



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

Meeting Minutes

April 13, 2020

Webex

4:00–7:00 p.m.

Judge Diana Hagen, presiding

Attendees:

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

Staff:

Larissa Lee
Marina Kelaidis, Recording Secretary

Guests:

Billy Walker, Office of Professional Conduct
Elizabeth Wright, General Counsel, Utah State Bar
Christine Greenwood, Ethics and Discipline Committee

1. Welcome and approval of the February 26, 2020 minutes: (Judge Diana Hagen)

Judge Diana Hagen welcomed everyone to the meeting and asked for approval of the minutes.

Judge Brooke Wells moved to approve the February 26, 2020 minutes. Roger Smith seconded the motion, and it passed unanimously.

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

The committee reviewed the suggested revisions to Rule 14-503 and Rule 14-510 provided by Christine Greenwood, Chair of the Utah Supreme Court's Ethics and Discipline Committee.

Rule 14-503 (Split into five rules)

1. Rule 14-503(a–c)

Ethics and Discipline Committee composition:

Christine Greenwood recommended amending section (a), line 7, by replacing “screening panel chair or vice chair” with “chair or vice chair of the Committee.”

Judge Brooke Wells moved to approve the proposed changes to Rule 14-503(a–c) Ethics and Discipline Committee (will be renumbered) with the recommended changes to section (a). Art Berger seconded the motion, and it passed unanimously.

2. Rule 14-503(d–f)

Screening panel composition; responsibilities:

Ms. Greenwood recommended amending section (a), line 6, by replacing “may” with “may, as practical” to allow more flexibility due to the small number of licensed paralegal practitioners currently licensed.

Ms. Greenwood recommended removing or defining “investigate” in section (f)(1), line 7, as it is unclear what the investigative abilities of the screening panel are. Billy Walker suggested that it is important for the screening panel to be a fact finding body in addition to the OPC, but agreed that “investigate” is not a clear description of the screening panel's process. The committee recommended amending the entire sentence and replacing it with: “The screening panels review, hear all complaints charging that a lawyer engaged in unethical or unprofessional conduct, and may consider any other relevant information.” Ms. Greenwood also recommended amending section (f)(1), line 10, by adding “based on applying these rules to the facts.”

Art Berger moved to approve the proposed changes to Rule 14-503(d–f) Screening panel composition; responsibilities (will be renumbered) with the recommended changes to sections (a) and (f)(1). Judge Brooke Wells seconded the motion, and it passed unanimously.

3. Rule 14-503(g)

Screening panel or respondent subpoena petitions:

Ms. Greenwood recommended amending section (a), lines 2–5, to remove the ability of the screening panel to issue a subpoena. The committee amended lines 2–5 as: “Before the screening panel authorizes the OPC to commence an action against respondent, the respondent may, for good cause, request that the Committee chair authorize service of a subpoena on a third party to produce documents, electronically stored information, or tangible things in the possession, custody, or control of that person or entity.”

Ms. Greenwood also recommended amending section (a), lines 5–7, to clarify the sequence of events for issuing a subpoena. The committee amended lines 5–7 by clarifying: “Except for good cause, all petitions under this rule require a seven-day written notice to the OPC before the Committee chair authorizes the subpoena.” The committee also amended the title of this rule to “Respondent subpoena petitions.”

Ms. Greenwood recommended amending section (c), line 13, by replacing or removing “validity” from this sentence. The committee agreed to remove the word “validity.”

Judge Brooke Wells moved to approve the proposed changes to Rule 14-503(g) Screening panel or respondent subpoena petitions (will be renumbered) with the recommended changes to sections (a), (c), and the title. Margaret Plane seconded the motion, and it passed unanimously.

4. Rule 14-503(h)
Committee Clerk:

Margaret Plane moved to approve the proposed changes to Rule 14-503(h), Committee Clerk (will be renumbered). Art Berger seconded the motion, and it passed unanimously.

5. Rule 14-503(i)
Disclosure, recusal, and disqualification:

No further recommendations.

Rule 14-510 (Split into six rules)

1. Rule 14-510(a)
Unprofessional conduct complaints:

Ms. Greenwood recommended amending section (b), line 24, by replacing “verification” with parallel language to the previous sentence. The committee agreed to replace “verification” with “such a declaration.”

Ms. Greenwood recommended amending section (c), lines 5–6, to clarify the meaning of “final disposition.” The committee agreed to remove this sentence entirely.

Ms. Greenwood recommended amending section (f), line 14, by replacing or removing “investigation.” Larissa Lee recommended amending the sentence by removing “investigation” and “consideration” resulting in “the OPC will refer the case to a screening panel to make a determination or recommendation.”

Ms. Greenwood recommended amending section (g)(2)(B), line 10, by increasing the time a complainant has to file a written notice. Larissa Lee recommended amending the response time to a multiple of 7 for consistency. The committee agreed to amend the time to 21 days. Ms. Lee will also amend the response times and due dates throughout the rule to be multiples of 7.

Ms. Greenwood recommended amending section (g)(2)(C), lines 14–15, by adding “and” after “file” in line 14 and clarifying the notice requirement in line 15. Judge Hagen recommended adding “if necessary” to line 15.

Margaret Plane moved to approve the proposed changes to Rule 14-510(a) Unprofessional conduct complaints (will be renumbered) with the recommended changes to sections (b), (c), (f), (g)(2)(B), and (g)(2)(C). Judge Brooke Wells seconded the motion, and it passed unanimously.

2. Rule 14-510(b)

Proceedings before Committee and screening panels:

Judge Hagen recommended amending section (a), line 2, by removing “as fact finders and investigators” from the beginning of the sentence. Billy Walker recommended also removing “and investigation” from the section title.

Ms. Greenwood recommended amending section (k), lines 19-20, for clarification. The committee agreed to replace “a screening panel may not consider facts raised in other cases against the same respondent” with “only the factual allegations in that case should be considered.”

Art Berger moved to approve the proposed changes to Rule 14-510(b) Proceedings before Committee and screening panels (will be renumbered) with the recommended

changes to sections (a) and (k). Judge Brooke Wells seconded the motion, and it passed unanimously.

3. Rule 14-510(c–d)

Exception to screening panel determinations and recommendations:

Ms. Greenwood recommended amending section (e)(3), lines 3–8, by specifying the duration of the extension and the deadline for filing a transcript with the Committee clerk. Judge Wells recommended a 60-day duration to provide the transcript. Ms. Greenwood recommended for the audio or video recording to be requested within 28 days. Judge Hagen recommended for the party to file the transcript with the Committee clerk “at the time of or before filing an exception or response.”

Roger Smith moved to approve the proposed changes to Rule 14-510(c–d) Exception to screening panel determinations and recommendations (will be renumbered) with the recommended changes to section (e)(3). Judge Wells seconded the motion, and it passed unanimously.

4. Rule 14-510(g)

General procedures:

Billy Walker recommended amending paragraph (g)(3)(c) to paragraph (c). This numeration was a typo. Ms. Greenwood recommended amending section (c), lines 7–11, to clarify whether a case to be put into abeyance after a screening panel has made a determination that a formal complaint or an action should be filed. The committee agreed to amend paragraph (c), lines 7–9 as: “A disciplinary proceeding may be held in abeyance by the Committee chair at any time before a screening panel hearing when the allegations.” Ms. Greenwood also recommended replacing “continued” and “continuance” with “abeyance” throughout this section, to include amending the paragraph title to “Abeyance of disciplinary proceedings.”

Art Berger moved to approve the proposed changes to Rule 14-510(g) General procedures (will be renumbered) with the recommended changes to section (c). Judge Brooke Wells seconded the motion, and it passed unanimously.

5. Rule 14-510(e)

Final Committee disposition:

Ms. Greenwood recommended amending section (b), lines 12–17, by removing or replacing subsections (b)(1) and (b)(2). The committee removed the subsections (b)(1), (b)(2), and (b)(3) and wrote a new sentence with cross references. “If the

screening panel recommends a public reprimand, the respondent may, within 28 days, file an exception in accordance with Rule {cross reference}, or elect a trial de novo with the district court by notifying the Committee chair, who will authorize the action in accordance with Rule {former rule 14-511}.”

Art Berger moved to approve the proposed changes to Rule 14-510(e) Final Committee disposition (will be renumbered) with the recommended changes to section (b). Judge Brooke Wells seconded the motion, and it passed unanimously.

6. Rule 14-510(f)

Appealing a final Committee determination:

The committee agreed to amend the title of this rule by adding “to the Supreme Court.”

Margaret Plane moved to approve the proposed changes to Rule 14-510(f), Appealing a final Committee determination to the Supreme Court (will be renumbered). Roger Smith seconded the motion and it passed unanimously.

3. Discussion & Action—Proposed OPC Performance Metrics:

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

4. Other Business—Schedule next meeting: (all)

Christine Greenwood explained that the Ethics and Discipline Committee’s Chair/Vice Chair administrative responsibilities and quantity of screening panel hearings have become overwhelming. Ms. Greenwood proposed for the committee to consider hiring a full-time staff attorney to assist with the Ethics and Discipline Committee’s responsibilities and to provide oversight for the Committee clerk or replace the Committee clerk paralegal position. This staff attorney may also serve as the Committee chair. John Baldwin recommended for the committee to prepare a written proposal, position description, and salary range by the beginning of May 2020 to be submitted to the Bar Commission at the end of May 2020. John Baldwin, Billy Walker, Christine Johnson and Elizabeth Wright will prepare a draft proposal, position description and salary range to be presented at the next OPC committee meeting.

The meeting adjourned at 7:00 p.m. The next meeting will be held on May 4, 2020 from 4:00–7:00p.m. via Webex.