

**AGENDA**  
**Paralegal Practitioner Steering Committee**  
 December 20, 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 <b>ACTION</b> – Approval of draft October 18, 2018 meeting minutes	Tab 1	Justice Himonas
<b>ACTION</b> – Amendments to Rule 14-802.	Tab 2	Cathy Dupont and Elizabeth Wright
<b>ACTION</b> – Amendments to the comments in Rules of Professional Practice 1.4 and 1.7, and repeal of Rule 1.13.	Tab 3	Steve Johnson
<b>UPDATE</b> – Development of LPP webpage		Geoff Fattah and Jason Ralston
<b>UPDATE</b> – LPP test development and curriculum development - Utah Valley University		Carrie Boren
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  
October 18, 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  
Dean Robert Adler  
John Baldwin  
Carrie Boren  
Terri Conaway  
Sue Crismon  
James Deans  
Julie Emery  
Steven Johnson  
Monte Sleight  
Senator Stephen Urquhart  
Elizabeth Wright

**Excused:**

Adam Caldwell  
Dr. Thomas Clarke  
Dean Benson Dastrup  
Judge Royal Hansen  
Dixie Jackson  
Jim Jardine  
Scott Jensen  
Commissioner Kim Luhn  
Ellen Maycock  
Jacqueline Esty Morrison  
Daniel O'Bannon  
Rob Rice  
Richard Schwermer  
Judge Kate Toomey

**Staff:**

Cathy Dupont  
Jeni Wood – Recording secretary

**Guests:**

Geoff Fattah  
Kevin Heiner  
Matt Page  
John Peterson

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

Justice Deno Himonas had to step out temporarily from the meeting. Steven Johnson welcomed everyone to the meeting. Julie Emery noted an error on the August 16 minutes as follows: page 2, paragraph 4, fourth line has a floating “f.”

**Motion:** Julie Emery moved to approve the August 16, 2018 committee minutes, as amended. Sue Crismon seconded the motion, and it passed unanimously.

**2. ARTICLE 9 CLIENT PROTECTION: (Cathy Dupont and Elizabeth Wright)**

Elizabeth Wright noted the Commission approved amending the lawyer client protection rules to include the LPPs. Ms. Wright will present the amended rules in November to the Commission. Ms. Dupont recommended withdrawing rule 15-9\_\_ once the article 9 rules are approved. John Baldwin stated the licensing fees will include the LPP fee to the lawyer client fund. Mr. Baldwin said the Commission will amend the title of the lawyer client fund to be consistent with including LPPs.

Mr. Johnson said the terminology used in court rules to identify LPPs should be consistent. Mr. Johnson will identify and propose amendments to the rules that need to have the language include LPPs. Mr. Baldwin said the Bar will not change the balance of the lawyer client fund once LPPs are included.

**3. RULES OF CIVIL PROCEDURE: (Cathy Dupont)**

Ms. Dupont reviewed the Rules of Civil Procedure (URCP) that need to be evaluated to conform with LPPs. Ms. Dupont will notify the Rules of Civil Procedure Committee of the anticipated rule amendments and request they complete a full review of all rules to ensure compliance. Ms. Wright confirmed LPPs will not be allowed to dispose litigants.

The committee discussed discovery requirements. Ms. Crismon asked if LPPs would be allowed to work on discovery. The committee agreed LPPs would be allowed in all case types to assist litigants with discovery. Mr. Sleight stated proof of ownership of a debt could be listed on a debt collection form, rather than through discovery. After further discussion, Justice Himonas stated having a litigant be required to show proof of debt is essential in determining jurisdiction. Justice Himonas recommended a rule change addressing this. Ms. Dupont will work on a rule amendment.

Dean Robert Adler suggested having the forms include a motion to compel. Justice Himonas would like to readdress motions to compel at a later time.

URCP rules for discussion and possible amendment:

- 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 other papers; representations to court; sanctions
- Rule 53 Masters
- Rule 56 Summary judgment (subsection 56(h))
- Rule 58B Satisfaction of judgment
- Rule 65A Injunctions
- Rule 74 Withdrawal of counsel
- Rule 75 Limited appearance
- Rule 76 Notice of contact information change

Discovery rules:

- Rule 16 Pretrial conferences
- Rule 26 General provisions governing disclosure and discovery

- Rule 28(c) Persons before whom depositions may be taken
- Rule 30(b)(2) Depositions upon oral questions
- Rule 37 Statement of discovery issues; Sanctions; Failure to admit, to attend deposition or to preserve evidence
- Rule 45 Subpoena
- Rule 63 Disability or disqualification of a judge

**4. UTAH RULES OF EVIDENCE RULE 504: (Justice Deno Himonas and Cathy Dupont)**

Ms. Emery addressed an error on line 19 of rule 14-802. Ms. Dupont will amend the rule and present it to the Supreme Court. Dean Adler questioned using the phrase “natural person” on line 24. Ms. Wright said this language removes the opportunity for LPPs to represent corporations.

Ms. Dupont next addressed proposed amendments to URE rule 504. The amendments in this rule define the phrase “legal professional” to include both lawyers and LPPs.

**4. MEDIA PLAN FOR LPP PROGRAM: (Geoff Fattah)**

Geoff Fattah proposed a two-phase media communication plan.

Phase 1 – Outreach/Advertising to Potential Students

- Work with Utah Valley University (UVU) marketing team to promote registration to the paralegal and LPP classes.
- Direct marketing of LPP program to Utah Bars Paralegal Section and Paralegal Survey participants to include the grandfather requirements.
- Potential media coverage of first graduating class of LPPs.

Phase 2 – Public Education/Awareness of LPP Profession

- Create webpage with FAQ and other pertinent information for the public and media.
- How can people find an LPP?
- Marketing: Media, ads, editorials

Mr. Fattah said it would be helpful to create a flyer to distribute to other paralegal programs throughout the state. Monte Sleight noted UVU is phasing out their paralegal program. Mr. Sleight said the Bar and the courts should be general and not market a particular program. Ms. Dupont noted committee members are receiving media requests about the LPP program.

Mr. Fattah reviewed the public safety assessment web page on the Utah Courts website. Ms. Emery will forward the information she has on the LPP program to Mr. Fattah to assist with the creation of an LPP web page. Mr. Fattah will prepare a sample web page for the next meeting.

**5. LPP TEST DEVELOPMENT AND MEMORANDUM OF UNDERSTANDING (MOU) WITH UTAH VALLEY UNIVERSITY: (Carrie Boren and Elizabeth Wright)**

Ms. Wright said the MOU with UVU promises that the Bar will license certified LPPs. Ms. Wright recommended meeting with UVU to set expectations. Classes should begin either January or March for debt collection and landlord tenant courses.

Carrie Boren received the proposed test. Ergometrics will create the cut-score for the tests. Mr. Sleight explained the question-ranking process when creating a cut-score.

Mr. Sleight said the family law course structure will include three models that will include an initial definition phase, a forms phase, and an assessment phase. This will be approximately 60 hours of online courses. Ms. Emery noted the only people exempt from the requirement to complete the LPP course is someone who has a law degree. All paralegals who wish to be grandfathered into the program must take the required course. Mr. Baldwin said the timeframe to review LPP applications should not take as long as reviewing lawyer applications. Ms. Boren will have the application prepared by January 1. The committee agreed to have the Bar begin accepting applications on March 1.

**6. OTHER BUSINESS**

The committee agreed to allow individuals work on both the curriculum and the test questions.

Ms. Wright noted rules do not require LPPs to be members of the paralegal division. The committee agreed at this time not to require membership. Justice Himonas asked to have an LPP be a member of the Bar Commission.

Justice Himonas said the Supreme Court met with the Texas Supreme Court to discuss the LPP program.

**7. ADJOURN**

The meeting adjourned at 1:16 p.m.

# Tab 2

1       **Rule 14-802. Authorization to practice law.**

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

5       (b) For purposes of this rule:

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

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

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

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

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

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

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

- 29 (c)(1)(B) establishing a contractual relationship with the client;
- 30 (c)(1)(C) interviewing the client to understand the client's objectives and obtaining  
31 facts relevant to achieving that objective;
- 32 (c)(1)(D) completing ~~an approved~~ forms approved by the Judicial Council;
- 33 (c)(1)(E) informing, counseling, advising, and assisting in determining which form to  
34 use and giving advice on how to complete the form;
- 35 (c)(1)(F) signing, filing, and completing service of the form;
- 36 (c)(1)(G) obtaining, explaining, and filing any document needed to support the form;
- 37 (c)(1)(H) reviewing documents of another party and explaining them;
- 38 (c)(1)(I) informing, counseling, assisting and advocating for a client in mediated  
39 negotiations;
- 40 (c)(1)(J) filling in, signing, filing and completing service of a written settlement  
41 agreement form in conformity with the negotiated agreement;
- 42 (c)(1)(K) communicating with another party or the party's representative regarding  
43 the relevant form and matters reasonably related thereto; and
- 44 (c)(1)(L) explaining a court order that affects the client's rights and obligations.
- 45 (d) Other Exceptions and Exclusions. Whether or not it constitutes the practice of  
46 law, the following activity by a non-lawyer, who is not otherwise claiming to be a lawyer  
47 or to be able to practice law, is permitted:
- 48 (d)(1) Making legal forms available to the general public, whether by sale or  
49 otherwise, or publishing legal self-help information by print or electronic media.
- 50 (d)(2) Providing general legal information, opinions or recommendations about  
51 possible legal rights, remedies, defenses, procedures, options or strategies, but not  
52 specific advice related to another person's facts or circumstances.
- 53 (d)(3) Providing clerical assistance to another to complete a form provided by a  
54 municipal, state, or federal court located in the State of Utah when no fee is charged to  
55 do so.

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

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

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

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

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

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

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

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

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

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

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

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

82 (d)(12)(D) insurance companies and agents licensed by the state of Utah may  
83 recommend coverage, inform customers with respect to their options for titling of

84 ownership of insurance and annuity contracts, the naming of beneficiaries, and the  
85 adjustment of claims under the company's insurance coverage outside of litigation.

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

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

91

92 Advisory Committee Comment:

93 Subsection (a).

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

96

97 Subsection (b).

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

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

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

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

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

122 Subparagraph (b)(2)(B) is intended to incorporate the breadth of decisional law, as well as the  
123 background, such as committee hearings, floor discussions and other legislative history, that often  
124 accompanies the written law of legislatures and other law- and rule-making bodies. Reference to  
125 adjudicative bodies in this subparagraph includes courts and similar tribunals, arbitrators,

126 administrative agencies and other bodies that render judgments or opinions involving a person's  
127 interests.

128 Subsection (c).

129 The exceptions for Licensed Paralegal Practitioners arise from the November 18, 2015 Report and  
130 Recommendation of the Utah Supreme Court Task Force to Examine Limited Legal Licensing. The Task  
131 Force was created to make recommendations to address the large number of litigants who are self  
132 represented or forego access to the Utah judicial system because of the high cost of retaining a  
133 lawyer. The Task Force recommended that the Utah Supreme Court exercise its constitutional  
134 authority to govern the practice of law to create a subset of discreet legal services in the practice  
135 areas of: (1) temporary separation, divorce, parentage, cohabitant abuse, civil stalking, and custody  
136 and support; (2) unlawful detainer and forcible entry and detainer; and (3) debt collection matters in  
137 which the dollar amount in issue does not exceed the statutory limit for small claims cases. The Task  
138 Force determined that these three practice areas have the highest number of unrepresented litigants  
139 in need of low cost legal assistance. Based on the Task Force's recommendations, the Utah Supreme  
140 Court authorized Licensed Paralegal Practitioners to provide limited legal services as prescribed in this  
141 Rule and in accordance with the Supreme Court Rules of Professional Practice.

142 Subsection (c)(1)(D)

143 A Licensed Paralegal Practitioner may complete forms that are approved by the Judicial Council. The  
144 Judicial Council approves forms for the Online Consumer Assistance Program and for use by the public.  
145 The forms approved by the Judicial Council may be found at <https://www.utcourts.gov/ocap/> and  
146 <https://www.utcourts.gov/selfhelp/> .

147 Subsection (d).

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

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

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

# Tab 3

#### **Rule 1.4. Communication.**

(a) A licensed paralegal practitioner shall:

(a)(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(f), is required by these Rules;

(a)(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(a)(3) keep the client reasonably informed about the status of the matter;

(a)(4) promptly comply with reasonable requests for information; and

(a)(5) consult with the client about any relevant limitation on the licensed paralegal practitioner's conduct when the licensed paralegal practitioner knows that the client expects assistance not permitted by the Licensed Paralegal Practitioner Rules of Professional Conduct or other law.

(b) A licensed paralegal practitioner shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

#### Comment

[1] Reasonable communication between the licensed paralegal practitioner and the client is necessary for the client effectively to participate in the representation.

#### Communicating with Client

[2] If these Rules require that a particular decision about the representation be made by the client, paragraph (a)(1) requires that the licensed paralegal practitioner promptly consult with and secure the client's consent prior to taking action unless prior discussions with the client have resolved what action the client wants the licensed paralegal practitioner to take. For example, a licensed paralegal practitioner who receives from opposing counsel an offer of settlement in a civil controversy must promptly inform the client of its substance unless the client has previously indicated that the proposal will be acceptable or unacceptable or has authorized the licensed paralegal practitioner to accept or to reject the offer. See Rule 1.2(a).

[3] Paragraph (a)(2) requires the licensed paralegal practitioner to reasonably consult with the client about the means to be used to accomplish the client's objectives. In some situations—depending on both the importance of the action under consideration and the feasibility of consulting with the client—this duty will require consultation prior to taking action. Additionally, paragraph (a)(3) requires that the licensed paralegal practitioner keep the client reasonably informed about the status of the matter, such as significant developments affecting the timing or the substance of the representation.

[4] A licensed paralegal practitioner's regular communication with clients will minimize the occasions on which a client will need to request information concerning the representation. When a client makes a reasonable request for information, however, paragraph (a)(4) requires prompt compliance with the request, or if a prompt response is not feasible, that the licensed paralegal practitioner, or a member of the licensed paralegal practitioner's staff, acknowledge

receipt of the request and advise the client when a response may be expected. A licensed paralegal practitioner should promptly respond to or acknowledge client communications.

#### Explaining Matters

[5] The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so. Adequacy of communication depends in part on the kind of advice or assistance that is involved. For example, when there is time to explain a proposal made in a negotiation, the licensed paralegal practitioner should review all important provisions with the client before proceeding to an agreement. On the other hand, a licensed paralegal practitioner ordinarily will not be expected to describe negotiation strategy in detail. The guiding principle is that the licensed paralegal practitioner should fulfill reasonable client expectations for information consistent with the duty to act in the client's best interests and the client's overall requirements as to the character of representation. In certain circumstances, such as when a licensed paralegal practitioner asks a client to consent to a representation affected by a conflict of interest, the client must give informed consent, as defined in Rule 1.0(f).

[6] Ordinarily, the information to be provided is that appropriate for a client who is a comprehending and responsible adult. However, fully informing the client according to this standard may be impracticable, for example, where the client suffers from diminished capacity. See Rule 1.14. ~~When the client is an organization or group, it is often impossible or inappropriate to inform every one of its members about its legal affairs; ordinarily, the licensed paralegal practitioner should address communications to the appropriate officials of the organization. See Rule 1.13.~~

#### Withholding Information

~~[7] In some circumstances, a licensed paralegal practitioner may be justified in delaying transmission of information when the client would be likely to react imprudently to an immediate communication. Thus, a licensed paralegal practitioner might withhold a psychiatric diagnosis of a client when the examining psychiatrist indicates that disclosure would harm the client. A licensed paralegal practitioner may not withhold information to serve the licensed paralegal practitioner's own interest or convenience or the interests or convenience of another person. Rules or court orders governing litigation may provide that information supplied to a licensed paralegal practitioner may not be disclosed to the client. Rule 3.4(e) directs compliance with such rules or orders.~~

Effective November 1, 2018

**Rule 1.7. Conflict of interest: current clients.**

(a) Except as provided in paragraph (b), a licensed paralegal practitioner shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(a)(1) The representation of one client will be directly adverse to another client; or

(a)(2) There is a significant risk that the representation of one or more clients will be materially limited by the licensed paralegal practitioner's responsibilities to another client, a former client or a third person or by a personal interest of the licensed paralegal practitioner.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a licensed paralegal practitioner may represent a client if:

(b)(1) the licensed paralegal practitioner reasonably believes that the licensed paralegal practitioner will be able to provide competent and diligent representation to each affected client;

(b)(2) the representation is not prohibited by law;

(b)(3) the representation does not involve the assertion of a claim by one client against another client represented by the licensed paralegal practitioner in the same litigation or other proceeding before a tribunal; and

(b)(4) each affected client gives informed consent, confirmed in writing.

Comment

General Principles

[1] Loyalty and independent judgment are essential elements in the licensed paralegal practitioner's relationship to a client. Concurrent conflicts of interest can arise from the licensed paralegal practitioner's responsibilities to another client, a former client or a third person or from the licensed paralegal practitioner's own interests. For specific rules regarding certain concurrent conflicts of interest, see Rule 1.8. For former client conflicts of interest, see Rule 1.9. For conflicts of interest involving prospective clients, see Rule 1.18. For definitions of "informed consent" and "confirmed in writing," see Rules 1.0(f) and (b).

[2] Resolution of a conflict of interest problem under this Rule requires the licensed paralegal practitioner to: 1) clearly identify the client or clients; 2) determine whether a conflict of interest exists; 3) decide whether the representation may be undertaken despite the existence of a conflict, i.e., whether the conflict is consentable; and 4) if so, consult with the clients affected under paragraph (a)(1) and obtain their informed consent, confirmed in writing. The clients affected under paragraph (a)(1) include both of the clients referred to in paragraph (a)(1) and the one or more clients whose representation might be materially limited under paragraph (a)(2).

[3] A conflict of interest may exist before representation is undertaken, in which event the representation must be declined, unless the licensed paralegal practitioner obtains the informed consent of each client under the conditions of paragraph (b). To determine whether a conflict of interest exists, a licensed paralegal practitioner should adopt reasonable procedures, appropriate

for the size and type of firm and practice, to determine in both litigation and nonlitigation matters the persons and issues involved. See also Comment to Rule 5.1. Ignorance caused by a failure to institute such procedures will not excuse a licensed paralegal practitioner's violation of this Rule.

[4] If a conflict arises after representation has been undertaken, the licensed paralegal practitioner ordinarily must withdraw from the representation, unless the licensed paralegal practitioner has obtained the informed consent of the client under the conditions of paragraph (b). See Rule 1.16. Where more than one client is involved, whether the licensed paralegal practitioner may continue to represent any of the clients is determined both by the licensed paralegal practitioner's ability to comply with duties owed to the former client and by the licensed paralegal practitioner's ability to represent adequately the remaining client or clients, given the licensed paralegal practitioner's duties to the former client. See Rule 1.9. See also Comments [5] and [29].

[5] Unforeseeable developments, such as changes in corporate and other organizational affiliations or the addition or realignment of parties in litigation, might create conflicts in the midst of a representation, as when a company sued by the licensed paralegal practitioner on behalf of one client is bought by another client represented by the licensed paralegal practitioner in an unrelated matter. Depending on the circumstances, the licensed paralegal practitioner may have the option to withdraw from one of the representations in order to avoid the conflict. The licensed paralegal practitioner must withdraw where necessary and take steps to minimize harm to the clients. See Rule 1.16. The licensed paralegal practitioner must continue to protect the confidences of the client from whose representation the licensed paralegal practitioner has withdrawn. See Rule 1.9(c).

#### Identifying Conflicts of Interest: Directly Adverse

[6] Loyalty to a current client prohibits undertaking representation directly adverse to that client without that client's informed consent. The client as to whom the representation is directly adverse is likely to feel betrayed, and the resulting damage to the licensed paralegal practitioner-client relationship is likely to impair the licensed paralegal practitioner's ability to represent the client effectively. In addition, the client on whose behalf the adverse representation is undertaken reasonably may fear that the licensed paralegal practitioner will pursue that client's case less effectively out of deference to the other client, i.e., that the representation may be materially limited by the licensed paralegal practitioner's interest in retaining the current client.

[7] Reserved.

#### Identifying Conflicts of Interest: Material Limitation

[8] Even where there is no direct adverseness, a conflict of interest exists if there is a significant risk that a licensed paralegal practitioner's ability to consider, recommend or carry out an appropriate course of action for the client will be materially limited as a result of the licensed paralegal practitioner's other responsibilities or interests. The critical questions are the likelihood that a difference in interests will eventuate and, if it does, whether it will materially interfere with the licensed paralegal practitioner's independent professional judgment in

considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client.

#### Licensed Paralegal Practitioner's Responsibilities to Former Clients and Other Third Persons

[9] In addition to conflicts with other current clients, a licensed paralegal practitioner's duties of loyalty and independence may be materially limited by responsibilities to former clients under Rule 1.9 or by the licensed paralegal practitioner's responsibilities to other persons, such as fiduciary duties arising from a licensed paralegal practitioner's service as a trustee, executor or corporate director.

#### Personal Interest Conflicts

[10] The licensed paralegal practitioner's own interests should not be permitted to have an adverse effect on representation of a client. For example, if the probity of a licensed paralegal practitioner's own conduct in a transaction is in serious question, it may be difficult or impossible for the licensed paralegal practitioner to give a client detached advice. Similarly, when a licensed paralegal practitioner has discussions concerning possible employment with an opponent of the licensed paralegal practitioner's client, or with a law firm representing the opponent, such discussions could materially limit the licensed paralegal practitioner's representation of the client. In addition, a licensed paralegal practitioner may not allow related business interests to affect representation, for example, by referring clients to an enterprise in which the licensed paralegal practitioner has an undisclosed financial interest. See Rule 1.8 for specific rules pertaining to a number of personal interest conflicts, including business transactions with clients. See also Rule 1.10 (personal interest conflicts under Rule 1.7 ordinarily are not imputed to other licensed paralegal practitioners in a law firm).

[11] When licensed paralegal practitioners representing different clients in the same matter or in substantially related matters are closely related by blood or marriage, there may be a significant risk that client confidences will be revealed and that the licensed paralegal practitioner's family relationship will interfere with both loyalty and independent professional judgment. As a result, each client is entitled to know of the existence and implications of the relationship between the licensed paralegal practitioners before the licensed paralegal practitioner agrees to undertake the representation. Thus, a licensed paralegal practitioner related to another licensed paralegal practitioner, e.g., as parent, child, sibling or spouse, ordinarily may not represent a client in a matter where that licensed paralegal practitioner is representing another party, unless each client gives informed consent. The disqualification arising from a close family relationship is personal and ordinarily is not imputed to members of firms with whom the licensed paralegal practitioners are associated. See Rule 1.10.

[12] A licensed paralegal practitioner is prohibited from engaging in sexual relationships with a client unless the sexual relationship predates the formation of the licensed paralegal practitioner-client relationship. See Rule 1.8(j).

#### Interest of Person Paying for a Licensed Paralegal Practitioner's Service

[13] A licensed paralegal practitioner may be paid from a source other than the client, including a co-client, if the client is informed of that fact and consents and the arrangement does not compromise the licensed paralegal practitioner's duty of loyalty or independent judgment to the client. See Rule 1.8(f). If acceptance of the payment from any other source presents a significant risk that the licensed paralegal practitioner's representation of the client will be materially limited by the licensed paralegal practitioner's own interest in accommodating the person paying the licensed paralegal practitioner's fee or by the licensed paralegal practitioner's responsibilities to a payer who is also a co-client, then the licensed paralegal practitioner must comply with the requirements of paragraph (b) before accepting the representation, including determining whether the conflict is consentable and, if so, that the client has adequate information about the material risks of the representation.

#### Prohibited Representations

[14] Ordinarily, clients may consent to representation notwithstanding a conflict. However, as indicated in paragraph (b), some conflicts are nonconsentable, meaning that the licensed paralegal practitioner involved cannot properly ask for such agreement or provide representation on the basis of the client's consent. When the licensed paralegal practitioner is representing more than one client, the question of consentability must be resolved as to each client.

[15] Consentability is typically determined by considering whether the interests of the clients will be adequately protected if the clients are permitted to give their informed consent to representation burdened by a conflict of interest. Thus, under paragraph (b)(1), representation is prohibited if in the circumstances the licensed paralegal practitioner cannot reasonably conclude that the licensed paralegal practitioner will be able to provide competent and diligent representation. See Rule 1.1 (competence) and Rule 1.3 (diligence).

[16] Paragraph (b)(2) describes conflicts that are nonconsentable because the representation is prohibited by applicable law.

[17] Paragraph (b)(3) describes conflicts that are nonconsentable because of the institutional interest in vigorous development of each client's position when the clients are aligned directly against each other in the same litigation or other proceeding before a tribunal. Whether clients are aligned directly against each other within the meaning of this paragraph requires examination of the context of the proceeding. Although this paragraph does not preclude a licensed paralegal practitioner's multiple representation of adverse parties to a mediation (because mediation is not a proceeding before a "tribunal" under Rule 1.0(o)), such representation may be precluded by paragraph (b)(1).

#### Informed Consent

[18] Informed consent requires that each affected client be aware of the relevant circumstances and of the material and reasonably foreseeable ways that the conflict could have adverse effects on the interests of that client. See Rule 1.0(f) (informed consent). The information required depends on the nature of the conflict and the nature of the risks involved. When representation of multiple clients in a single matter is undertaken, the information must

include the implications of the common representation, including possible effects on loyalty, confidentiality and the licensed paralegal practitioner-client privilege and the advantages and risks involved. See Comments [30] and [31] (effect of common representation on confidentiality).

[19] Under some circumstances it may be impossible to make the disclosure necessary to obtain consent. For example, when the licensed paralegal practitioner represents different clients in related matters and one of the clients refuses to consent to the disclosure necessary to permit the other client to make an informed decision, the licensed paralegal practitioner cannot properly ask the latter to consent. In some cases the alternative to common representation can be that each party may have to obtain separate representation with the possibility of incurring additional costs. These costs, along with the benefits of securing separate representation, are factors that may be considered by the affected client in determining whether common representation is in the client's interests.

#### Consent Confirmed in Writing

[20] Paragraph (b) requires the licensed paralegal practitioner to obtain the informed consent of the client, confirmed in writing. Such a writing may consist of a document executed by the client or one that the licensed paralegal practitioner promptly records and transmits to the client following an oral consent. See Rule 1.0(b). See also Rule 1.0(p) (writing includes electronic transmission). If it is not feasible to obtain or transmit the writing at the time the client gives informed consent, then the licensed paralegal practitioner must obtain or transmit it within a reasonable time thereafter. See Rule 1.0(b). The requirement of a writing does not supplant the need in most cases for the licensed paralegal practitioner to talk with the client, to explain the risks and advantages, if any, of representation burdened with a conflict of interest, as well as reasonably available alternatives, and to afford the client a reasonable opportunity to consider the risks and alternatives and to raise questions and concerns. Rather, the writing is required in order to impress upon clients the seriousness of the decision the client is being asked to make and to avoid disputes or ambiguities that might later occur in the absence of a writing.

#### Revoking Consent

[21] A client who has given consent to a conflict may revoke the consent and, like any other client, may terminate the licensed paralegal practitioner's representation at any time. Whether revoking consent to the client's own representation precludes the licensed paralegal practitioner from continuing to represent other clients depends on the circumstances, including the nature of the conflict, whether the client revoked consent because of a material change in circumstances, the reasonable expectations of the other client and whether material detriment to the other clients or the licensed paralegal practitioner would result.

#### Consent to Future Conflict

[22] Whether a licensed paralegal practitioner may properly request a client to waive conflicts that might arise in the future is subject to the test of paragraph (b). The effectiveness of such waivers is generally determined by the extent to which the client reasonably understands the

material risks that the waiver entails. The more comprehensive the explanation of the types of future representations that might arise and the actual and reasonably foreseeable adverse consequences of those representations, the greater the likelihood that the client will have the requisite understanding.

#### Conflicts in Litigation

[23] Paragraph (b)(3) prohibits representation of opposing parties in the same litigation, regardless of the clients' consent. On the other hand, simultaneous representation of parties whose interests in litigation may conflict, such as co-plaintiffs or co-defendants, is governed by paragraph (a)(2). A conflict may exist by reason of substantial discrepancy in the parties' testimony, incompatibility in positions in relation to an opposing party or the fact that there are substantially different possibilities of settlement of the claims or liabilities in question. Common representation of persons having similar interests in civil litigation is proper if the requirements of paragraph (b) are met

[24] Ordinarily a licensed paralegal practitioner may take inconsistent legal positions in different tribunals at different times on behalf of different clients. The mere fact that advocating a legal position on behalf of one client might create precedent adverse to the interests of a client represented by the licensed paralegal practitioner in an unrelated matter does not create a conflict of interest. A conflict of interest exists, however, if there is a significant risk that a licensed paralegal practitioner's action on behalf of one client will materially limit the licensed paralegal practitioner's effectiveness in representing another client in a different case; for example, when a decision favoring one client will create a precedent likely to seriously weaken the position taken on behalf of the other client. Factors relevant in determining whether the clients need to be advised of the risk include: where the cases are pending, whether the issue is substantive or procedural, the temporal relationship between the matters, the significance of the issue to the immediate and long-term interests of the clients involved and the clients' reasonable expectations in retaining the licensed paralegal practitioner. If there is significant risk of material limitation, then absent informed consent of the affected clients, the licensed paralegal practitioner must refuse one of the representations or withdraw from one or both matters.

[25] Reserved.

#### Non-litigation Conflicts

[26] Conflicts of interest under paragraphs (a)(1) and (a)(2) arise in contexts other than litigation. Relevant factors in determining whether there is significant potential for material limitation include the duration and intimacy of the licensed paralegal practitioner's relationship with the client or clients involved, the functions being performed by the licensed paralegal practitioner, the likelihood that disagreements will arise and the likely prejudice to the client from the conflict. The question is often one of proximity and degree. See Comment [8].

[27] Reserved.

[28] Whether a conflict is consentable depends on the circumstances. For example, a licensed paralegal practitioner may not represent multiple parties to a negotiation whose interests are

fundamentally antagonistic to each other, but common representation is permissible where the clients are generally aligned in interest even though there is some difference in interest among them. Thus, a licensed paralegal practitioner may seek to establish or adjust a relationship between clients on an amicable and mutually advantageous basis; for example, in helping to organize a business in which two or more clients are entrepreneurs, working out the financial reorganization of an enterprise in which two or more clients have an interest or arranging a property distribution in settlement of an estate. The licensed paralegal practitioner seeks to resolve potentially adverse interests by developing the parties' mutual interests. Otherwise, each party might have to obtain separate representation, with the possibility of incurring additional cost, complication or even litigation. Given these and other relevant factors, the clients may prefer that the licensed paralegal practitioner act for all of them.

#### Special Considerations in Common Representation

[29] In considering whether to represent multiple clients in the same matter, a licensed paralegal practitioner should be mindful that if the common representation fails because the potentially adverse interests cannot be reconciled, the result can be additional cost, embarrassment and recrimination. Ordinarily, the licensed paralegal practitioner will be forced to withdraw from representing all of the clients if the common representation fails. In some situations, the risk of failure is so great that multiple representation is plainly impossible. For example, a licensed paralegal practitioner cannot undertake common representation of clients where contentious litigation or negotiations between them are imminent or contemplated. Moreover, because the licensed paralegal practitioner is required to be impartial between commonly represented clients, representation of multiple clients is improper when it is unlikely that impartiality can be maintained. Generally, if the relationship between the parties has already assumed antagonism, the possibility that the clients' interests can be adequately served by common representation is not very good. Other relevant factors are whether the licensed paralegal practitioner subsequently will represent both parties on a continuing basis and whether the situation involves creating or terminating a relationship between the parties.

[30] A particularly important factor in determining the appropriateness of common representation is the effect on licensed paralegal practitioner-client confidentiality and the licensed paralegal practitioner-client privilege. With regard to the licensed paralegal practitioner-client privilege, the prevailing rule is that, as between commonly represented clients, the privilege does not attach. Hence, it must be assumed that if litigation eventuates between the clients, the privilege will not protect any such communications, and the client should be so advised.

[31] As to the duty of confidentiality, continued common representation will almost certainly be inadequate if one client asks the licensed paralegal practitioner not to disclose to the other client information relevant to the common representation. This is so because the licensed paralegal practitioner has an equal duty of loyalty to each client, and each client has the right to be informed of anything bearing on the representation that might affect that client's interests and

the right to expect that the licensed paralegal practitioner will use that information to that client's benefit. See Rule 1.4. The licensed paralegal practitioner should, at the outset of the common representation and as part of the process of obtaining each client's informed consent, advise each client that information will be shared and that the licensed paralegal practitioner will have to withdraw if one client decides that some matter material to the representation should be kept from the other. In limited circumstances, it may be appropriate for the licensed paralegal practitioner to proceed with the representation when the clients have agreed, after being properly informed, that the licensed paralegal practitioner will keep certain information confidential.

[32] When seeking to establish or adjust a relationship between clients, the licensed paralegal practitioner should make clear that the licensed paralegal practitioner's role is not that of partisanship normally expected in other circumstances and, thus, that the clients may be required to assume greater responsibility for decisions than when each client is separately represented. Any limitations on the scope of the representation made necessary as a result of the common representation should be fully explained to the clients at the outset of the representation. See Rule 1.2(c).

[33] Subject to the above limitations, each client in the common representation has the right to loyal and diligent representation and the protection of Rule 1.9 concerning the obligations to a former client. The client also has the right to discharge the licensed paralegal practitioner as stated in Rule 1.16.

#### Organizational Clients

~~[34] A licensed paralegal practitioner who represents a corporation or other organization does not, by virtue of that representation, necessarily represent any constituent or affiliated organization, such as a parent or subsidiary. See Rule 1.13(a). Thus, the licensed paralegal practitioner for an organization is not barred from accepting representation adverse to an affiliate in an unrelated matter, unless the circumstances are such that the affiliate should also be considered a client of the licensed paralegal practitioner, there is an understanding between the licensed paralegal practitioner and the organizational client that the licensed paralegal practitioner will avoid representation adverse to the client's affiliates, or the licensed paralegal practitioner's obligations to either the organizational client or the new client are likely to limit materially the licensed paralegal practitioner's representation of the other client.~~

~~[35] A licensed paralegal practitioner for a corporation or other organization who is also a member of its board of directors should determine whether the responsibilities of the two roles may conflict.~~

Effective November 1, 2018

**Rule 1.13. Organization as a client. REPEAL RULE**

(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.

Effective November 1, 2018