

AGENDA
Paralegal Practitioner Steering Committee
 October 18, 2018
 12:00 p.m. – 1:30 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 August 16, 2018 meeting minutes	Tab 1	Justice Himonas
DISCUSSION – Article 9 Client Protection. Reserved for LPPs. Need for amendment to Article 9 for attorneys to include LPPs		Cathy Dupont and Elizabeth Wright
DISCUSSION – List of Rules of Civil Procedure that need to include LPPs. Discussion of LPPs and rules related to discovery	Tab 2	Cathy Dupont
DISCUSSION – Rules of Evidence and LPPs URE 504	Tab 3	Justice Himonas and Cathy Dupont
DISCUSSION – Media plan for LPP Program		Geoff Fattah
UPDATE – LPP test development and the memorandum of understanding with Utah Valley University		Carrie Boren and Elizabeth Wright
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
 Dean Robert Adler
 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
August 16, 2018
Executive Dining Room
Matheson Courthouse
450 S. State St.
Salt Lake City, Utah 84111
12:00 p.m. – 2:00 p.m.**

Judge Kate Toomey, Presiding

Attendees:

Justice Deno Himonas, Chair
John Baldwin
Carrie Boren
Terry Conaway
Sue Crismon
James Deans
Julie Emery
Judge Royal Hansen
Dixie Jackson
Steven Johnson
Commissioner Kim Luhn
Jacqueline Esty Morrison
Daniel O'Bannon
Rob Rice
Richard Schwermer
Monte Sleight
Judge Kate Toomey
Elizabeth Wright

Excused:

Dean Robert Adler
Adam Caldwell
Dr. Thomas Clarke
Dean Benson Dastrup
Jim Jardine
Scott Jensen
Ellen Maycock
Senator Stephen Urquhart

Staff:

Cathy Dupont
Jeni Wood – Recording secretary

Guests:

1. WELCOME AND APPROVAL OF MINUTES: (Judge Kate Toomey)

Judge Kate Toomey welcomed everyone to the meeting. Judge Toomey noted Justice Deno Himonas would be late.

Motion: Steven Johnson moved to approve the June 21, 2018 committee minutes, as amended. Rob Rice seconded the motion, and it passed unanimously.

2. RGLPP 15-701(p) AND UTAH CODE § 78B-6-801 : (Cathy Dupont)

Cathy Dupont reviewed the proposed amendment to rule 15-701(p) and 14-802. The committee discussed the definition of unlawful detainer and agreed to add “unlawful detainer” to the definitions throughout the LPP Rules. Ms. Wright will assist identifying which rules need to be amended.

Ms. Dupont next discussed name changes. The committee agreed to remove the phrase relating to name changes.

3. DEBT COLLECTION SETTLEMENT AGREEMENT: (Carrie Boren)

Carrie Boren said there were issues with the debt collection test questions. They would like the Forms Committee to create a settlement agreement. Ms. Dupont noted the ODR program has created settlement forms that may be of use in this role. Sue Crismon noted divorce cases have settlement agreements in the form of the decree of divorce and the findings, fact, and conclusions of law form. Mr. Johnson said rule 14-802 states a settlement agreement must be completed. Ms. Dupont will discuss this with the Forms Committee. Ms. Crismon said the Bar provides attorneys with debt collection forms.

4. LPP PRESENTATION TO THE UTAH STATE BAR: (Julie Emery)

Julie Emery said the presentation at the Bar's Summer Convention was successful. Part of the presentation was role-play between LPP's and clients. In attendance was Chief Justice Durrant, judges, paralegals, and family law attorneys. Ms. Dupont said they learned the importance of respect, especially in the public, of the role of LPP's and attorneys. Ms. Emery commented that for future presentations on the LPP profession, the hypotheticals used in the training will focus on different reasons a person might use an LPP, rather than just the cost difference between an LPP and an attorney.

There was discussion related to how attorneys could best utilize the services of LPP's. Mr. Rice said there were interactive discussions with attorneys. Ms. Emery noted Jones, Waldo is considering creating an LPP section at their law firm. Monte Sleight thought including federal judges into this process may help to further the LPP's role, such as with social security cases. Judge Toomey confirmed LPP's will be allowed to work on pro bono cases.

5. MEMORANDUM OF UNDERSTANDING (MOU) WITH UTAH VALLEY UNIVERSITY: (Carrie Boren and Elizabeth Wright)

Ms. Boren said there is a delay with Ergometrix because the contact person resigned. The MOU has been signed by the Bar and Utah Valley University. Mr. Sleight said Salt Lake Community College is working on the curriculum, however, they would like to see the test questions prior to finalizing the curriculum. They believe they are still on schedule for January, 2019.

6. PREPARATION OF RULES: (Cathy Dupont)

Ms. Dupont shared a list of all of the rules (new and revised) that were related to the LPP program. The next step is for the Supreme Court issue an order with an effective date of November 1, 2018. Ms. Dupont noted rule 15-703 needed to be sent out for public comment. The comment period expires in September. Rule 14-403 needed to be revised to allow for LPP's to be members of the Board of Mandatory Continuing Legal Education. The rule will go before

the Supreme Court soon and be effective November 1, 2018. Rule 14-101 inadvertently did not go out for public comment with the other rules. Ms. Dupont believes the Supreme Court will not require this rule to be published because the amendments are conforming amendments from other published rules.

There are a set of rules in the 700 section of the LPP Rules that have blank sections in them where testing dates need to be filled in. Ms. Dupont said the committee can propose dates for the rules. Elizabeth Wright will revise these rules.

7. OTHER BUSINESS

Commissioner Kim Luhn said they have proposed changes in the rules of evidence. This will be addressed at the next executive meeting.

Ms. Dupont said Kim Allard presented on the OCAP forms. Ms. Allard will program a line for "preparers" on forms. Mr. Johnson noted there are several rules of professional conduct that need to be amended to include LPP's. They will prepare the rule amendments for a future meeting. Judge Toomey said some procedural rules will need to be amended as well.

Jacqueline Esty Morrison noted Dean Adler apologized for his absence. Dean Adler said the College of Law will host the Access to Justice next spring (approximately March 10-17, 2019). Dean Adler invited the LPP program to attend. Justice Himonas said this would be a great idea and would like to add the Online Dispute Resolution program, the court forms offered through OCAP, and the Self Help Center.

Ms. Dupont next discussed 2019 meeting dates. Justice Himonas proposed meeting every other month for both the steering committee and executive committee. Judge Toomey said the committee can cancel the meeting if need be.

8. ADJOURN

The meeting adjourned at 12:57 p.m.

Tab 2

Utah Rules of Civil Procedure LPP Review

The following rules use the word “attorney” and should be evaluated by the advisory committee to determine if a Licensed Paralegal should be included in the rule:

Rule 4 Process

Rule 5 Service and filing of pleadings and other papers

Rule 10 Form of Pleading and other papers

Rule 11 Signing of Pleadings, motions and affidavits and other papers

Rule 53 Masters

Rule 56 Summary Judgement (Subsection 56(h))

Rule 58B Satisfaction of Judgement

Rule 65A Injunctions

Rule 74 Withdrawal of counsel

Rule 75 Limited Appearance (Should an LPP always file this document to provide notice to the parties and the court that an LPP is involved in the case for limited legal representation?)

Rule 76 Notice of Contact information change

The following rules use the word attorney, but are related to discovery and pre-trial conferences (note Rule 14-802(c) Authorization to Practice Law, does not include discovery in the LPP scope of practice, so do we amend?):

Rule 16 Pre-trial conferences

Rule 26 General Provisions governing disclosure and discovery (see Subsections (b)(5), (b)(7) and (e))

Rule 28(c) Persons before whom a deposition may be taken

Rule 30(b)(2), (f) and (g) Deposition upon oral questions

Rule 37 Statement of Discovery issues, Sanctions etc. (See 37(a)(7)(K), (b)(5))

Rule 45 Subpoenas

Rule 63 Disability of disqualification of a judge

Rule 14-802. Authorization to practice law.

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

3 (b) For purposes of this rule:

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

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

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

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

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

17 (c) Exceptions and Exclusions for Licensed Paralegal Practitioners. A person may be
18 licensed to engage in the limited practice of law in the area or areas of (1) temporary
19 separation, divorce, parentage, cohabitant abuse, civil stalking, and custody and support; (2)
20 forcible entry and detainer and unlawful detainer; or (3) debt collection matters in which the
21 dollar amount in issue does not exceed the statutory limit for small claims cases.

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

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

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

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

30 (c)(1)(E) informing, counseling, advising, and assisting in determining which form to use

- 31 and giving advice on how to complete the form;
- 32 (c)(1)(F) signing, filing, and completing service of the form;
- 33 (c)(1)(G) obtaining, explaining, and filing any document needed to support the form;
- 34 (c)(1)(H) reviewing documents of another party and explaining them;
- 35 (c)(1)(I) informing, counseling, assisting and advocating for a client in mediated
- 36 negotiations;
- 37 (c)(1)(J) filling in, signing, filing and completing service of a written settlement agreement
- 38 form in conformity with the negotiated agreement;
- 39 (c)(1)(K) communicating with another party or the party's representative regarding the
- 40 relevant form and matters reasonably related thereto; and
- 41 (c)(1)(L) explaining a court order that affects the client's rights and obligations.

42 ~~(e)~~(d) Other Exceptions and Exclusions. Whether or not it constitutes the practice of

43 law, the following activity by a non-lawyer, who is not otherwise claiming to be a lawyer or to

44 be able to practice law, is permitted:

45 ~~(e)~~(d)(1) Making legal forms available to the general public, whether by sale or otherwise, or

46 publishing legal self-help information by print or electronic media.

47 ~~(e)~~(d)(2) Providing general legal information, opinions or recommendations about

48 possible legal rights, remedies, defenses, procedures, options or strategies, but not specific

49 advice related to another person's facts or circumstances.

50 ~~(e)~~(d)(3) Providing clerical assistance to another to complete a form provided by a municipal,

51 state, or federal court located in the State of Utah when no fee is charged to do so.

52 ~~(e)~~(d)(4) When expressly permitted by the court after having found it clearly to be in

53 the best interests of the child or ward, assisting one's minor child or ward in a juvenile court

54 proceeding.

55 ~~(e)~~(d)(5) Representing a party in small claims court as permitted by Rule of Small Claims

56 Procedure 13.

57 ~~(e)~~(d)(6) Representing without compensation a natural person or representing a legal

58 entity as an employee representative of that entity in an arbitration proceeding, where the

59 amount in controversy does not exceed the jurisdictional limit of the small claims court set

60 by the Utah Legislature.

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

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

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

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

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

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

70 ~~(e)(d)~~(12)(A) a real estate agent or broker licensed by the state of Utah may complete State-
71 approved forms including sales and associated contracts directly related to the sale of real estate
72 and personal property for their customers.

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

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

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

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

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

Effective November 1, 2018

Advisory Committee Note

Subsection (a).

"Active" in this paragraph refers to the formal status of a lawyer, as determined by the Bar. Among other things, an active lawyer must comply with the Bar's requirements for continuing legal education.

Subsection (b).

The practice of law defined in Subparagraph (b)(1) includes: giving advice or counsel to another person as to that person's legal rights or responsibilities with respect to that person's facts and circumstances; selecting, drafting or completing legal documents that affect the legal rights or responsibilities of another person; representing another person before an adjudicative, legislative or executive body, including the preparation or filing of documents and conducting discovery; negotiating legal rights or responsibilities on behalf of another person.

Because representing oneself does not involve another person, it is not technically the "practice of law." Thus, any natural person may represent oneself as an individual in any legal context. To the same effect is Article 1, Rule 14-111 Integration and Management: "Nothing in this article shall prohibit a person who is unlicensed as an attorney at law or a foreign legal consultant from personally representing that person's own interests in a cause to which the person is a party in his or her own right and not as assignee."

Similarly, an employee of a business entity is not engaged in "the representation of the interest of another person" when activities involving the law are a part of the employee's duties solely in connection with the internal business operations of the entity and do not involve providing legal advice to another person. Further, a person acting in an official capacity as an employee of a government agency that has administrative authority to determine the rights of persons under the law is also not representing the interests of another person.

As defined in subparagraph (b)(2), "the law" is a comprehensive term that includes not only the black-letter law set forth in constitutions, treaties, statutes, ordinances, administrative and court rules and regulations, and similar enactments of governmental authorities, but the entire fabric of its development, enforcement, application and interpretation.

Laws duly enacted by the electorate by initiative and referendum under constitutional authority would be included under subparagraph (b)(2)(A).

Subparagraph (b)(2)(B) is intended to incorporate the breadth of decisional law, as well as the background, such as committee hearings, floor discussions and other legislative history, that often accompanies the written law of legislatures and other law- and rule-making bodies.

Reference to adjudicative bodies in this subparagraph includes courts and similar tribunals, arbitrators, administrative agencies and other bodies that render judgments or opinions involving a person's interests.

Subsection (c).

The exceptions for Licensed Paralegal Practitioners arise from the November 18, 2015 Report and Recommendation of the Utah Supreme Court Task Force to Examine Limited Legal Licensing. The Task Force was created to make recommendations to address the large number of

litigants who are self represented or forego access to the Utah judicial system because of the high cost of retaining a lawyer. The Task Force recommended that the Utah Supreme Court exercise its constitutional authority to govern the practice of law to create a subset of discreet legal services in the practice areas of: (1) temporary separation, divorce, parentage, cohabitant abuse, civil stalking, custody and support, and name change; (2) forcible entry and detainer; and (3) debt collection matters in which the dollar amount in issue does not exceed the statutory limit for small claims cases. The Task Force determined that these three practice areas have the highest number of unrepresented litigants in need of low cost legal assistance. Based on the Task Force's recommendations, the Utah Supreme Court authorized Licensed Paralegal Practitioners to provide limited legal services as prescribed in this Rule and in accordance with the Supreme Court Rules of Professional Practice.

Subsection ~~(e)~~(d).

To the extent not already addressed by the requirement that the practice of law involves the representation of others, subparagraph (d)(2) permits the direct and indirect dissemination of legal information in an educational context, such as legal teaching and lectures.

Subparagraph (d)(3) permits assistance provided by employees of the courts and legal-aid and similar organizations that do not charge for providing these services.

Subparagraph (d)(7) applies only to the procedures directly related to parties' involvement before a neutral third-party mediator; it does not extend to any related judicial proceedings unless otherwise provided for under this rule (e.g., under subparagraph (d)(5)).

Tab 3

1 **Rule 504. ~~Lawyer~~ Legal Professional- Client.**

2 **(a) Definitions.**

3 (1) "Client" means a person, public officer, corporation, association, or other
4 organization or entity, either public or private, who is rendered legal
5 services by a ~~lawyer~~ legal professional or who consults a ~~lawyer or a lawyer~~
6 legal professional or legal professional referral service to obtain legal
7 services.

8 (2) "Client's representative means a person or entity authorized by the client to:

9 (A) obtain legal services for or on behalf of the client;

10 (B) act on advice rendered pursuant to legal services for or on behalf of
11 the client;

12 (C) provide assistance to the client that is reasonably necessary to
13 facilitate the client's confidential communications; or

14 (D) disclose, as an employee or agent of the client, confidential
15 information concerning a legal matter to the ~~lawyer~~ legal professional.

16 (3) "Communication" includes:

17 (A) advice, direction or guidance given by the ~~lawyer, the lawyer's~~ legal
18 professional or the legal professional's representative or a ~~lawyer~~ legal
19 professional referral service in the course of providing legal services; and

20 (B) disclosures of the client and the client's representative to the ~~lawyer,~~
21 ~~the lawyer's~~ legal professional or the legal professional's representative or
22 a ~~lawyer~~ legal professional referral service incidental to the client's legal
23 services.

24 (4) "Confidential communication" means a communication not intended to be
25 disclosed to third persons other than those to whom disclosure is in furtherance
26 of rendition of legal services to the client or to those reasonably necessary for the
27 transmission of the communication.

28 (5) "Lawyer" means a person authorized, or reasonably believed by the client to
29 be authorized, to practice law in any state or nation.

30 (6) "Legal Professional" includes a lawyer and a licensed paralegal practitioner.

31 ~~(6)~~ (7) "Lawyer Legal professional referral service" means an organization, either
32 non-profit or for-profit that is providing intake or screening services to clients or
33 prospective clients for the purpose of referring them to legal services.

34 ~~(7)~~ (8) "Legal services" means the provision by a ~~lawyer~~ legal professional or
35 ~~lawyer~~ legal professional referral service of:

36 (A) professional counsel, advice, direction or guidance on a legal
37 matter or question;

38 (B) professional representation on the client's behalf on a legal matter;

39 or

40 (C) referral to a ~~lawyer~~ legal professional.

41 ~~(8)~~ (9) "Lawyer's Legal Professional's representative" means a person or entity
42 employed to assist the ~~lawyer~~ legal professional in the rendition of legal
43 services.

44 (10) "Licensed Paralegal Practitioner" means a person authorized, or reasonably
45 believed by the client to be authorized, by the Utah Supreme Court to provide
46 legal representation under URGLPP Rule 15-701.

47

48 **(b) Statement of the Privilege.** A client has a privilege to refuse to disclose, and to
49 prevent any other person from disclosing, confidential communications if:

50 (1) the communications were made for the purpose or in the course of obtaining
51 or facilitating the rendition of legal services to the client; and

52 (2) the communications were:

53 (A) between (i) the client or the client's representative and (ii) the ~~lawyer~~ legal
54 professional, the ~~lawyer's~~ legal professional's representatives, or a ~~lawyer~~
55 legal professional representing others in matters of common interest;

56 (B) between clients or clients' representatives as to matters of common
57 interest but only if each clients' ~~lawyer or lawyer's~~ legal professional or
58 legal professional's representatives was also present or included in the
59 communications;

60 (C) between (i) the client or the client's representatives and (ii) a ~~lawyer~~ legal
61 professional referral service; or

62 (D) between (i) the client's ~~lawyer or lawyer's~~ legal professional or legal
63 professional representatives and (ii) the client's ~~lawyer~~ legal professional
64 referral service.

65 **(c) Who May Claim the Privilege.** The privilege may be claimed by:

- 66 (1) the client;
- 67 (2) the client's guardian or conservator;
- 68 (3) the personal representative of a client who is deceased;
- 69 (4) the successor, trustee, or similar representative of a client that was a
70 corporation, association, or other organization, whether or not in existence; and
- 71 (5) the ~~lawyer or the lawyer~~ legal professional or the legal professional referral
72 service on behalf of the client.

73 **(d) Exceptions to the Privilege.** Privilege does not apply in the following
74 circumstances:

- 75 (1) Furtherance of the Crime or Fraud. If the services of the ~~lawyer~~ legal
76 professional were sought or obtained to enable or aid anyone to commit or plan
77 to commit what the client knew or reasonably should have known to be a crime
78 or fraud;
- 79 (2) Claimants through Same Deceased Client. As to a communication relevant
80 to an issue between parties who claim through the same deceased client,
81 regardless of whether the claims are by testate or intestate succession or by inter
82 vivos transaction;
- 83 (3) Breach of Duty by ~~Lawyer~~ Legal Professional or Client. As to a
84 communication relevant to an issue of breach of duty by the ~~lawyer~~ legal
85 professional to the client;
- 86 (4) Document Attested by ~~Lawyer~~ Legal Professional. As to a communication
87 relevant to an issue concerning a document to which the ~~lawyer~~ legal
88 professional was an attesting witness; or
- 89 (5) Joint Clients. As to the communication relevant to a matter of common
90 interest between two or more clients if the communication was made by any of
91 them to a ~~lawyer~~ legal professional retained or consulted in common, when
92 offered in an action between any of the clients.

93 **2018 Advisory Committee Note:** These amendments are limited to the scope of the
94 ~~attorney~~ legal professional-client privilege. Nothing in the amendments is intended to
95 suggest that for other purposes, such as application of the Utah Rules of Professional
96 Conduct or principles of ~~attorney~~ legal professional liability, ~~an attorney~~ a legal
97 professional forms ~~an attorney~~ a legal professional-client relationship with a person
98 merely by making a referral to another ~~lawyer~~ legal professional, even if privileged
99 confidential communications are made in the process of that referral.

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