
(3) "Law enforcement officer" includes
(A) peace officers;
(B) prosecutors;
(C) members of a legislative committee or its staff conducting an investigation; and
(D) members of a regulatory agency or its staff conducting an investigation.

(b) Statement of the Privilege. The government has a privilege to refuse to disclose the identity of an informer.

(c) Who May Claim the Privilege. The privilege may be claimed by counsel for the government or in the absence of counsel by another appropriate representative. The privilege may be claimed regardless of whether the information was furnished to an officer of the government claiming the privilege.

(e) Testimony on Merits.

(1) In General. If it appears from the evidence in the case or from another showing by a party that an informer may be able to give testimony necessary to a fair determination of the issue of guilt or innocence in a criminal case or of a material issue on the merits of a civil case, whether or not the government is a party, and the government invokes a privilege, the judge may give the government an opportunity to show in camera facts relevant to determining whether the informer can, in fact, supply the testimony. The judge may make such orders regarding the procedures to be followed as are consistent with the spirit and purpose of this rule.

(2) Effect of Invoking Privilege. If the judge finds there is reasonable probability that the informer can give the testimony, and the government elects not to disclose the informer's identity, the judge, on motion of the defendant in a criminal case, shall dismiss the charges to which the testimony would relate. The judge may dismiss the charges on the judge's own motion. In a civil case, the judge may make any order that justice requires.

(3) Record for Appeal. Evidence submitted to the judge may be sealed and preserved to be made available to the appellate court in the event of an appeal, and the contents shall not otherwise be revealed without consent of the government.

(4) Right to be Present. All counsel and parties shall be permitted to be present at every stage of the proceedings under this subparagraph, except a showing in camera at which no counsel or party shall be permitted to be present.

(f) Legality of Obtained Evidence.

(2) Process of Disclosure. The judge shall, at the request of the government, direct that the disclosure be made in camera. All counsel and parties concerned with the issue of legality shall be permitted to be present at every stage of the proceeding under this subparagraph, except at a disclosure in camera, at which no counsel or parties shall be permitted to be present. If disclosure of the identity of the informer is made in camera, the record thereof shall be sealed and preserved to be made available to the appellate court in the event of an appeal, and the contents shall not otherwise be revealed without consent of the government.

ADVISORY COMMITTEE NOTE

Subparagraph (c) allows the privilege to be claimed by counsel for the government or, in the absence of counsel, allows the court to determine who is "another appropriate representative" of the government for the purposes of claiming the privilege. Subparagraph (d) makes it clear that the privilege is lost if (1) the informer appears as a witness for the government, (2) the informer discloses his or her identity to the party opposed to the privilege, or (3) the government discloses the informer's identity to the party opposed to the privilege.

Rule 510. Miscellaneous Matters.

(c) Comment or Inference Not Permitted. The claim of privilege, whether in the present proceeding or upon a prior occasion, is not a proper subject of comment by judge or counsel. No inference may be drawn from any claim of privilege.

ADVISORY COMMITTEE NOTE
Subparagraph (c).

(1) Allowing inferences to be drawn from the invocation of a privilege might undermine the interest or relationship the privilege was designed to protect.

(2) For the same reason, the invocation of a privilege should not be revealed to the jury. Doing so might also result in unwarranted emphasis on the exclusion of the privileged matter.

(3) Whether to seek an instruction is left to the judgment of counsel for the party against whom the inference might be drawn. If requested, such an instruction is a matter of right.

(4) The provisions of subparagraph (c)(4) are not intended to alter the common law rules as to inferences that may be drawn or as to when a party may comment or be entitled to a jury instruction when the privilege has been invoked.

Rule 612. Writing Used to Refresh a Witness's Memory

(c) Failure to Produce or Deliver the Writing. If a writing is not produced or is not delivered as ordered, the court may issue any appropriate order. But if the prosecution does not comply in a criminal case, the court must strike the witness's testimony or — if justice so requires — declare a mistrial.

Rule 702. Testimony by Experts

Section (b) adopts the three general categories of inquiry for expert testimony contained in the federal rule. Unlike the federal rule, however, the Utah rule notes that the proponent of the testimony is required to make only a "threshold" showing. That "threshold" requires only a basic foundational showing of indicia of reliability for the testimony to be admissible, not that the opinion is indisputably correct. When a trial court, applying this amendment, rules that an expert's testimony is reliable, this does not necessarily mean that contradictory expert testimony is unreliable. The amendment is broad enough to permit testimony that is the product of competing principles or methods in the same field of expertise. Contrary and inconsistent opinions may simultaneously meet the threshold; it is for the factfinder to reconcile - or choose between - the different opinions. As such, this amendment is not intended to provide an excuse for an automatic challenge to the testimony of every expert, and it is not contemplated that evidentiary hearings will be routinely required in order for the trial judge to fulfill his role as a rationally skeptical gatekeeper. In the typical case, admissibility under the rule may be determined based on affidavits, expert reports prepared pursuant to Utah R.Civ.P. 26, deposition testimony and memoranda of counsel.