

AGENDA
Paralegal Practitioner Steering Committee

February 21, 2019
 12:00 p.m. – 2:00 p.m.
 Scott M. Matheson Courthouse
 Council Room, Room N31
 450 S. State St.
 Salt Lake City, UT. 84111

Welcome ACTION – Approval of Draft December 20, 2018 meeting minutes	Tab 1	Justice Deno Himonas
ACTION – Amendments to Rule 1.14	Tab 2	Steve Johnson
Discussion – Update from the State Bar on Test Development		Carrie Boren
Discussion – Update from the Education Committee re: Curriculum Development and Enrollment Numbers		Monte Sleight Carrie Boren
Other Business		

Members

Justice Deno Himonas, Chair
 Dean Robert Adler
 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
 Daniel O'Bannon
 Robert O. Rice
 Monte Sleight

Gayla Sorenson
 Judge Kate Appleby
 Steve Urquhart
 Elizabeth Wright

Tab 1

**PARALEGAL PRACTITIONER
STEERING COMMITTEE
MEETING**

**Minutes
December 20, 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 – unsure if present
Carrie Boren
Adam Caldwell
Dr. Thomas Clarke
Terri Conaway
Sue Crismon
Dean Benson Dastrup
James Deans
Julie Emery
Dixie Jackson
Scott Jensen
Steven Johnson
Ellen Maycock
Rob Rice
Monte Sleight
Judge Kate Appleby
Senator Stephen Urquhart
Representative Elizabeth Weight

Excused:

Jim Jardine
Richard Schwermer
Judge Royal Hansen
Commissioner Kim Luhn

Guests:

Geoff Fattah

Staff:

Cathy Dupont
Amber Stubbings – Recording
secretary

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

Judge Kate Appleby welcomed everyone to the meeting, and stated Justice Himonas will be late to the meeting.

Motion: Mr. Steven Johnson made a request for correction to section two changing “rule 15-9__” to “the 15-900 series”, and section three changing “dispose” to “depose”. Mr. Johnson moved to approve the October 18, 2018 committee minutes, as amended. Elizabeth Wright seconded the motion, and it passed unanimously.

2. AMENDMENTS TO RULE 14-802: (Cathy Dupont and Elizabeth Wright)

Ms. Cathy Dupont presented minor changes to rule 14-802. Ms. Dupont noted the rule currently implies in section (c) that LPPs can practice law in only one area of law. Ms. Dupont proposes changing “or” to “and” so it will be clear that LPPs can practice in all three areas of law. Section (c)(1)(D) will now include that the approval of forms comes from the Judicial Council. This is further explained in the amendment to the advisory note. Ms. Julie Emery asked if there was a concern about the Judicial Council approval process of the forms. Judge Appleby explained the approval process.

Motion: Mr. Johnson moved to approve the proposed amendments to rule 14-802, as presented and send the rule to the Supreme Court for final approval. Ms. Dixie Jackson seconded the motion, and it passed unanimously.

3. AMENDMENTS TO THE COMMENTS IN RULES OF PROFESSIONAL PRACTICE 1.4 AND 1.7, AND REPEAL OF RULE 1.13: (Steve Johnson)

Mr. Johnson presented amendments to the advisory note in rule 1.4. Mr. Johnson noted the reason for the proposed deleted section to the note is due to the limitation on LPP’s. He stated this was an oversight until Ethics Training was being prepared and discussed. Mr. Johnson next addressed the proposed deleted section to the advisory note in rule 1.7. Judge Appleby asked Mr. Johnson if he was reasonably confident this would be the final change to the rule. Ms. Carrie provided a spreadsheet which detailed issues related to the rule detailing the scope of the LPP duties. Ms. Dupont inquired if these rules should be revisited with corrections available for the committee. This task will be completed off the record, electronically.

Motion: Ms. Dixie Jackson moved to approve the proposed amendments to rules 1.4 and 1.7 and the repeal of rule 1.13, and send the rule to the Supreme Court. Mr. Johnson seconded the motion, and it passed unanimously.

4. LPP TEST DEVELOPMENT AND CURRICULUM DEVELOPMENT - UTAH VALLEY UNIVERSITY: (Carrie Boren and Elizabeth Wright)

Judge Appleby invited Ms. Carrie Boren to speak to curriculum development. Ms. Boren stated the testing process and development should be prepared by March 2019. She stated there were some conflicts of understanding with the contracted company to develop the materials. Mr. Sleight stated Utah Valley University met with an Ethics Subject Matter Expert and reviewed the areas of curriculum, detailing the prospective credit hours and cost associated with enrolling in the program. Judge Appleby asked him if the tuition points are sustainable for the university and accessible for students. He stated due to the cost per pupil to run the program there should be an effective distribution of funds for the program to be sustainable. Mr. Sleight reviewed the survey material which indicates firms are offering to pay initial costs for many prospective LPP’s. He stated it would be beneficial if the Committee could source other funding opportunities students could apply for. Judge Appleby opined there is not an appetite to expand the funding until there has been significant data collected for the program. USDA has rural development money to potentially encourage students to apply for in rural areas. Discussion centered on other opportunities to help fund low income services. Mr. Sleight stated one avenue that has not yet been addressed is to account for ADA accommodations, and speculated to the solutions to be set up through UVU. Ms. Emery asked if the curriculum is still on schedule for the June 2019 timeline, he stated they are hopeful.

5. OTHER BUSINESS

Ms. Dupont provided an update from the National Certifications for LPP. She reviewed a survey of hours in the paralegal field nationwide, and speculated to a limitation of how to meet training hour requirements. Discussion centered on how to help paralegals get certification hours. Mr. Adler stated there may be additional opportunity to get certification hours online. Mr. Sleight asked if there was a list of practitioners who could help certify hours for paralegals for debt collection or landlord/tenant cases. Justice Himonas provided an update on the Online Dispute Resolution work. He stated the pilot is running smoothly and other courts are beginning to show interest in running the pilot, as are other states. He stated the time to disposition reports are decreasing significantly. Justice Himonas then stated a task force has been developed with the Utah State Bar to review regulatory reform.

6. DEVELOPMENT OF LPP WEBPAGE: (Geoff Fattah)

Mr. Fattah presented the draft webpage for the LPP program. He asked the Committee for feedback and suggestions. Ms. Dupont suggested including links to the rules specific to the LPP. Discussion centered on whether there will be a link to advertise to hire a licensed paralegal. It was discussed that the Utah Bar will handle that type of advertising. Mr. Fattah stated once the webpage is live it will be collapsible and more easily navigated. Ms. Julie Emery inquired when the webpage will be live. Judge Appleby asked Mr. Fattah to aim to go live before the end of the year. Ms. Dupont asked the Committee to her to filter out the suggestions. Judge Appleby asked if we can monitor web traffic as that could become helpful to gauge interest in the program.

7. ADJOURN

The meeting adjourned at 1:00 p.m.

Tab 2

1 **Rule 1.14. Client with diminished capacity.**

2 (a) When a client's capacity to make adequately considered decisions in connection
3 with a representation is diminished, whether because of minority, mental impairment or
4 for some other reason, the licensed paralegal practitioner shall, as far
5 as reasonably possible, maintain a normal licensed paralegal practitioner-client
6 relationship with the client.

7 (b) When the licensed paralegal practitioner reasonably believes that the client has
8 diminished capacity, is at risk of substantial physical, financial or other harm unless
9 action is taken and cannot adequately act in the client's own interest, the licensed
10 paralegal practitioner may take reasonably necessary protective action, including
11 consulting with individuals or entities that have the ability to take action to protect the
12 client.

13 (c) Information relating to the representation of a client with diminished capacity is
14 protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the
15 licensed paralegal practitioner is impliedly authorized under Rule 1.6(a) to reveal
16 information about the client, but only to the extent reasonably necessary to protect the
17 client's interests.

18
19 **Comment**

20 [1] The normal licensed paralegal practitioner-client relationship is based on the
21 assumption that the client, when properly advised and assisted, is capable of making
22 decisions about important matters. When the client is a minor or suffers from a
23 diminished mental capacity, however, maintaining the ordinary licensed paralegal
24 practitioner-client relationship may not be possible in all respects. In particular, a
25 severely incapacitated person may have no power to make legally binding decisions.
26 Nevertheless, a client with diminished capacity often has the ability to understand,
27 deliberate upon and reach conclusions about matters affecting the client's own well-
28 being. For example, children as young as five or six years of age, and certainly those of
29 ten or twelve, are regarded as having opinions that are entitled to weight in legal
30 proceedings concerning their custody. So also, it is recognized that some persons of
31 advanced age can be quite capable of handling routine financial matters while needing
32 special legal protection concerning major transactions.

33 [2] The fact that a client suffers a disability does not diminish the licensed paralegal
34 practitioner's obligation to treat the client with attention and respect. Even if the person
35 has a legal representative, the licensed paralegal practitioner should as far as possible

36 accord the represented person the status of client, particularly in maintaining
37 communication.

38 [3] The client may wish to have family members or other persons participate in
39 discussions with the licensed paralegal practitioner. When necessary to assist in the
40 representation, the presence of such persons generally does not affect the applicability
41 of the attorney-client evidentiary privilege. Nevertheless, the licensed paralegal
42 practitioner must keep the client's interests foremost and, except for protective action
43 authorized under paragraph (b), must look to the client, and not family members, to
44 make decisions on the client's behalf.

45 [4] If a legal representative has already been appointed for the client, the licensed
46 paralegal practitioner should ordinarily look to the representative for decisions on behalf
47 of the client. In matters involving a minor, whether the licensed paralegal practitioner
48 should look to the parents as natural guardians may depend on the type of proceeding
49 or matter in which the licensed paralegal practitioner is representing the minor. If the
50 licensed paralegal practitioner represents the guardian as distinct from the ward, and is
51 aware that the guardian is acting adversely to the ward's interest, the licensed paralegal
52 practitioner may have an obligation to prevent or rectify the guardian's misconduct. See
53 Rule 1.2(d).

54 Taking Protective Action

55 [5] If a licensed paralegal practitioner reasonably believes that a client is at risk of
56 substantial physical, financial or other harm unless action is taken, and that a normal
57 licensed paralegal practitioner-client relationship cannot be maintained as provided in
58 paragraph (a) because the client lacks sufficient capacity to communicate or to make
59 adequately considered decisions in connection with the representation, then paragraph
60 (b) permits the licensed paralegal practitioner to take protective measures deemed
61 necessary. Such measures could include: consulting with family members, using a
62 reconsideration period to permit clarification or improvement of circumstances, using
63 voluntary surrogate decision-making tools such as durable powers of attorney or
64 consulting with support groups, professional services, adult-protective agencies or other
65 individuals or entities that have the ability to protect the client. In taking any protective
66 action, the licensed paralegal practitioner should be guided by such factors as the
67 wishes and values of the client to the extent known, the client's best interests and the
68 goals of intruding into the client's decision-making autonomy to the least extent feasible,
69 maximizing client capacities and respecting the client's family and social connections.

70 [6] In determining the extent of the client's diminished capacity, the licensed
71 paralegal practitioner should consider and balance such factors as: the client's ability to
72 articulate reasoning leading to a decision, variability of state of mind and ability to
73 appreciate consequences of a decision; the substantive fairness of a decision; and the

74 consistency of a decision with the known long-term commitments and values of the
75 client. In appropriate circumstances, the licensed paralegal practitioner may seek
76 guidance from an appropriate diagnostician.

77 [7] If a legal representative has not been appointed, the licensed paralegal
78 practitioner should consider whether appointment of a guardian ad litem, conservator or
79 guardian is necessary to protect the client's interests. Thus, if a client with diminished
80 capacity has substantial property that should be sold for the client's benefit, effective
81 completion of the transaction may require appointment of a legal representative. In
82 addition, rules of procedure in litigation sometimes provide that minors or persons with
83 diminished capacity must be represented by a guardian or next friend if they do not
84 have a general guardian. In many circumstances, however, appointment of a legal
85 representative may be more expensive or traumatic for the client than circumstances in
86 fact require. Evaluation of such circumstances is a matter entrusted to the professional
87 judgment of the licensed paralegal practitioner. In considering alternatives, however, the
88 licensed paralegal practitioner should be aware of any law that requires the licensed
89 paralegal practitioner to advocate the least restrictive action on behalf of the client.

90 Disclosure of the Client's Condition

91 [8] Disclosure of the client's diminished capacity could adversely affect the client's
92 interests. For example, raising the question of diminished capacity could, in some
93 circumstances, lead to proceedings for involuntary commitment. Information relating to
94 the representation is protected by Rule 1.6. Therefore, unless authorized to do so, the
95 licensed paralegal practitioner may not disclose such information. When taking
96 protective action pursuant to paragraph (b), the licensed paralegal practitioner is
97 impliedly authorized to make the necessary disclosures, even when the client directs
98 the licensed paralegal practitioner to the contrary. Nevertheless, given the risks of
99 disclosure, paragraph (c) limits what the licensed paralegal practitioner may disclose in
100 consulting with other individuals or entities or seeking the appointment of a legal
101 representative. At the very least, the licensed paralegal practitioner should determine
102 whether it is likely that the person or entity consulted with will act adversely to the
103 client's interests before discussing matters related to the client. The licensed paralegal
104 practitioner's position in such cases is an unavoidably difficult one.

105 [9] Reserved.

106 [10] Reserved.