



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

### Meeting Minutes

May 4, 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 April 13, 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 April 13, 2020 minutes. Art Berger seconded the motion, and it passed unanimously.*

#### **2. Action—Approve Rule 14-103:** (Elizabeth Wright)

The committee reviewed the proposed amendments to Rule 14-103 provided by Elizabeth Wright, General Counsel, Utah State Bar.

*Margaret Plane moved to approve the proposed changes to Rule 14-103, Bar organization and management. Art Berger seconded the motion, and it passed unanimously.*

3. **Action—Approve OPC investigative subpoenas rule:** (Christine Greenwood, Billy Walker)

New Rule: OPC investigative subpoenas:

Christine Greenwood recommended changes to this rule to streamline the process and provide that the Ethics and Discipline Committee chair approve the service of an OPC investigative subpoena but not require the chair to serve the subpoena. Larissa Lee recommended amending paragraph (b) to give the OPC the option of emailing the subpoena request and proposed subpoena.

*Margaret Plane moved to approve the proposed changes to OPC investigative subpoenas (will be renumbered) with the recommended changes to paragraph (b). Roger Smith seconded the motion, and it passed unanimously.*

4. **Discussion and action—Review and approve remaining proposed rule changes:** (Judge Diana Hagen)

**Diversion (split Rule 14-533)**

1. Rule 14-533(a), (b), (e), (i)

Diversion referrals, authority, and responsibilities:

Christine Greenwood recommended amending paragraph (a) by adding “before the matter is submitted to a screening panel” to clarify the procedural stage in which a case may be referred to diversion.

*Judge Hagen moved to approve the proposed changes to Rule 14-533(a), (b), (e), (i) Diversion referrals, authority, and responsibilities (will be renumbered) with the recommended changes to paragraph (a). Judge Wells seconded the motion, and it passed unanimously.*

2. Rule 14-533(c–d)

Circumstances warranting diversion:

*Judge Hagen moved to approve the proposed changes to Rule 14-533(c–d) Circumstances warranting diversion (will be renumbered). Margaret Plane seconded the motion, and it passed unanimously.*

3. Rule 14-533(f-h)  
Diversion contract:

*Judge Hagen moved to approve the proposed changes to Rule 14-533(f-h) Diversion contract (will be renumbered). Judge Wells seconded the motion, and it passed unanimously.*

4. Rule 14-533 (a)(1)–(a)(9)  
Respondent’s participation:

*Judge Hagen moved to approve the proposed changes to Rule 14-533(a)(1)–(a)(9) Respondent’s participation (will be renumbered). Art Berger seconded the motion, and it passed unanimously.*

5. Rule 14-533(j)  
Terminating diversion:

*Judge Hagen moved to approve the proposed changes to Rule 14-533(j) Terminating diversion (will be renumbered). Roger Smith seconded the motion, and it passed unanimously.*

6. Rule 14-533(k)  
Diversion costs:

Judge Wells recommended adding language giving OPC the discretion to waive fees based on a hardship request.

*Judge Hagen moved to approve the proposed changes to Rule 14-533(k) Diversion costs (will be renumbered) with the recommended changes regarding hardship. Judge Wells seconded the motion, and it passed unanimously.*

## **Discipline**

- Rule 14-509:  
Grounds for discipline:

Art Berger recommended amending paragraphs (b) and (f) by removing “willfully.” Billy Walker recommended removing paragraph (f) as it is a duplicate of paragraph (a), specifically Rule 8.1(b).

*Margaret Plane moved to approve the proposed changes to Rule 14-509, Grounds for discipline (will be renumbered) with the recommended changes to paragraphs (b) and (f). Art Berger seconded the motion, and it passed unanimously.*

Rule 14-515:  
Accessing disciplinary information:

*Judge Hagen moved to approve the proposed changes to Rule 14-515 Accessing disciplinary information. Judge Wells seconded the motion, and it passed unanimously.*

Rule 14-516:  
Disseminating disciplinary information:

*Judge Hagen moved to approve the proposed changes to Rule 14-516 Disseminating disciplinary information. Roger Smith seconded the motion, and it passed unanimously.*

Rule 14-518:  
Interim discipline for threat of harm:

*Judge Hagen moved to approve the proposed changes to Rule 14-518 Interim discipline for threat of harm. Margaret Plane seconded the motion, and it passed unanimously.*

Rule 14-519:  
Lawyers found guilty of a crime:

*Judge Hagen moved to approve the proposed changes to Rule 14-519 Lawyers found guilty of a crime. Margaret Plane seconded the motion, and it passed unanimously.*

Rule 14-520:  
Discipline by consent:

Christine Greenwood recommended amending paragraph (a) by adding “before the matter is submitted to a screening panel” to clarify jurisdiction. Ms. Greenwood also recommended amending the title of paragraph(a) to “Discipline by consent before the matter is submitted to a screening panel.”

*Judge Hagen moved to approve the proposed changes to Rule 14-520 Discipline by consent with the recommended changes to paragraph (a). Art Berger seconded the motion, and it passed unanimously.*

Rule 14-521:  
Resignation with discipline pending:

To include Licensed Paralegal Practitioners, the committee recommended amending paragraph (a) to allow a respondent to resign by voluntarily relinquishing their license.

*Judge Hagen moved to approve the proposed changes to Rule 14-521 Resignation with discipline pending with the recommended changes to paragraph (a). Roger Smith seconded the motion, and it passed unanimously.*

Rule 14-522:

Reciprocal discipline:

Billy Walker recommended amending paragraph (b)(2) by removing “equivalent” to mirror the case law of *In re Discipline of Welker*. The committee agreed to postpone this recommendation for consideration at the next meeting to allow for further review of the recommendation and associated case law.

*Judge Hagen moved to approve the proposed changes to Rule 14-522 Reciprocal discipline. Margaret Plane seconded the motion, and it passed unanimously.*

Rule 14-523: Proceedings in which lawyer is declared to be incompetent or alleged to be incapacitated:

*Judge Hagen moved to approve the proposed changes to Rule 14-523 Proceedings in which lawyer is declared to be incompetent or alleged to be incapacitated. Roger Smith seconded the motion, and it passed unanimously.*

Rule 14-531:

Noncompliance with child support order, child visitation order, subpoena or order relating to paternity, or child support proceeding:

*Judge Hagen moved to approve the proposed changes to Rule 14-531 Noncompliance with child support order, child visitation order, subpoena or order relating to paternity, or child support proceeding. Art Berger seconded the motion, and it passed unanimously.*

Rule 14-526:

Notice of disability or suspension; return of clients’ property; refund of unearned fees:

*Judge Hagen moved to approve the proposed changes to Rule 14-526 Notice of disability or suspension; return of clients’ property; refund of unearned fees. Margaret Plane seconded the motion, and it passed unanimously.*

## **Sanctions**

Rule 14-601: Article 6. Standards for Imposing Lawyer Sanctions:

Definitions:

*Judge Hagen moved to repeal Rule 14-601 Definitions, as the terms have been incorporated into Rule 14-502, Definitions (will be renumbered)). Art Berger seconded the motion, and it passed unanimously.*

Rule 14-602:

Purpose and nature of sanctions:

*Judge Hagen moved to approve the proposed changes to Rule 14-602 Purpose and nature of sanctions. Margaret Plane seconded the motion, and it passed unanimously.*

Rule 14-603:

Sanctions:

Larissa Lee recommended amending paragraph (a) to clarify who finds or acknowledges that the lawyer has engaged in professional misconduct. Judge Hagen recommended removing “or acknowledgement.” Larissa Lee recommended amending paragraph (g)(2) by removing “but may not be limited to.” Christine Greenwood recommended amending paragraph (h)(1) by adding “before the matter is submitted to a screening panel.” Larissa Lee recommended amending paragraph (j) by replacing “which may be imposed” with “that a court may impose.”

*Judge Hagen moved to approve the proposed changes to Rule 14-603 Sanctions with the recommended changes to paragraphs (a), (g)(2), (h)(1), and (j). Judge Wells seconded the motion, and it passed unanimously.*

Rule 14-604:

Factors to be considered in imposing sanctions:

The committee agreed to amend paragraph (a)(1), remove paragraph (a)(4), and create paragraphs (a)(1)(A)–(a)(1)(C).

*Judge Hagen moved to approve the proposed changes to Rule 14-604 Factors to be considered in imposing sanctions with the recommended changes to paragraph (a). Art Berger seconded the motion, and it passed unanimously.*

Rule 14-605: (Split into four rules)

1. Sanctions for violating duties owed to clients:

*Judge Hagen moved to approve the proposed changes to Sanctions for violating duties owed to clients (will be renumbered). Margaret Plane seconded the motion, and it passed unanimously.*

2. Sanctions for violating duties owed to the public:

*Judge Hagen moved to approve the proposed changes to Sanctions for violating duties owed to the public (will be renumbered). Margaret Plane seconded the motion, and it passed unanimously.*

3. Sanctions for violating duties owed to the legal system:

*Judge Hagen moved to approve the proposed changes to Sanctions for violating duties owed to the legal system (will be renumbered). Margaret Plane seconded the motion, and it passed unanimously.*

4. Sanctions for violating duties owed as a professional.

*Judge Hagen moved to approve the proposed changes to Sanctions for violating duties owed as a professional (will be renumbered). Margaret Plane seconded the motion, and it passed unanimously.*

Rule 14-606:

Prior discipline orders:

*Judge Hagen moved to approve the proposed changes to Prior discipline orders. Art Berger seconded the motion, and it passed unanimously.*

Rule 14-607:

Aggravation and mitigation:

Judge Hagen recommended amending paragraph (a) by replacing “determined” to “decided.”

*Judge Hagen moved to approve the proposed changes to Rule 14-607 Aggravation and Mitigation with the recommended changes to paragraph (a). Roger Smith seconded the motion, and it passed unanimously.*

## **Reinstatement**

Rule 14-524:

Reinstatement following a suspension or probation of no more than six months:

Billy Walker recommended amending the title of this rule to “reinstatement following a suspension of no more than six months, or probation” and amending the first sentence to “for no more than six months or placed on probation.”

*Judge Hagen moved to approve the proposed changes to Rule 14-524 Reinstatement following a suspension or probation of no more than six months with the recommended*

*changes to the title and paragraph (a). Roger Smith seconded the motion, and it passed unanimously.*

Rule 14-525:

Reinstatement following a suspension of more than six months; relicensure:

The committee agreed to amend paragraph (e)(4)(A) to clarify how the court may determine whether the lawyer seeking reinstatement or relicensure has demonstrated the requisite honesty, integrity, and fitness to practice law. To be inclusive of LPPs, the committee agreed to add “or relicensure” throughout the rule. Larissa Lee recommended amending paragraph (e)(6) by adding “retake and pass.”

*Judge Hagen moved to approve the proposed changes to Rule 14-525 Reinstatement following a suspension of more than six months; relicensure with the recommended changes to paragraph (e)(4)(A) and (e)(6). Margaret Plane seconded the motion, and it passed unanimously.*

Rule 14-528:

Appeal by complainant:

*Judge Hagen moved to repeal Rule 14-528 Appeal by complainant as it has been fully incorporated into rule 14-510(a) (will be renumbered). Judge Wells seconded the motion, and it passed unanimously.*

## **Article 7. Admissions**

Rule 14-701:

Definitions:

*Judge Hagen moved to approve the proposed changes to Rule 14-701 Definitions. Roger Smith seconded the motion, and it passed unanimously.*

Rule 14-705:

Admission by motion:

*Judge Hagen moved to approve the proposed changes to Rule 14-705 Admission by motion. Margaret Plane seconded the motion, and it passed unanimously.*

Rule 14-712:

Qualifications for admission based on UBE:

*Judge Hagen moved to approve the proposed changes to Rule 14-712 Qualifications for admission based on UBE. Art Berger seconded the motion, and it passed unanimously.*



Rule 14-718:  
Licensing of Foreign Legal Consultants:

*Judge Hagen moved to approve the proposed changes to Rule 14-718 Licensing of Foreign Legal Consultants. Margaret Plane seconded the motion, and it passed unanimously.*

### **Article 8. Special Practice Rules**

Rule 14-801:  
Definitions:

*Judge Hagen moved to approve the proposed changes to Rule 14-801 Definitions. Art Berger seconded the motion, and it passed unanimously.*

### **Article 9. Lawyer's Fund for Client Protection**

Rule 14-904:  
Funding:

*Judge Hagen moved to approve the proposed changes to Rule 14-904 Funding. Judge Wells seconded the motion, and it passed unanimously.*

Rule 14-912:  
Processing claims:

*Judge Hagen moved to approve the proposed changes to Rule 14-912 Processing claims. Art Berger seconded the motion, and it passed unanimously.*

### **Chapter 15. Rules Governing Licensed Paralegal Practitioners**

Rule 15-402:  
Definitions:

*Judge Hagen moved to approve the proposed changes to Rule 15-402 Definitions. Roger Smith seconded the motion, and it passed unanimously.*

Rule 15-701:  
Definitions:

*Judge Hagen moved to approve the proposed changes to Rule 15-701 Definitions. Margaret Plane seconded the motion, and it passed unanimously.*

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

The meeting adjourned at 7:00 p.m. The next meeting will be held on Tuesday, May 19, 2020 from 4:00–5:30 p.m.