



**Utah Supreme Court  
Oversight Committee for the Office of Professional Conduct**

**Meeting Minutes**

February 26, 2020

Scott M. Matheson Courthouse  
Court of Appeals Conference Room  
450 South State Street  
Salt Lake City, UT 84111  
4:00-7:00 p.m.

*Judge Diana Hagen, presiding*

**Attendees:**

Judge Diana Hagen, Chair  
Magistrate Judge Brooke Wells  
Margaret Plane  
Roger Smith  
John Baldwin, ex-officio member

**Staff:**

Larissa Lee  
Marina Kelaidis, Recording Secretary

**Excused:**

Art Berger

**Guests:**

Billy Walker, Office of Professional Conduct  
Elizabeth Wright, General Counsel, Utah State Bar

**1. Welcome, introductions of each committee member, and approval of the minutes:** (Judge Diana Hagen)

Judge Diana Hagen welcomed everyone to the meeting, asked each committee member to introduce themselves and the general nature of their practice, and asked for approval of the January 28, 2020 minutes.

*Judge Brooke Wells moved to approve the January 28, 2020 minutes. Margaret Plane seconded the motion, and it passed unanimously.*

**2. Discussion & Action—Whether to replace current sanctions rules with ABA model language:** (Billy Walker)

Billy Walker asked the committee to review Rule 14-605, Imposition of Sanctions. Mr. Walker reported the ABA model standards are more specific and provide more guidance for determining the appropriate level of imposed sanction based upon the factors to be considered. Mr. Walker reported the OPC would prefer for the committee to incorporate the ABA model factors into the rule to promote more consistency and fairness for imposing sanctions.

Judge Wells recommended changing the pronoun “he” in ABA model rule 4.12 to “lawyer” in order to be consistent with all other ABA rules. Larissa Lee reported the court is working to remove all gendered pronouns from the rules and replacing them with the pronoun “they.”

Billy Walker and Larissa Lee will prepare a redline version of Rule 14-605 to incorporate the OPC’s recommendations to be presented at the next committee meeting for approval.

**3. Discussion & Action—Reviewing proposed rule changes:** (Judge Diana Hagen)

**Rule 14-102:**

*Judge Hagen moved to approve the proposed changes to Rule 14-102. Margaret Plane seconded the motion, and it passed unanimously.*

**Rule 14-103:**

*Margaret Plane moved to approve the proposed changes to Rule 14-103. Judge Hagen seconded the motion, and it passed unanimously.*

**Rule 14-105:**

*Judge Hagen moved to approve the proposed changes to Rule 14-105. Margaret Plane seconded the motion, and it passed unanimously.*

**Rule 14-107:**

*Judge Hagen moved to approve the proposed changes to Rule 14-107. Judge Wells seconded the motion, and it passed unanimously.*

**Rule 14-111:**

*Judge Hagen moved to approve the proposed changes to Rule-111. Judge Wells seconded the motion, and it passed unanimously.*

**Rule 14-202:**

*Judge Hagen moved to approve the proposed changes to Rule 14-202. Margaret Plane seconded the motion, and it passed unanimously.*

**Rule 14-207:**

Margaret Plane recommended amending section (c)(4), line 10, by replacing “any amount of check may” with “a check of any amount may.”

*Margaret Plane moved to approve the proposed changes to Rule 14-207 with the recommended changes to section (c)(4). Judge Hagen seconded the motion, and it passed unanimously.*

**Rule 14-208:**

*Judge Hagen moved to approve the proposed changes to Rule 14-208. Margaret Plane seconded the motion, and it passed unanimously.*

**Rule 14-402:**

*Judge Hagen moved to approve the proposed changes to Rule 14-402. Judge Wells seconded the motion, and it passed unanimously.*

**Rule 11-501:**

John Baldwin recommended amending section (a)(2) to allow for committee members to potentially come back for future appointments. The committee agreed there is a limited pool from which committee members may be drawn from, and it may be necessary to allow past committee members to serve again. Judge Hagen recommended adding the word “consecutive” before “staggered four-year terms” to allow this proposed option. Margaret Plane recommended amending section (c)(1), line 24, by removing “not including complaints regarding OPC counsel or staff” from the end of the sentence.

*Judge Hagen moved to approve the proposed changes to Rule 11-501 with the recommended changes to sections (a)(2) and (c)(1). Roger Smith seconded the motion, and it passed unanimously.*

**Rule 14-501:**

*Margaret Plane moved to approve the proposed changes to Rule 14-501. Judge Wells seconded the motion, and it passed unanimously.*

**Rule 14-502:**

Larissa Lee proposed adding a definition of “Licensed” to include lawyers admitted to the Bar, unless provided otherwise. This proposed change would require replacing the use of “admitted” or “admitted or licensed” in all other rules with the word “licensed.”

*Judge Hagen moved to approve the proposed changes to Rule 14-502 with the recommended addition of the definition of “Licensed.” Margaret Plane seconded the motion, and it passed unanimously.*

**Rule 14-506:**

In accordance with the definition of “Licensed,” Larissa Lee recommended amending section (a), lines 3, 4, 8, and 10 by replacing “admitted” with “licensed.”

*Judge Hagen moved to approve the proposed changes to Rule 14-506 with the recommended changes to section (a). Judge Wells seconded the motion, and it passed unanimously.*

**Rule 14-529:**

Billy Walker presented the proposed changes to Rule 14-529, explaining this iteration of the rule has been modeled from Colorado’s Statute of Limitations rule. The ABA model does not have a statute of limitations for any lawyer discipline cases. The committee discussed section (c) and proposed a compromise for cases involving fraud, conversion, conviction of a serious crime, or concealment. The rule will be presented to the Supreme Court for approval as written and Larissa Lee will also present the committee’s compromise proposal section (c) for guidance from the Court.

*Judge Hagen moved to approve the proposed changes to Rule 14-529. Margaret Plane seconded the motion, and it passed unanimously.*

**Rule 14-503 (Split into five rules)**

1. Rule 14-503(a)-(c):

Ethics and Discipline Committee composition:

*Judge Hagen moved to approve the proposed changes to Rule 14-503(a)-(c), Ethics and Discipline Committee (will be renumbered). Judge Wells seconded the motion, and it passed unanimously.*

2. Rule 14-503(d)-(f)

Screening panel composition; responsibilities:

*Judge Hagen moved to approve the proposed changes to Rule 14-503(d)-(f), Screening panel composition; responsibilities (will be renumbered). Margaret Plane seconded the motion, and it passed unanimously.*

3. Former Rule 14-503(g)

Screening panel or respondent subpoena petitions:

*Judge Hagen moved to approve the proposed changes to Rule 14-503(g), Screening panel or respondent subpoena petitions (will be renumbered). Margaret Plane seconded the motion, and it passed unanimously.*

4. Rule 14-503(h)

Committee clerk:

*Judge Hagen moved to approve the proposed changes to Rule 14-503(h), Committee clerk (will be renumbered). Roger Smith seconded the motion, and it passed unanimously.*

5. Rule 14-503(i)

Disclosure, recusal, and disqualification:

Margaret Plane recommended amending section (b)(3)(A), line 18, by removing “domestic partner of such a person.” Judge Wells proposed instead ending the sentence after “third degree of relationship.”

*Judge Hagen moved to approve the proposed changes to Rule 14-503(i), Disclosure, recusal, and disqualification (will be renumbered) with the recommended changes to section (b)(3)(A). Judge Wells seconded the motion, and it passed unanimously.*

**Rule 14-504 (Split into five rules)**

1. Rule 14-504(a)

Chief disciplinary counsel and OPC counsel:

*Judge Hagen moved to approve the proposed changes to Rule 14-504(a), Chief disciplinary counsel and OPC counsel (will be renumbered). Margaret Plane seconded the motion, and it passed unanimously.*

2. Rule 14-504(b)-(c)

OPC prosecutorial powers and duties:

*Judge Hagen moved to approve the proposed changes to Rule 14-504(b)-(c), OPC prosecutorial powers and duties (will be renumbered). Roger Smith seconded the motion, and it passed unanimously.*

3. Former Rule 14-504(d)

Ethics advisory opinions:

*Judge Hagen moved to approve the proposed changes to Rule 14-504(d), Ethics advisory opinions (will be renumbered). Margaret Plane seconded the motion, and it passed unanimously.*

#### 4. New Rule

OPC investigative subpoenas:

*Judge Hagen moved to approve the addition of OPC investigative subpoenas as a new rule (will be renumbered). Judge Wells seconded the motion, and it passed unanimously.*

#### 5. New Rule

Retaining records:

Billy Walker recommended amending the section heading of section (b), line 10, to be changed from “Public reprimand, suspension, disbarment” to “Discipline and disability.”

*Judge Hagen moved to approve the addition of Retaining records as a new rule (will be renumbered). Margaret Plane seconded the motion, and it passed unanimously*

#### **Rule 14-505:**

The committee approved repealing Rule 14-505. Section (a) was moved into 14-504(d) and section (b) was replaced with 11-501(2)(B)(ii).

*Judge Hagen moved to approve the proposed changes to Rule 14-505. Judge Wells seconded the motion, and it passed unanimously.*

#### **Rule 14-507:**

The committee approved repealing Rule 14-507, as the language in this rule has been incorporated into Rule 14-107.

*Judge Hagen moved to approve the proposed changes to Rule 14-507. Judge Wells seconded the motion, and it passed unanimously.*

#### **Rule 14-508:**

The committee approved repealing Rule 14-508, as the language in this rule has been incorporated into Rule 14-107.

*Judge Hagen moved to approve the proposed changes to Rule 14-508. Margaret Plane seconded the motion, and it passed unanimously.*

#### **Rule 14-510 (Split into six rules)**

##### 1. Rule 14-510(a)

Unprofessional conduct complaints:

The committee worked to amend section (c), lines 5-6, by splitting the single sentence into two sentences and clarifying the requirements of the OPC.

*Judge Hagen moved to approve the proposed changes to Rule 14-510(a), Unprofessional conduct complaints (will be renumbered) with the recommended changes to section (c). Margaret Plane seconded the motion, and it passed unanimously.*

The committee discussed removing or using alternative language for “probable cause” to define the standard for screening panels. This issue will be postponed for action at the next committee meeting.

## 2. Rule 14-510(b)

Proceedings before Committee and screening panels:

*Judge Hagen moved to approve the proposed changes to Rule 14-510(b), Proceedings before Committee and screening panels (will be renumbered). Margaret Plane seconded the motion and it passed unanimously.*

## 3. Rule 14-510(c)-(d)

Exception to screening panel determinations and recommendations:

*Judge Hagen moved to approve the proposed changes to Rule 14-510(c)-(d), Exception to screening panel determinations and recommendations (will be renumbered). Margaret Plane seconded the motion and it passed unanimously.*

## 4. Rule 14-510(g)

General Procedures:

The committee agreed to move paragraph (g), General Procedures in between paragraph (c)-(d) Exceptions to screening panel determinations and recommendations and paragraph (e) Final committee disposition (will be renumbered).

*Judge Hagen moved to approve the proposed changes to Rule 14-510(g) General Procedures (will be renumbered). Roger Smith seconded the motion, and it passed unanimously.*

## 5. Former Rule 14-510(e)

Final Committee disposition:

Roger Smith recommended amending section (b), line 13, by replacing “may” with “must.” Billy Walker recommended also adding “within 30 days” after “must” in line 13.

*Judge Hagen moved to approve the proposed changes to Rule 14-510(e), Final Committee disposition (will be renumbered), with the proposed changes to section (b). Roger Smith seconded the motion, and it passed unanimously.*

#### 6. Former Rule 14-510(f)

Appealing a final Committee determination:

Larissa Lee recommended removing the cross-references in section (a).

*Judge Hagen moved to approve the proposed changes to Rule 14-510(f), Appealing a final Committee determination (will be renumbered), with the proposed changes to section (a). Margaret Plane seconded the motion, and it passed unanimously.*

#### **Rule 14-511:**

*Judge Hagen moved to approve the proposed changes to Rule 14-511, subject to the committee’s determination on the probable cause standard. Margaret Plane seconded the motion, and it passed unanimously.*

#### **Rule 14-532:**

*Judge Hagen moved to approve the proposed changes to Rule 14-532. Judge Wells seconded the motion, and it passed unanimously.*

#### **Rule 14-527:**

Judge Wells recommended amending section (a), line 3, by removing “disappeared” and adding “or cannot be located” after the word “died.”

*Judge Hagen moved to approve the proposed changes to Rule 14-527 with the recommended changes to section (a). Judge Wells seconded the motion, and it passed unanimously.*

#### **Rule 14-528:**

The committee approved repealing Rule 14-528, as it has been incorporated into Unprofessional conduct complaints, formerly Rule 14-510(a)(7).

*Judge Hagen moved to approve the proposed changes to Rule 14-528. Margaret Plane seconded the motion, and it passed unanimously.*

#### **Rule 14-530:**



*Judge Hagen moved to approve the proposed changes to Rule 14-530. Margaret Plane seconded the motion, and it passed unanimously.*

**Rule 14-512:**

The committee approved repealing Rule 14-512, because the committee is combining the article 5 and 6 (sanctions) rules.

*Judge Hagen moved to approve the proposed changes to Rule 14-512. Margaret Plane seconded the motion, and it passed unanimously.*

**Rule 14-513:**

*Judge Hagen moved to approve the proposed changes to Rule 14-513. Judge Wells seconded the motion, and it passed unanimously.*

**Rule 14-514:**

*Judge Hagen moved to approve the proposed changes to Rule 14-514. Roger Smith seconded the motion, and it passed unanimously.*

**Rule 14-517:**

*Judge Hagen moved to approve the proposed changes to Rule 14-517, subject to the committee's determination on the probable cause standard. Margaret Plane seconded the motion, and it passed unanimously.*

**4. Discussion & Action—Proposed OPC Performance Metrics:**

This matter was postponed and will be addressed at the next committee meeting.

**5. Other Business—Schedule next meeting: (all)**

The meeting adjourned at 7:00 p.m. The next meeting will be held on March 25, 2020.