



AGENDA

Utah Supreme Court Oversight Committee for the Office of Professional Conduct

Location: Webex
Date: May 4, 2020
Time: 4:00 to 7:00 p.m.

Action: Welcome and approval of the April 13, 2020 minutes. Tab 1: Draft meeting minutes for April 13, 2020.	Judge Diana Hagen
Action: Approve Rule 14-103 Tab 2: Email from Elizabeth Wright and proposed redline (approved changes in clean copy).	Elizabeth Wright
Action: Approve OPC investigative subpoena rule Tab 3: Email from Christine Greenwood and proposed redline (approved changes in clean copy).	Christine Greenwood, Billy Walker
Discussion & action: Review and approve remaining proposed rule changes. Tab 4: Redline of remaining proposed rules Tab 5: Clean copy of remaining proposed rules Tab 6: Progress Report/Recommendations	Judge Diana Hagen
Other business – Schedule next meeting	

Committee Webpage: <https://www.utcourts.gov/utc/opc/>

Tab 1



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

Draft 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.

Tab 2



Larissa Lee <larissal@utcourts.gov>

Bar rule in OPC Oversight rules

4 messages

Elizabeth Wright <Elizabeth.Wright@utahbar.org>
To: Larissa Lee <larissal@utcourts.gov>

Thu, Apr 23, 2020 at 12:51 PM

Hello Larissa,

The OPC Oversight Committee approved changes to Rule 14-103. Meanwhile, the Commission would like to change three words at the end of section (f)(2). Line 7 on page 10 of the packet of rules I have from you. The Commission would like the last line to read "before the date on which the election closes." Remove "ballots will be counted."

OPC Oversight already voted to approve. I will defer to you on how to handle this. Perhaps a quick vote at the beginning of the next meeting? Please let me know.

Elizabeth A. Wright

General Counsel

Utah State Bar

645 South 200 East

Salt Lake City, UT 84111

(801) 297-7047

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Larissa Lee <larissal@utcourts.gov>
To: Elizabeth Wright <Elizabeth.Wright@utahbar.org>

Thu, Apr 23, 2020 at 11:13 PM

Hi Elizabeth,

Thanks for your email. I think this is something the OPC Oversight Committee can easily approve at the beginning of our next meeting. I'll add it to the agenda!

Hope you're doing well,
Larissa

[Quoted text hidden]

Rule 14-103. Bar organization and management.

(a) Board of Commissioners: number, term, and vacancies.

(a)(1) Number. The Bar's Board of Commissioners consists of at least 13 but no more than 15 voting members, including 11 elected lawyers and two nonlawyers appointed by the Supreme Court.

(a)(2) Term. Unless otherwise provided, the term of office of each commissioner is three years and until a successor is elected and qualified. The initial term of office of one of the nonlawyer commissioners is two years.

(a)(3) Vacancies.

(a)(3)(A) If a lawyer vacancy on the Board occurs before the completed term of office, the remaining commissioners will:

(a)(3)(A)(i) conduct a special election;

(a)(3)(A)(ii) appoint an interim successor from among the active Bar members whose business mailing addresses on the Bar's records are in the division from which the commissioner was elected, who will serve until the next annual election; or

(a)(3)(A)(iii) fill the vacancy during the next regular annual election.

(a)(3)(B) If a lawyer vacancy on the Board is filled by either a special or regular election, the Board may establish the term of the successor to be a one, two or full three-year term, provided that there would be only two or three commissioners from the Third Division whose terms expire in any one year and only four or five Board commissioners whose terms expire in any one year.

(a)(3)(C) A President's unexpired Commission term will be filled in the regular election cycle immediately preceding the time he or she succeeds to the office of President.

1 (b) **Board's powers.** The Board may exercise all powers necessary and proper to carry out its
2 duties and responsibilities and has all authority not specifically reserved to the Supreme Court.
3 The Court specifically reserves the authority to:

4 (b)(1) approve Bar admission and licensure fees for attorneys and Licensed Paralegal
5 Practitioners;

6 (b)(2) approve all rules and regulations for admission, licensure, professional conduct,
7 client security fund, fee arbitration, legislative activities, unauthorized practice of law,
8 and Bar Examination review and appeals; and

9 (b)(3) establish appropriate rules and regulations governing mandatory continuing legal
10 education.

11 (c) **Territorial divisions.** The First Division includes the First Judicial District; the Second
12 Division includes the Second Judicial District; the Third Division includes the Third Judicial
13 District; the Fourth Division includes the Fourth Judicial District; and the Fifth Division includes
14 the Fifth, Sixth, Seventh, and Eighth Judicial Districts.

15 (d) **Number of lawyer commissioners from each division.** Each division will have one lawyer
16 commissioner, except the Third Division will have seven lawyer commissioners. No more than
17 one lawyer commissioner from any division except from the Third Division, and no more than
18 seven lawyer commissioners from the Third Division, may serve on the Board at the same time.

19 (e) **Nomination and eligibility of lawyer commissioners.** To nominate a person for
20 commissioner for a particular division, a member's business mailing address on the Bar's records
21 must be within that division. To be eligible for the office of lawyer commissioner in a division,
22 the nominee's business mailing address on the Bar's records must be within that division.
23 Nomination to the office of commissioner must be by written petition of at least 10 Bar members
24 in good standing. Any number of candidates may be nominated on a single petition. Nominating
25 petitions will be provided to the executive director within a period fixed by the Board's rules.

26 (f) **Commissioner Elections.**

27 (f)(1) Lawyer commissioners must be elected by resident active Bar members as follows:

(f)(1)(A) beginning in 1983 and every third year thereafter, one member from the Second Division and two members from the Third Division, but in 1983 only, there will be four members elected from the Third Division;

(f)(1)(B) beginning in 1984 and every third year thereafter, one member from the First Division and three members from the Third Division; and

(f)(1)(C) beginning in 1985 and every third year thereafter, two members from the Third Division and one each from the Fourth and Fifth Divisions.

(f)(2) The candidate from any division, and the two or three candidates from the Third Division, receiving the greatest number of votes of that division will be the commissioner of such division. A member may only vote for commissioner candidates in the division in which the member's business mailing address on the Bar's records is located. The ballots will be returned to the Bar offices in accordance with its rules. There will be an annual election by the resident active Bar members for the purpose of filling vacancies. The Board will fix the time for holding the annual election and prescribe such rules and regulations in accordance with this chapter. The Board must mail annual election notices at least 90 days before the date on which ~~ballots will be counted~~the election closes.

(g) **President-elect's nomination and election.** The Board must nominate at least one active lawyer in good standing to run for the office of president-elect, to be elected by the active Bar members. The president and the president-elect will hold office until their successors are elected and seated. A secretary, and such other assistants as the Board may require, may be selected from within or without the Board to hold office at the pleasure of the Board and to be paid such compensation as the Board determines.

(h) **Board officers and organization.** The Board is organized and authorized to conduct business through its elected commissioners, and the Bar's president and president-elect. The president-elect for the previous year will automatically succeed to the office of president. A president and president-elect who are not elected commissioners have the authority to vote on matters brought before the Board. In the event of a tie vote, the matter at hand will fail to pass.

1 (i) **Annual and special meetings notice.** There must be an annual meeting of the Bar, presided
2 over by the Bar president, open to all members in good standing, and held at such time and place
3 as the Board may designate, for discussing Bar affairs and the administration of justice. Special
4 Bar meetings may be held at such times and places as the Board designates. Notice of all
5 meetings must be published to the Bar's website not fewer than 14 days before the date of such
6 meeting.

7 (j) **Bylaws.** The Board may adopt Bylaws, not conflicting with any of these rules' terms,
8 concerning officer selection and tenure, creation of sections and committees and their powers
9 and duties, and generally for the control and regulation of the business of the Board and of the
10 Bar.

Tab 3



Larissa Lee <larissal@utcourts.gov>

Recap OPC Oversight 4/13 Meeting

Christine T. Greenwood <greenwood@mcg.law>

Thu, Apr 23, 2020 at 11:45 AM

To: Larissa Lee <larissal@utcourts.gov>

Cc: Judge Diana Hagen <dhagen@utcourts.gov>

Dear Judge Hagen and Larissa,

I am still planning to get my comments on the diversion, discipline, and sanction rules to you later today. As it turns out, I do not have many comments on those rules, so that will hopefully come as good news!

Having said that, although I understand that you don't want to receive my comments on the already-approved rules (until the time for public comment), there is one such rule I feel strongly about and as to which I'd like to at least give you my comments prior to having the rule go out for public comment and to the Court, if at all possible. If that's not doable, I completely understand, but I think it's worth raising at this stage for the following reasons.

The rule is the one on OPC Investigative Subpoenas. I've attached a redline with my comments and questions. The main issue with the current iteration is the new burdens it imposes on the E&D Committee, including the chair and the clerk. A related issue is that the rule includes a lot of steps that complicate rather than streamline the process. For example, the first sentence suggests it would be the chair's duty to serve subpoenas requested by OPC, but I'm guessing that is not the intent. Subsection (d) suggests that the (already-overburdened) E&D clerk is to develop a subpoena form for OPC that the clerk will then need to sign and provide to OPC any time OPC's request for a subpoena is granted by the chair. Is that step necessary and can we not have OPC prepare and issue its own form? These issues are set out in the attached redline.

If we ultimately are able to have a staff attorney appointed for the E&D committee, the rule as is may not be as much of a problem, but for now I foresee practical difficulties with implementation that could in my view be resolved with some minor revisions.

Please let me know your thoughts. Due to time considerations, I have not consulted with Billy Walker on my concerns or proposed changes, but am happy to do so and/or to share this email and the attached redline with him if appropriate.

Best,

Christine

Christine T. Greenwood



170 South Main Street, Suite 1100

Salt Lake City, Utah 84101

Telephone: 801.359.9000

Facsimile: 801.359.9011

greenwood@mcg.law

I. Rule _____ OPC investigative subpoenas.

(a) **Power to subpoena.** The OPC may request that the Committee chair approve serving ~~serve~~ on a respondent or third party a subpoena to produce documents, electronically stored information, or tangible things in the possession, custody, or control of that person.

(b) **Requesting a subpoena.** The OPC must file a written request with the Committee chair for a subpoena and attach a copy of the proposed subpoena. ~~with the Committee chair~~ The OPC must ~~and mail~~ a copy of the request and proposed subpoena to the respondent's address according to the Bar's records. The request must describe the purpose for seeking the subpoena. Any objections to the request must be filed with the chair within seven days ~~of the~~ after the subpoena request is mailed. Within ~~three~~ seven business days after the time for filing an objection expires, the Committee chair will grant or deny the subpoena request, without a hearing, based on ~~the following considerations:~~ weighing:

(b)(1) ~~a weighing of~~ the materiality and necessity of the requested documents, electronically stored information, or tangible things; and

(b)(2) ~~a weighing of~~ the burden to the custodian of producing the documents, electronically stored information, or tangible things.

(c) **Serving the subpoena.** If the Committee chair grants the request, the OPC may sign and serve the subpoena ~~obtain a signed subpoena form, but otherwise blank, from the Committee clerk. The OPC will fill out the subpoena and serve it~~ on the respondent or third party.

(d) **Witnesses and fees.** Subpoena fees, witness fees, and mileage are reimbursed in the amounts provided under Rule 45 of the Utah Rules of Civil Procedure. The requesting party bears the cost associated with producing documents or electronically stored information.

(e) **Quashing or enforcing a subpoena.** A district court in the district in which the attendance or production is being sought may, upon proper application, quash the subpoena, or enforce the attendance and testimony of any witnesses and the production of any documents subpoenaed as provided for in Rule 45 of the Utah Rules of Civil Procedure. Any resulting order is not appealable before the entry of a final order in the disciplinary proceeding.

Commented [LL1]: Recommendation 4.3

Commented [CG2]: The duty to serve the subpoena shouldn't fall on the chair?

Commented [LL3]: Is this always mailed or is it emailed?

Commented [CG4]: Three is a pretty quick turnaround – could we do 5 or 7 days?

Commented [CG5]: This seems like an unnecessary series of steps. The OPC should have its own form and be allowed to issue a subpoena without a signature from the Committee clerk or chair.

Commented [CG6]: This sentence could be omitted to make it consistent with subsection (d) of the rule on "Respondent subpoena petitions."

Commented [LL7R6]: I agree this is not needed, as Rule 45 already lays out who pays the costs.

Tab 4

Remaining rules to be approved

Chapter 11, Article 5

Diversion (split 14-533)

- Diversion referrals, authority, and responsibilities (formerly 14-533(a), (b), (e), (i))
- Circumstances warranting diversion. (formerly 14-533(c)-(d))
- Diversion contract. (formerly 14-533(f)-(h))
- Respondent's participation. (formerly 14-533(a)(1)-(9))
- Terminating diversion. (formerly 14-533(j))
- Diversion costs. (formerly 14-533(k))

Discipline.

- 14-509 Grounds for discipline.
- 14-515 ~~Access to~~ Accessing disciplinary information.
- 14-516 ~~Dissemination of~~ Disseminating disciplinary information.
- 14-518 Interim ~~suspension~~ discipline for threat of harm.
- 14-519 Lawyers ~~convicted~~ found guilty of a crime.
- 14-520 Discipline by consent.
- 14-521 Resignation with discipline pending.
- 14-522 Reciprocal discipline.
- 14-523 Proceedings in which lawyer is declared to be incompetent or alleged to be incapacitated.
- 14-531 Noncompliance with child support order, child visitation order, subpoena or order relating to paternity, or child support proceeding.
- 14-526 Notice of disability or suspension; return of clients' property; refund of unearned fees.

Sanctions (originally article 6 rules)

- ~~14-601 Definitions.~~
- 14-602 Purpose and nature of sanctions.
- 14-603 Sanctions.
- 14-604 Factors to be considered in imposing sanctions.
- ~~14-605 Imposition of sanctions.~~ Sanctions for violating duties owed to clients. (ABA model rule)
- Sanctions for violating duties owed to the public. (ABA model rule)
- Sanctions for violating duties owed to the legal system. (ABA model rule)

- [Sanctions for violating duties owed as a professional](#), (ABA model rule)
- 14-606 Prior discipline orders.
- 14-607 Aggravation and mitigation.

Reinstatement.

- 14-524 Reinstatement following a suspension of [no more than](#) six months ~~or less~~.
- 14-525 Reinstatement following a suspension of more than six months; ~~readmission~~ [relicensure](#).

14-701 Definitions.

14-705 Admission by motion.

14-712 Qualifications for admission based on UBE.

14-718 Licensing of Foreign Legal Consultants.

14-801 Definitions.

14-806 Admission pro hac vice.

14-904 Funding.

14-912 Processing claims.

15-402 Definitions.

15-701 Definitions.

1 **Diversion.**

2 **Rule 14-533 . Diversion referrals, authority, and responsibilities.**

Commented [LL1]: Recommendation 6.1

3 (a) **Referral to diversion.** In a matter involving less serious misconduct as outlined in
 4 ~~subsection rule {NEXT RULE—Circumstances warranting diversion} (c), upon receipt of an~~
 5 ~~informal~~ upon receiving a complaint and before filing an action ~~formal complaint~~, the respondent
 6 may have the option of electing to have the matter referred to diversion, the appropriateness of
 7 which the OPC ~~will be determined by the chair of the Diversion Committee after consultation~~
 8 ~~with OPC. The option for diversion also may be initiated by OPC or the Ethics and Discipline~~
 9 ~~Committee screening panel. (b) Diversion Committee.~~

Commented [LL2]: Paragraph (c) actually defines only serious misconduct. It isn't until paragraph (d) that it elaborates on what qualifies as less serious misconduct.

Commented [LL3]: Christine Greenwood: I'm concerned about the period between a screening panel hearing/determination and the filing of an action. Can diversion commence at that point, even if the screening panel has, e.g., already instructed OPC to file an action, or recommended dismissal, admonition or reprimand?

Commented [LL4]: Recommendation 6.2 eliminate diversion committee

Commented [LL5]: Recommendation 6.2 eliminate diversion committee

10 ~~(b)(1) Composition. Members of the Diversion Committee shall be appointed by the Supreme~~
 11 ~~Court. The committee shall consist of five members, four of whom shall be members of the Bar~~
 12 ~~who have demonstrated a high standard of professional conduct, preferably with at least~~
 13 ~~one Bar member having past experience on the Supreme Court Ethics and Discipline Committee,~~
 14 ~~and one public member with professional training in the area of substance abuse and/or stress~~
 15 ~~management. All appointments shall be for four year terms with one of the lawyers' terms~~
 16 ~~expiring each year. Committee members shall not serve more than two consecutive terms. The~~
 17 ~~Supreme Court shall designate one of the Bar members as committee chair.~~

18 ~~(b)(2) Authority and responsibility.~~ The ~~Diversion Committee~~ OPC may negotiate and execute
 19 diversion contracts, assign monitoring to a lawyers or licensed paralegal practitioner assistance
 20 program, determine of the lawyer ~~compliance~~ with the ~~terms of~~ diversion contracts, ~~and~~
 21 determine if the lawyer ~~fulfilledment~~ or ~~any~~ materially ~~breached the of~~ diversion contracts,
 22 ~~subject to review under subsection (j)(3) of this rule,~~ and adopt such policies and procedures as
 23 may be appropriate to accomplish its duties under this rule. The ~~Diversion Committee~~ OPC ~~shall~~
 24 ~~have~~ has authority to establish subcommittees of volunteer attorneys and other professionals for
 25 the specific purpose of monitoring the compliance of any attorney under diversion and reporting
 26 compliance to the OPC ~~and the Diversion Committee on a regular basis.~~

Commented [LL6]: Recommendation 6.2 eliminate diversion committee

Commented [LL7]: Recommendation 6.2 eliminate diversion committee

Commented [LL8]: Recommendation 6.2: designating a monitor for compliance who will be responsible to report to OPC.

27 ~~(c)~~ **Notice to complainant.** The OPC will notify the complainant, if any, of the proposed
 28 decision to refer the respondent to diversion, and the complainant may submit written comments.

- 1 The complainant will be notified when the complaint is diverted and when the complaint is
- 2 dismissed. All notices will be sent to the complainant's address of record on file with the OPC.
- 3 Such decision to divert or dismiss is not appealable.
- 4 ~~(d)~~ (d) **Effect of ~~non-participation~~ not participating in diversion.** The respondent has the right
- 5 to decline to participate in diversion. If the respondent chooses not to participate in diversion, the
- 6 matter proceeds ~~pursuant to the Rules of Lawyer Discipline and Disability~~ under these rules.
- 7
- 8

Rule Circumstances warranting diversion.

(a) ~~Less serious~~ **Prohibited misconduct.** Conduct ~~which may only be considered less serious misconduct warranting diversion if it does not~~ **would** result in a suspension or ~~disbarment delicensure is not considered to be less serious misconduct.~~ Conduct is not ordinarily considered less serious misconduct if any of the following considerations apply:

- (a)(1) the misconduct involves the misappropriation of client funds;
- (a)(2) the misconduct results in or is likely to result in substantial prejudice to a client or other person, absent adequate provisions for restitution;
- (a)(3) the respondent has been sanctioned in the last three years;
- (a)(4) the misconduct is of the same nature as misconduct for which the respondent has been sanctioned in the last three years;
- (a)(5) the misconduct involves dishonesty, deceit, fraud, or misrepresentation;
- (a)(6) the misconduct constitutes a substantial threat of irreparable harm to the public; a felony; or a misdemeanor which reflects adversely on the respondent's honesty, trustworthiness or fitness as a lawyer; or
- (a)(7) the misconduct is part of a pattern of similar misconduct.

(b) **Factors for consideration.** ~~The Diversion Committee~~ **OPC** considers ~~the following~~ **these** factors in negotiating and executing the diversion contract:

- (b)(1) whether in the OPC's opinion, the presumptive sanction that would be imposed, ~~in the opinion of OPC or the Diversion Committee~~ is likely to be no more severe than a public reprimand or private admonition;
- (b)(2) whether participation ing in diversion is likely to improve the respondent's future professional conduct and accomplish the goals of lawyer discipline;
- (b)(3) whether aggravating or mitigating factors exist; and
- (b)(4) whether diversion was already tried.

Commented [LL9]: Recommendation 6.2 eliminate diversion committee

Commented [LL10]: Recommendation 6.2 eliminate diversion committee

Rule ~~(f)~~ Diversion contract.

~~(a)(1)~~ Contract requirements.

~~(a)(1)~~ If the respondent agrees or elects to participate in diversion as provided by this rule, the terms of the diversion ~~shall~~ must be set forth in a written contract. ~~If the contract is entered prior to a hearing of a screening panel of the Ethics and Discipline Committee pursuant to Rule 14-510(b), the~~ The contract ~~shall~~ will be between the respondent and the OPC. ~~If diversion is agreed to and entered after a screening panel of the Ethics and Discipline Committee has convened pursuant to Rule 14-510(b), the contract shall be made as part of the decision of that screening panel. OPC will memorialize the contract and decision. If diversion is agreed to and entered after a complaint has been filed pursuant to Rule 14-512, the diversion contract shall be made as part of the ruling and order of the Court.~~

~~(a)(2)~~ ~~Except as otherwise part of an order of a court, the~~ Diversion Committee The OPC ~~shall~~ must monitor and supervise the conditions of diversion and the terms of the diversion contract.

Commented [LL11]: Recommendation 6.2 eliminate diversion committee

~~(a)(3)~~ The contract ~~shall~~ must specify the program(s) to which the attorney will ~~shall~~ be diverted, the general purpose of the diversion, the manner in which compliance is to be monitored, and any requirement for payment of restitution or cost.

~~(a)(4)~~ The respondent ~~attorney shall~~ will bear the burden of drafting and submitting the proposed diversion contract. Respondent may ~~utilize~~ use counsel to assist in the negotiation phase of diversion. Respondent may also request that the OPC draft the proposed diversion contract.

~~(a)(5)~~ Respondent may also ~~utilize Bar~~ use benefits programs provided by the Bar, such as a lawyer or licensed paralegal practitioner assistance program to assist in developing terms and conditions for the diversion contract appropriate to that respondent's particular situation. Use of a lawyer ~~'s~~ or licensed paralegal practitioner assistance program to assess

appropriate conditions for diversion ~~shall~~will not conflict that entity from providing services under the contract.

(a)(6) The terms of each contract ~~shall~~must be specifically tailored to the respondent's individual circumstances. The contract is confidential and its terms ~~shall~~may not be disclosed to anyone other than the parties to the contract.

~~(b)(2)~~ Contract terms. All diversion contracts must contain at least ~~all the following~~:

~~(b)(1)(A)~~ the signatures of respondent, ~~his~~respondent's counsel (if any), and the ~~chair of the Diversion Committee~~OPC;

Commented [LL12]: Recommendation 6.2

~~(b)(2)(B)~~ the terms and conditions of the plan for respondent and, the identity, if appropriate, of any service provider, mentor, monitor and/or supervisor and that individual's specific responsibilities. If respondent uses a professional or service ~~is utilized~~, and it is necessary to disclose confidential information, respondent must sign a limited conditional waiver of confidentiality permitting the professional or service to make the necessary disclosures ~~in order~~ for the respondent to fulfill ~~their~~his duties under the contract;

~~(b)(3)(C)~~ the necessary terms providing for oversight of ~~fulfillment of~~fulfilling the contract terms, including provisions for those involved to report any alleged breach of the contract to the OPC;

~~(b)(4)(D)~~ the necessary terms providing that respondent will pay all costs incurred in connection with the contract and those costs further specified ~~pursuant to~~under ~~subsection~~rule (Diversion costs) and any costs associated with the complaints to be deferred; and

~~(b)(2)(5E)~~ a specific acknowledgement that a material violation of a contract term renders the respondent's participation in diversion voidable by the ~~chair of the Diversion Committee or his designee~~OPC.

Commented [LL13]: Recommendation 6.2

~~(c)(3)~~ Amendments. The contract may be amended if ~~on subsequent agreement of the~~ respondent and the OPC agree.

~~(f)(4) The chair of the Ethics and Discipline Committee and OPC shall be given copies of every diversion contract entered and signed by the respondent and the Diversion Committee chair.~~

~~(g) **Affidavit supporting diversion.** A diversion contract must be supported by the respondents or the respondents lawyer's affidavit or declaration as approved by the Diversion Committee setting forth the purpose for diversion and how the specific terms of the diversion contract will address the allegations raised by the complaint. The respondent is not required to admit to the allegations in the complaint upon entering diversion. However, an admission and/or acknowledgement may be relevant and necessary as part of treatment in diversion. Such an admission shall be confidential for treatment purposes, shall not be released to any third party, and shall not be treated as an admission against interest nor used for future prosecution should diversion fail.~~

~~(h)~~(d) **Status of complaint.** After a diversion contract is executed by the respondent, the disciplinary complaint is deferred pending successful completion of the contract.

Rule Respondent's participation.

Diversion may require the respondent's participation ~~of the respondent~~ in one or more of the following:

- (a)(1) fee arbitration;
- (b)(2) mediation;
- (c)(3) law office management assistance;
- (d)(4) lawyer or licensed paralegal practitioner assistance programs;
- (e)(5) psychological and behavioral counseling;
- (f)(6) monitoring;
- (g)(7) restitution;
- (h)(8) continuing legal education programs including, but not limited to, ethics school;
- or
- (i)(9) any other program or corrective course of action to address the respondent's conduct.

Rule (j) Termination of diversion.

(a) (j)(1) Fulfillment of the contract. The contract terminates when the respondent ~~has~~ fulfilled the contract ~~terms of the contract~~ and gives the Diversion Committee and OPC an affidavit or declaration demonstrating fulfillment. Upon ~~receipt of~~ receiving this affidavit or declaration, the ~~Diversion Committee and OPC~~ must acknowledge receipt and ~~request that the chair of the Ethics and Discipline Committee or his designee~~ dismiss any complaint(s) deferred pending successful completion of the contract or notify the respondent that fulfillment of the contract is ~~disputed~~ terminated based on an OPC claim of material breach. ~~The complainant cannot appeal the dismissal.~~ Determinations under this rule are not subject to further review and are not reviewable in any proceeding. Successfully ~~completing~~ completion of the contract is a bar to any further disciplinary proceedings based on the same allegations and successfully ~~completion of~~ completion of diversion ~~shall~~ may not constitute a form of discipline.

(b) (j)(2) Material breach. ~~A material~~ Materially ~~breaching of~~ the contract is cause for terminating ~~on of~~ the contract. After a material breach, the OPC must notify the respondent of the alleged breach and intent to terminate the diversion. Thereafter, disciplinary proceedings may be instituted, resumed, or reinstated.

~~(j)(3) Review by the chair. The Diversion Committee may review disputes regarding the alleged material breach of any term of the contract on the request of the respondent or OPC. The request must be filed with the Diversion Committee chair within 15 days of notice to the respondent of the determination for which review is sought. The respondent is entitled to a hearing before the Diversion Committee on any alleged breach to the diversion contract. Determinations under this section are not subject to further review and are not reviewable in any proceeding.~~

Commented [LL14]: Recommendation 6.2

1 Rule ~~(*)~~ Diversion Costs.

2 ~~Upon entering diversion, r~~Respondent ~~shall~~must pay an initial fee of \$250 upon entering
3 diversion. During diversion, respondent ~~shall~~must pay a monthly fee of \$50 ~~per month~~. All such
4 fees are payable to the Bar's general fund. ~~These fees may be waived upon a hardship request,~~
5 ~~the validity or appropriateness of which shall be determined by the chair of the Diversion~~
6 ~~Committee or his designee.~~

7

Discipline.

Rule 14-509. Grounds for discipline.

It ~~shall be~~ constitutes a ground for discipline for a lawyer to:

(a) violate the Rules of Professional Conduct or Licensed Paralegal Practitioner Rules of Professional Conduct;

(b) willfully violate a valid court or Committee order ~~of a court or a screening panel~~ imposing discipline;

(c) be publicly disciplined in another jurisdiction;

(d) fail to comply with the requirements of Rule 14-526(e); ~~or~~

(e) fail to notify the OPC of public discipline in another jurisdiction in accordance with Rule 14-522(a); or

(f) willfully fail to comply with a validly issued subpoena from the OPC or knowingly fail to respond to a lawful demand from the OPC.

Commented [LL15]: Christine Greenwood: Is "lawful demand" a defined term? Can we be any more specific or provide examples?

Commented [LL16]: Recommendations 4.3 & 4.4

Rule 14-515. Accessing disciplinary information.

(a) **Confidentiality.** ~~Prior to the~~ Before the OPC filing of a formal complaint initiates an action or the issuance of a public reprimand ~~under~~ pursuant to Rule 14-510 in a discipline matter, OPC counsel, OPC employees staff, the Committee, Committee volunteers, Committee staff, Committee employees, special counsel appointed pursuant to Rule 14-517(f), and special counsel employees or assistants, ~~shall~~ must keep the proceeding confidential, ~~except that but the the OPC~~ may disclose the pendency, subject matter, and status of an investigation ~~may be disclosed by~~ OPC counsel if the proceeding is based upon allegations ~~that have been~~ disseminated through the mass media, or include either the conviction of a crime or reciprocal public discipline. The proceeding ~~shall is not not be deemed~~ confidential to the extent:

Commented [LL17]: Recommendation 5.7, amendments effective Nov. 1, 2019.

(a)(1) the respondent has given an express written waiver of confidentiality;

(a)(2) there is a need to notify another person or organization ~~—~~, including the Bar's Lawyer's Fund for Client Protection or Licensed Paralegal Practitioners' Fund for Client Protection, ~~in order to~~ protect the public, the administration of justice, or the legal profession; ~~or~~

(a)(3) the information is required in a subsequent lawyer sanctions hearing; or

(a)(4) a referral is made to the Professionalism and Civility Counseling Board pursuant to Rule 14-510 (a)(4) or (b)(6)(C-), ~~in the which~~ event ~~of such a referral~~, OPC counsel, ~~members of the~~ Committee members, ~~and of any~~ screening panel members, and ~~members of the~~ Professionalism and Civility Counseling Board members may share all information between and among them with the expectation that such information will in all other respects be subject to applicable confidentiality rules or exceptions.

(b) **Public proceedings.** ~~Upon the~~ Upon the filing ~~of of an action~~ formal complaint in a discipline matter or, the filing of a petition for reinstatement or relicensure, or the filing of a motion or petition for interim suspension, the proceedings are public, except as provided in paragraph (d) below.

(c) **Proceedings alleging disability.** Proceedings for transfer to or from disability status are confidential. All orders transferring a respondent to or from disability status are public.

(d) **Protective order.** ~~In order to~~ To protect the interest of a complainant, witness, third party, or respondent, the district court may, ~~upon application of~~ on any person's request and for good cause ~~shown~~, issue a protective order prohibiting the disclosure of specific information and direct that the proceedings be conducted so as to implement the order, including requiring that the hearing be conducted in such a way as to preserve the confidentiality of the information that is the subject of the application.

(e) **Request for nonpublic information.** Nonpublic information ~~shall be~~ is confidential, other than as authorized for disclosure under paragraph (a), unless: ~~(e)(1) the request for information is made by the Board, any Bar committee, a committee or consultant appointed by the Supreme Court or the Board to review OPC operations, or the executive director, and is required in the furtherance of their duties; or~~

~~(e)(12) the request for information is approved by the OPC and there is compliance with the provisions of paragraphs (f) and (g) of this rule.~~

(f) **Notice to the respondent.** Except as provided in paragraph (g), if the Committee decides to provide nonpublic information requested pursuant to paragraph (e), and if the respondent has not signed an express written waiver permitting the party requesting the information to obtain the nonpublic information, the respondent ~~shall~~ must be notified in writing at the respondent's ~~last known designated~~ mailing address as shown by Bar records of ~~that~~ the information ~~which that~~ has been requested and by whom, together with a copy of the information proposed to be released.

The notice ~~shall~~ must advise the respondent that the information ~~shall~~ will be released ~~at the end of 21 days following after the notice's~~ mailing ~~of the notice~~ unless the respondent objects to the disclosure. If the respondent timely objects to the disclosure, the information ~~shall~~ must remain confidential unless the requesting party obtains a court order authorizing its release.

(g) **Release without notice.** If a requesting party as outlined in paragraph (e) ~~(2)~~ has not obtained an express written waiver from the respondent to obtain nonpublic information, and requests that

Commented [LL18]: Replaced with 11-501(2)(C)

the information be released without giving notice to the respondent, the requesting party ~~shall~~
must certify that:

(g)(1) the request ~~is made in furtherance of~~will further an ongoing investigation into the
respondent's misconduct ~~by the respondent~~;

(g)(2) the information is essential to that investigation; and

(g)(3) ~~disclosure of~~disclosing the existence of the investigation to the respondent would
seriously prejudice that investigation.

(h) Disclosure without notice. ~~○~~The OPC can may disclose nonpublic information without
notice to the respondent if:

(h)(1) ~~disclosure is made in furtherance of~~disclosure furthers an ongoing OPC
investigation into the respondent's misconduct ~~by the respondent~~; and

(h)(2) ~~the information that is sought through~~ disclosure is essential to that investigation.

(i) ~~Duty of P~~participants' duty. OPC counsel, OPC ~~employees~~staff, the Committee, Committee
volunteers, Committee staff, Committee employees, special counsel appointed pursuant to Rule
14-517(f), and special counsel employees or assistants in a proceeding under these rules ~~shall~~
~~conduct themselves so as to~~must maintain confidentiality. ~~Except as~~Unless otherwise authorized
~~by other statutes or rules~~, persons receiving private records under paragraph (e) will not provide
access to the records to anyone else.

Rule 14-516. ~~Dissemination of~~ Disseminating disciplinary information.

(a) **Notice to disciplinary agencies.** The OPC ~~shall~~must ~~transmit~~send notice of public discipline, resignation with discipline pending, transfers to or from disability status, reinstatements, ~~readmissions~~relicensures, and certified copies of judgments of conviction to the disciplinary enforcement agency of every other jurisdiction in which the respondent is ~~admitted~~licensed, and to the American Bar Association's National Lawyer Regulatory Database ~~maintained by the American Bar Association.~~

(b) **Notice to the public.** The ~~executive director~~OPC ~~shall~~will ~~publish~~cause notices of admonition, public reprimand, suspension, ~~disbarment~~relicensure, resignation with discipline pending, transfer to disability status, and petitions for reinstatement or ~~readmission~~relicensure to:

(b)(1) the OPC's website; and

(b)(2) be published in the Utah Bar Journal; and

~~(b)(3). The executive director OPC also shall cause notices of suspension, disbarment, resignation with discipline pending, transfer to disability status and petitions for reinstatement or readmission to be published in a newspaper of general circulation in each judicial district within Utah in which the respondent maintained an office for the practice of law.~~

(c) **Notice to the courts.** The ~~executive director~~OPC ~~shall~~must promptly ~~cause transmittal of~~forward notices of suspension, ~~disbarment~~relicensure, resignation with discipline pending, transfer to or from disability status, reinstatement, ~~or readmission or relicensure~~ to all Utah state courts for licensed paralegal practitioners and both Utah state and federal courts ~~in Utah~~for lawyers.

Commented [LL19]: Recommendation 3.1: OPC should continue the current practice of providing information about disciplinary actions by phone, or other means, for actions more than 10 years old. OPC should publish on its website, the names of attorneys who have been publicly disciplined in the last 10 years. The USB should continue to publish attorney licensure status on the USB website.

Rule 14-518. Interim ~~suspension~~ discipline for threat of harm.

(a) ~~Transmittal of evidence~~ Petition for interim discipline. ~~Upon receipt of~~ On receiving sufficient evidence ~~demonstrating~~ that a lawyer subject to the ~~disciplinary jurisdiction of the~~ Supreme Court's disciplinary jurisdiction poses a ~~substantial~~ threat of ~~irreparable~~ serious harm to the public and has either committed a violation of the Rules of Professional Conduct or Licensed Paralegal Practitioner Rules of Professional Conduct or is under a disability as herein defined, ~~the OPC counsel shall must~~ file a petition for interim ~~suspension~~ discipline in the district court, requesting a hearing and giving notice in accordance with Utah Rule of Civil Procedure 65A.

(a)(1) The petition for interim discipline must be filed with the district court and served on the respondent in accordance with Rule 4 of the Utah Rules of Civil Procedure.

(a)(2) The district court will set a hearing within 14 days of filing the return of service showing that respondent has been served.

~~An action is commenced under this rule when the petition for interim suspension is filed.~~

(b) **Immediate interim ~~suspension~~ discipline**. After conducting a hearing on the petition, the district court may enter an order immediately suspending the respondent, limiting the respondent's practice area, or requiring supervision of the respondent pending final disposition of a disciplinary proceeding ~~predicated upon the conduct causing the harm~~, or may order such other action as deemed appropriate.

(b)(1) If an order is entered:

(b)(1)(A) the district court may appoint a trustee, pursuant to Rule 14-527, to protect the interests of the respondent's clients; and

(b)(2)(B) the OPC may file ~~a formal complaint~~ a misconduct action in the district court without presenting the matter to a screening panel.

(b)(2) If an order for interim discipline is not obtained, the OPC must dismiss the interim action and will process the matter as it does any other information coming to the OPC's attention.

Commented [LL20]: Recommendations 7.1 and 7.3

Commented [LL21]: Recommendation 7.3 (permit OPC to request and Court to impose other types of interim orders to protect the public)

Commented [LL22]: Recommendation 7.3

Commented [LL23]: I think this may not be necessary.

- 1 (c) **Notice to clients.** A respondent ~~suspended~~subject to interim discipline pursuant to paragraph
2 (b) ~~shall~~must comply with the notice requirements in Rule 14-526 as ordered by the district
3 court.
- 4 (d) **Motion ~~for dissolution of~~to dissolve or modify interim ~~suspension~~discipline.** On ~~two~~48
5 hours'~~days~~ notice to the OPC ~~counsel~~, a respondent suspended pursuant to paragraph (b) may
6 appear and move ~~for dissolution or modification of the~~to dissolve or modify the order of
7 ~~suspension~~discipline, and ~~in that event, the~~such motion ~~shall~~will be heard and determined as
8 expeditiously as ~~the ends of~~ justice requires.

Rule 14-519. Lawyers ~~found guilty~~convicted of a crime.

Commented [LL24]: Recommendation 7.4

(a) ~~Transmittal of~~**Forwarding the** judgment of ~~guilt~~conviction (after a finding or admission of guilt). ~~The court in which~~When a lawyer is ~~guilty~~convicted of or has entered a plea in abeyance for~~of~~ any felony or ~~of any~~misdemeanor ~~which that~~ reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer, ~~the court shall~~will forward a certified copy of the judgment to the OPC; ~~—~~within ~~30-28~~ days after the judgment of ~~guilt~~conviction, ~~—~~transmit a certified copy of the judgment of conviction to OPC counsel.

(b) **Motion for interim suspension.** On being advised that a lawyer has been ~~found guilty~~convicted of ~~or has entered a plea in abeyance for a felony or misdemeanor~~crime ~~which that~~ reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer, ~~the OPC shall~~ must determine whether the crime warrants interim suspension. Upon a determination that the crime warrants interim suspension, ~~the OPC shall~~must file a ~~suspension~~ ~~formal~~ ~~complaint~~action, accompanied by the certified copy of the judgment ~~of conviction~~, and concurrently file a motion for immediate interim suspension. A ~~suspension~~ action ~~is~~ ~~commenced~~commences under this rule when both the petition for interim suspension and the ~~formal~~complaint are filed. The respondent may assert any jurisdictional deficiency ~~which~~ ~~establishing~~establishes that the interim suspension may not properly be ordered, such as ~~that~~the crime ~~is not a felony or a misdemeanor which that~~does not reflect adversely on the respondent's honesty, trustworthiness, or fitness as a lawyer, or that the respondent is not the individual ~~found guilty~~convicted. ~~The respondent is not entitled to an evidentiary hearing but may request an informal hearing, solely to determine whether the finding or admission of guilt was for a felony or misdemeanor that reflects adversely on the respondent's honesty, trustworthiness, or fitness to practice law.~~ If an order for interim suspension is not obtained, ~~the OPC must dismiss the formal~~ ~~complaint~~suspension action ~~shall and must be dismissed and OPC counsel shall~~will process the matter as it does any other information coming to the ~~OPC's~~ attention ~~of the OPC~~.

Commented [LL25]: Recommendation 7.4

(c) **Imposition.** The district court ~~shall~~will place a respondent on interim suspension upon proof that the respondent has been ~~found guilty~~convicted of a ~~felony or a misdemeanor~~ crime ~~which that~~ reflects adversely on the respondent's honesty, trustworthiness, or fitness as a lawyer regardless of ~~any~~the pendency ~~of any~~ appeal.

- (d) ~~Dissolution of~~Dissolving interim suspension. Interim suspension may be dissolved as provided in Rule 14-518(d).
- (e) Judgment of guilt~~Conviction~~ as conclusive evidence. Except as provided in paragraph (b), a certified copy of the~~a~~ judgment ~~of conviction~~ constitutes conclusive evidence that the respondent committed the crime.
- (f) **Automatic reinstatement from interim suspension upon reversal of judgment~~conviction~~.**
If a respondent suspended solely under ~~the provisions of~~ paragraph (c) demonstrates that the underlying judgment~~conviction~~ has been reversed or vacated, the order for interim suspension ~~shall will~~ be vacated and the respondent placed on active status. ~~The vacating of~~Vacating the interim suspension ~~shall will~~ not automatically terminate any disciplinary proceeding then pending against the respondent, the disposition of which ~~shall will~~ be determined based upon~~on~~ ~~the basis of~~ the available evidence other than the judgment~~conviction~~.
- (g) **Notice to clients and other of interim suspension.** An interim suspension under this rule ~~shall~~s constitutes a suspension of the respondent for the purpose of Rule 14-526.

1 **Rule 14-520. Discipline by consent.**

2 (a) **Discipline by consent** ~~prior to before~~ filing a misconduct action ~~of formal complaint~~. A
3 respondent against whom a ~~n informal~~ complaint has been filed may, ~~prior to the filing of a~~
4 ~~formal complaint~~ before the matter is submitted to a screening panel, tender a proposal for
5 discipline by consent, including a conditional admission to the ~~informal~~ complaint or portions
6 thereof in exchange for a disciplinary sanction and final disposition of the ~~informal~~ complaint.
7 The proposal ~~shall~~ must include a waiver of right to a screening panel hearing. The respondent
8 must submit the proposal ~~shall~~ to the OPC, who ~~shall~~ will forward the proposal to the Committee
9 chair with a recommendation in favor of or opposed to the proposal and a statement of the basis
10 for such recommendation. If the Committee chair approves the proposal ~~is approved by the~~
11 ~~Committee chair~~, the sanction ~~shall~~ will be imposed as provided in this rule. If the proposal is
12 rejected by the Committee chair, the proposal and admission ~~shall~~ will be withdrawn and cannot
13 be used against the respondent in subsequent proceedings.

14 (b) **Discipline by consent after filing** ~~of formal complaint~~ a misconduct action. A respondent
15 against whom an ~~an action~~ ~~formal complaint~~ has been filed may tender a conditional admission to
16 the allegations in the OPC's ~~formal~~ complaint or to a particular count thereof in exchange for a
17 stated form of discipline and final disposition of the ~~formal complaint~~ action. The proposal
18 ~~shall~~ must be submitted to ~~the~~ OPC ~~counsel~~, who ~~shall~~ will then forward the proposal to the
19 district court with a recommendation favoring or opposing the proposal and a statement of the
20 basis for such recommendation. The district court ~~shall~~ will either approve or reject the proposal.
21 If the district court approves the proposal and the stated form of discipline includes public
22 discipline, it ~~shall~~ will enter the appropriate disciplinary order as provided in paragraph (d). If the
23 district court rejects the proposal, the proposal and conditional admission ~~shall~~ will be withdrawn
24 and cannot be used against the respondent in subsequent proceedings.

25 (c) **Order of discipline by consent.** The final order of discipline by consent ~~shall~~ will be
26 predicated ~~upon~~:

27 (c)(1) the ~~informal~~ complaint and ~~any NOIC~~ the OPC's notice to the respondent if no
28 ~~formal complaint~~ action has been filed;

Commented [LL26]: Christine Greenwood: This is the same question I have with respect to diversion. Can a respondent or OPC propose discipline by consent even after a screening panel has held a hearing and made a determination? How would that play out? If the panel recommends a reprimand, could the respondent then propose something different?

(c)(2) the ~~formal complaint~~ misconduct action, if filed;

(c)(3) the approved proposal for discipline by consent; and

(c)(4) an affidavit of consent by the respondent to be disciplined.

(d) **Affidavit of consent.** A respondent whose proposal for discipline by consent has been approved as provided in this rule, ~~shall~~ must submit an affidavit to the Committee chair or the district court as appropriate, consenting to ~~the imposition of~~ the approved disciplinary sanction and affirming that:

(d)(1) the consent is freely and voluntarily entered;

(d)(2) the respondent is not acting under coercion or duress;

(d)(3) the respondent is fully aware of the implications of submitting the consent;

(d)(4) the respondent is aware that there is presently pending an investigation into, or proceeding involving, allegations that there exist grounds for discipline, the nature of which ~~shall~~ must be specifically set forth;

(d)(5) for purposes of disciplinary proceedings, the respondent acknowledges that the material facts so alleged are true; and

(d)(6) the respondent submits consent because the respondent knows that if a misconduct action ~~n informal or formal complaint were~~ predicated ~~upon the matters~~ allegations under investigation were filed, or the pending action ~~formal charges~~ were prosecuted, the respondent could not successfully defend against the charges upon which the discipline is based.

Rule 14-521. Resignation with discipline pending.

(a) A respondent may resign from the Bar, prior to the adjudication of a pending complaint, only with the consent of the Supreme Court and upon such terms as the Supreme Court may impose for the protection of the public.

(b) The respondent ~~shall~~must submit a sworn petition:

(b)(1) admitting for purposes of the disciplinary proceedings the facts upon which the allegations of misconduct are based;

(b)(2) admitting that the facts constitute grounds for discipline;

(b)(3) stating that the respondent's resignation is freely and voluntarily tendered and that it is submitted without coercion or duress;

(b)(4) verifying that the respondent is fully aware of the implications of submitting the resignation;

(b)(5) acknowledging that the discipline matter, the petition, and the sanction ~~shall~~will be available to the public and that a notice of the resignation ~~shall~~will be published in the Utah Bar Journal;

(b)(6) agreeing to comply with these rules, including Rule 14-526(b) regarding notice to clients and return of clients' property; and

(b)(7) agreeing to comply with other Supreme Court orders ~~of the Supreme Court~~.

(c) A copy of the petition ~~shall~~must be submitted to the OPC ~~counsel~~. The OPC ~~counsel~~ may, within ~~20~~14 days, object to the petition. If the OPC ~~counsel~~ consents to the petition, the Supreme Court ~~shall~~will review the petition and enter an appropriate order. If the OPC ~~counsel~~ files a timely objection, the matter ~~shall~~will be set for hearing in the district court. Within ~~ten~~14 days after the hearing, the district court will transmit its~~s~~ findings of fact and conclusions of law ~~shall be transmitted~~ to the Supreme Court ~~for~~to review and ~~the entry of~~enter an appropriate order.

Commented [LL27]: Note from OPC: Because this provision is reserved in the current LPP rule set, the mechanism for resignation for discipline pending is only provided for attorneys. Once the sections are combined, it should be made clear that it only applies to licensed lawyers unless the intent is for it to apply to LPPs as well.

- 1 (d) If the Supreme Court accepts the resignation, it ~~will~~shall enter an order specifying the
2 effective date of the resignation. The order may include additional or alternative terms and
3 conditions deemed appropriate, including conditions precedent to ~~readmission~~relicensure.
- 4 (e) A respondent whose resignation is accepted must comply with Rule 14-525 and may not
5 apply for ~~readmission~~relicensure until five years after the effective date of the resignation unless
6 the Supreme Court orders otherwise in ~~the~~its order accepting the resignation.

7

1 **Rule 14-522. Reciprocal discipline.**

2 (a) **Duty to notify** the OPC of discipline or transfer to disability inactive status. When
3 another court, jurisdiction, or regulatory body having disciplinary jurisdiction publicly
4 disciplines or transfers to disability inactive status a lawyer licensed to practice in Utah. ~~Upon~~
5 ~~being publicly disciplined by another court, another jurisdiction, or a regulatory body having~~
6 ~~disciplinary jurisdiction, a lawyer admitted to practice in Utah shall~~ such lawyer must inform the
7 OPC of the discipline or transfer within ~~3028~~ days. If the OPC receives notification ~~inform the~~
8 ~~OPC of the discipline.~~ ~~Upon~~ notification from any source that a lawyer within the Supreme
9 Court's jurisdiction ~~of the Supreme Court~~ has been publicly disciplined or transferred to
10 disability inactive status by ~~another court, another jurisdiction, or a regulatory body having~~
11 ~~disciplinary jurisdiction~~ any other jurisdiction, the OPC ~~shall~~ must obtain a certified copy of the
12 disciplinary order.

Commented [LL28]: Recommendation 4.7

13 (b) ~~Notice served upon~~ Serving notice on lawyer. ~~Upon receipt of~~ On receiving a certified copy
14 of an order demonstrating that a lawyer ~~admitted~~ licensed to practice in Utah has been publicly
15 disciplined or transferred to disability inactive status by another court, ~~another~~ jurisdiction, or a
16 regulatory body having disciplinary jurisdiction, the OPC ~~shall~~ will issue a notice directed to the
17 lawyer containing:

18 (b)(1) a copy of the order from the other court, jurisdiction, or regulatory body; and
19 (b)(2) a notice giving the lawyer the right to inform the OPC, within ~~3028~~ days from
20 service of the notice, of any claim by the lawyer predicated ~~upon~~ the grounds set forth in
21 paragraph (d), that the imposition of the equivalent discipline or transfer in Utah would
22 be ~~unwarranted, and~~ unwarranted and stating the reasons for that claim.

Commented [LL29]: Committee/Court need to decide whether this should be deleted. Question about which jurisdiction's "equivalent" discipline should be imposed?

23 (c) **Effect of stay of discipline in** another jurisdiction. If the discipline or transfer imposed in
24 the other court, jurisdiction, or regulatory body has been stayed, any reciprocal discipline or
25 transfer imposed in Utah ~~shall~~ will be deferred until the stay expires.

26 (d) **Discipline to be imposed.** Upon the expiration of ~~3028~~ days from service of the notice
27 ~~pursuant to~~ under paragraph (b), the district court ~~shall~~ will take such action as may be appropriate

1 to cause the equivalent discipline or transfer to be imposed in this jurisdiction, unless it clearly
2 appears ~~up~~ on the face of the record from which the discipline or transfer is predicated that:

3 (d)(1) the procedure was so lacking in notice or opportunity to be heard as to constitute a
4 deprivation of due process;

5 (d)(2) the imposition of equivalent discipline would result in grave injustice; ~~or~~

6 (d)(3) the misconduct ~~established~~ warrants substantially different discipline in Utah or is
7 not misconduct in this jurisdiction; or

8 (d)(4) the reason for the original transfer to disability inactive status no longer exists.

9 If the district court determines that any of these elements exist, it ~~shall~~ will enter such other order
10 as it deems appropriate. The burden is on the ~~respondent~~ lawyer seeking different discipline or
11 transfer to demonstrate that the imposition of equivalent discipline or transfer is not appropriate.

12 (e) ~~Conclusiveness of adjudication in o~~ Other jurisdictions' final adjudications. Except as
13 provided in paragraphs (c) and (d) above, a respondent who has been found guilty of misconduct
14 or is transferred to disability inactive status in a final adjudication of ~~the~~ an other court,
15 jurisdiction, or regulatory body ~~that a respondent has been guilty of misconduct or should be~~
16 ~~transferred to disability inactive status shall~~ will establish conclusively the misconduct or the
17 disability for purposes of a disciplinary or disability proceeding in Utah.

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

(a) **Involuntary commitment or adjudication of incompetency.** If a lawyer has been judicially declared incompetent or is involuntarily committed on the grounds of incompetency, ~~then OPC counsel,~~ upon proper proof of the fact, ~~the shall~~ OPC must file a petition with the district court for the immediate transfer of the lawyer to disability status for an indefinite period until further order of the district court. ~~The OPC must serve a~~ A copy of the order ~~shall be served by OPC counsel~~ ~~up~~ on the lawyer or the lawyer's guardian or, if no guardian or legal representative has been appointed, ~~up~~ on the director of the institution to which the lawyer has been committed.

(b) **Inability to properly defend.** If a lawyer alleges in the course of a disciplinary proceeding an inability to assist in the defense due to mental or physical incapacity, the district court ~~shall will~~ immediately transfer the lawyer to disability status pending determination of the incapacity.

(b)(1) If the district court determines the claim of inability to defend is valid, the disciplinary proceeding ~~shall will~~ be deferred and the lawyer retained on disability status until the district court subsequently considers a petition for transfer of the lawyer to active status. If the district court considering the petition for transfer to active status determines the petition should be granted, the interrupted disciplinary proceedings may resume.

(b)(2) If the district court determines the claim of incapacity to defend to be invalid, the disciplinary proceeding ~~shall will~~ resume.

(c) **Proceedings to determine incapacity.** Information relating to a lawyer's physical or mental condition ~~which that~~ adversely affects the lawyer's ability to practice law ~~shall will~~ be investigated, and if warranted, ~~shall will~~ be the subject of formal proceedings to determine whether the lawyer ~~must shall~~ be transferred to disability status. Hearings ~~shall will~~ be conducted in the same manner as disciplinary proceedings, except that all of the proceedings ~~shall will~~ be confidential. The district court ~~shall will~~ provide ~~the lawyer with for~~ such notice ~~to the lawyer~~ of proceedings in the matter as it deems proper and advisable and may appoint counsel to represent

1 the lawyer if the lawyer is without adequate representation. The district court may take or direct
2 whatever action it deems necessary or proper to determine whether the lawyer is so
3 incapacitated, including designating qualified experts to~~the examination of the lawyer by~~
4 ~~qualified experts designated by the district court.~~ If, ~~upon due consideration of the matter,~~ the
5 district court concludes that the lawyer is incapacitated from continuing to practice law, it ~~shall~~
6 will enter an order transferring the lawyer to disability status for an indefinite period and until the
7 further order ~~of the district court.~~ Any pending disciplinary proceedings against the lawyer ~~shall~~
8 will be held in abeyance.

9 **(d) Reinstatement from disability status.**

10 (d)(1) Court order. No lawyer transferred to disability status may resume active status
11 except by district court order ~~of the district court.~~

12 (d)(2) Petition. Any lawyer transferred to disability status ~~is~~shall be entitled to petition for
13 transfer to active status once a year, or at whatever shorter intervals the district court may
14 direct in the order transferring the lawyer to disability status or any modifications thereof.

15 (d)(3) Examination. ~~Upon the filing of~~On filing a petition for transfer to active status, the
16 district court may take or direct whatever action it deems necessary or proper to
17 determine whether the disability has been removed, including directing designated
18 qualified experts to~~a direction for an examination of the lawyer by qualified experts~~
19 ~~designated by the district court.~~ In its discretion, the district court may direct the lawyer
20 to pay the examination expense~~that the expense of the examination be paid by the lawyer.~~

21 (d)(4) Waiver of privilege. ~~When~~With the filing of a petition for reinstatement to active
22 status, the lawyer ~~shall~~will be required to disclose the name of each psychiatrist,
23 psychologist, physician, or other health care provider and hospital or other institution by
24 whom or in which the lawyer has been examined or treated related to the disability since
25 the transfer to disability status. The lawyer ~~shall~~must furnish written consent to each
26 listed provider to divulge information and records relating to the disability if requested by
27 the district court or the district court's appointed experts.

(d)(5) Learning in law; Bar Examination. The district court may also direct that the lawyer establish proof of competence and learning in law, which proof may include the Bar's certification ~~by the Bar of that the lawyer has successfully completed~~ of an examination ~~for admission to practice~~ relicensure.

(d)(6) Granting petition for transfer to active status. The district court ~~shall~~ will grant the petition for transfer to active status ~~upon~~ a showing by clear and convincing evidence that the disability has been removed.

(d)(7) Judicial declaration of competence. If a lawyer transferred to disability status on the basis of a judicial determination of incompetence is subsequently judicially declared to be competent, the district court may dispense with further evidence that the lawyer's disability has been removed and may immediately order the lawyer's reinstatement to active status upon terms as are deemed proper and advisable.

Commented [LL30]: Note from OPC: The principle behind the two is the same. However, the actual examination will be different and it should be noted in the updates.

Larissa's response: could we rephrase it as an examination for relicensure? I'm not sure if this is just the original Bar exam or something else?

Rule 14-531. Noncompliance with child support order, child visitation order, subpoena or order relating to paternity, or child support proceeding.

(a) Upon ~~entry of~~entering an order holding a lawyer in contempt for the lawyer's noncompliance with a child support order, child visitation order, or a subpoena or order relating to a paternity or child support proceeding, a district court may suspend the lawyer's license to engage in the practice of law consistent with applicable law and, if suspended, ~~shall~~will also impose conditions of reinstatement.

(b) If a district court suspends a lawyer's license to engage in the practice of law, the court ~~shall~~will provide a copy of the order to the OPC.

Rule 14-526. Notice of disability or suspension; return of clients' property; refund of unearned fees.

(a) **Effective date of order; winding up affairs.** Each order that imposes ~~disbarment~~delicensure or suspension is effective ~~30~~28 days after the order's ~~date of the order~~, or at such ~~other~~ time as the order provides. Each order that transfers a respondent to disability status is effective immediately ~~upon the date of the order~~, unless the order otherwise provides. After the court ~~enters~~y of any order of ~~disbarment~~delicensure, suspension, or transfer to disability status, the respondent ~~shall~~may not accept any new retainer or employment as a lawyer in any new case or legal matter; ~~provided, however, except~~; that during any period between the date an order is entered~~of entry of an order~~ and its effective date, the respondent may, with the consent of the client after full disclosure, wind up or complete any matters pending on the date the order is entered~~of entry of the order~~.

(b) **Notice to clients and others.** In every case in which a respondent is ~~disbarred~~delicensed or suspended for more than six months, the respondent ~~shall~~must, within ~~20~~1 days after the order is entered~~of the entry of the order~~, accomplish the following acts:

(b)(1) notify each client and any co-counsel in every pending legal matter, litigation, and non-litigation, that the respondent has been ~~disbarred~~delicensed or suspended from the practice of law and is disqualified from further participation in the matter;

(b)(2) notify each client that, in the absence of co-counsel, the client should obtain a new lawyer, calling attention to the urgency to seek new counsel, particularly in pending litigation;

(b)(3) deliver to every client any papers or other property to which the client is entitled or, if delivery cannot reasonably be made, make arrangements satisfactory to the client or co-counsel of a reasonable time and place where papers and other property may be obtained, calling attention to any urgency to obtain the same;

(b)(4) refund any part of any fee paid in advance that has not been earned as of the order's effective date ~~of the discipline~~;

(b)(5) in each matter pending before a court, agency, or tribunal, notify opposing counsel or, in the absence of counsel, the adverse party, of the respondent's ~~disbarment~~ ~~delicensure~~ or suspension and consequent disqualification to further participate as a lawyer in the matter;

(b)(6) file with the court, agency, or tribunal before which any matter is pending a copy of the notice given to opposing counsel or to an adverse party; and

(b)(7) within ~~ten~~ 14 days after the effective date of ~~disbarment~~ ~~delicensure~~ or suspension, file a declaration under penalty of perjury ~~n affidavit~~ with the OPC ~~counsel~~ showing complete performance of the foregoing requirements ~~of this rule~~. The respondent ~~shall~~ must keep and maintain for the OPC's inspection ~~by OPC counsel~~ all records of the steps taken to accomplish the requirements of this rule.

(c) **Lien.** Any attorney's lien for services rendered ~~which~~ that are not tainted by reason of ~~disbarment~~ ~~delicensure~~ or suspension ~~shall~~ may not be rendered invalid merely because of the order of discipline.

(d) **Other notice.** If a respondent is suspended for six months or less, the district court may impose conditions similar to those set out in paragraph (b). In any public disciplinary matter, the district court may also require the respondent to ~~issue~~ ~~ance of~~ notice to others as it deems necessary to protect the interests of clients or the public.

(e) **Compliance.** Substantial compliance with the provisions of paragraphs (a), (b) and (d) ~~shall~~ will be a precondition for reinstatement or readmission ~~delicensure~~. Willful failure to comply with paragraphs (a), (b) and (d) ~~shall~~ constitute contempt of court and may be punished as such or by further disciplinary action.

Sanctions.

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

~~Rule 14-601. Definitions.~~

~~As used in this article:~~

~~(a) “complainant” means the person who files an informal complaint or the OPC when the OPC determines to open an investigation based on information it has received;~~

~~(b) “formal complaint” means a complaint filed in the district court alleging misconduct by a lawyer or seeking the transfer of a lawyer to disability status;~~

~~(c) “informal complaint” means any written, notarized allegation of misconduct by or incapacity of a lawyer;~~

~~(d) “injury” means harm to a client, the public, the legal system, or the profession which results from a lawyer’s misconduct. The level of injury can range from “serious” injury to “little or no” injury; a reference to “injury” alone indicates any level of injury greater than “little or no” injury;~~

~~(e) “intent” means the conscious objective or purpose to accomplish a particular result;~~

~~(f) “knowledge” means the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result;~~

~~(g) “negligence” means the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation;~~

~~(h) “potential injury” means the harm to a client, the public, the legal system or the profession that is reasonably foreseeable at the time of the lawyer’s misconduct, and which, but for some intervening factor or event, would probably have resulted from the lawyer’s misconduct;~~

~~(i) “respondent” means a lawyer subject to the disciplinary jurisdiction of the Supreme Court against whom an informal or formal complaint has been filed; and~~

Commented [LL31]: These definitions are incorporated into article 5, because we will be merging both articles 5 and 6 into Chapter 11, article 5.

~~(j) “Rules of Professional Conduct” means the Utah Rules of Professional Conduct (including the accompanying comments) initially adopted by the Supreme Court in 1988, as amended from time to time.~~

Rule 14-602. Purpose and nature of sanctions.

~~(a) Summary. This article is based on the Black Letter Rules contained in the Standards for Imposing Lawyer Sanctions prepared by the American Bar Association’s Center for Professional Responsibility. They have been substantially revised by the Supreme Court. Notably, ABA Standards 4 through 8 have been reduced into a single Rule 14-605.~~

Commented [LL32]: This no longer seems necessary.

~~(b)~~ **Purpose of lawyer discipline proceedings.** The purpose of imposing lawyer sanctions is to ensure and maintain the high standard of professional conduct required of those who undertake the discharge of professional responsibilities as lawyers, and to protect the public and the administration of justice from lawyers who have demonstrated by their conduct that they are unable or likely to be unable to discharge properly their professional responsibilities.

~~(b)~~ **Public nature of lawyer discipline proceedings.** The ~~U~~ultimate disposition of lawyer discipline ~~shall~~will be public in cases of ~~disbarment~~delicensure, suspension, and reprimand; and nonpublic in cases of admonition.

~~(d)~~ **Purpose of these rules.** These rules are designed for use in imposing a sanction or sanctions following a determination that a member of the legal profession has violated a provision of the Rules of Professional Conduct or Licensed Paralegal Practitioner Rules of Professional Conduct. Descriptions in these rules of substantive disciplinary offenses are not intended to create grounds for determining culpability independent of the Rules of Professional Conduct or Licensed Paralegal Practitioner Rules of Professional Conduct. The rules constitute a system for determining sanctions, permitting flexibility and creativity in assigning sanctions in particular cases of lawyer misconduct. They are designed to promote:

~~(c)~~(1) consideration of all factors relevant to imposing the appropriate level of sanction in an individual case;

1 (c)(2) consideration of the appropriate weight of such factors in light of the stated goals
2 of lawyer discipline; and

3 (c)(3) consistency in the imposition of disciplinary sanctions for the same or similar
4 offenses within and among jurisdictions.
5
6

1 **Rule 14-603. Sanctions.**

2 (a) **Scope.** A disciplinary sanction ~~is~~ imposed on a lawyer upon a finding or acknowledgement
3 that the lawyer has engaged in professional misconduct.

4 (b) **Disbarment/Delicensure.** ~~Disbarment/Delicensure~~ terminates the individual's status as a
5 lawyer. A lawyer who has been ~~disbarred/delicensed~~ may be readmitted/relicensed as provided in
6 **Rule 14-525.**

7 (c) **Suspension.** Suspension ~~is the removal of~~ removes a lawyer from the practice of law for a
8 specified minimum ~~period of time, generally six months or more.~~ Generally, suspension should
9 ~~be imposed for a specific period of time equal to or greater than six months, but in~~ no event
10 should the time ~~period prior to~~ before application for reinstatement be more than three years.

11 ~~(e)(1) A lawyer who has been suspended for six months or less may be reinstated as set~~
12 ~~forth in Rule 14-524.~~

13 ~~(e)(2) A lawyer who has been suspended for more than six months may be reinstated as~~
14 ~~set forth in Rule 14-525.~~

15 (d) **Interim suspension or interim discipline.** Interim suspension ~~is the temporarily~~
16 ~~suspension of~~ a lawyer from the practice of law. Interim suspension ~~or interim discipline~~ may
17 be imposed as set forth in Rules 14-518 and 14-519.

18 (e) **Reprimand.** Reprimand is public discipline ~~which that~~ declares the ~~lawyer's~~ conduct ~~of the~~
19 ~~lawyer~~ improper, but does not limit the lawyer's right to practice ~~law~~.

20 (f) **Admonition.** Admonition is nonpublic discipline ~~that which~~ declares the conduct of the
21 lawyer improper, but does not limit the lawyer's right to practice ~~law~~.

22 (g) **Probation.** Probation ~~is a sanction that~~ allows a lawyer to practice law under specified
23 conditions. Probation ~~can may~~ be public or nonpublic, ~~can be~~ imposed alone or in conjunction
24 with other sanctions, and ~~can be~~ imposed as a condition ~~of readmission or reinstatement or~~
25 ~~relicensure~~.

26 (g)(1) A respondent may be placed on probation if they can demonstrate that they:

Commented [LL33]: Christine Greenwood: Must a sanction always be imposed on a finding of misconduct? Could the application of mitigating factors warrant a downward adjustment from an admonition to a dismissal? Could other circumstances involving a technical violation ever warrant the lack of a sanction? If these are possibilities, suggest changing "is" to "may be"

Commented [LL34]: Who finds/acknowledges? The Court? OPC? The disciplined lawyer?

Commented [LL35]: Redundant of Rule 14-525

Commented [LL36]: Recommendation 7.2

Commented [LL37]: Note from OPC: Should this new probation language apply to LPPs as well as attorneys? Concerns with (g)(1)(E), (g)(2)(E), and (g)(2)(K) specifically.

1 (g)(1)(A) can perform legal services and the continued practice of law will not
2 cause the courts or the profession to fall into disrepute;

3 (g)(1)(B) are unlikely to harm the public during the period of rehabilitation and
4 the necessary conditions of probation can be adequately supervised;

5 (g)(1)(C) have a disability which is temporary or minor and does not require
6 treatment and transfer to disability status;

7 (g)(1)(D) have not committed acts involving dishonesty, fraud, deceit, or
8 misrepresentation; and

9 (g)(1)(E) have not committed acts warranting ~~disbarment~~ **delicensure**.

10 (g)(2) Probation may include, but is not limited to, the following conditions:

11 (g)(2)(A) no further violations of the Rules of Professional Conduct or Licensed
12 Paralegal Practitioner Rules of Professional Conduct;

13 (g)(2)(B) restitution;

14 (g)(2)(C) assessment of costs;

15 (g)(2)(D) limitation on practice;

16 (g)(2)(E) requirement that the lawyer pass the Multistate Professional
17 Responsibility Exam;

18 (g)(2)(F) requirement that the lawyer take continuing legal education courses;

19 (g)(2)(G) mental health counseling and treatment;

20 (g)(2)(H) abstinence from drugs and alcohol;

21 (g)(2)(I) medical evaluation and treatment;

22 (g)(2)(J) periodic reports to the court and the OPC; and

23 (g)(2)(K) monitoring of all or part of respondent's work by a supervising attorney.

1 (g)(3) The respondent is responsible for all costs of evaluation, treatment, and
2 supervision. Failing to pay these costs before probation terminates is a violation of
3 probation.

4 (g)(4) A respondent may terminate their probation by filing with the district court and
5 serving on the OPC an affidavit stating that the respondent has fully complied with the
6 requirements of the probation order. The OPC may file an objection and thereafter the
7 court will conduct a hearing.

8 (g)(5) Violations. If during the period of probation, the OPC receives information that
9 any probation term has been violated, the OPC may file a motion specifying the alleged
10 violation and seeking to have the probation terminated. Upon filing such motion, the
11 respondent must have the opportunity to respond and a hearing will be held, at which
12 time the court will determine whether to revoke probation.

13 (h) **Diversion.** Diversion is an alternative to a sanction if completed. Diversion allows a lawyer
14 to practice law under specified conditions. Diversion may be public or non-public.

15 (h)(1) Rule 14-533 governs diversion matters before the OPC files a misconduct action
16 under Rule 14-511.

Commented [LL38]: Christine Greenwood: Same question from above re 14-533 – can a case go into diversion in the period after a screening panel determination?

17 (h)(2) For a misconduct action, the following criteria will determine the appropriateness
18 of a diversion:

19 (h)(2)(A) The misconduct does not involve the misappropriation of funds or
20 property; fraud, dishonesty, deceit or misrepresentation; or the commission of a
21 misdemeanor adversely reflecting on the lawyer's fitness to practice law or any
22 felony;

23 (h)(2)(B) The misconduct appears to be the result of inadequate law office
24 management, chemical dependency, a physical or mental health condition,
25 negligence or lack of training, education or other similar circumstance; and

(h)(2)(C) There appears to be a reasonable likelihood that the successful completion of a remedial program will prevent the recurrence of conduct by the attorney similar to that under consideration for diversion.

(h)(3) In addition to the above-required criteria of (A), (B) and (C), other considerations may include whether the misconduct is a one-time act or based on a chronic condition and whether there is sufficient evidence connecting the chronic condition to the misconduct.

(h)(4) Diversion determinations must include compliance conditions to address the misconduct and the time for completion.

(h)(5) If the lawyer completes the conditions of the Diversion, the misconduct action will be dismissed with prejudice.

(h)(6) If the lawyer does not complete the conditions of the Diversion within the required time, the lawyer will be subject to a suspension of six months and a day.

(h) Resignation with discipline pending. Resignation with discipline pending is a form of public discipline ~~which~~ that allows a respondent to resign from the practice of law while either an informal or formal complaint is pending against the respondent. Resignation with discipline pending may be imposed as set forth in Rule 14-521.

(i) Other sanctions and remedies. Other sanctions and remedies which may be imposed include:

(i)(1) restitution;

(i)(2) assessment of costs;

(i)(3) limitation upon practice;

(i)(4) appointment of a receiver;

(i)(5) a requirement that the lawyer take the Bar Examination or professional responsibility examination; and

Commented [LL39]: Christine Greenwood: I am unsure whether screening panels can impose the following remedies and as a practical matter they do not. Should these be described as remedies that may be imposed by courts, or should we clarify that panels may impose and the OPC may ask for the imposition of these remedies? Or can the panels impose only certain of the listed remedies?

1 (i)(6) a requirement that the lawyer attend continuing education courses.
2 (k) **Reciprocal discipline.** Reciprocal discipline ~~is the imposition of~~ is imposing a disciplinary
3 sanction on a lawyer who has been disciplined in another court, another jurisdiction, or a
4 regulatory body having disciplinary jurisdiction.
5

Rule 14-604. Factors to be considered in imposing sanctions.

(a) The Committee and the court must consider the following factors in imposing sanctions after a finding of lawyer misconduct under these rules.
~~The following factors should be considered in imposing a sanction after a finding of lawyer misconduct:~~

(a)(1) the duty violated;

~~(b)~~(a)(2) the lawyer's mental state;

~~(c)~~(a)(3) the potential or actual injury caused by the lawyer's misconduct;

(a)(4) the presumptive discipline based on the factors in paragraphs (a)(1) through (a)(3);

and

~~(d)~~(4) the existence of aggravating or mitigating factors.

(d) Multiple charges of misconduct.

(d)(1) Where a respondent is found to have committed multiple charges of misconduct, the ultimate sanction imposed must at least be consistent with the sanction for the most serious instance of misconduct among the violations, and may be greater than the sanction for the most serious misconduct.

(d)(2) Either a pattern of misconduct or multiple instances of misconduct should be considered as aggravating factors.

Commented [LL40]: Christine Greenwood: This is a possible change based on Supreme Court case law suggesting that aggravating and mitigating factors are considered only after a determination what is the presumptive discipline, and only for purposes of determining whether departure from the presumptive sanction is warranted.

The Supreme Court has also said that a departure downward from the presumptive sanction of disbarment for knowing misappropriation of client funds, mitigating factors must be "truly compelling." But it is unclear to me whether this "truly compelling" standard applies with respect to other sanctions and/or to upward departures (see below in aggravating and mitigating factors discussion).

Commented [LL41]: See Tyler Larsen case.

Rule 14-605. ~~Imposition of sanctions.~~Sanctions for violating duties owed to clients.

(a) Failing to preserve the client's property. The following sanctions are generally appropriate when a lawyer fails to preserve client property:

(a)(1) **Delicensure** is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client.

(a)(2) Suspension is generally appropriate when a lawyer knows or should know that the lawyer is dealing improperly with client property and causes injury or potential injury to a client.

(a)(3) Reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client.

(a)(4) Admonition is generally appropriate when a lawyer is negligent in dealing with client property and causes little or no actual or potential injury to a client.

(b) Failing to preserve the client's confidences. The following sanctions are generally appropriate when a lawyer improperly reveals information related to representing a client:

(b)(1) **Delicensure** is generally appropriate when a lawyer, with the intent to benefit the lawyer or another, knowingly reveals information relating to representation of a client not otherwise lawfully permitted to be disclosed, and this disclosure causes injury or potential injury to a client.

(b)(2) Suspension is generally appropriate when a lawyer knowingly reveals information relating to the representation of a client not otherwise lawfully permitted to be disclosed, and this disclosure causes injury or potential injury to a client.

(b)(3) Reprimand is generally appropriate when a lawyer negligently reveals information relating to representation of a client not otherwise lawfully permitted to be disclosed and this disclosure causes injury or potential injury to a client.

(b)(4) Admonition is generally appropriate when a lawyer negligently reveals information relating to representation of a client not otherwise lawfully permitted to be disclosed and this disclosure causes little or no actual or potential injury to a client.

1 (c) Failing to avoid conflicts of interest. The following sanctions are generally appropriate in
2 cases involving conflicts of interest:

3 (c)(1) Delicensure is generally appropriate when a lawyer, without the informed consent
4 of client(s):

5 (c)(1)(A) engages in representation of a client knowing that the lawyer's interests
6 are adverse to the client's with the intent to benefit the lawyer or another, and
7 causes serious or potentially serious injury to the client;

8 (c)(1)(B) simultaneously represents clients that the lawyer knows have adverse
9 interests with the intent to benefit the lawyer or another, and causes serious or
10 potentially serious injury to a client; or

11 (c)(1)(C) represents a client in a matter substantially related to a matter in which
12 the interests of a present or former client are materially adverse, and knowingly
13 uses information relating to the representation of a client with the intent to benefit
14 the lawyer or another, and causes serious or potentially serious injury to a client.

15 (c)(2) Suspension is generally appropriate when a lawyer knows of a conflict of interest
16 and does not fully disclose to a client the possible effect of that conflict, and causes injury
17 or potential injury to a client.

18 (c)(3) Reprimand is generally appropriate when a lawyer is negligent in determining
19 whether the representation of a client may be materially affected by the lawyer's own
20 interests, or whether the representation will adversely affect another client, and causes
21 injury or potential injury to a client.

22 (c)(4) Admonition is generally appropriate when a lawyer engages in an isolated instance
23 of negligence in determining whether the representation of a client may be materially
24 affected by the lawyer's own interests, or whether the representation will adversely affect
25 another client, and causes little or no actual or potential injury to a client.

26 (d) Lack of diligence. The following sanctions are generally appropriate when a lawyer fails to
27 act with reasonable diligence and promptness in representing a client:

1 (d)(1) Delicensure is generally appropriate when:

2 (d)(1)(A) a lawyer abandons the practice and causes serious or potentially serious
3 injury to a client;

4 (d)(1)(B) a lawyer knowingly fails to perform services for a client and causes
5 serious or potentially serious injury to a client; or

6 (d)(1)(C) a lawyer engages in a pattern of neglect with respect to client matters
7 and causes serious or potentially serious injury to a client.

8 (d)(2) Suspension is generally appropriate when:

9 (d)(2)(A) a lawyer knowingly fails to perform services for a client and causes
10 injury or potential injury to a client, or

11 (d)(2)(B) a lawyer engages in a pattern of neglect and causes injury or potential
12 injury to a client.

13 (d)(3) Reprimand is generally appropriate when a lawyer is negligent and does not act
14 with reasonable diligence in representing a client, and causes injury or potential injury to
15 a client.

16 (d)(4) Admonition is generally appropriate when a lawyer is negligent and does not act
17 with reasonable diligence in representing a client, and causes little or no actual or
18 potential injury to a client.

19 (e) **Lack of Competence.** The following sanctions are generally appropriate when a lawyer fails
20 to provide competent representation to a client:

21 (e)(1) Delicensure is generally appropriate when a lawyer's course of conduct
22 demonstrates that the lawyer does not understand the most fundamental legal doctrines or
23 procedures, and the lawyer's conduct causes injury or potential injury to a client.

24 (e)(2) Suspension is generally appropriate when a lawyer engages in an area of practice in
25 which the lawyer knows they are not competent, and causes injury or potential injury to a
26 client.

1 (e)(3) Reprimand is generally appropriate when a lawyer:

2 (e)(3)(A) demonstrates failure to understand relevant legal doctrines or
3 procedures and causes injury or potential injury to a client, or

4 (e)(3)(B) is negligent in determining whether the lawyer is competent to handle a
5 legal matter and causes injury or potential injury to a client.

6 (e)(4) Admonition is generally appropriate when a lawyer engages in an isolated instance
7 of negligence in determining whether the lawyer is competent to handle a legal matter,
8 and causes little or no actual or potential injury to a client.

9 (f) **Lack of Candor.** The following sanctions are generally appropriate in cases where a lawyer
10 engages in fraud, deceit, or misrepresentation directed toward a client:

11 (f)(1) **Delicensure** is generally appropriate when a lawyer knowingly deceives a client
12 with the intent to benefit the lawyer or another, and causes serious injury or potential
13 serious injury to a client.

14 (f)(2) Suspension is generally appropriate when a lawyer knowingly deceives a client,
15 and causes injury or potential injury to the client.

16 (f)(3) Reprimand is generally appropriate when a lawyer negligently fails to provide a
17 client with accurate or complete information, and causes injury or potential injury to the
18 client.

19 (f)(4) Admonition is generally appropriate when a lawyer engages in an isolated instance
20 of negligence in failing to provide a client with accurate or complete information, and
21 causes little or no actual or potential injury to the client.

22 ~~Absent aggravating or mitigating circumstances, upon application of the factors set out in Rule~~
23 ~~14-604, the following sanctions are generally appropriate:~~

24 ~~(a) **Disbarment.** Disbarment is generally appropriate when a lawyer:~~

25 ~~(a)(1) knowingly engages in professional misconduct as defined in Rule 8.4(a), (d), (e),~~
26 ~~or (f) of the Rules of Professional Conduct with the intent to benefit the lawyer or another~~

1 ~~or to deceive the court, and causes serious or potentially serious injury to a party, the~~
2 ~~public, or the legal system, or causes serious or potentially serious interference with a~~
3 ~~legal proceeding; or~~

4 ~~(a)(2) engages in serious criminal conduct, a necessary element of which includes~~
5 ~~intentional interference with the administration of justice, false swearing,~~
6 ~~misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution, or~~
7 ~~importation of controlled substances; or the intentional killing of another; or an attempt~~
8 ~~or conspiracy or solicitation of another to commit any of these offenses; or~~

9 ~~(a)(3) engages in any other intentional misconduct involving dishonesty, fraud, deceit, or~~
10 ~~misrepresentation that seriously adversely reflects on the lawyer's fitness to practice law.~~

11 ~~(b) **Suspension.** Suspension is generally appropriate when a lawyer:~~

12 ~~(b)(1) knowingly engages in professional misconduct as defined in Rule 8.4(a), (d), (e),~~
13 ~~or (f) of the Rules of Professional Conduct and causes injury or potential injury to a~~
14 ~~party, the public, or the legal system, or causes interference or potential interference with~~
15 ~~a legal proceeding; or~~

16 ~~(b)(2) engages in criminal conduct that does not contain the elements listed in Rule 14-~~
17 ~~605(a)(2) but nevertheless seriously adversely reflects on the lawyer's fitness to practice~~
18 ~~law.~~

19 ~~(c) **Reprimand.** Reprimand is generally appropriate when a lawyer:~~

20 ~~(c)(1) negligently engages in professional misconduct as defined in Rule 8.4(a), (d), (e),~~
21 ~~or (f) of the Rules of Professional Conduct and causes injury to a party, the public, or the~~
22 ~~legal system, or causes interference with a legal proceeding; or~~

23 ~~(c)(2) engages in any other misconduct that involves dishonesty, fraud, deceit, or~~
24 ~~misrepresentation and that adversely reflects on the lawyer's fitness to practice law.~~

25 ~~(d) **Admonition.** Admonition is generally appropriate when a lawyer:~~

26 ~~(d)(1) negligently engages in professional misconduct as defined in Rule 8.4(a), (d), (e),~~
27 ~~or (f) of the Rules of Professional Conduct and causes little or no injury to a party, the~~

Commented [LL42]: Do we still want this when we have it in suspension?

1 ~~public, or the legal system or interference with a legal proceeding, but exposes a party,~~
2 ~~the public, or the legal system to potential injury or causes potential interference with a~~
3 ~~legal proceeding; or~~

4 ~~(d)(2) engages in any professional misconduct not otherwise identified in this rule that~~
5 ~~adversely reflects on the lawyer's fitness to practice law.~~

Rule 11- }. Sanctions for violating duties owed to the public.

(a) Failing to maintain personal integrity. The following sanctions are generally appropriate when a lawyer commits a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, or in cases with conduct involving dishonesty, fraud, deceit, or misrepresentation.

(a)(1) **Delicensure** is generally appropriate when:

(a)(1)(A) a lawyer engages in serious criminal conduct, a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution, or importation of controlled substances; or the intentional killing of another; or an attempt, conspiracy, or solicitation of another to commit any of these offenses; or

(a)(1)(B) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

(a)(2) Suspension is generally appropriate when a lawyer knowingly engages in criminal conduct which does not contain the elements listed in (a)(1) and that seriously adversely reflects on the lawyer's fitness to practice.

(a)(3) Reprimand is generally appropriate when a lawyer negligently engages in any other conduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer's fitness to practice law.

(a)(4) Admonition is generally appropriate when a lawyer engages in any other conduct that reflects adversely on the lawyer's fitness to practice law.

(b) Failing to maintain the public trust. The following sanctions are generally appropriate in cases involving public officials who engage in conduct that is prejudicial to the administration of justice or who state or imply an ability to influence improperly a government agency or official:

Commented [LL43]: The ABA model rules use "knowingly" here.

1 (b)(1) Delicensure is generally appropriate when a lawyer in an official or governmental
2 position knowingly misuses the position with the intent to obtain a significant benefit or
3 advantage for himself or another, or with the intent to cause serious or potentially serious
4 injury to a part or to the integrity of the legal process.

5 (b)(2) Suspension is generally appropriate when a lawyer in an official or governmental
6 position knowingly fails to follow proper procedures or rules, and causes injury or
7 potential injury to a party or to the integrity of the legal process.

8 (b)(3) Reprimand is generally appropriate when a lawyer in an official or governmental
9 position negligently fails to follow proper procedures or rules, and causes injury or
10 potential injury to a party or to the integrity of the legal process.

11 (b)(4) Admonition is generally appropriate when a lawyer in an official or governmental
12 position engages in an isolated instance of negligence in not following proper procedures
13 or rules, and causes little or no actual or potential injury to a party or to the integrity of
14 the legal process.

Rule 11-{ }. Sanctions for violating duties owed to the legal system.

(a) False statements, fraud, and misrepresentation. The following sanctions are generally appropriate when a lawyer's conduct is prejudicial to the administration of justice or involves dishonesty, fraud, deceit, or misrepresentation to a court:

(a)(1) **Delicensure** is generally appropriate when a lawyer, with the intent to deceive the court, makes a false statement, submits a false document, or improperly withholds material information, and causes serious or potentially serious injury to a party, or causes a significant or potentially significant adverse effect on the legal proceeding.

(a)(2) Suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.

(a)(3) Reprimand is generally appropriate when a lawyer is negligent either in determining whether statements or documents are false or in taking remedial action when material information is being withheld and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.

(a)(4) Admonition is generally appropriate when a lawyer engages in an isolated instance of neglect in determining whether submitted statements or documents are false or in failing to disclose material information upon learning of its falsity, and causes little or no actual or potential injury to a party, or causes little or no adverse or potentially adverse effect on the legal proceeding.

(b) Abuse of the legal process. The following sanctions are generally appropriate when a lawyer fails to expedite litigation or bring a meritorious claim, or fails to obey any obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists:

1 (b)(1) Delicensure is generally appropriate when a lawyer knowingly violates a court
2 order or rule with the intent to obtain a benefit for the lawyer or another, and causes
3 serious injury or potentially serious injury to a party or causes serious or potentially
4 serious interference with a legal proceeding.

5 (b)(2) Suspension is generally appropriate when a lawyer knows that the lawyer is
6 violating a court order or rule, and causes injury or potential injury to a client or a party,
7 or causes interference or potential interference with a legal proceeding.

8 (b)(3) Reprimand is generally appropriate when a lawyer negligently fails to comply with
9 a court order or rule, and causes injury or potential injury to a client or other party, or
10 causes interference or potential interference with a legal proceeding.

11 (b)(4) Admonition is generally appropriate when a lawyer engages in an isolated instance
12 of negligence in complying with a court order or rule, and causes little or no actual or
13 potential injury to a party, or causes little or no actual or potential interference with a
14 legal proceeding.

15 (c) **Improper communications with individuals in the legal system.** The following sanctions
16 are generally appropriate when a lawyer attempts to influence a judge, juror, prospective juror, or
17 other official by means prohibited by law:

18 (c)(1) Delicensure is generally appropriate when a lawyer:

19 (c)(1)(A) intentionally tampers with a witness and causes serious or potentially
20 serious injury to a party, or causes significant or potentially significant
21 interference with the outcome of the legal proceeding;

22 (c)(1)(B) makes an ex parte communication with a judge or juror with intent to
23 affect the outcome of the proceeding, and causes serious or potentially serious
24 injury to a party, or causes significant or potentially significant interference with
25 the outcome of the legal proceeding; or

26 (c)(1)(C) improperly communicates with someone in the legal system other than a
27 witness, judge, or juror with the intent to influence or affect the outcome of the

1 proceeding, and causes significant or potentially significant interference with the
2 outcome of the legal proceeding.

3 (c)(2) Suspension is generally appropriate when a lawyer engages in communication with
4 an individual in the legal system when the lawyer knows that such communication is
5 improper, and causes injury or potential injury to a party or causes interference or
6 potential interference with the outcome of the legal proceeding.

7 (c)(3) Reprimand is generally appropriate when a lawyer is negligent in determining
8 whether it is proper to engage in communication with an individual in the legal system,
9 and causes injury or potential injury to a party or interference or potential interference
10 with the outcome of the legal proceeding.

11 (c)(4) Admonition is generally appropriate when a lawyer engages in an isolated instance
12 of negligence in improperly communicating with an individual in the legal system, and
13 causes little or no: (A) actual or potential injury to a party, or (B) actual or potential
14 interference with the outcome of the legal proceeding.
15

Rule 11- }. Sanctions for violating duties owed as a professional.

The following sanctions are generally appropriate in cases involving false or misleading communication about the lawyer or the lawyer's services, including improper communication of fields of practice, improper solicitation of professional employment from a prospective client, unreasonable or improper fees, unauthorized practice of law, improper withdrawal from representation, or failure to report professional misconduct.

(a) **Delicensure** is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.

(b) Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

(c) Reprimand is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

(d) Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence that is a violation of a duty owed as a professional, and causes little or no actual or potential injury to a client, the public, or the legal system.

Commented [LL44]: Check to ensure this section doesn't conflict with proposed regulatory reform rules/Standing Order.

Rule 14-606. Prior discipline orders.

The following sanctions are generally appropriate in cases involving prior discipline.

(a) Delicensure is generally appropriate when a lawyer:

(a)(1) intentionally or knowingly violates the terms of a prior disciplinary order and such violation causes injury or potential injury to a client, the public, the legal system, or the profession; or

(a)(2) has been suspended for the same or similar misconduct, and intentionally or knowingly engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.

(b) Suspension is generally appropriate when a lawyer has been reprimanded for the same or similar misconduct and engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.

(c) Reprimand is generally appropriate when a lawyer:

(c)(1) negligently violates the terms of a prior disciplinary order and such violation causes injury or potential injury to a client, the public, the legal system, or the profession; or

(c)(2) has received an admonition for the same or similar misconduct and engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.

(d) An admonition is generally not an appropriate sanction when a lawyer violates the terms of a prior disciplinary order or when a lawyer has engaged in the same or similar misconduct in the past.

~~Absent aggravating or mitigating circumstances, upon application of the factors set out in Rule 14-604, the following principles generally apply in cases involving prior discipline:~~

~~(a) The district court or Supreme Court may impose further sanctions upon a lawyer who violates the terms of a prior disciplinary order.~~

1 ~~(b) When a lawyer engages in misconduct similar to that for which the lawyer has~~
2 ~~previously been disciplined, the appropriate sanction will generally be one level more~~
3 ~~severe than the sanction the lawyer previously received, provided that the harm requisite~~
4 ~~for the higher sanction is present.~~
5

1 **Rule 14-607. Aggravation and mitigation.**

2 (a) Application. After ~~misconduct has been established~~ the presumptive discipline has been
3 established, aggravating and mitigating circumstances may be considered and weighed in
4 ~~deciding what sanction to impose~~ determining whether departure from the presumptive discipline
5 is warranted.

Commented [LL45]: Christine Greenwood: These changes relate to my note above about presumptive discipline.

6 (b) Aggravating circumstances. Aggravating circumstances are any considerations or factors
7 ~~that may justify an increase~~ in the degree of discipline to be imposed. Aggravating circumstances
8 may include:

Commented [LL46]: Christine Greenwood: The Supreme Court has said that a departure downward from the presumptive sanction of disbarment for knowing misappropriation of client funds, mitigating factors must be "truly compelling." But it is unclear to me whether this "truly compelling" standard applies with respect to other sanctions and/or to upward departures.

9 (a)(1) prior record of discipline;

10 (a)(2) dishonest or selfish motive;

11 (a)(3) a pattern of misconduct;

12 (a)(4) multiple offenses;

13 (a)(5) obstruction of the disciplinary proceeding by intentionally failing to comply with
14 rules or orders of the disciplinary authority;

15 (a)(6) submission of false evidence, false statements, or other deceptive practices during
16 the disciplinary process;

17 (a)(7) refusal to acknowledge the wrongful nature of the misconduct involved, either to
18 the client or to the disciplinary authority;

19 (a)(8) vulnerability of victim;

20 (a)(9) substantial experience in the practice of law;

21 (a)(10) lack of good faith effort to make restitution or to rectify the consequences of the
22 misconduct involved; and

23 (a)(11) illegal conduct, including the use of controlled substances.

(c)(b) **Mitigating circumstances.** Mitigating circumstances are any considerations or factors that may justify a reduction in the degree of discipline to be imposed. Mitigating circumstances may include:

- (b)(1) absence of a prior record of discipline;
- (b)(2) absence of a dishonest or selfish motive;
- (b)(3) personal or emotional problems;
- (b)(4) timely good faith effort to make restitution or to rectify the consequences of the misconduct involved;
- (b)(5) full and free disclosure to the client or the disciplinary authority prior to the discovery of any misconduct or cooperative attitude toward proceedings;
- (b)(6) inexperience in the practice of law;
- (b)(7) good character or reputation;
- (b)(8) physical disability;
- (b)(9) mental disability or impairment, including substance abuse when:
 - (b)(9)(A) the respondent is affected by a substance abuse or mental disability; and
 - (b)(9)(B) the substance abuse or mental disability causally contributed to the misconduct; and
 - (b)(9)(C) the respondent's recovery from the substance abuse or mental disability is demonstrated by a meaningful and sustained period of successful rehabilitation; and
 - (b)(9)(D) the recovery arrested the misconduct and the recurrence of that misconduct is unlikely;

(b)(10) unreasonable delay in disciplinary proceedings, provided that the respondent did not substantially contribute to the delay and provided further that the respondent has demonstrated prejudice resulting from the delay;

(b)(11) interim reform in circumstances not involving mental disability or impairment;

(b)(12) imposition of other penalties or sanctions;

(b)(13) remorse; and

(b)(14) remoteness of prior offenses.

(e) **Other circumstances.** The following circumstances ~~should~~ may not be considered as either aggravating or mitigating:

(e)(1) forced or compelled restitution;

(e)(2) withdrawal of complaint against the lawyer;

(e)(3) resignation prior to completion of disciplinary proceedings;

(e)(4) complainant's recommendation as to sanction; and

(e)(5) failure of injured client to complain.

Reinstatement.

Rule 14-524. Reinstatement following a suspension or probation of no more than six months ~~or less~~.

A respondent who has been suspended or placed on probation for no more than six months ~~or less~~ pursuant to disciplinary proceedings ~~shall~~ will be reinstated at the end of the suspension or probation period ~~of suspension~~ upon filing with the district court and serving ~~up~~ on the OPC ~~counsel~~ an affidavit stating that the respondent has fully complied with the requirements of the suspension or probation order and that the respondent has fully reimbursed the Bar's Lawyers' Fund for Client Protection or Licensed Paralegal Practitioners' Fund for Client Protection for any amounts paid on account of the respondent's conduct. Within ~~ten~~ 14 days, the OPC ~~counsel~~ may file an objection and ~~thereafter~~ the district court ~~shall conduct~~ will hold a hearing.

**Rule 14-525. Reinstatement following a suspension of more than six months;
~~readmission~~relicensure.**

(a) **Generally.** A respondent suspended for more than six months or a ~~disbarred~~delicensed respondent ~~shall~~may be reinstated or ~~readmitted~~relicensed only upon the district court's order ~~of the district court~~. No respondent may petition for reinstatement until three months before the period for suspension has expired. No respondent may petition for ~~readmission~~reinstatement until five years after the effective date of ~~disbarment~~delicensure. A respondent who has been placed on interim suspension and is then ~~disbarred~~delicensed for the same misconduct that was the ground for the interim suspension may petition for ~~readmission~~reinstatement or relicensure at the expiration of five years from the effective date of the interim suspension.

(b) **Petition.** A petition for reinstatement or ~~readmission~~relicensure ~~shall~~must be verified, filed with the district court, and ~~shall~~must specify with particularity the manner in which the respondent meets each of the criteria specified in paragraph (e) or, if not, why there is otherwise good and sufficient reason for reinstatement or ~~readmission~~relicensure. With specific reference to paragraph (e)(4), ~~prior to the before~~ filing ~~of~~ a petition for reinstatement or ~~readmission~~relicensure, the respondent must receive a report and recommendation from the Bar's Character and Fitness Committee. In addition to receiving the report and recommendation from the Character and Fitness Committee, the respondent must satisfy all other requirements as set forth in Chapter 14, Article 7, Admissions. ~~Prior to Before~~ or as part of the respondent's petition, the respondent may request to modification or ~~abatement of~~ conditions of discipline, reinstatement or ~~readmission~~relicensure.

(c) ~~Service of~~Serving the petition. The respondent ~~shall~~must serve the OPC with a copy of the petition ~~upon OPC counsel~~.

(d) **Publication of notice of petition.** ~~At the time~~When a respondent files a petition for reinstatement or ~~readmission~~relicensure, the OPC counsel shall ~~must~~:

(d)(1) publish a notice of the petition in the Utah Bar Journal, which:

(d)(1)(A) ~~The notice shall inform~~ Bar members ~~of the Bar about~~ of the application for reinstatement or ~~readmission~~relicensure, and

(d)(1)(B) ~~shall request~~ that any individuals file notice of their opposition or concurrence with the district court within ~~30~~28 days of the date of publication; and

(d)(2) ~~In addition, OPC counsel shall notify~~ send a notice to the complainant's last known address according to OPC records, to each complainant in the disciplinary proceeding that led to the respondent's suspension or ~~disbarment~~delicensure informing such complainant that:

(d)(2)(A) the respondent is applying for reinstatement or ~~readmission~~relicensure, and

(d)(2)(B) ~~shall inform each complainant that~~ the complainant has ~~30~~28 days from the mailing date ~~of mailing to raise objections to or to support the respondent's petition. Notice shall be mailed to the last known address of each complainant in OPC counsel's records.~~

(e) **Criteria for reinstatement and ~~readmission~~relicensure.** A respondent may be reinstated or ~~readmitted~~relicensed only if the respondent meets each of the following criteria, or, if not, presents good and sufficient reason why the respondent should nevertheless be reinstated or ~~readmitted~~relicensed.

(e)(1) The respondent has fully complied with the terms and conditions of all prior disciplinary orders except to the extent they are abated by the district court.

(e)(2) The respondent has not engaged nor attempted to engage in the unauthorized practice of law during the period of suspension or ~~disbarment~~delicensure.

(e)(3) If the respondent was suffering from a physical or mental disability or impairment which was a causative factor of the respondent's misconduct, including substance abuse, the disability or impairment has been removed. Where substance abuse was a causative factor in the respondent's misconduct, the respondent ~~shall~~may not be reinstated or ~~readmitted~~relicensed unless the respondent:

(e)(3)(A) ~~the respondent~~ has recovered from the substance abuse as demonstrated by a meaningful and sustained period of successful rehabilitation;

(e)(3)(B) ~~the respondent~~ has abstained from the use of the abused substance and the unlawful use of controlled substances for the preceding six months; and

(e)(3)(C) ~~the respondent~~ is likely to continue to abstain from the substance abused and the unlawful use of controlled substances.

(e)(4) Notwithstanding the conduct for which the respondent was disciplined, the respondent has the requisite honesty, ~~and~~ integrity, and fitness to practice law. In ~~readmission-relicensure~~ cases, the respondent must appear before the Bar's Character and Fitness Committee and cooperate in its investigation of the respondent. A copy of the Character and Fitness Committee's report and recommendation ~~shall~~ will be provided to the OPC and forwarded to the district court assigned to the petition after the respondent files a petition.

(e)(4)(A) Factors considered in determining honesty, integrity, and fitness for reinstatement. The court may use the following factors to decide whether the lawyer seeking reinstatement possesses the requisite honesty, integrity, and fitness to practice law:

Commented [LL47]: Should this be "lacks"?

(e)(4)(A)(i) lack of candor in the reinstatement process;

(e)(4)(A)(ii) unlawful conduct while suspended;

(e)(4)(A)(iii) false or misleading statements or omissions during suspension or the reinstatement process;

(e)(4)(A)(iv) acts involving dishonesty, fraud, deceit, or misrepresentation while suspended;

(e)(4)(A)(v) abuse of the legal process;

(e)(4)(A)(vi) neglecting financial responsibilities while suspended;

(e)(4)(A)(vii) violating court order while suspended;

(e)(4)(A)(viii) evidence of mental or emotional instability; and

(e)(4)(A)(ix) evidence of drug or alcohol dependency while suspended;

(e)(4)(B) Assigning weight and significance to conduct. In determining honesty, integrity, and fitness to practice law, the court may use the following factors to assign weight and significance to prior conduct:

(e)(4)(B)(i) how recent the conduct occurred,

(e)(4)(B)(ii) seriousness of the conduct,

(e)(4)(B)(iii) cumulative effect of the conduct,

(e)(4)(B)(iv) evidence of rehabilitation,

(e)(4)(B)(v) positive social contributions while suspended.

(e)(5) The respondent has kept informed about recent developments in the law by engaging in legal education and is competent to practice.

(e)(6) In cases of suspensions for one year or more, ~~the respondent~~ lawyers shall will be required to pass the Multistate Professional Responsibility Examination, and respondent licensed paralegal practitioners must pass the Licensed Paralegal Practitioner Professional Responsibility Exam.

Commented [LL48]: I am assuming this requires them to retake the exam, if so, should we say "retake and pass...."?

(e)(7) In all cases of ~~disbarment~~ delicensure, ~~the respondent~~ lawyers shall will be required to pass the student applicant Bar Examination and the Multistate Professional Responsibility Examination, and respondent licensed paralegal practitioners must pass the student applicant Licensed Paralegal Practitioner Licensing Exam.

(e)(8) The respondent has fully reimbursed the Bar's Lawyers' Fund for Client Protection or Licensed Paralegal Practitioners' Fund for Client Protection for any amounts paid on account of the respondent's conduct.

(f) **Review of petition.** Within 60 days ~~after~~ of receiving a respondent's petition for reinstatement or readmission ~~relicensure~~, the OPC-counsel shall must either:

(f)(1) advise the respondent and the district court that the OPC counsel will not object to the respondent's reinstatement or readmission relicensure; or

(f)(2) file a written objection in writing to the petition.

(g) **Hearing; report.** If the OPC an objection is filed by OPC counsel, the district court, as soon as reasonably practicable and within a target date of 90 days of the filing of the petition, shall will conduct a hearing at which the respondent shall will have the burden of demonstrating by a preponderance of the evidence that the respondent has met each of the criteria in paragraph (e) or, if not, that there is good and sufficient reason why the respondent should nevertheless be reinstated or readmitted relicensed. The district court shall will enter its findings and order. If the OPC does not no objection is filed by OPC counsel, the district court shall will review the petition without a hearing and enter its findings and order.

(h) **Successive petitions.** Unless the district court orders otherwise ordered by the district court, no respondent shall may apply for reinstatement or readmission relicensure within one year following an adverse judgment upon a petition for reinstatement or readmission relicensure.

(i) **Conditions of reinstatement or readmission relicensure.** The district court may impose conditions on a respondent's reinstatement or readmission relicensure if the respondent has met the burden of proof justifying reinstatement or readmission relicensure, but the district court reasonably believes that further precautions should be taken to ensure that the public will be protected upon when the respondent's returns to practice.

(j) **Reciprocal reinstatement or readmission relicensure.** If a respondent has been suspended or disbarred delicensed solely on the basis because of discipline imposed by another court, another jurisdiction, or a regulatory body having disciplinary jurisdiction, and if the respondent is later reinstated or readmitted relicensed by that court, jurisdiction or regulatory body, the respondent may petition for reciprocal reinstatement or readmission relicensure in Utah. The respondent shall must file with the district court and serve upon the OPC counsel with a petition for reciprocal reinstatement or readmission relicensure, as the case may be. The petition shall must include a certified or otherwise authenticated copy of the order of reinstatement or readmission relicensure from the other court, jurisdiction, or regulatory body. Within 201 days of

1 ~~receiving~~~~service of~~ the petition, ~~the~~ OPC ~~counsel~~ may ~~file an objection thereto~~ based solely ~~upon~~
2 substantial procedural irregularities. If ~~an objection is filed~~ the OPC objects, the district court
3 ~~shall~~will hold a hearing and enter its findings and order. If no objection is filed, the district court
4 ~~shall~~ will enter its order based ~~upon~~ the petition.

5

1 ~~Rule 14-528. Appeal by complainant.~~
2 ~~The complainant shall not have a right of appeal, except as provided in Rule 14-510(a)(7) to~~
3 ~~appeal a dismissal of an informal complaint.~~
4

Commented [LL49]: This language has been fully incorporated into Rule 14-510(a)(7).

1 **Article 7. Admissions**

2 **Rule 14-701. Definitions.**

3 As used in this article:

4 (a) “**ABA**” means the American Bar Association;.

5 (b) “**Active Practice**” means work performed by an attorney holding an “active” status law
6 license and having professional experience and responsibilities involving the Full-time Practice
7 of Law as defined in ~~sections~~ paragraphs (d) and (ff). The Active Practice of law includes any
8 ~~combination~~ of the following activities provided that such employment is available only to
9 licensed attorneys and the activities are performed in the jurisdiction in which the Applicant is
10 admitted;.

11 (b)(1) sole practitioner, or partner, shareholder, associate, or of counsel in a law firm;

12 (b)(2) an organization’s employee whose principal responsibility is to provide legal
13 advice or service;

14 (b)(3) government employee whose principal duties are to provide legal advice or
15 service;

16 (b)(4) service in the United States armed forces as a lawyer or judge;

17 (b)(5) judge of a court of general or appellate jurisdiction provided that such employment
18 requires admission to the bar for the appointment thereto and for the performance of the
19 duties thereof;

20 (b)(6) law clerk to a judge of a court of general or appellate jurisdiction; or

21 (b)(7) teaching full-time at an Approved Law School; and

22 (b)(8) the Active Practice of law ~~shall~~ does not include work that, as undertaken,
23 constitutes the unauthorized practice of law in the jurisdiction in which it was performed
24 or in the jurisdiction in which the clients receiving the unauthorized services were
25 located, nor ~~shall~~ does it include work completed in advance of any bar admission.

(c) “**Admissions Committee**” means those Utah State Bar members or others appointed by the Board or president of the Bar who are charged with recommending standards and procedures for admission to the Bar and with implementation of this article. The Admissions Committee is responsible for supervising the work of the Bar Examiner Committee, the Test Accommodations Committee, and the Character and Fitness Committee, handling requests for review as provided herein and performing other work relating to ~~the admission of~~ Applicant admissions.

(d) “**Applicant**” means each person requesting admission to the Bar. For purposes of this article, an Applicant is classified as a Student Applicant, a Foreign Law School Applicant, an Attorney Applicant, a Motion Applicant, a Disbarred Attorney Applicant, a Foreign Legal Consultant Applicant, a House Counsel Applicant, a Formerly-Admitted Applicant, a Military Lawyer Applicant, or a Military Spouse Attorney Applicant.

Commented [LL50]: Admissions Committee recommendation.

(e) “**Approved Law School**” means a law school which is fully or provisionally approved by the ABA pursuant to its Standards and Rules of Procedure for Approval of Law Schools. To qualify as approved, the law school must have been fully or provisionally approved at the time of the Applicant’s graduation, or at the time of the Applicant’s enrollment, provided ~~that~~ the Applicant graduated within a typical and reasonable ~~period of time~~.

(f) “**Attorney Applicant**” means any person who satisfies the requirements of Rule 14-704.

(g) “**Bar**” means the Utah State Bar, including its employees, committees and the Board.

(h) “**Bar Examination**” means the Bar Examination as defined in Rules 14-710 and 14-711.

(i) “**Bar Examiner Committee**” means those Bar members or others appointed by the Board or president of the Bar who are charged with grading the Bar Examination.

(j) “**Board**” means the Board of Bar Commissioners.

(k) “**Character and Fitness Committee**” means those Bar members or others appointed by the Board or president of the Bar who are charged with assessing the character and fitness of Applicants and making determinations thereon.

(l) “**Complete Application**” means an application that includes all fees and necessary application forms, along with any required supporting documentation, character references, a

1 criminal background check, a photo, an official certificate of law school graduation and if
2 applicable, a test accommodation request with supporting medical documentation, a certificate of
3 admission and/or good standing, and a certificate of discipline~~;~~.

4 (m) “**Confidential Information**” is defined in Rule 14-720(a)~~;~~.

5 (n) “**Deputy General Counsel for Admissions**” or “**Deputy General Counsel**” are terms used
6 interchangeably to mean the Bar’s attorney in charge of admissions ~~or her or his~~ designee~~;~~.

7 (o) “**Disbarred Attorney Applicant**” means a person who has previously been licensed to
8 practice law in Utah and who is no longer licensed to practice law because of disbarment or
9 resignation with discipline pending or their equivalent and who satisfies the requirements of Rule
10 14-708(g) and 14-717~~;~~.

11 (p) “**Executive Director**” means the executive director of the Utah State Bar ~~or her or his~~
12 designee~~;~~.

13 (q) “**First Professional Degree**” means a degree that prepares the holder for admission to the
14 practice of law (e.g. juris doctorate) by emphasizing competency skills along with theory and
15 analysis. An advanced, focused, or honorary degree in law is not recognized as a First
16 Professional Degree (e.g. master of laws or doctor of laws)~~;~~.

17 (r) “**Foreign Law School**” means any school located outside of the United States and its
18 protectorates, that is accredited by that jurisdiction’s legal accreditation body, if one exists,
19 where principles of English Common Law form the predominant basis for that country’s system
20 of jurisprudence, and whose graduates are otherwise permitted by that jurisdiction’s highest
21 court to practice law~~;~~.

22 (s) “**Foreign Legal Consultant Applicant**” means any Applicant who satisfies the requirements
23 of Rule 14-718~~;~~.

24 (t) **Formerly-Admitted Applicant** means a person who has previously been licensed to
25 practice law in Utah who is no longer licensed to practice law because of resignation without
26 discipline pending or who failed to pay licensing fees for three or more years under Rule 14-
27 107(b)(4), and who satisfies the requirements of Rule 14-717.

Commented [LL51]: Admissions Committee recommendation.

1 (tu) “**Full-time Practice**” means the Active and lawful Practice of Law for no fewer than 80
2 hours per month. Time spent on administrative or managerial duties, continuing legal education,
3 or client development and marketing does not qualify as part of the required 80 hours of legal
4 work.

5 (tv) “**General Counsel**” means the General Counsel of the Utah State Bar or ~~her or his~~
6 designee.

7 (wv) “**House Counsel Applicant**” means any Applicant who satisfies the requirements of Rule
8 14-719.

9 (wx) “**House Counsel**” means a person granted a license under Rule 14-719.

10 (xy) “**Inactive**” means an attorney’s law license is held in “inactive status” or an equivalent
11 term.

12 (yz) “**MBE**” means the Multistate Bar Examination ~~prepared by the NCBE~~.

Commented [LL52]: Admissions Committee recommendation.

13 (zaa) “**MEE**” means the Multistate Essay Examination prepared by the NCBE.

14 (abb) “**Military Lawyer Applicant**” means any Applicant who satisfies ~~the requirements of~~
15 Rule 14-804;

16 (bcc) “**Military Spouse Attorney Applicant**” means any Applicant who satisfies ~~the~~
17 ~~requirements of~~ Rule 14-805.

18 (edd) “**Motion Applicant**” means any person who satisfies the requirements of Rule 14-705.

19 (dee) “**MPRE**” means the Multistate Professional Responsibility Examination prepared by the
20 NCBE.

21 (eff) “**MPT**” means the Multistate Performance Test prepared by the NCBE.

22 (feg) “**NCBE**” means the National Conference of Bar Examiners, an organization that develops,
23 maintains, and applies reasonable and uniform standards of bar examination education and
24 testing.

25 (ggh) “**OPC**” means the ~~Bar’s~~ Office of Professional Conduct.

Commented [LL53]: Recommendation 1.2

(ii) **“Person”** includes the plural as well as the singular and legal entities as well as natural persons.

~~(hhjj)~~ **“Practice of Law”** means employment available only to licensed attorneys where the primary duty of the position is to represent the interests of another person by informing, counseling, advising, assisting, advocating for or drafting documents for that person through application of the law and associated legal principles to that person’s facts and circumstances.

~~“Person” includes the plural as well as the singular and legal entities as well as natural persons.~~
The Practice of Law constitutes more than merely working with legally-related matters.

~~(#kk)~~ **“Privileged Information”** in this article includes: information subject to the attorney-client privilege, attorney work product, test materials and applications of examinees; correspondence and written decisions of the Board, Admissions Committee, Bar Examiner Committee, Character and Fitness Committee, and Test Accommodations Committee; and the identity of individuals participating in the drafting, reviewing, grading and scoring of the Bar Examination.

~~(jjll)~~ **“Reapplication for Admission”** means that for two years after the filing of an original application, an Applicant may reapply by completing a Reapplication for Admission form updating any information that has changed since the prior application was filed and submitting a new criminal background check.

~~(kk)~~ **“Resigned Applicant”** means a person who has previously been licensed to practice law in Utah who is no longer licensed to practice law because of resignation without discipline pending or resignation under Rule 14-508(d) and who satisfies the requirements of Rule 14-717(a);

Commented [LL54]: Admissions Committee recommendation

~~(Hnm)~~ **“Student Applicant”** means any person who satisfies the requirements of Rule 14-703(a) who has never been admitted as an attorney in any jurisdiction.

Commented [LL55]: Admissions Committee recommendation.

~~(mmnn)~~ **“Supreme Court”** means the Utah Supreme Court.

~~(nnoo)~~ **“Test Accommodations Committee”** means those Bar members or others appointed by the Board or president of the Bar who are charged with the review of requests from Applicants

seeking to take the Bar Examination with test accommodations and who make determinations thereon.

~~(eop)~~ **“Unapproved Law School”** means a law school that is not fully or provisionally approved by the ABA. For an Unapproved Law School’s graduates to be eligible for admission, the law school must be accredited in the jurisdiction where it exists, provide legal education that is the substantial equivalent of the legal education provided by an Approved Law School, and not be based on correspondence or internet study.

~~(qqp)~~ **“UBE”** means the Uniform Bar Examination as prepared by the NCBE.

~~(err)~~ **“Updated Application”** means that an Applicant is required to amend and update ~~her or his~~ their application on an ongoing basis and correct any information that has changed since the application was filed. ~~and~~

~~(ss)~~ **“Written Component”** means that ~~portion~~ part of the Bar Examination that consists of MEE and MPT questions.

Rule 14-705. Admission by Motion.

(a) **Reciprocal admission.** An Applicant is eligible to be admitted by motion if the Applicant meets all the requirements of this rule. Admission by Motion is not a right; the burden of proof is on the Applicant to establish by clear and convincing evidence that ~~she or he~~ the Applicant:

(a)(1) has paid the prescribed nonrefundable fee and filed the required Complete Application as a Motion Applicant;

(a)(2) is at least 21 years old;

(a)(3) has been admitted by bar examination to practice law before the highest court of a U.S. state, territory or the District of Columbia;

(a)(4) holds a First Professional Degree in law from an Approved Law School;

(a)(5) has successfully passed the MPRE;

(a)(6) has demonstrated that the U.S. state, territory or the District of Columbia that licenses the Applicant reciprocally allows the admission of licensed Utah lawyers under terms and conditions similar to those set forth in this rule;

(a)(7) has been Actively licensed and lawfully engaged in the Full-time Practice of Law as defined in Rule 14-701 in the reciprocal jurisdiction(s) where licensed for 60 of the 84 months immediately preceding the date ~~of the filing of the~~ application for admission is filed. For ~~purposes of~~ admission purposes under this rule, any time practicing at an office located in Utah will not be counted as time practicing in a reciprocal jurisdiction;

(a)(8) is a member in good standing in all jurisdictions where currently admitted;

(a)(9) has a proven record of ethical, civil, and professional behavior and has never been disbarred or resigned with discipline pending, or their equivalent, in any jurisdiction and is not currently subject to lawyer discipline or the subject of a pending disciplinary matter; and

(a)(10) is of good moral character and satisfies the requirements of Rule 14-708;

~~(b) Continuing legal education requirement.~~ All Applicants admitted to practice law pursuant to this rule shall must complete and certify no later than six months following the Applicant's admission that ~~she or he has~~ they have attended at least 15 hours of continuing legal education on Utah practice and procedure and ethics requirements.

Commented [LL56]: Admissions Committee recommendation.

~~(b)(1) The Board may by regulation specify the number of the required 15 hours that must be in particular areas of practice, procedure, and ethics. Included in this mandatory 15 hours is attendance at the Bar's OPC ethics school.~~

Commented [LL57]: Recommendation 1.2

~~(e)~~ **Application Form and content of application.** The Board may require additional proof of any facts stated in the application. ~~In the event of the failure or the refusal of~~ If the Applicant fails or refuses to furnish any information or proof, or to answer any Board inquiry ~~of the Board~~ pertinent to the pending application, the Board may deny the application without hearing.

~~(d)~~ **Timing of application and admission.** An application may be filed at any time but the Applicant must be able to demonstrate that ~~she or he~~ the Applicant satisfies the requirements of this rule as of the date the application is filed. Processing of the application and the character and fitness investigation require a minimum of four months to complete.

~~(d)~~(1) An Applicant not eligible for admission pursuant to this rule may qualify for admission as an Attorney Applicant pursuant to Rule 14-704.

~~(d)~~(2) Upon approval the Applicant must comply with ~~the provisions of~~ Rule 14-716 concerning licensing and enrollment fees.

~~(e)~~ **Practice pending admission.** Only persons who are active, licensed ~~members of the~~ Bar members in good standing may engage in the practice of law in Utah. However, a Motion Applicant with a pending Bar application may be eligible to practice for a limited period ~~upon satisfaction of~~ satisfying all of the requirements of Rule 14-809 and ~~receipt of~~ receiving a Practice Pending Admission Certificate.

1 **Rule 14-712. Qualifications for admission based on UBE.**

2 (a) ~~A~~ **Timing of application and admission** timing. An application may be filed at any time.
3 Processing ~~of~~ the application and ~~the~~ character and fitness investigation require a minimum of
4 four months to complete.

5 (b) **UBE score transferability**. An Applicant who has taken and completed the UBE in a single
6 administration in a jurisdiction other than Utah may transfer the UBE score by filing an
7 application, provided:

8 (b)(1) the Applicant meets all the requirements of Rule 14-703 or Rule 14-704;

9 (b)(2) the Applicant has not been denied by any jurisdiction on character and fitness
10 grounds;

11 (b)(3) the UBE score is 270 or above; and

12 (b)(4) the Bar receives the Applicant's UBE score no later than nine months after ~~the~~
13 ~~filing of~~ filing the application. To transfer a UBE score, an Applicant must send a written
14 transfer request, along with the prescribed fee, to the NCBE.

15 (c) **Time limitations on transferability**. ~~The transferability of~~ Transferring the UBE score ~~will~~
16 ~~be~~ is subject to the following time limitations:

17 (c)(1) the UBE score is transferable for all Applicants only if the application is filed
18 within ~~24~~ 36 months of the UBE's administration ~~of the UBE~~ in which the passing score
19 was earned; or

20 (c)(2) the UBE may be transferable for up to five years from the administration of the
21 UBE in which the passing score was earned if the Attorney Applicant can prove by clear
22 and convincing evidence ~~that she or he~~ they ~~has~~ have been admitted to a U.S. state, territory,
23 or the District of Columbia and ~~has~~ have been Actively engaged in the Full-time Practice of
24 Law as defined in Rule 14-701(b), (t) and (ff) for at least one-half of the time ~~period~~ since
25 the score was earned. ~~(d) Utah legal education requirement.~~

26 ~~(d) Continuing legal education.~~

Commented [LL58]: Admissions Committee Recommendation

Commented [LL59]: Admissions Committee Recommendation.

1 ~~(d)(1) Applicants who gain admission by transferring a UBE score and who have less~~
2 ~~than two years of legal practice must complete the New Lawyer Training Program as~~
3 ~~outlined in Rules 14-404 and 14-808.~~

4 ~~(d)(2) Applicants who gain admission by transferring a UBE score that and have two or~~
5 ~~more years of legal practice shall must complete and certify no later than six months~~
6 ~~following the Applicant's admission that she or he has they have attended at least 15~~
7 ~~hours of continuing legal education on Utah practice and procedure, and ethics, and~~
8 ~~civility requirements.~~

9 ~~(d)(3) The Board may by regulation specify the number of the required 15 hours that~~
10 ~~must be in particular areas of practice, procedure, ethics, and civility. OPC ethics school~~
11 ~~is included in this mandatory 15 hours is attendance at the Bar's OPC ethics school.~~

Commented [LL60]: Recommendation 1.2

Rule 14-718. Licensing of Foreign Legal Consultants.

(a) **Requirements of Foreign Legal Consultants.** The burden of proof is on the Applicant to establish by clear and convincing evidence that ~~she or he~~ the Applicant:

(a)(1) is a member in good standing of a recognized legal profession in a foreign country, the members of which are admitted to practice as attorneys or counselors at law or the equivalent and are subject to effective regulation and discipline by a duly constituted professional body or a public authority; and

(a)(2) has paid the prescribed fee and filed a Complete Application as a Foreign Legal Consultant Applicant;

(a)(3) is of the good moral character and satisfies the requirements of Rule 14-708;

(a)(4) intends to practice as a legal consultant in this state and to maintain an office in this state for that purpose; and

(a)(5) has passed the MPRE.

(b) **Proof required.** An Applicant ~~shall~~ must file with the Bar's Admissions Office:

(b)(1) a certificate from the professional body or public authority in such foreign country having final jurisdiction over professional discipline, certifying as to the Applicant's admission to practice and the date, and ~~as to her or his~~ the Applicant's good standing as such attorney or counselor at law or the equivalent;

(b)(2) a duly authenticated English translation of such certificate, if it is not in English; and

(b)(3) such other evidence as to the Applicant's educational and professional qualifications, good moral character and general fitness, and compliance with the requirements of this rule as the Bar may require.

(c) **Scope of practice.** A person licensed to practice as a Foreign Legal Consultant under this rule may render legal services in this state with respect to the law of the foreign county in which

1 such person is admitted to practice law. The Foreign Legal Consultant ~~She or he shall~~ may not
2 violate any provision of ~~the~~ Rule 14-802 and ~~shall~~ may not:

3 (c)(1) appear for a person other than herself or himself as attorney in any court, or before
4 any magistrate or other judicial officer, in Utah other than as permitted under Rule 14-
5 802 or upon qualified admission pro hac vice pursuant to Rule 14-806; or

6 (c)(2) render professional legal advice on the law of this state or of the United States;

7 (c)(3) be, or in any way hold herself or himself out as a ~~member of the Bar~~ member; or

8 (c)(4) carry on ~~her or his~~ a practice under, or ~~utilize~~ use in connection with such practice,
9 any name, title or designation other than the following:

10 (c)(~~54~~)(A) ~~her or his~~ the Foreign Legal Consultant's own name;

11 (c)(~~54~~)(B) the name of the law firm or other entity with which ~~she or he~~ the
12 Foreign Legal Consultant is affiliated, in each case only in conjunction with the
13 title "Foreign Legal Consultant" as set forth below;

14 (c)(~~54~~)(C) ~~her or his~~ the Foreign Legal Consultant's authorized title in the foreign
15 country ~~of her or his~~ in which the Foreign Legal Consultant is ~~admission~~ admitted to
16 practice, in each case only in conjunction with the title "Foreign Legal
17 Consultant" as set forth below; and

18 (c)(~~54~~)(D) the title "Foreign Legal Consultant," which ~~shall~~ must be used in
19 conjunction with the words "admitted to the practice of law only in [name of the
20 foreign country ~~or her or his admission~~ in which the Foreign Legal Consultant is
21 admitted to practice]."

22 (d) **Rights and obligations.** ~~Subject to the limitations set forth in paragraph (d), a~~ A person
23 licensed as a Foreign Legal Consultant ~~shall~~ will be considered a lawyer affiliated with the Bar
24 as permitted by this rule and ~~shall~~ will be entitled and subject to:

25 (d)(1) the rights and obligations set forth in the Utah Rules of Professional Conduct or
26 arising from the other conditions and requirements that apply to a ~~member of the Bar~~
27 member under rules adopted by the Supreme Court; and

(d)(2) attorney-client privilege, work-product privilege and similar professional privileges.

(e) **Subject to disciplinary proceedings.** A person licensed to practice as a Foreign Legal Consultant ~~shall be~~is subject to professional discipline in the same manner and to the same extent as ~~members of the Bar~~ members and specifically ~~shall be~~is subject to discipline by the Supreme Court as delegated by rule and ~~shall is~~ otherwise ~~be~~ governed by Chapter 13, the Utah Rules of Professional Conduct; Chapter 14, Article 5, Lawyer Discipline and Disability; Article 6, Standards for Imposing Lawyer Sanctions; and other applicable ~~rules adopted by the~~ Supreme Court rules.

(f) **Requirements for licensure.** Every person licensed to practice as a Foreign Legal Consultant must:

(f)(1) attend the OPC ethics school prior to before receiving a license to practice as a Foreign Legal Consultant, ~~shall must attend the Bars OPC ethics school; and~~

Commented [LL61]: Recommendation 1.2

Commented [LL62]: Recommendation 1.2

(f)(2) ~~shall must~~ execute and file with the Bar, in such form and manner as the Supreme Court may prescribe:

(f)(2)(A) ~~her or his~~their understanding of, and commitment to observe, the Utah Rules of Professional Conduct and other ~~the other rules adopted by the~~ Supreme Court rules, and to the extent applicable to the legal services authorized under paragraph (c) of this rule;

(f)(2)(B) written notice to the OPC of any change in ~~her or his~~the Foreign Legal Consultant's membership status, good standing, or authorization to practice law in any jurisdiction where licensed, including the commencement of all formal disciplinary proceedings and of all final disciplinary actions taken in any other jurisdiction.

(g) **License fees.** A person licensed as a Foreign Legal Consultant ~~shall must~~ pay annual license fees ~~which shall be~~ equal to the fees ~~required to be~~ paid by a ~~member of the Bar~~ member on Active status.

1 (h) **Revocation of license.** ~~In the event that~~ If a ~~person~~-licensed ~~as a~~ Foreign Legal Consultant no
2 longer meets the requirements for licensure set forth in paragraph (a) or (g), ~~her or his~~ their
3 license ~~shall~~ will be revoked following the procedures set forth in Chapter 14, Article 5, Lawyer
4 Discipline and Disability²; and Article 6, Standards for Imposing Lawyer Sanctions.

5 (i) **Admission to Bar.** ~~In the event that a person~~ If a licensed ~~as a~~ Foreign Legal Consultant is
6 subsequently admitted as a ~~member of the Bar~~ member under Chapter 14, Article 7, Admission
7 to the Utah State Bar, ~~the~~ the license granted to such person shall be deemed superseded by the
8 license granted to such person to practice law as a ~~member of the Bar~~ member supersedes the
9 Foreign Legal Consultant license.

1 **Article 8. Special Practice Rules**

2 **Rule 14-801. Definitions.**

3 As used in this article:

4 (a) “~~a~~**A**ctive status” means a Bar licensing category as defined by Rule 14-203(a) and Rule 14-
5 802, and the Bar’s rules, regulations and policies;

6 (b) “~~a~~**A**pproved legal services organization” means a Utah ~~not for~~ nonprofit legal services
7 organization ~~which is~~ approved by the Bar as set forth herein. A legal services organization
8 seeking approval ~~from the Bar shall~~ must file a petition with the Bar, attaching copies of its
9 Articles of Incorporation and Bylaws, if any, and certifying that it is a ~~not for~~ nonprofit
10 organization, reciting with specificity:

11 (b)(1) the structure of the organization and whether it accepts funds from its clients;

12 (b)(2) the major sources of funds used by the organization;

13 (b)(3) the criteria used to determine potential clients’ eligibility for legal services
14 performed by the organization;

15 (b)(4) the types of legal and nonlegal service ~~performed by~~ the organization performs;

16 (b)(5) the names of all Bar members ~~of the Bar who are~~ employed by the organization or
17 who regularly perform legal work for the organization; and

18 (b)(6) the existence and extent of malpractice insurance ~~which that~~ will cover the
19 volunteer attorneys, with such documentation being updated on an annual basis;

20 (c) “~~a~~**A**ttorney applicant” means a lawyer applicant as defined by ~~the~~ Rule 14-701;

21 (d) “**Bar**” means the Utah State Bar;

22 (e) “**CLE**” means MCLE accredited continuing legal education;

23 (f) “~~i~~**I**nactive status” means a Bar licensing category as defined by Rule 14-203(a), Rule 14-802,
24 and the Bar’s rules, regulations and policies;

25 (g) “**MCLE**” means Mandatory Continuing Legal Education as set forth in Rule 14-401 et seq.;

1 (h) “**Mentoring Completion Certification**” means the certification form in the NLTP appendix
2 of forms.

3 (i) “**NLTP**” means the Bar’s New Lawyer Training Program as set forth in Rule 14-808;

4 (j) “**OPC**” means the ~~Bar’s~~ Office of Professional Conduct;

Commented [LL63]: Recommendation 1.2

5 (k) ~~except as used in Rule 14-807, “s~~**Supervising attorney;** ~~” except as used in Rule 14-807,~~
6 means an active ~~member of the Bar~~ member who generally supervises a volunteer attorney. The
7 supervising attorney must:

8 (k)(1) be employed by an approved legal services organization;

9 (k)(2) assume professional responsibility as contemplated by Rule 5.1 of the Utah Rules
10 of Professional Conduct for supervising the conduct of any litigation, administrative
11 proceeding or other legal services in which the volunteer attorney participates providing,
12 however, that concurrent administrative or judicial appearance is at the discretion of the
13 supervising attorney;

14 (k)(3) assist the volunteer attorney ~~s in his or her~~ legal service preparation to the extent
15 that the supervisory attorney considers it necessary; and

16 (k)(4) ensure along with the agency that the volunteer attorney has appropriate and
17 adequate training, knowledge and competency to perform the legal service permitted.
18

1 **Rule 14-806. Admission pro hac vice.**

2 (a) Applicability. An attorney who is not a Bar member ~~of the Bar~~ but ~~who~~ is admitted to
3 practice law in another state or in any court of the United States or Territory or insular
4 possession of the United States ~~shall~~ may apply to be admitted pro hac vice in accordance with
5 this rule ~~prior to before~~ appearing as counsel before any state or local court or administrative or
6 governmental body in the State of Utah.

7 (b) **Application of rule.** This rule applies to:

8 (b)(1) All actions or proceedings pending before a court of ~~this state~~ Utah:

9 (b)(2) All actions or proceedings pending before an administrative or governmental
10 body in this state, unless the rules of that body provide otherwise;

11 (b)(3) All arbitration or alternative dispute resolution procedures in this state that
12 are court annexed, court ordered, or mandated by statute or administrative rule; and

13 (b)(4) All services incident to any of the proceedings in ~~Subsections paragraphs~~ (b)(1)
14 through (b)(3), including, but not limited to, discovery and settlement negotiations.

15 (b)(5) This rule does not apply to arbitration or alternative dispute resolution
16 procedures in which the parties engage voluntarily or by private agreement.

17 (c) Permission to appear. Nonresident counsel may be permitted to appear in a particular case
18 or proceeding if the court or administrative or governmental body in which the matter is pending
19 determines that admission pro hac vice will serve the interests of the parties and the efficient and
20 just administration of the case. Resident counsel may be permitted only if ~~he or she has~~ they have
21 received a Practice Pending Admission Certificate.

22 (d) Admission is discretionary. Admission pro hac vice under this rule is discretionary with the
23 court or administrative or governmental body in which the application for admission is made.
24 The court may revoke A admission pro hac vice ~~may be revoked by the court~~ upon its own
25 motion or the motion of a party if, after notice and a hearing, the court or administrative or
26 governmental body determines that admission pro hac vice is inappropriate. Admission
27 pro hac vice ~~shall~~ must be denied or, if granted, ~~shall be~~ revoked if the court or administrative of

1 governmental body determines that the process is being used to circumvent the normal
2 requirements for ~~the attorneys to the practice of law in Utah.~~

3 (e) **Eligibility.** Nonresident counsel who has been retained to represent a client in an action or
4 proceedings described in ~~section paragraph (b) of this rule~~ may file a written application to
5 appear as counsel in that action or proceedings if the following conditions are met:

6 (e)(1) The lawyer is not a member of the Utah State Bar;

7 (e)(2) The lawyer is not a resident of Utah;

8 (e)(3) The lawyer is not regularly employed in Utah;

9 (e)(4) The lawyer is an active member licensed and in good standing in another state,
10 territory or insular possession of the United States; and

11 (e)(5) The lawyer associates with an active Utah State Bar member ~~lawyer~~ in good
12 standing ~~of the Utah State Bar~~ who is a Utah resident ~~of the State of Utah~~ and whose law
13 office is in the ~~State of~~ Utah, hereinafter called "local counsel."

14 (f) Factors in determining admission and revocation. In determining whether to enter or
15 revoke the order of admission pro hac vice, the court or administrative or governmental body
16 may consider any relevant information, including whether nonresident counsel:

17 (f)(1) is familiar with Utah rules of evidence and procedure, including applicable local
18 rules;

19 (f)(2) is available to opposing parties;

20 (f)(3) has particular familiarity with the legal affairs of the party relevant to the case;

21 (f)(4) complies with the rulings and orders of the court or administrative or governmental
22 body;

23 (f)(5) has caused delay or been disruptive; and

24 (f)(6) has been disciplined in any other jurisdiction within the prior ~~5~~five years.

1 (g) **Application Procedure.** The non-member attorney seeking admission pro hac vice must
2 complete under oath and submit to the Bar an application form available from the Utah State
3 Bar. The applicant must complete a separate application for each matter in which the applicant
4 wants to appear. The application must include the following:

5 (g)(1) identify the court or administrative or governmental body for which the applicant
6 wishes to appear, and the case number or other identifying information for the matter
7 in which the applicant wishes to appear;

8 (g)(2) the name of the party on whose behalf the applicant wishes to appear;

9 (g)(3) the name, number, court or administrative or governmental body of other cases
10 pending or closed within the prior five years for which the applicant appeared pro
11 hac vice;

12 (g)(4) a statement whether the applicant is currently suspended or disbarred from the
13 practice of law in any state, or whether the applicant has been disciplined within the
14 prior five years, or is the subject of any pending disciplinary proceedings in any state;

15 (g)(5) a statement that the applicant submits to the disciplinary authority and
16 procedures of the Utah State Bar, is familiar with the rules or procedure and evidence,
17 including applicable local rules, will be available for depositions, hearings, and
18 conferences, and will comply with the rulings and orders of the court;

19 (g)(6) the name, address, Bar identification number, telephone number, and e-
20 mail address of the member of the Utah State Bar to serve as local counsel;

21 (g)(7) an original certificate of good standing from the jurisdiction or jurisdictions in
22 which the applicant is admitted dated no more than 60 days prior to the date of
23 application; and

24 (g)(8) an application fee equal to the current dues paid by active members of the
25 Utah State Bar for the licensing year in which the application is filed. The fee must be
26 paid to the Utah State Bar.

1 (h) **Limited Exception to Original and Annual Fee.** The application fee and annual fee will be
2 waived for:

3 (h)(1) non-member attorneys providing legal services without compensation or an
4 expectation of compensation through a charitable, religious, civic, community,
5 governmental, or educational organization in a matter designed primarily to address the
6 needs of people of limited means. A non-member seeking a fee waiver to provide pro
7 bono representation shall include in the application a verification that all clients
8 represented in the action are of limited means and that no attorney fee shall be paid by
9 the client.

10 (h)(2) attorneys who are employees of and representing the United States of America
11 or any of its departments or agencies.

12 (i) **Acknowledgment of Supporting Documentation and Receipt of Filing Fee.** Upon ~~receipt~~
13 ~~of~~ receiving a complete application and fee, the Bar shall issue an Acknowledgement
14 of Supporting Documentation and Receipt of Filing Fee (hereinafter “Acknowledgement”). In
15 making the Acknowledgement, the Bar may attach copies or comment on any submitted material
16 that may be appropriate for a tribunal to consider with an application for pro hac vice admission.

17 (j) **Filing with the Tribunal.** Once the Bar issues an Acknowledgement, local counsel must file
18 the original Acknowledgement along with the following documents: (1) an original motion for
19 admission pro hac vice; (2) a copy of the application and all supporting documents; (3) a copy of
20 the certificate of good standing; (4) an original proposed order; and (5) any submissions from the
21 Bar together with proof of service on all parties in accordance with the Utah Rules of Civil
22 Procedure or, to the extent they differ from the civil rules, the governing rules of the
23 administrative or governmental body.

24 (k) **Names and Appearances.** The name, bar number, and address of local counsel must appear
25 on all notices, orders, pleadings and other documents filed in the case or proceeding in which the
26 non-member attorney is appearing pursuant to this rule. Local counsel is required to
27 personally appear and participate in pre-trial conferences, hearings and other proceedings before
28 the court or the administrative or governmental body if the court or administrative or

governmental body, or agency deems such appearances or participation appropriate. Local counsel shall accept joint responsibility with the non-member attorney to the client, opposing counsel and parties and to the court or administrative or governmental body. Local counsel must continue as the local counsel of record in the case unless another member of the Utah State Bar is substituted as local counsel.

(l) **Appearances by non-member attorneys.** An applicant shall not appear in a proceeding subject to this rule until the court or administrative or governmental body where the action is pending enters an order granting the motion for pro hac vice.

(m) **Continuing Duty to Advise of Changes in Status.** Out-of-state counsel admitted pro hac vice has a continuing duty during the period of such admission to promptly advise the Bar of a disposition made of pending charges or the institution of any new disciplinary proceedings or investigations. The Bar shall then advise any court or administrative or governmental body where the attorney has been admitted pro hac of any such information. Out-of-state counsel shall promptly advise the Bar if permission to appear pro hac vice pursuant to this rule is revoked by any court or administrative or governmental body.

(n) **Annual Renewal.** On or before the anniversary date of the filing of the initial application with the Bar, the local counsel must certify to the Bar that the non-resident attorney continues to act as counsel in the cause or that the cause has been finally adjudicated. In the event that non-member attorney shall remit to the Bar an annual fee equal to the current dues paid by active members of the Utah State Bar for the licensing year in which the renewal is filed within ~~30~~28 days of the anniversary date.

(o) **Failure to Renew.** Any non-member attorney, who continues to appear pro hac vice in a cause and fails to pay the renewal fee set forth in (n) of this rule, shall be suspended from appearing in any proceeding subject to the rule after ~~30~~28 days of the anniversary date. The Executive Director of the Utah State Bar shall notify the non-member attorney and local counsel of the suspension and shall file a certified copy of the notice with the court or administrative or governmental body, or agency that approved the pro hac vice application. The non-member may be reinstated upon payment of the fees set forth in paragraph (n) of this rule and a \$50 late

1 penalty. Upon payment of all accrued fees and late penalty, the Executive Director shall reinstate
2 the non-member attorney and shall certify reinstatement to the appropriate court or
3 administrative or governmental body.

4 (p) **Appellate Matters and Other Forms of Review.** Out-of-state counsel admitted in a lower
5 tribunal on a case or matter that is appealed must file a notice of appearance in the appellate
6 court or reviewing tribunal. A new application to the Bar is not required.

7 (q) Applicable laws. An attorney admitted pro hac vice shall comply with and is subject to Utah
8 statutes, rules of the Supreme Court, including the Rules of Professional Conduct and **Article**
9 **5, Lawyer Discipline and Disability**, the rules of the court in which the attorney appears, and the
10 rules of the Code of Judicial Administration.

1 **Article 9. Lawyers' Fund for Client Protection**

2 **Rule 14-904. Funding.**

3 (a) The Supreme Court ~~shall~~will provide for funding by the lawyers licensed in this state in
4 amounts adequate for the proper payment of claims and costs of administering the Fund subject
5 to paragraph (c).

6 (b) All determinations ~~with regards to~~regarding funding ~~shall~~will be within the discretion of the
7 Board, subject to the Supreme Court's approval ~~of the Supreme Court~~.

8 (c) The Bar ~~shall have the~~has authority to assess its members for purposes of maintaining the
9 Fund at sufficient levels to pay eligible claims in accordance with these rules. The Committee
10 ~~shall~~must report annually to the Commission on a timely basis as to known prospective claims
11 as well as total claims paid to date so that an appropriate assessment can be made for the
12 upcoming fiscal year. After the assessment at the beginning of the fiscal year is determined, the
13 Fund balance ~~shall~~must be set in an amount of ~~not less than~~at least \$200,000. The Bar ~~shall~~will
14 then report to the Supreme Court as to known prospective claims as well as total claims paid to
15 date after which the final assessment and fund balance ~~shall~~will be set with the Court's
16 approval.

17 (d) A lawyer's failure to pay any fee assessed under paragraph (c) ~~shall be~~is cause for
18 administrative suspension from practice until payment ~~has been made~~is received.

19 (e) Any lawyer whose actions have caused payment of funds to a claimant from the Fund ~~shall~~
20 must reimburse the Fund for all monies paid out as a result of ~~his or her~~the lawyer's conduct with
21 interest at legal rate, in addition to payment of the assessment for the procedural costs of
22 processing the claim and reasonable attorney fees incurred by the ~~Bar's~~ Office of Professional
23 Conduct or any other attorney or investigator engaged by the Committee to investigate and
24 process the claim as a condition of continued practice.

25 (e)(1) In lawyer discipline cases for which the Fund pays an eligible claim, the lawyer's
26 license to practice ~~shall~~will be administratively suspended for non-payment until the
27 lawyer has reimbursement ~~ed to~~ the Fund ~~has been made by the lawyer~~.

Commented [LL64]: Recommendation 1.2

1 **Rule 14-912. Processing claims.**

2 (a) Whenever it appears that a claim is not eligible for reimbursement pursuant to these rules, the
3 claimant ~~shall~~must be advised of the reasons why the claim may not be eligible for
4 reimbursement, and that unless additional facts to support eligibility are submitted to the
5 Committee, the claim file ~~shall~~will be closed. The ~~chairperson of the~~Fund chair may appoint
6 ~~themselves or any member of the~~Committee member and/or his/herself to determine the
7 eligibility of claims.

8 (b) A certified copy of an order disciplining a lawyer for the same dishonest act or conduct
9 alleged in the claim, or a final judgment imposing civil or criminal liability therefor, ~~shall be~~is
10 evidence that a lawyer committed such dishonest act or conduct.

11 (c) The ~~Bar's~~ Office of Professional Conduct ~~Senior Counsel shall~~must be promptly notified of
12 each and every claim.

Commented [LL65]: Recommendation 1.2

13 (d) The lawyer alleged to have engaged in dishonest conduct ~~shall~~must be provided a copy of
14 the claim and given an opportunity to respond to the Committee in writing within 20 days of ~~the~~
15 ~~receipt thereof to the Committee~~receiving the claim.

16 (e) The Committee may request that testimony be presented. The lawyer or lawyer's
17 representative ~~shall~~must be given an opportunity to be heard if they so request within 20 days
18 of receiving a notice from the Committee that the Committee will process the claim.

19 (f) The Committee may make a finding of dishonest conduct for purposes of adjudicating a
20 claim. Such a determination is not a finding of dishonest conduct for the purposes of professional
21 discipline and further, represents only a recommendation to the Board. A claim may only be
22 considered if the individual lawyer involved has been disciplined to a threshold level of a public
23 reprimand or is no longer in practice.

24 (g) The claim ~~shall~~will be determined on the basis of all available evidence, and notice ~~shall~~
25 must be given to the claimant and the lawyer of the final decision by the Board after a
26 recommendation has been made by the Committee. The recommendation for ~~approval or denial~~

1 ~~of approving or denying~~ a claim ~~shall~~ requires the affirmative votes of ~~at least~~ a majority of the
2 Committee members and a quorum of the voting ~~members of the Board~~ members.

3 (h) Any proceeding ~~upon~~ a claim ~~shall will~~ not be conducted according to technical rules relating
4 to evidence, procedure, and witnesses. Any relevant evidence ~~shall must~~ be admitted if it is the
5 sort of evidence on which responsible persons are accustomed to rely ~~on~~ in the conduct of
6 serious affairs, regardless of ~~the existence of~~ any common law or statutory rule ~~which that~~
7 ~~may~~ right make improper the admission of such evidence over objection in court proceedings. The
8 claimant ~~shall have~~ has the duty to supply relevant evidence to support the claim.

9 (i) The Board ~~shall must~~ determine the order and manner of payment and pay those claims it
10 deems meritorious. ~~U~~ but unless the Board directs otherwise, no claim ~~should will~~ be approved
11 during ~~the pendency of a~~ a pending disciplinary proceeding involving the same act or conduct as
12 alleged in the claim. ~~specifically, n~~ No determination ~~and/or~~ hearing ~~shall will~~ take place until
13 ~~such time that~~ all disciplinary proceedings ~~have, in fact, been completed~~ are complete.

14 (j) ~~The Board must advise B~~ both the claimant and the lawyer ~~shall be advised~~ of the status of the
15 Board's consideration of the claim and after having received the recommendation of the
16 Committee, must also ~~shall~~ be informed of the final determination.

17 (k) The claimant may request reconsideration within ~~30~~ 28 days of the denial or determination of
18 the amount of the claim.

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

2 **Article 4. Mandatory Continuing Licensed Paralegal Practitioner Education**

3 **Rule 15-402. Definitions.**

4 As used in this article:

5 (a) Reserved~~;~~

6 (b) “**Accredited CLE**” means a CLE course that has been approved the Board in accordance
7 with Rule 15-410.

8 (c) “**Active status**” or “**active status “licensed paralegal practitioner**” means a licensed
9 paralegal practitioner who has elected to be on active status as defined under the Bar’s rules,
10 regulations~~;~~ and policies~~;~~

11 (d) ~~Reserved;~~

12 ~~(e)(1)~~ “**Approved law school**” means an ABA approved law school as defined under Rule 14-
13 701~~;~~

14 ~~(e)(2)~~ “**Approved paralegal education program**” means a program offered by an accredited
15 school as that term is defined in Rule 15-701~~;~~

16 (f) “**Bar**” means the Utah State Bar~~;~~

17 (g) Reserved~~;~~

18 (h) “**Board**” means the Utah State Board of Mandatory Continuing Legal Education as set forth
19 in Rule 14-403~~;~~

20 (i) “**Board of Bar Commissioners**” means the governing board of the Bar~~;~~

21 (j) “**Certificate of Compliance**” means a written report evidencing a licensed paralegal
22 practitioner’s completion of accredited CLE as required and defined under Rule 15-414~~;~~

23 (k) “**CLE**” means continuing legal education~~;~~

24 (k)(1) “**Live CLE**” means a CLE program presented in a classroom setting where
25 the licensed paralegal practitioner is in the same room as the presenter~~;~~

(k)(2) “**Live Attendance**” means in person attendance at a Utah state courthouse where a course is streamed by live audio-visual communication from another Utah state courthouse or from the Law and Justice Center.

(k)(3) “**Self-Study CLE Program**” means a program presented in a suitable setting where the licensed paralegal practitioner can view approved self-study activities.

(l) Reserved.

(m) “**Compliance Cycle**” means the period of two 2-years beginning July 1 through June 30.

(n) “**Ethics**” means standards set by the Utah Rules of Professional Conduct with which a licensed paralegal practitioner must comply to remain authorized to certify as a licensed paralegal practitioner in Utah and remain in good standing.

(o) Reserved.

(p) Reserved.

(q) “**Inactive status**” or “**inactive status licensed paralegal practitioner**” means a licensed paralegal practitioner who has elected to be on inactive status as defined under the Bar’s rules, regulations and policies.

(r) “**MCLE**” means mandatory continuing legal education as defined under this article.

(s) Reserved.

(t) “**New licensee**” means a licensed paralegal practitioner newly licensed by the Utah State Bar.

(u) Reserved.

(v) “**Presumptively approved sponsor**” means those CLE sponsors or providers who qualify under the standards set forth in Rule 15-412.

(w) “**Presumptive CLE accreditation**” means those CLE courses or activities that qualify under the standards set forth in Rule 15-412.

(x) “**Professionalism and Civility**” means conduct consistent with the tenets of the legal profession by which a licensed paralegal practitioner demonstrates civility, honesty, integrity,

1 character, fairness, competence, ethical conduct, public service, and respect for the rules of law,
2 the courts, clients, lawyers, other licensed paralegal practitioners, witnesses and unrepresented
3 parties~~;~~.

4 (y) “**OPC**” means the ~~Bar’s~~ Office of Professional Conduct~~;~~.

5 (z) Reserved~~;~~.

6 (aa) “**Supreme Court**” means the Utah Supreme Court~~;~~~~and~~.

7 ~~(bb) Reserved~~

8

Commented [LL66]: Recommendation 1.2

1 **15-701. Definitions.**

2 As used in this article:

3 (a) “**ABA**” means the American Bar Association.

4 (b) “**Accredited Program**” means a course of instruction in paralegal studies from a program
5 officially recognized as meeting the standards and requirements of a regional or national
6 accrediting organization that is approved by the U.S. Department of Education, or a paralegal
7 school or paralegal studies program that has been fully or provisionally approved by the ABA
8 Standing Committee on Paralegals.

9 (c) “**Accredited School**” means a school officially recognized as meeting the standards and
10 requirements of a regional or national accrediting organization that is approved by the U.S.
11 Department of Education.-

12 (d) “**Applicant**” means each person requesting licensure as a Licensed Paralegal Practitioner.

13 (e) “**Approved Law School**” means a law school which is fully or provisionally approved by the
14 ABA pursuant to its Standards and Rules of Procedure for Approval of Law Schools. To qualify
15 as approved, the law school must have been fully or provisionally approved at the time of the
16 Applicant’s graduation, or at the time of the Applicant’s enrollment, provided ~~that~~ the Applicant
17 graduated within a typical and reasonable ~~period of time~~.

18 (f) “**Associate Degree**” means an undergraduate academic degree conferred by a college upon
19 completion of the curriculum required for an associate degree.

20 (g) “**Bachelor’s Degree**” means an academic degree conferred by a college or university upon
21 completion of the undergraduate curriculum.

22 (h) “**Bar**” means the Utah State Bar, including its employees, committees and the Board.

23 (i) “**Board**” means the Board of Bar Commissioners.

24 (j) “**Complete Application**” means an application that includes all fees and necessary
25 application forms, along with any required supporting documentation, character references, a

criminal background check, a photo, an official certificate of graduation and if applicable, a test accommodation request with supporting medical documentation.

(k) “**Confidential Information**” is defined in Rule 15-720(a).

(l) “**Disbarred Lawyer**” means an individual who was once a licensed lawyer and is no longer permitted to practice law.

(m) “**Executive Director**” means the executive director of the Utah State Bar or ~~her or his~~ their designee.

(n) “**First Professional Degree**” means a degree that prepares the holder for admission to the practice of law (e.g. juris doctorate) by emphasizing competency skills along with theory and analysis. An advanced, focused, or honorary degree in law is not recognized as a First Professional Degree (e.g. master of laws or doctor of laws).

(o) “**Full-time**” means providing legal services as a paralegal for no fewer than 80 hours per month.

(p) “**General Counsel**” means the General Counsel of the Utah State Bar or ~~her or his~~ their designee.

(q) “**Licensed Paralegal Practitioner**” means a person licensed by the Utah Supreme Court to provide limited legal representation in the areas of (1) temporary separation, divorce, parentage, cohabitant abuse, civil stalking, and custody and support; (2) forcible entry and detainer and unlawful detainer; or (3) debt collection matters in which the dollar amount in issue does not exceed the statutory limit for small claims cases.

(r) “**LPP**” means Licensed Paralegal Practitioner.

(s) “**LPP Administrator**” means the Bar employee in charge of LPP licensure or ~~his or her~~ their designee.

(t) “**LPP Admissions Committee**” means those Utah State Bar members or others appointed by the Board or president of the Bar who are charged with recommending standards and procedures for licensure of LPPs, with implementation of this article, reviewing requests for test accommodations, and assessing the qualifications of applicants.

- 1 (u) “**NALA**” means the National Association of Legal Assistants.
- 2 (v) “**NALS**” means The Association for Legal Professionals.
- 3 (w) “**NFPA**” means the National Federation of Paralegal Associations.
- 4 (x) “**National Certification**” means Certified Paralegal (CP or CLA) credential from the
5 National Association of Legal Assistants (NALA); the Professional Paralegal (PP) credential
6 from the National Association of Legal Professionals (NALS); or the Registered Paralegal (RP)
7 credential from the National Federation of Paralegal Associations (NFPA).
- 8 (y) “**OPC**” means the ~~Bar’s~~ Office of Professional Conduct.
- 9 (z) “**Paralegal**” means a person qualified through education, training, or work experience, who is
10 employed or retained by a lawyer, law office, governmental agency, or the entity in the capacity
11 or function which involves the performance, under the ultimate direction and supervision of an
12 attorney, of specifically delegated substantive legal work, which work, for the most part, requires
13 a sufficient knowledge of legal concepts that absent such assistance, the attorney would perform.
- 14 (aa) “**Paralegal Certificate**” means verification that an individual has successfully completed a
15 paralegal studies program from an Accredited Program that includes at least 15 credit hours of
16 paralegal studies. The certificate must be offered, taught, and granted by an Accredited Program.
- 17 (bb) “**Paralegal Studies**” and “**Paralegal Studies Degree**” mean course work that prepares a
18 holder to work as a paralegal.
- 19 (cc) “**Privileged Information**” in this article includes: information subject to the attorney-client
20 privilege, attorney work product, test materials and applications of examinees; correspondence
21 and written decisions of the Board and LPP Admissions Committee, and the identity of
22 individuals participating in the drafting, reviewing, grading and scoring of the LPP Licensure
23 Examination.
- 24 (dd) “**Reapplication for Licensure**” means that for two years after the filing of an original
25 application, an Applicant may reapply by completing a Reapplication for Licensure form
26 updating any information that has changed since the prior application was filed and submitting a
27 new criminal background check.

1 (ee) “**Substantive Law-Related Experience**” means the provision of legal services as a
2 Paralegal, paralegal student or law student including, but not limited to, drafting pleadings, legal
3 documents or correspondence, completing forms, preparing reports or charts, legal research, and
4 interviewing clients or witnesses. Substantive Law-Related Experience does not include routine
5 clerical or administrative duties. Substantive Law-Related Experience for licensure in landlord-
6 tenant and debt collection includes, but is not limited to, the provision of legal services as a
7 Paralegal supervised by a licensed attorney, paralegal student or law student in the areas of
8 bankruptcy, real estate, mortgage and/or banking law.

9 (ff) “**Supreme Court**” means the Utah Supreme Court.

10 (gg) “**Unapproved Law School**” means a law school that is not fully or provisionally approved
11 by the ABA.

12 (hh) “**Updated Application**” means that an Applicant is required to amend and update ~~her or his~~
13 [the Applicant’s](#) application on an ongoing basis and correct any information that has changed
14 since the application was filed.

15

Tab 5

Remaining rules to be approved

Chapter 11, Article 5

Diversion (split 14-533)

- _____ Diversion referrals, authority, and responsibilities (formerly 14-533(a), (b), (e), (i))
- _____ Circumstances warranting diversion. (formerly 14-533(c)-(d))
- _____ Diversion contract. (formerly 14-533(f)-(h))
- _____ Respondent's participation. (formerly 14-533(a)(1)-(9))
- _____ Terminating diversion. (formerly 14-533(j))
- _____ Diversion costs. (formerly 14-533(k))

Discipline.

- 14-509 Grounds for discipline.
- 14-515 Accessing disciplinary information.
- 14-516 Disseminating disciplinary information.
- 14-518 Interim discipline for threat of harm.
- 14-519 Lawyers found guilty of a crime.
- 14-520 Discipline by consent.
- 14-521 Resignation with discipline pending.
- 14-522 Reciprocal discipline.
- 14-523 Proceedings in which lawyer is declared to be incompetent or alleged to be incapacitated.
- 14-531 Noncompliance with child support order, child visitation order, subpoena or order relating to paternity, or child support proceeding.
- 14-526 Notice of disability or suspension; return of clients' property; refund of unearned fees.

Sanctions (originally article 6 rules)

- 14-602 Purpose and nature of sanctions.
- 14-603 Sanctions.
- 14-604 Factors to be considered in imposing sanctions.
- _____ Sanctions for violating duties owed to clients. (ABA model rule)
- _____ Sanctions for violating duties owed to the public. (ABA model rule)
- _____ Sanctions for violating duties owed to the legal system. (ABA model rule)
- _____ Sanctions for violating duties owed as a professional. (ABA model rule)
- 14-606 Prior discipline orders.
- 14-607 Aggravation and mitigation.

Reinstatement.

- 14-524 Reinstatement following a suspension of no more than six months.
- 14-525 Reinstatement following a suspension of more than six months; relicensure.

14-701 Definitions.

14-705 Admission by motion.

14-712 Qualifications for admission based on UBE.

14-718 Licensing of Foreign Legal Consultants.

14-801 Definitions.

14-806 Admission pro hac vice.

14-904 Funding.

14-912 Processing claims.

15-402 Definitions.

15-701 Definitions.

Diversion.

Rule _____. Diversion referrals, authority, and responsibilities.

(a) **Referral to diversion.** In a matter involving less serious misconduct as outlined in rule {NEXT RULE—Circumstances warranting diversion}, upon receiving a complaint and before filing an action, the respondent may have the option of electing to have the matter referred to diversion, the appropriateness of which the OPC will determine.

(b) **Authority and responsibility.** The OPC may negotiate and execute diversion contracts, assign monitoring to a lawyer or licensed paralegal practitioner assistance program, determine if the lawyer complied with the diversion contract, determine if the lawyer fulfilled or materially breached the diversion contract, and adopt such policies and procedures as may be appropriate to accomplish its duties under this rule. The OPC has authority to establish subcommittees of volunteer attorneys and other professionals for the specific purpose of monitoring the compliance of any attorney under diversion and reporting compliance to the OPC.

(c) **Notice to complainant.** The OPC will notify the complainant, if any, of the proposed decision to refer the respondent to diversion, and the complainant may submit written comments. The complainant will be notified when the complaint is diverted and when the complaint is dismissed. All notices will be sent to the complainant's address of record on file with the OPC. Such decision to divert or dismiss is not appealable.

(d) **Effect of not participating in diversion.** The respondent has the right to decline to participate in diversion. If the respondent chooses not to participate in diversion, the matter proceeds under these rules.

Rule ____ Circumstances warranting diversion.

(a) **Prohibited misconduct.** Conduct may only be considered less serious misconduct warranting diversion if it does not result in a suspension or **delicensure**. Conduct is not ordinarily considered less serious misconduct if any of the following considerations apply:

(a)(1) the misconduct involves the misappropriation of client funds;

(a)(2) the misconduct results in or is likely to result in substantial prejudice to a client or other person, absent adequate provisions for restitution;

(a)(3) the respondent has been sanctioned in the last three years;

(a)(4) the misconduct is of the same nature as misconduct for which the respondent has been sanctioned in the last three years;

(a)(5) the misconduct involves dishonesty, deceit, fraud, or misrepresentation;

(a)(6) the misconduct constitutes a substantial threat of irreparable harm to the public; a felony; or a misdemeanor which reflects adversely on the respondent's honesty, trustworthiness or fitness as a lawyer; or

(a)(7) the misconduct is part of a pattern of similar misconduct.

(b) **Factors for consideration.** The OPC considers these factors in negotiating and executing the diversion contract:

(b)(1) whether in the OPC's opinion, the presumptive sanction that would be imposed is likely to be no more severe than a public reprimand or private admonition;

(b)(2) whether participating in diversion is likely to improve the respondent's future professional conduct and accomplish the goals of lawyer discipline;

(b)(3) whether aggravating or mitigating factors exist; and

(b)(4) whether diversion was already tried.

Rule _____ Diversion contract.

(a) Contract requirements.

(a)(1) If the respondent agrees or elects to participate in diversion as provided by this rule, the terms of the diversion must be set forth in a written contract. The contract will be between the respondent and the OPC.

(a)(2) The OPC must monitor and supervise the conditions of diversion and the terms of the diversion contract.

(a)(3) The contract must specify the program(s) to which the attorney will be diverted, the general purpose of the diversion, the manner in which compliance is to be monitored, and any requirement for payment of restitution or cost.

(a)(4) The respondent will bear the burden of drafting and submitting the proposed diversion contract. Respondent may use counsel to assist in the negotiation phase of diversion. Respondent may also request that the OPC draft the proposed diversion contract.

(a)(5) Respondent may also use benefits programs provided by the Bar, such as a lawyer or licensed paralegal practitioner assistance program to assist in developing terms and conditions for the diversion contract appropriate to that respondent's particular situation. Use of a lawyer or licensed paralegal practitioner assistance program to assess appropriate conditions for diversion will not conflict that entity from providing services under the contract.

(a)(6) The terms of each contract must be specifically tailored to the respondent's individual circumstances. The contract is confidential and its terms may not be disclosed to anyone other than the parties to the contract.

(b) Contract terms. All diversion contracts must contain at least:

(b)(1) the signatures of respondent, respondent's counsel (if any), and the OPC;

(b)(2) the terms and conditions of the plan for respondent and, the identity, if appropriate, of any service provider, mentor, monitor and/or supervisor and that individual's specific

responsibilities. If respondent uses a professional or service, and it is necessary to disclose confidential information, respondent must sign a limited conditional waiver of confidentiality permitting the professional or service to make the necessary disclosures for the respondent to fulfill their duties under the contract;

(b)(3) the necessary terms providing for oversight of fulfilling the contract terms, including provisions for those involved to report any alleged breach of the contract to the OPC;

(b)(4) the necessary terms providing that respondent will pay all costs incurred in connection with the contract and those costs further specified under **rule (Diversion costs)** and any costs associated with the complaints to be deferred; and

(b)(5) a specific acknowledgement that a material violation of a contract term renders the respondent's participation in diversion voidable by the OPC.

(c) **Amendments.** The contract may be amended if the respondent and the OPC agree.

(d) **Status of complaint.** After a diversion contract is executed by the respondent, the disciplinary complaint is deferred pending successful completion of the contract.

1 **Rule _____ Respondent's participation.**

2 Diversion may require the respondent's participation in one or more of the following:

3 (a) fee arbitration;

4 (b) mediation;

5 (c) law office management assistance;

6 (d) lawyer or licensed paralegal practitioner assistance programs;

7 (e) psychological and behavioral counseling;

8 (f) monitoring;

9 (g) restitution;

10 (h) continuing legal education programs including, but not limited to, ethics school; or

11 (i) any other program or corrective course of action to address the respondent's conduct.

12

Rule _____ Terminating diversion.

(a) **Fulfilling the contract.** The contract terminates when the respondent fulfills the contract terms and gives the OPC an affidavit or declaration demonstrating fulfillment. Upon receiving this affidavit or declaration, the OPC must acknowledge receipt and dismiss any complaint(s) deferred pending successful completion of the contract or notify the respondent that fulfillment of the contract is terminated based on an OPC claim of material breach. Determinations under this rule are not subject to further review and are not reviewable in any proceeding. Successfully completing the contract is a bar to any further disciplinary proceedings based on the same allegations and successfully completing diversion may not constitute a form of discipline.

(b) **Material breach.** Materially breaching the contract is cause for terminating the contract. After a material breach, the OPC must notify the respondent of the alleged breach and intent to terminate the diversion. Thereafter, disciplinary proceedings may be instituted, resumed, or reinstated.

1 **Rule _____ Diversion Costs.**

2 Respondent must pay an initial fee of \$250 upon entering diversion. During diversion,
3 respondent must pay a monthly fee of \$50. All such fees are payable to the Bar's general fund.

4

1 **Discipline.**

2 **Rule 14-509. Grounds for discipline.**

3 It constitutes a ground for discipline for a lawyer to:

4 (a) violate the Rules of Professional Conduct or Licensed Paralegal Practitioner Rules of
5 Professional Conduct;

6 (b) willfully violate a valid court or Committee order imposing discipline;

7 (c) be publicly disciplined in another jurisdiction;

8 (d) fail to comply with the requirements of Rule 14-526(e);

9 (e) fail to notify the OPC of public discipline in another jurisdiction in accordance with
10 Rule 14-522(a); or

11 (f) willfully fail to comply with a validly issued subpoena from the OPC or knowingly
12 fail to respond to a lawful demand from the OPC.

Rule 14-515. Accessing disciplinary information.

(a) **Confidentiality.** Before the OPC initiates an action or issues a public reprimand under Rule 14-510, OPC counsel, OPC staff, the Committee, Committee volunteers, Committee staff, Committee employees, special counsel appointed pursuant to Rule 14-517(f), and special counsel employees or assistants, must keep the proceeding confidential, but the OPC may disclose the pendency, subject matter, and status of an investigation if the proceeding is based on allegations disseminated through the mass media, or include either the conviction of a crime or reciprocal public discipline. The proceeding is not confidential to the extent:

(a)(1) the respondent has given an express written waiver of confidentiality;

(a)(2) there is a need to notify another person or organization—including the Bar’s Lawyer’s Fund for Client Protection or Licensed Paralegal Practitioners’ Fund for Client Protection—to protect the public, the administration of justice, or the legal profession;

(a)(3) the information is required in a subsequent lawyer sanctions hearing; or

(a)(4) a referral is made to the Professionalism and Civility Counseling Board pursuant to Rule 14-510 (a)(4) or (b)(6)(C), in which event OPC counsel, Committee members, screening panel members, and Professionalism and Civility Counseling Board members may share all information between and among them with the expectation that such information will in all other respects be subject to applicable confidentiality rules or exceptions.

(b) **Public proceedings.** Upon the filing of an action or a petition for reinstatement or relicensure, the proceedings are public, except as provided in paragraph (d) below.

(c) **Proceedings alleging disability.** Proceedings for transfer to or from disability status are confidential. All orders transferring a respondent to or from disability status are public.

(d) **Protective order.** To protect the interest of a complainant, witness, third party, or respondent, the district court may, on any person’s request and for good cause, issue a protective order prohibiting the disclosure of specific information and direct that the proceedings be conducted so as to implement the order, including requiring that the hearing be conducted in

1 such a way as to preserve the confidentiality of the information that is the subject of the
2 application.

3 **(e) Request for nonpublic information.** Nonpublic information is confidential, other than as
4 authorized for disclosure under paragraph (a), unless the request for information is approved by
5 the OPC and there is compliance with paragraphs (f) and (g) of this rule.

6 **(f) Notice to the respondent.** Except as provided in paragraph (g), if the Committee decides to
7 provide nonpublic information requested pursuant to paragraph (e), and if the respondent has not
8 signed an express written waiver permitting the party requesting the information to obtain the
9 nonpublic information, the respondent must be notified in writing at the respondent's mailing
10 address as shown by Bar records of the information that has been requested and by whom,
11 together with a copy of the information proposed to be released. The notice must advise the
12 respondent that the information will be released 21 days after the notice's mailing unless the
13 respondent objects to the disclosure. If the respondent timely objects to the disclosure, the
14 information must remain confidential unless the requesting party obtains a court order
15 authorizing its release.

16 **(g) Release without notice.** If a requesting party as outlined in paragraph (e) has not obtained an
17 express written waiver from the respondent to obtain nonpublic information, and requests that
18 the information be released without giving notice to the respondent, the requesting party must
19 certify that:

20 (g)(1) the request will further an ongoing investigation into the respondent's misconduct;

21 (g)(2) the information is essential to that investigation; and

22 (g)(3) disclosing the existence of the investigation to the respondent would seriously
23 prejudice that investigation.

24 **(h) Disclosure without notice.** The OPC may disclose nonpublic information without notice to
25 the respondent if:

26 (h)(1) disclosure furthers an ongoing OPC investigation into the respondent's
27 misconduct; and

(h)(2) disclosure is essential to that investigation.

(i) **Participants' duty.** OPC counsel, OPC staff, the Committee, Committee volunteers, Committee staff, Committee employees, special counsel appointed pursuant to Rule 14-517(f), and special counsel employees or assistants in a proceeding under these rules must maintain confidentiality. Unless otherwise authorized, persons receiving private records under paragraph (e) will not provide access to the records to anyone else.

Rule 14-516. Disseminating disciplinary information.

(a) **Notice to disciplinary agencies.** The OPC must send notice of public discipline, resignation with discipline pending, transfers to or from disability status, reinstatements, relicensures, and certified copies of judgments of conviction to the disciplinary enforcement agency of every other jurisdiction in which the respondent is licensed, and to the American Bar Association's National Lawyer Regulatory Database.

(b) **Notice to the public.** The OPC will publish notices of admonition, public reprimand, suspension, delicensure, resignation with discipline pending, transfer to disability status, and petitions for reinstatement or relicensure to:

(b)(1) the OPC's website, and

(b)(2) the Utah Bar Journal.

(c) **Notice to the courts.** The OPC must promptly forward notices of suspension, delicensure, resignation with discipline pending, transfer to or from disability status, reinstatement, or relicensure to all Utah state courts for licensed paralegal practitioners and both Utah state and federal courts for lawyers.

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

(a) **Petition for interim discipline.** On receiving sufficient evidence that a lawyer subject to the Supreme Court's disciplinary jurisdiction poses a threat of serious harm to the public and has either committed a violation of the Rules of Professional Conduct or Licensed Paralegal Practitioner Rules of Professional Conduct or is under a disability as herein defined, the OPC must file a petition for interim discipline in the district court, requesting a hearing and giving notice in accordance with Utah Rule of Civil Procedure 65A.

(a)(1) The petition for interim discipline must be filed with the district court and served on the respondent in accordance with Rule 4 of the Utah Rules of Civil Procedure.

(a)(2) The district court will set a hearing within 14 days of filing the return of service showing that respondent has been served.

(b) **Immediate interim discipline.** After conducting a hearing on the petition, the district court may enter an order immediately suspending the respondent, limiting the respondent's practice area, or requiring supervision of the respondent pending final disposition of a disciplinary proceeding, or may order such other action as deemed appropriate.

(b)(1) If an order is entered:

(b)(1)(A) the district court may appoint a trustee, pursuant to Rule 14-527, to protect the interests of the respondent's clients; and

(b)(1)(B) the OPC may file a misconduct action in the district court without presenting the matter to a screening panel.

(b)(2) If an order for interim discipline is not obtained, the OPC must dismiss the interim action and will process the matter as it does any other information coming to the OPC's attention.

(c) **Notice to clients.** A respondent subject to interim discipline pursuant to paragraph (b) must comply with the notice requirements in Rule 14-526 as ordered by the district court.

(d) **Motion to dissolve or modify interim discipline.** On 48 hours' notice to the OPC, a respondent suspended pursuant to paragraph (b) may appear and move to dissolve or modify the

1 order of discipline, and such motion will be heard and determined as expeditiously as justice
2 requires.

3

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

(a) **Forwarding the judgment of guilt (after a finding or admission of guilt).** When a lawyer is guilty of or has entered a plea in abeyance for any felony or misdemeanor that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer, the court will forward a certified copy of the judgment to the OPC within 28 days after the judgment of guilt.

(b) **Motion for interim suspension.** On being advised that a lawyer has been found guilty of or has entered a plea in abeyance for a felony or misdemeanor that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer, the OPC must determine whether the crime warrants interim suspension. Upon a determination that the crime warrants interim suspension, the OPC must file a suspension action, accompanied by the certified copy of the judgment, and concurrently file a motion for immediate interim suspension. A suspension action commences under this rule when both the petition for interim suspension and the complaint are filed. The respondent may assert any jurisdictional deficiency establishing that the interim suspension may not properly be ordered, such as the crime is not a felony or misdemeanor that reflects adversely on the respondent's honesty, trustworthiness, or fitness as a lawyer, or that the respondent is not the individual found guilty. The respondent is not entitled to an evidentiary hearing but may request an informal hearing, solely to determine whether the finding or admission of guilt was for a felony or misdemeanor that reflects adversely on the respondent's honesty, trustworthiness, or fitness to practice law. If an order for interim suspension is not obtained, the OPC must dismiss the suspension action and will process the matter as it does any other information coming to the OPC's attention.

(c) **Imposition.** The district court will place a respondent on interim suspension upon proof that the respondent has been found guilty of a felony or misdemeanor that reflects adversely on the respondent's honesty, trustworthiness, or fitness as a lawyer regardless of any pending appeal.

(d) **Dissolving interim suspension.** Interim suspension may be dissolved as provided in Rule 14-518(d).

(e) **Judgment of guilt as conclusive evidence.** Except as provided in paragraph (b), a certified copy of the judgment constitutes conclusive evidence that the respondent committed the crime.

1 **(f) Automatic reinstatement from interim suspension upon reversal of judgment.** If a
2 respondent suspended solely under paragraph (c) demonstrates that the underlying judgment has
3 been reversed or vacated, the order for interim suspension will be vacated and the respondent
4 placed on active status. Vacating the interim suspension will not automatically terminate any
5 disciplinary proceeding then pending against the respondent, the disposition of which will be
6 determined based on the available evidence other than the judgment.

7 **(g) Notice to clients and other of interim suspension.** An interim suspension under this rule
8 constitutes a suspension of the respondent for the purpose of Rule 14-526.

9

Rule 14-520. Discipline by consent.

(a) **Discipline by consent before filing a misconduct action.** A respondent against whom a complaint has been filed may, before the matter is submitted to a screening panel, tender a proposal for discipline by consent, including a conditional admission to the complaint or portions thereof in exchange for a disciplinary sanction and final disposition of the complaint. The proposal must include a waiver of right to a screening panel hearing. The respondent must submit the proposal to the OPC, who will forward the proposal to the Committee chair with a recommendation in favor of or opposed to the proposal and a statement of the basis for such recommendation. If the Committee chair approves the proposal, the sanction will be imposed as provided in this rule. If the proposal is rejected by the Committee chair, the proposal and admission will be withdrawn and cannot be used against the respondent in subsequent proceedings.

(b) **Discipline by consent after filing a misconduct action.** A respondent against whom an action has been filed may tender a conditional admission to the allegations in the OPC's complaint or to a particular count thereof in exchange for a stated form of discipline and final disposition of the action. The proposal must be submitted to the OPC, who will then forward the proposal to the district court with a recommendation favoring or opposing the proposal and a statement of the basis for such recommendation. The district court will either approve or reject the proposal. If the district court approves the proposal and the stated form of discipline includes public discipline, it will enter the appropriate disciplinary order as provided in paragraph (d). If the district court rejects the proposal, the proposal and conditional admission will be withdrawn and cannot be used against the respondent in subsequent proceedings.

(c) **Order of discipline by consent.** The final order of discipline by consent will be predicated on:

(c)(1) the complaint and the OPC's notice to the respondent if no action has been filed;

(c)(2) the misconduct action, if filed;

(c)(3) the approved proposal for discipline by consent; and

1 (c)(4) an affidavit of consent by the respondent to be disciplined.

2 (d) **Affidavit of consent.** A respondent whose proposal for discipline by consent has been
3 approved as provided in this rule, must submit an affidavit to the Committee chair or the district
4 court as appropriate, consenting to the approved disciplinary sanction and affirming that:

5 (d)(1) the consent is freely and voluntarily entered;

6 (d)(2) the respondent is not acting under coercion or duress;

7 (d)(3) the respondent is fully aware of the implications of submitting the consent;

8 (d)(4) the respondent is aware that there is presently pending an investigation into, or
9 proceeding involving, allegations that there exist grounds for discipline, the nature of
10 which must be specifically set forth;

11 (d)(5) for purposes of disciplinary proceedings, the respondent acknowledges that the
12 material facts so alleged are true; and

13 (d)(6) the respondent submits consent because the respondent knows that if a misconduct
14 action predicated on the allegations under investigation were filed, or the pending action
15 were prosecuted, the respondent could not successfully defend against the charges upon
16 which the discipline is based.

Rule 14-521. Resignation with discipline pending.

(a) A respondent may resign from the Bar, prior to the adjudication of a pending complaint, only with the consent of the Supreme Court and upon such terms as the Supreme Court may impose for the protection of the public.

(b) The respondent must submit a sworn petition:

(b)(1) admitting for purposes of the disciplinary proceedings the facts upon which the allegations of misconduct are based;

(b)(2) admitting that the facts constitute grounds for discipline;

(b)(3) stating that the respondent's resignation is freely and voluntarily tendered and that it is submitted without coercion or duress;

(b)(4) verifying that the respondent is fully aware of the implications of submitting the resignation;

(b)(5) acknowledging that the discipline matter, the petition, and the sanction will be available to the public and that a notice of the resignation will be published in the Utah Bar Journal;

(b)(6) agreeing to comply with these rules, including Rule 14-526(b) regarding notice to clients and return of clients' property; and

(b)(7) agreeing to comply with other Supreme Court orders.

(c) A copy of the petition must be submitted to the OPC. The OPC may, within 21 days, object to the petition. If the OPC consents to the petition, the Supreme Court will review the petition and enter an appropriate order. If the OPC files a timely objection, the matter will be set for hearing in the district court. Within 14 days after the hearing, the district court will transmit its findings of fact and conclusions of law to the Supreme Court to review and enter an appropriate order.

(d) If the Supreme Court accepts the resignation, it will enter an order specifying the effective date of the resignation. The order may include additional or alternative terms and conditions deemed appropriate, including conditions precedent to relicensure.

1 (e) A respondent whose resignation is accepted must comply with Rule 14-525 and may not
2 apply for relicensure until five years after the effective date of the resignation unless the
3 Supreme Court orders otherwise in its order accepting the resignation.

4

Rule 14-522. Reciprocal discipline.

(a) **Duty to notify the OPC of discipline or transfer to disability inactive status.** When another court, jurisdiction, or regulatory body having disciplinary jurisdiction publicly disciplines or transfers to disability inactive status a lawyer licensed to practice in Utah, such lawyer must inform the OPC of the discipline or transfer within 28 days. If the OPC receives notification from any source that a lawyer within the Supreme Court's jurisdiction has been publicly disciplined or transferred to disability inactive status by any other jurisdiction, the OPC must obtain a certified copy of the disciplinary order.

(b) **Serving notice on lawyer.** On receiving a certified copy of an order demonstrating that a lawyer licensed to practice in Utah has been publicly disciplined or transferred to disability inactive status by another court, jurisdiction, or regulatory body having disciplinary jurisdiction, the OPC will issue a notice directed to the lawyer containing:

(b)(1) a copy of the order from the other court, jurisdiction, or regulatory body; and

(b)(2) a notice giving the lawyer the right to inform the OPC, within 28 days from service of the notice, of any claim by the lawyer predicated on the grounds set forth in paragraph

(d), that the imposition of the equivalent discipline or transfer in Utah would be unwarranted and stating the reasons for that claim.

(c) **Effect of stay of discipline in another jurisdiction.** If the discipline or transfer imposed in the other court, jurisdiction, or regulatory body has been stayed, any reciprocal discipline or transfer imposed in Utah will be deferred until the stay expires.

(d) **Discipline to be imposed.** Upon the expiration of 28 days from service of the notice under paragraph (b), the district court will take such action as may be appropriate to cause the equivalent discipline or transfer to be imposed in this jurisdiction, unless it clearly appears on the face of the record from which the discipline or transfer is predicated that:

(d)(1) the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;

(d)(2) the imposition of equivalent discipline would result in grave injustice;

(d)(3) the misconduct warrants substantially different discipline in Utah or is not misconduct in this jurisdiction; or

(d)(4) the reason for the original transfer to disability inactive status no longer exists.

If the district court determines that any of these elements exist, it will enter such other order as it deems appropriate. The burden is on the lawyer seeking different discipline or transfer to demonstrate that the imposition of equivalent discipline or transfer is not appropriate.

(e) **Other jurisdictions’ final adjudications.** Except as provided in paragraphs (c) and (d) above, a respondent who has been found guilty of misconduct or is transferred to disability inactive status in a final adjudication of another court, jurisdiction, or regulatory body will establish conclusively the misconduct or the disability for purposes of a disciplinary or disability proceeding in Utah.

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

(a) **Involuntary commitment or adjudication of incompetency.** If a lawyer has been judicially declared incompetent or is involuntarily committed on the grounds of incompetency, then upon proper proof of the fact, the OPC must file a petition with the district court for the immediate transfer of the lawyer to disability status for an indefinite period until further order of the district court. The OPC must serve a copy of the order on the lawyer or the lawyer's guardian or, if no guardian or legal representative has been appointed, on the director of the institution to which the lawyer has been committed.

(b) **Inability to properly defend.** If a lawyer alleges in the course of a disciplinary proceeding an inability to assist in the defense due to mental or physical incapacity, the district court will immediately transfer the lawyer to disability status pending determination of the incapacity.

(b)(1) If the district court determines the claim of inability to defend is valid, the disciplinary proceeding will be deferred and the lawyer retained on disability status until the district court subsequently considers a petition for transfer of the lawyer to active status. If the district court considering the petition for transfer to active status determines the petition should be granted, the interrupted disciplinary proceedings may resume.

(b)(2) If the district court determines the claim of incapacity to defend to be invalid, the disciplinary proceeding will resume.

(c) **Proceedings to determine incapacity.** Information relating to a lawyer's physical or mental condition that adversely affects the lawyer's ability to practice law will be investigated, and if warranted, will be the subject of formal proceedings to determine whether the lawyer must be transferred to disability status. Hearings will be conducted in the same manner as disciplinary proceedings, except that all of the proceedings will be confidential. The district court will provide the lawyer with such notice of proceedings in the matter as it deems proper and advisable and may appoint counsel to represent the lawyer if the lawyer is without adequate representation. The district court may take or direct whatever action it deems necessary or proper to determine whether the lawyer is so incapacitated, including designating qualified experts to

1 examine the lawyer. If the district court concludes that the lawyer is incapacitated from
2 continuing to practice law, it will enter an order transferring the lawyer to disability status for an
3 indefinite period and until the further order. Any pending disciplinary proceedings against the
4 lawyer will be held in abeyance.

5 **(d) Reinstatement from disability status.**

6 (d)(1) Court order. No lawyer transferred to disability status may resume active status
7 except by district court order.

8 (d)(2) Petition. Any lawyer transferred to disability status is entitled to petition for
9 transfer to active status once a year, or at whatever shorter intervals the district court may
10 direct in the order transferring the lawyer to disability status or any modifications thereof.

11 (d)(3) Examination. On filing a petition for transfer to active status, the district court may
12 take or direct whatever action it deems necessary or proper to determine whether the
13 disability has been removed, including directing designated qualified experts to examine
14 the lawyer. In its discretion, the district court may direct the lawyer to pay the
15 examination expense.

16 (d)(4) Waiver of privilege. When filing a petition for reinstatement to active status, the
17 lawyer will be required to disclose the name of each psychiatrist, psychologist, physician,
18 or other health care provider and hospital or other institution by whom or in which the
19 lawyer has been examined or treated related to the disability since the transfer to
20 disability status. The lawyer must furnish written consent to each listed provider to
21 divulge information and records relating to the disability if requested by the district court
22 or the district court's appointed experts.

23 (d)(5) Learning in law; Bar examination. The district court may also direct that the
24 lawyer establish proof of competence and learning in law, which proof may include the
25 Bar's certification that the lawyer has successfully completed an examination for
26 relicensure.

1 (d)(6) Granting petition for transfer to active status. The district court will grant the
2 petition for transfer to active status on a showing by clear and convincing evidence that
3 the disability has been removed.

4 (d)(7) Judicial declaration of competence. If a lawyer transferred to disability status on
5 the basis of a judicial determination of incompetence is subsequently judicially declared
6 to be competent, the district court may dispense with further evidence that the lawyer's
7 disability has been removed and may immediately order the lawyer's reinstatement to
8 active status upon terms as are deemed proper and advisable.

Rule 14-531. Noncompliance with child support order, child visitation order, subpoena or order relating to paternity, or child support proceeding.

(a) Upon entering an order holding a lawyer in contempt for the lawyer's noncompliance with a child support order, child visitation order, or a subpoena or order relating to a paternity or child support proceeding, a district court may suspend the lawyer's license to engage in the practice of law consistent with applicable law and, if suspended, will also impose conditions of reinstatement.

(b) If a district court suspends a lawyer's license to engage in the practice of law, the court will provide a copy of the order to the OPC.

Rule 14-526. Notice of disability or suspension; return of clients' property; refund of unearned fees.

(a) **Effective date of order; winding up affairs.** Each order that imposes delicensure or suspension is effective 28 days after the order's date, or at such time as the order provides. Each order that transfers a respondent to disability status is effective immediately, unless the order otherwise provides. After the court enters any order of **delicensure**, suspension, or transfer to disability status, the respondent may not accept any new retainer or employment as a lawyer in any new case or legal matter; except that during any period between the date an order is entered and its effective date, the respondent may, with the consent of the client after full disclosure, wind up or complete any matters pending on the date the order is entered.

(b) **Notice to clients and others.** In every case in which a respondent is **delicensed** or suspended for more than six months, the respondent must, within 21 days after the order is entered, accomplish the following acts:

(b)(1) notify each client and any co-counsel in every pending legal matter, litigation, and non-litigation, that the respondent has been **delicensed** or suspended from the practice of law and is disqualified from further participation in the matter;

(b)(2) notify each client that, in the absence of co-counsel, the client should obtain a new lawyer, calling attention to the urgency to seek new counsel, particularly in pending litigation;

(b)(3) deliver to every client any papers or other property to which the client is entitled or, if delivery cannot reasonably be made, make arrangements satisfactory to the client or co-counsel of a reasonable time and place where papers and other property may be obtained, calling attention to any urgency to obtain the same;

(b)(4) refund any part of any fee paid in advance that has not been earned as of the order's effective date;

(b)(5) in each matter pending before a court, agency, or tribunal, notify opposing counsel or, in the absence of counsel, the adverse party, of the respondent's **delicensure** or

1 suspension and consequent disqualification to further participate as a lawyer in the
2 matter;

3 (b)(6) file with the court, agency, or tribunal before which any matter is pending a copy
4 of the notice given to opposing counsel or to an adverse party; and

5 (b)(7) within 14 days after the effective date of **delicensure** or suspension, file a
6 declaration under penalty of perjury with the OPC showing complete performance of the
7 foregoing requirements. The respondent must keep and maintain for the OPC's inspection
8 all records of the steps taken to accomplish the requirements of this rule.

9 (c) **Lien.** Any attorney's lien for services rendered that are not tainted by reason of delicensure or
10 suspension may not be rendered invalid merely because of the order of discipline.

11 (d) **Other notice.** If a respondent is suspended for six months or less, the district court may
12 impose conditions similar to those set out in paragraph (b). In any public disciplinary matter, the
13 district court may also require the respondent to issue notice to others as it deems necessary to
14 protect the interests of clients or the public.

15 (e) **Compliance.** Substantial compliance with the provisions of paragraphs (a), (b) and (d) will
16 be a precondition for **reinstatement or relicensure**. Willful failure to comply with paragraphs (a),
17 (b) and (d) constitute contempt of court and may be punished as such or by further disciplinary
18 action.

Sanctions.

Rule 14-602. Purpose and nature of sanctions.

(a) **Purpose of lawyer discipline proceedings.** The purpose of imposing lawyer sanctions is to ensure and maintain the high standard of professional conduct required of those who undertake the discharge of professional responsibilities as lawyers, and to protect the public and the administration of justice from lawyers who have demonstrated by their conduct that they are unable or likely to be unable to discharge properly their professional responsibilities.

(b) **Public nature of lawyer discipline proceedings.** The ultimate disposition of lawyer discipline will be public in cases of **delicensure**, suspension, and reprimand; and nonpublic in cases of admonition.

(c) **Purpose of these rules.** These rules are designed for use in imposing a sanction or sanctions following a determination that a member of the legal profession has violated a provision of the Rules of Professional Conduct or Licensed Paralegal Practitioner Rules of Professional Conduct. Descriptions in these rules of substantive disciplinary offenses are not intended to create grounds for determining culpability independent of the Rules of Professional Conduct or Licensed Paralegal Practitioner Rules of Professional Conduct. The rules constitute a system for determining sanctions, permitting flexibility and creativity in assigning sanctions in particular cases of lawyer misconduct. They are designed to promote:

(c)(1) consideration of all factors relevant to imposing the appropriate level of sanction in an individual case;

(c)(2) consideration of the appropriate weight of such factors in light of the stated goals of lawyer discipline; and

(c)(3) consistency in the imposition of disciplinary sanctions for the same or similar offenses within and among jurisdictions.

Rule 14-603. Sanctions.

(a) **Scope.** A disciplinary sanction is imposed on a lawyer upon a finding or acknowledgement that the lawyer has engaged in professional misconduct.

(b) **Delicensure.** Delicensure terminates the individual's status as a lawyer. A lawyer who has been delicensed may be relicensed.

(c) **Suspension.** Suspension removes a lawyer from the practice of law for a specified minimum time, generally six months or more. In no event should the time before application for reinstatement be more than three years.

(d) **Interim suspension or interim discipline.** Interim suspension temporarily suspends a lawyer from the practice of law. Interim suspension or interim discipline may be imposed as set forth in Rules 14-518 and 14-519.

(e) **Reprimand.** Reprimand is public discipline that declares the lawyer's conduct improper, but does not limit the lawyer's right to practice law.

(f) **Admonition.** Admonition is nonpublic discipline that declares the conduct of the lawyer improper, but does not limit the lawyer's right to practice law.

(g) **Probation.** Probation allows a lawyer to practice law under specified conditions. Probation may be public or nonpublic, imposed alone or in conjunction with other sanctions, and imposed as a condition of reinstatement or relicensure.

(g)(1) A respondent may be placed on probation if they can demonstrate that they:

(g)(1)(A) can perform legal services and the continued practice of law will not cause the courts or the profession to fall into disrepute;

(g)(1)(B) are unlikely to harm the public during the period of rehabilitation and the necessary conditions of probation can be adequately supervised;

(g)(1)(C) have a disability which is temporary or minor and does not require treatment and transfer to disability status;

(g)(1)(D) have not committed acts involving dishonesty, fraud, deceit, or misrepresentation; and

(g)(1)(E) have not committed acts warranting **delicensure**.

(g)(2) Probation may include, but is not limited to, the following conditions:

(g)(2)(A) no further violations of the Rules of Professional Conduct or Licensed Paralegal Practitioner Rules of Professional Conduct;

(g)(2)(B) restitution;

(g)(2)(C) assessment of costs;

(g)(2)(D) limitation on practice;

(g)(2)(E) requirement that the lawyer pass the Multistate Professional Responsibility Exam;

(g)(2)(F) requirement that the lawyer take continuing legal education courses;

(g)(2)(G) mental health counseling and treatment;

(g)(2)(H) abstinence from drugs and alcohol;

(g)(2)(I) medical evaluation and treatment;

(g)(2)(J) periodic reports to the court and the OPC; and

(g)(2)(K) monitoring of all or part of respondent's work by a supervising attorney.

(g)(3) The respondent is responsible for all costs of evaluation, treatment, and supervision. Failing to pay these costs before probation terminates is a violation of probation.

(g)(4) A respondent may terminate their probation by filing with the district court and serving on the OPC an affidavit stating that the respondent has fully complied with the requirements of the probation order. The OPC may file an objection and thereafter the court will conduct a hearing.

(g)(5) Violations. If during the period of probation, the OPC receives information that any probation term has been violated, the OPC may file a motion specifying the alleged violation and seeking to have the probation terminated. Upon filing such motion, the respondent must have the opportunity to respond and a hearing will be held, at which time the court will determine whether to revoke probation.

(h) **Diversion.** Diversion is an alternative to a sanction if completed. Diversion allows a lawyer to practice law under specified conditions. Diversion may be public or non-public.

(h)(1) Rule 14-533 governs diversion matters before the OPC files a misconduct action under Rule 14-511.

(h)(2) For a misconduct action, the following criteria will determine the appropriateness of a diversion:

(h)(2)(A) The misconduct does not involve the misappropriation of funds or property; fraud, dishonesty, deceit or misrepresentation; or the commission of a misdemeanor adversely reflecting on the lawyer's fitness to practice law or any felony;

(h)(2)(B) The misconduct appears to be the result of inadequate law office management, chemical dependency, a physical or mental health condition, negligence or lack of training, education or other similar circumstance; and

(h)(2)(C) There appears to be a reasonable likelihood that the successful completion of a remedial program will prevent the recurrence of conduct by the attorney similar to that under consideration for diversion.

(h)(3) In addition to the above-required criteria of (A), (B) and (C), other considerations may include whether the misconduct is a one-time act or based on a chronic condition and whether there is sufficient evidence connecting the chronic condition to the misconduct.

(h)(4) Diversion determinations must include compliance conditions to address the misconduct and the time for completion.

1 (h)(5) If the lawyer completes the conditions of the Diversion, the misconduct action will
2 be dismissed with prejudice.

3 (h)(6) If the lawyer does not complete the conditions of the Diversion within the required
4 time, the lawyer will be subject to a suspension of six months and a day.

5 (i) **Resignation with discipline pending.** Resignation with discipline pending is a form of public
6 discipline that allows a respondent to resign from the practice of law while either an informal or
7 formal complaint is pending against the respondent. Resignation with discipline pending may be
8 imposed as set forth in Rule 14-521.

9 (j) **Other sanctions and remedies.** Other sanctions and remedies which may be imposed
10 include:

11 (j)(1) restitution;

12 (j)(2) assessment of costs;

13 (j)(3) limitation upon practice;

14 (j)(4) appointment of a receiver;

15 (j)(5) a requirement that the lawyer take the Bar Examination or professional
16 responsibility examination; and

17 (j)(6) a requirement that the lawyer attend continuing education courses.

18 (k) **Reciprocal discipline.** Reciprocal discipline is imposing a disciplinary sanction on a lawyer
19 who has been disciplined in another court, another jurisdiction, or a regulatory body having
20 disciplinary jurisdiction.

21

Rule 14-604. Factors to be considered in imposing sanctions.

(a) The Committee and the court must consider the following factors in imposing sanctions after a finding of lawyer misconduct under these rules:

(a)(1) the duty violated,

(a)(2) the lawyer's mental state,

(a)(3) the potential or actual injury caused by the lawyer's misconduct,

(a)(4) the presumptive discipline based on the factors in paragraphs (a)(1) through (a)(3);
and

(a)(4) the existence of aggravating or mitigating factors.

(d) Multiple charges of misconduct.

(d)(1) Where a respondent is found to have committed multiple charges of misconduct, the ultimate sanction imposed must at least be consistent with the sanction for the most serious instance of misconduct among the violations, and may be greater than the sanction for the most serious misconduct.

(d)(2) Either a pattern of misconduct or multiple instances of misconduct should be considered as aggravating factors.

Rule 14-605. Sanctions for violating duties owed to clients.

(a) Failing to preserve the client's property. The following sanctions are generally appropriate when a lawyer fails to preserve client property:

(a)(1) **Delicensure** is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client.

(a)(2) Suspension is generally appropriate when a lawyer knows or should know that the lawyer is dealing improperly with client property and causes injury or potential injury to a client.

(a)(3) Reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client.

(a)(4) Admonition is generally appropriate when a lawyer is negligent in dealing with client property and causes little or no actual or potential injury to a client.

(b) Failing to preserve the client's confidences. The following sanctions are generally appropriate when a lawyer improperly reveals information related to representing a client:

(b)(1) **Delicensure** is generally appropriate when a lawyer, with the intent to benefit the lawyer or another, knowingly reveals information relating to representation of a client not otherwise lawfully permitted to be disclosed, and this disclosure causes injury or potential injury to a client.

(b)(2) Suspension is generally appropriate when a lawyer knowingly reveals information relating to the representation of a client not otherwise lawfully permitted to be disclosed, and this disclosure causes injury or potential injury to a client.

(b)(3) Reprimand is generally appropriate when a lawyer negligently reveals information relating to representation of a client not otherwise lawfully permitted to be disclosed and this disclosure causes injury or potential injury to a client.

(b)(4) Admonition is generally appropriate when a lawyer negligently reveals information relating to representation of a client not otherwise lawfully permitted to be disclosed and this disclosure causes little or no actual or potential injury to a client.

(c) **Failing to avoid conflicts of interest.** The following sanctions are generally appropriate in cases involving conflicts of interest:

(c)(1) **Delicensure** is generally appropriate when a lawyer, without the informed consent of client(s):

(c)(1)(A) engages in representation of a client knowing that the lawyer's interests are adverse to the client's with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to the client;

(c)(1)(B) simultaneously represents clients that the lawyer knows have adverse interests with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to a client; or

(c)(1)(C) represents a client in a matter substantially related to a matter in which the interests of a present or former client are materially adverse, and knowingly uses information relating to the representation of a client with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to a client.

(c)(2) Suspension is generally appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client.

(c)(3) Reprimand is generally appropriate when a lawyer is negligent in determining whether the representation of a client may be materially affected by the lawyer's own interests, or whether the representation will adversely affect another client, and causes injury or potential injury to a client.

(c)(4) Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in determining whether the representation of a client may be materially affected by the lawyer's own interests, or whether the representation will adversely affect another client, and causes little or no actual or potential injury to a client.

(d) **Lack of diligence.** The following sanctions are generally appropriate when a lawyer fails to act with reasonable diligence and promptness in representing a client:

1 (d)(1) **Delicensure** is generally appropriate when:

2 (d)(1)(A) a lawyer abandons the practice and causes serious or potentially serious
3 injury to a client;

4 (d)(1)(B) a lawyer knowingly fails to perform services for a client and causes
5 serious or potentially serious injury to a client; or

6 (d)(1)(C) a lawyer engages in a pattern of neglect with respect to client matters
7 and causes serious or potentially serious injury to a client.

8 (d)(2) Suspension is generally appropriate when:

9 (d)(2)(A) a lawyer knowingly fails to perform services for a client and causes
10 injury or potential injury to a client, or

11 (d)(2)(B) a lawyer engages in a pattern of neglect and causes injury or potential
12 injury to a client.

13 (d)(3) Reprimand is generally appropriate when a lawyer is negligent and does not act
14 with reasonable diligence in representing a client, and causes injury or potential injury to
15 a client.

16 (d)(4) Admonition is generally appropriate when a lawyer is negligent and does not act
17 with reasonable diligence in representing a client, and causes little or no actual or
18 potential injury to a client.

19 (e) **Lack of Competence.** The following sanctions are generally appropriate when a lawyer fails
20 to provide competent representation to a client:

21 (e)(1) **Delicensure** is generally appropriate when a lawyer's course of conduct
22 demonstrates that the lawyer does not understand the most fundamental legal doctrines or
23 procedures, and the lawyer's conduct causes injury or potential injury to a client.

24 (e)(2) Suspension is generally appropriate when a lawyer engages in an area of practice in
25 which the lawyer knows they are not competent, and causes injury or potential injury to a
26 client.

1 (e)(3) Reprimand is generally appropriate when a lawyer:

2 (e)(3)(A) demonstrates failure to understand relevant legal doctrines or
3 procedures and causes injury or potential injury to a client, or

4 (e)(3)(B) is negligent in determining whether the lawyer is competent to handle a
5 legal matter and causes injury or potential injury to a client.

6 (e)(4) Admonition is generally appropriate when a lawyer engages in an isolated instance
7 of negligence in determining whether the lawyer is competent to handle a legal matter,
8 and causes little or no actual or potential injury to a client.

9 (f) **Lack of Candor.** The following sanctions are generally appropriate in cases where a lawyer
10 engages in fraud, deceit, or misrepresentation directed toward a client:

11 (f)(1) **Delicensure** is generally appropriate when a lawyer knowingly deceives a client
12 with the intent to benefit the lawyer or another, and causes serious injury or potential
13 serious injury to a client.

14 (f)(2) Suspension is generally appropriate when a lawyer knowingly deceives a client,
15 and causes injury or potential injury to the client.

16 (f)(3) Reprimand is generally appropriate when a lawyer negligently fails to provide a
17 client with accurate or complete information, and causes injury or potential injury to the
18 client.

19 (f)(4) Admonition is generally appropriate when a lawyer engages in an isolated instance
20 of negligence in failing to provide a client with accurate or complete information, and
21 causes little or no actual or potential injury to the client.

Rule 11-{____}. Sanctions for violating duties owed to the public.

(a) Failing to maintain personal integrity. The following sanctions are generally appropriate when a lawyer commits a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, or in cases with conduct involving dishonesty, fraud, deceit, or misrepresentation.

(a)(1) **Delicensure** is generally appropriate when:

(a)(1)(A) a lawyer engages in serious criminal conduct, a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution, or importation of controlled substances; or the intentional killing of another; or an attempt, conspiracy, or solicitation of another to commit any of these offenses; or

(a)(1)(B) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

(a)(2) Suspension is generally appropriate when a lawyer knowingly engages in criminal conduct which does not contain the elements listed in (a)(1) and that seriously adversely reflects on the lawyer's fitness to practice.

(a)(3) Reprimand is generally appropriate when a lawyer negligently engages in any other conduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer's fitness to practice law.

(a)(4) Admonition is generally appropriate when a lawyer engages in any other conduct that reflects adversely on the lawyer's fitness to practice law.

(b) Failing to maintain the public trust. The following sanctions are generally appropriate in cases involving public officials who engage in conduct that is prejudicial to the administration of justice or who state or imply an ability to influence improperly a government agency or official:

1 (b)(1) **Delicensure** is generally appropriate when a lawyer in an official or governmental
2 position knowingly misuses the position with the intent to obtain a significant benefit or
3 advantage for himself or another, or with the intent to cause serious or potentially serious
4 injury to a part or to the integrity of the legal process.

5 (b)(2) Suspension is generally appropriate when a lawyer in an official or governmental
6 position knowingly fails to follow proper procedures or rules, and causes injury or
7 potential injury to a party or to the integrity of the legal process.

8 (b)(3) Reprimand is generally appropriate when a lawyer in an official or governmental
9 position negligently fails to follow proper procedures or rules, and causes injury or
10 potential injury to a party or to the integrity of the legal process.

11 (b)(4) Admonition is generally appropriate when a lawyer in an official or governmental
12 position engages in an isolated instance of negligence in not following proper procedures
13 or rules, and causes little or no actual or potential injury to a party or to the integrity of
14 the legal process.

Rule 11-{____}. Sanctions for violating duties owed to the legal system.

(a) False statements, fraud, and misrepresentation. The following sanctions are generally appropriate when a lawyer's conduct is prejudicial to the administration of justice or involves dishonesty, fraud, deceit, or misrepresentation to a court:

(a)(1) **Delicensure** is generally appropriate when a lawyer, with the intent to deceive the court, makes a false statement, submits a false document, or improperly withholds material information, and causes serious or potentially serious injury to a party, or causes a significant or potentially significant adverse effect on the legal proceeding.

(a)(2) Suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.

(a)(3) Reprimand is generally appropriate when a lawyer is negligent either in determining whether statements or documents are false or in taking remedial action when material information is being withheld and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.

(a)(4) Admonition is generally appropriate when a lawyer engages in an isolated instance of neglect in determining whether submitted statements or documents are false or in failing to disclose material information upon learning of its falsity, and causes little or no actual or potential injury to a party, or causes little or no adverse or potentially adverse effect on the legal proceeding.

(b) Abuse of the legal process. The following sanctions are generally appropriate when a lawyer fails to expedite litigation or bring a meritorious claim, or fails to obey any obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists:

(b)(1) **Delicensure** is generally appropriate when a lawyer knowingly violates a court order or rule with the intent to obtain a benefit for the lawyer or another, and causes serious injury or potentially serious injury to a party or causes serious or potentially serious interference with a legal proceeding.

(b)(2) Suspension is generally appropriate when a lawyer knows that the lawyer is violating a court order or rule, and causes injury or potential injury to a client or a party, or causes interference or potential interference with a legal proceeding.

(b)(3) Reprimand is generally appropriate when a lawyer negligently falls to comply with a court order or rule, and causes injury or potential injury to a client or other party, or causes interference or potential interference with a legal proceeding.

(b)(4) Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in complying with a court order or rule, and causes little or no actual or potential injury to a party, or causes little or no actual or potential interference with a legal proceeding.

(c) **Improper communications with individuals in the legal system.** The following sanctions are generally appropriate when a lawyer attempts to influence a judge, juror, prospective juror, or other official by means prohibited by law:

(c)(1) **Delicensure** is generally appropriate when a lawyer:

(c)(1)(A) intentionally tampers with a witness and causes serious or potentially serious injury to a party, or causes significant or potentially significant interference with the outcome of the legal proceeding;

(c)(1)(B) makes an ex parte communication with a judge or juror with intent to affect the outcome of the proceeding, and causes serious or potentially serious injury to a party, or causes significant or potentially significant interference with the outcome of the legal proceeding; or

(c)(1)(C) improperly communicates with someone in the legal system other than a witness, judge, or juror with the intent to influence or affect the outcome of the

1 proceeding, and causes significant or potentially significant interference with the
2 outcome of the legal proceeding.

3 (c)(2) Suspension is generally appropriate when a lawyer engages in communication with
4 an individual in the legal system when the lawyer knows that such communication is
5 improper, and causes injury or potential injury to a party or causes interference or
6 potential interference with the outcome of the legal proceeding.

7 (c)(3) Reprimand is generally appropriate when a lawyer is negligent in determining
8 whether it is proper to engage in communication with an individual in the legal system,
9 and causes injury or potential injury to a party or interference or potential interference
10 with the outcome of the legal proceeding.

11 (c)(4) Admonition is generally appropriate when a lawyer engages in an isolated instance
12 of negligence in improperly communicating with an individual in the legal system, and
13 causes little or no: (A) actual or potential injury to a party, or (B) actual or potential
14 interference with the outcome of the legal proceeding.

Rule 11-{____}. Sanctions for violating duties owed as a professional.

The following sanctions are generally appropriate in cases involving false or misleading communication about the lawyer or the lawyer's services, including improper communication of fields of practice, improper solicitation of professional employment from a prospective client, unreasonable or improper fees, unauthorized practice of law, improper withdrawal from representation, or failure to report professional misconduct.

(a) **Delicensure** is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.

(b) Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

(c) Reprimand is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

(d) Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence that is a violation of a duty owed as a professional, and causes little or no actual or potential injury to a client, the public, or the legal system.

Rule 14-606. Prior discipline orders.

The following sanctions are generally appropriate in cases involving prior discipline.

(a) **Delicensure** is generally appropriate when a lawyer:

(a)(1) intentionally or knowingly violates the terms of a prior disciplinary order and such violation causes injury or potential injury to a client, the public, the legal system, or the profession; or

(a)(2) has been suspended for the same or similar misconduct, and intentionally or knowingly engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.

(b) Suspension is generally appropriate when a lawyer has been reprimanded for the same or similar misconduct and engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.

(c) Reprimand is generally appropriate when a lawyer:

(c)(1) negligently violates the terms of a prior disciplinary order and such violation causes injury or potential injury to a client, the public, the legal system, or the profession; or

(c)(2) has received an admonition for the same or similar misconduct and engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.

(d) An admonition is generally not an appropriate sanction when a lawyer violates the terms of a prior disciplinary order or when a lawyer has engaged in the same or similar misconduct in the past.

Rule 14-607. Aggravation and mitigation.

(a) **Application.** After the presumptive discipline has been established, aggravating and mitigating circumstances may be considered and weighed in determining whether departure from the presumptive discipline is warranted.

(b) **Aggravating circumstances.** Aggravating circumstances are any considerations or factors that may justify an increase in the degree of discipline to be imposed. Aggravating circumstances may include:

(b)(1) prior record of discipline;

(b)(2) dishonest or selfish motive;

(b)(3) a pattern of misconduct;

(b)(4) multiple offenses;

(b)(5) obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary authority;

(b)(6) submission of false evidence, false statements, or other deceptive practices during the disciplinary process;

(b)(7) refusal to acknowledge the wrongful nature of the misconduct involved, either to the client or to the disciplinary authority;

(b)(8) vulnerability of victim;

(b)(9) substantial experience in the practice of law;

(b)(10) lack of good faith effort to make restitution or to rectify the consequences of the misconduct involved; and

(b)(11) illegal conduct, including the use of controlled substances.

(c) **Mitigating circumstances.** Mitigating circumstances are any considerations or factors that may justify a reduction in the degree of discipline to be imposed. Mitigating circumstances may include:

- 1 (c)(1) absence of a prior record of discipline;
- 2 (c)(2) absence of a dishonest or selfish motive;
- 3 (c)(3) personal or emotional problems;
- 4 (c)(4) timely good faith effort to make restitution or to rectify the consequences of the
- 5 misconduct involved;
- 6 (c)(5) full and free disclosure to the client or the disciplinary authority prior to the
- 7 discovery of any misconduct or cooperative attitude toward proceedings;
- 8 (c)(6) inexperience in the practice of law;
- 9 (c)(7) good character or reputation;
- 10 (c)(8) physical disability;
- 11 (c)(9) mental disability or impairment, including substance abuse when:
 - 12 (bc)(9)(A) the respondent is affected by a substance abuse or mental disability;
 - 13 and
 - 14 (c)(9)(B) the substance abuse or mental disability causally contributed to the
 - 15 misconduct; and
 - 16 (c)(9)(C) the respondent's recovery from the substance abuse or mental disability
 - 17 is demonstrated by a meaningful and sustained period of successful rehabilitation;
 - 18 and
 - 19 (c)(9)(D) the recovery arrested the misconduct and the recurrence of that
 - 20 misconduct is unlikely;
- 21 (c)(10) unreasonable delay in disciplinary proceedings, provided that the respondent did
- 22 not substantially contribute to the delay and provided further that the respondent has
- 23 demonstrated prejudice resulting from the delay;
- 24 (c)(11) interim reform in circumstances not involving mental disability or impairment;
- 25 (c)(12) imposition of other penalties or sanctions;

(c)(13) remorse; and

(c)(14) remoteness of prior offenses.

(d) **Other circumstances.** The following circumstances may not be considered as either aggravating or mitigating:

(d)(1) forced or compelled restitution,

(d)(2) withdrawal of complaint against the lawyer,

(d)(3) resignation prior to completion of disciplinary proceedings,

(d)(4) complainant's recommendation as to sanction, and

(d)(5) failure of injured client to complain.

Reinstatement.

Rule 14-524. Reinstatement following a suspension or probation of no more than six months.

A respondent who has been suspended or placed on probation for no more than six months pursuant to disciplinary proceedings will be reinstated at the end of the suspension or probation period upon filing with the district court and serving on the OPC an affidavit stating that the respondent has fully complied with the requirements of the suspension or probation order and that the respondent has fully reimbursed the Bar's Lawyers' Fund for Client Protection or Licensed Paralegal Practitioners' Fund for Client Protection for any amounts paid on account of the respondent's conduct. Within 14 days, the OPC may file an objection and the district court will hold a hearing.

Rule 14-525. Reinstatement following a suspension of more than six months; relicensure.

(a) **Generally.** A respondent suspended for more than six months or a **delicensed** respondent may be reinstated or relicensed only upon the district court's order. No respondent may petition for reinstatement until three months before the period for suspension has expired. No respondent may petition for **reinstatement until five years after the effective date of delicensure.** A respondent who has been placed on interim suspension and is then **delicensed** for the same misconduct that was the ground for the interim suspension may petition for **reinstatement or relicensure** at the expiration of five years from the effective date of the interim suspension.

(b) **Petition.** A petition for reinstatement or **relicensure** must be verified, filed with the district court, and must specify with particularity the manner in which the respondent meets each of the criteria specified in paragraph (e) or, if not, why there is otherwise good and sufficient reason for reinstatement or **relicensure**. With specific reference to paragraph (e)(4), before filing a petition for reinstatement or **relicensure**, the respondent must receive a report and recommendation from the Bar's Character and Fitness Committee. In addition to receiving the report and recommendation from the Character and Fitness Committee, the respondent must satisfy all other requirements as set forth in Chapter 14, Article 7. Before or as part of the respondent's petition, the respondent may request to modify or abate conditions of discipline, reinstatement or **relicensure**.

(c) **Serving the petition.** The respondent must serve the OPC with a copy of the petition.

(d) **Publication of notice of petition.** When a respondent files a petition **for reinstatement or relicensure**, the OPC must:

(d)(1) publish a notice of the petition in the Utah Bar Journal, which:

(d)(1)(A) informs Bar members of the application for **reinstatement or relicensure**,
and

(d)(1)(B) requests that any individuals file notice of their opposition or
concurrence with the district court within 28 days of the date of publication; and

(d)(2) send a notice to the complainant's last known address according to OPC records, to each complainant in the disciplinary proceeding that led to the respondent's suspension or **delicensure** informing such complainant that:

(d)(2)(A) the respondent is applying for reinstatement or relicensure, and

(d)(2)(B) the complainant has 28 days from the mailing date to object to or support the respondent's petition.

(e) Criteria for reinstatement and relicensure. A respondent may be reinstated or relicensed only if the respondent meets each of the following criteria, or, if not, presents good and sufficient reason why the respondent should nevertheless be reinstated or relicensed.

(e)(1) The respondent has fully complied with the terms and conditions of all prior disciplinary orders except to the extent they are abated by the district court.

(e)(2) The respondent has not engaged nor attempted to engage in the unauthorized practice of law during the period of suspension or **delicensure**.

(e)(3) If the respondent was suffering from a physical or mental disability or impairment which was a causative factor of the respondent's misconduct, including substance abuse, the disability or impairment has been removed. Where substance abuse was a causative factor in the respondent's misconduct, the respondent may not be reinstated or relicensed unless the respondent:

(e)(3)(A) has recovered from the substance abuse as demonstrated by a meaningful and sustained period of successful rehabilitation;

(e)(3)(B) has abstained from the use of the abused substance and the unlawful use of controlled substances for the preceding six months; and

(e)(3)(C) is likely to continue to abstain from the substance abused and the unlawful use of controlled substances.

(e)(4) Notwithstanding the conduct for which the respondent was disciplined, the respondent has the requisite honesty, integrity, and fitness to practice law. In relicensure cases, the respondent must appear before the Bar's Character and Fitness Committee and

1 cooperate in its investigation of the respondent. A copy of the Character and Fitness
2 Committee's report and recommendation will be provided to the OPC and forwarded to
3 the district court assigned to the petition after the respondent files a petition.

4 (e)(4)(A) Factors considered in determining honesty, integrity, and fitness for
5 reinstatement. The court may use the following factors to decide whether the
6 lawyer seeking reinstatement possesses the requisite honesty, integrity, and fitness
7 to practice law:

8 (e)(4)(A)(i) lack of candor in the reinstatement process;

9 (e)(4)(A)(ii) unlawful conduct while suspended;

10 (e)(4)(A)(iii) false or misleading statements or omissions during
11 suspension or the reinstatement process;

12 (e)(4)(A)(iv) acts involving dishonesty, fraud, deceit, or misrepresentation
13 while suspended;

14 (e)(4)(A)(v) abuse of the legal process;

15 (e)(4)(A)(vi) neglecting financial responsibilities while suspended;

16 (e)(4)(A)(vii) violating court order while suspended;

17 (e)(4)(A)(viii) evidence of mental or emotional instability; and

18 (e)(4)(A)(ix) evidence of drug or alcohol dependency while suspended;

19 (e)(4)(B) Assigning weight and significance to conduct. In determining honesty,
20 integrity, and fitness to practice law, the court may use the following factors to
21 assign weight and significance to prior conduct:

22 (e)(4)(B)(i) how recent the conduct occurred,

23 (e)(4)(B)(ii) seriousness of the conduct,

24 (e)(4)(B)(iii) cumulative effect of the conduct,

25 (e)(4)(B)(iv) evidence of rehabilitation,

(e)(4)(B)(v) positive social contributions while suspended.

(e)(5) The respondent has kept informed about recent developments in the law by engaging in legal education and is competent to practice.

(e)(6) In cases of suspensions for one year or more, respondent lawyers will be required to pass the Multistate Professional Responsibility Examination, and respondent licensed paralegal practitioners must pass the Licensed Paralegal Practitioner Professional Responsibility Exam.

(e)(7) In all cases of **delicensure**, respondent lawyers will be required to pass the student applicant Bar Examination and the Multistate Professional Responsibility Examination, and respondent licensed paralegal practitioners must pass the student applicant Licensed Paralegal Practitioner Licensing Exam.

(e)(8) The respondent has fully reimbursed the Bar's Lawyers' Fund for Client Protection or Licensed Paralegal Practitioners' Fund for Client Protection for any amounts paid on account of the respondent's conduct.

(f) Review of petition. Within 60 days of receiving a respondent's petition for **reinstatement or relicensure**, the OPC must either:

(f)(1) advise the respondent and district court that the OPC will not object to the respondent's reinstatement or relicensure; or

(f)(2) object in writing to the petition.

(g) Hearing; report. If the OPC objects, the district court, as soon as reasonably practicable and within a target date of 90 days of the filing of the petition, will conduct a hearing at which the respondent will have the burden of demonstrating by a preponderance of the evidence that the respondent has met each of the criteria in paragraph (e) or, if not, that there is good and sufficient reason why the respondent should nevertheless be **reinstated or relicensed**. The district court will enter its findings and order. If the OPC does not object, the district court will review the petition without a hearing and enter its findings and order.

1 (h) **Successive petitions.** Unless the district court orders otherwise, no respondent may apply for
2 reinstatement or relicensure within one year following an adverse judgment upon a petition for
3 reinstatement or relicensure.

4 (i) **Conditions of reinstatement or relicensure.** The district court may impose conditions on a
5 respondent's reinstatement or relicensure if the respondent has met the burden of proof justifying
6 reinstatement or relicensure, but the district court reasonably believes that further precautions
7 should be taken to ensure that the public will be protected when the respondent returns to
8 practice.

9 (j) **Reciprocal reinstatement or relicensure.** If a respondent has been suspended or **delicensed**
10 solely because of discipline imposed by another court, another jurisdiction, or a regulatory body
11 having disciplinary jurisdiction, and if the respondent is later reinstated or **relicensed** by that
12 court, jurisdiction or regulatory body, the respondent may petition for reciprocal reinstatement or
13 relicensure in Utah. The respondent must file with the district court and serve the OPC with a
14 petition for reciprocal reinstatement or relicensure. The petition must include a certified or
15 otherwise authenticated copy of the order of reinstatement or relicensure from the other court,
16 jurisdiction, or regulatory body. Within 21 days of receiving the petition, the OPC may object
17 based solely on substantial procedural irregularities. If the OPC objects, the district court will
18 hold a hearing and enter its findings and order. If no objection is filed, the district court will enter
19 its order based on the petition.

20

Article 7. Admissions

Rule 14-701. Definitions.

As used in this article:

(a) “**ABA**” means the American Bar Association.

(b) “**Active Practice**” means work performed by an attorney holding an “active” status law license and having professional experience and responsibilities involving the Full-time Practice of Law as defined in paragraphs (t) and (ff). The Active Practice of law includes any of the following activities provided that such employment is available only to licensed attorneys and the activities are performed in the jurisdiction in which the Applicant is admitted:

(b)(1) sole practitioner, or partner, shareholder, associate, or of counsel in a law firm;

(b)(2) an organization’s employee whose principal responsibility is to provide legal advice or service;

(b)(3) government employee whose principal duties are to provide legal advice or service;

(b)(4) service in the United States armed forces as a lawyer or judge;

(b)(5) judge of a court of general or appellate jurisdiction provided that such employment requires admission to the bar for the appointment thereto and for the performance of the duties thereof;

(b)(6) law clerk to a judge of a court of general or appellate jurisdiction; or

(b)(7) teaching full-time at an Approved Law School; and

(b)(8) the Active Practice of law does not include work that, as undertaken, constitutes the unauthorized practice of law in the jurisdiction in which it was performed or in the jurisdiction in which the clients receiving the unauthorized services were located, nor does it include work completed in advance of any bar admission.

(c) “**Admissions Committee**” means those Utah State Bar members or others appointed by the Board or president of the Bar who are charged with recommending standards and procedures for

1 admission to the Bar and with implementation of this article. The Admissions Committee is
2 responsible for supervising the work of the Bar Examiner Committee, the Test Accommodations
3 Committee, and the Character and Fitness Committee, handling requests for review as provided
4 herein and performing other work relating to Applicant admissions.

5 (d) “**Applicant**” means each person requesting admission to the Bar. For purposes of this article,
6 an Applicant is classified as a Student Applicant, a Foreign Law School Applicant, an Attorney
7 Applicant, a Motion Applicant, a Disbarred Attorney Applicant, a Foreign Legal Consultant
8 Applicant, a House Counsel Applicant, a Formerly-Admitted Applicant, a Military Lawyer
9 Applicant, or a Military Spouse Attorney Applicant.

10 (e) “**Approved Law School**” means a law school which is fully or provisionally approved by the
11 ABA pursuant to its Standards and Rules of Procedure for Approval of Law Schools. To qualify
12 as approved, the law school must have been fully or provisionally approved at the time of the
13 Applicant’s graduation, or at the time of the Applicant’s enrollment, provided the Applicant
14 graduated within a typical and reasonable time.

15 (f) “**Attorney Applicant**” means any person who satisfies the requirements of Rule 14-704.

16 (g) “**Bar**” means the Utah State Bar, including its employees, committees and the Board.

17 (h) “**Bar Examination**” means the Bar Examination as defined in Rules 14-710 and 14-711.

18 (i) “**Bar Examiner Committee**” means those Bar members or others appointed by the Board or
19 president of the Bar who are charged with grading the Bar Examination.

20 (j) “**Board**” means the Board of Bar Commissioners.

21 (k) “**Character and Fitness Committee**” means those Bar members or others appointed by the
22 Board or president of the Bar who are charged with assessing the character and fitness of
23 Applicants and making determinations thereon.

24 (l) “**Complete Application**” means an application that includes all fees and necessary
25 application forms, along with any required supporting documentation, character references, a
26 criminal background check, a photo, an official certificate of law school graduation and if

1 applicable, a test accommodation request with supporting medical documentation, a certificate of
2 admission and/or good standing, and a certificate of discipline.

3 (m) “**Confidential Information**” is defined in Rule 14-720(a).

4 (n) “**Deputy General Counsel for Admissions**” or “**Deputy General Counsel**” are terms used
5 interchangeably to mean the Bar’s attorney in charge of admissions or designee.

6 (o) “**Disbarred Attorney Applicant**” means a person who has previously been licensed to
7 practice law in Utah and who is no longer licensed to practice law because of disbarment or
8 resignation with discipline pending or their equivalent and who satisfies the requirements of Rule
9 14-708(g) and 14-717.

10 (p) “**Executive Director**” means the executive director of the Utah State Bar or designee.

11 (q) “**First Professional Degree**” means a degree that prepares the holder for admission to the
12 practice of law (e.g. juris doctorate) by emphasizing competency skills along with theory and
13 analysis. An advanced, focused, or honorary degree in law is not recognized as a First
14 Professional Degree (e.g. master of laws or doctor of laws).

15 (r) “**Foreign Law School**” means any school located outside of the United States and its
16 protectorates, that is accredited by that jurisdiction’s legal accreditation body, if one exists,
17 where principles of English Common Law form the predominant basis for that country’s system
18 of jurisprudence, and whose graduates are otherwise permitted by that jurisdiction’s highest
19 court to practice law.

20 (s) “**Foreign Legal Consultant Applicant**” means any Applicant who satisfies the requirements
21 of Rule 14-718.

22 (t) “**Formerly-Admitted Applicant**” means a person who has previously been licensed to
23 practice law in Utah who is no longer licensed to practice law because of resignation without
24 discipline pending or who failed to pay licensing fees for three or more years under Rule 14-
25 107(b)(4), and who satisfies the requirements of Rule 14-717.

26 (u) “**Full-time Practice**” means the Active and lawful Practice of Law for no fewer than 80
27 hours per month. Time spent on administrative or managerial duties, continuing legal education,

or client development and marketing does not qualify as part of the required 80 hours of legal work.

(v) “**General Counsel**” means the General Counsel of the Utah State Bar or designee.

(w) “**House Counsel Applicant**” means any Applicant who satisfies the requirements of Rule 14-719.

(x) “**House Counsel**” means a person granted a license under Rule 14-719.

(y) “**Inactive**” means an attorney’s law license is held in “inactive status” or an equivalent term.

(z) “**MBE**” means the Multistate Bar Examination.

(aa) “**MEE**” means the Multistate Essay Examination prepared by the NCBE.

(bb) “**Military Lawyer Applicant**” means any Applicant who satisfies Rule 14-804;

(cc) “**Military Spouse Attorney Applicant**” means any Applicant who satisfies Rule 14-805.

(dd) “**Motion Applicant**” means any person who satisfies the requirements of Rule 14-705.

(ee) “**MPRE**” means the Multistate Professional Responsibility Examination prepared by the NCBE.

(ff) “**MPT**” means the Multistate Performance Test prepared by the NCBE.

(gg) “**NCBE**” means the National Conference of Bar Examiners, an organization that develops, maintains, and applies reasonable and uniform standards of bar examination education and testing.

(hh) “**OPC**” means the Office of Professional Conduct.

(ii) “**Person**” includes the plural as well as the singular and legal entities as well as natural persons.

(jj) “**Practice of Law**” means employment available only to licensed attorneys where the primary duty of the position is to represent the interests of another person by informing, counseling, advising, assisting, advocating for or drafting documents for that person through

1 application of the law and associated legal principles to that person's facts and circumstances.

2 ""The Practice of Law constitutes more than merely working with legally-related matters.

3 (kk) "**Privileged Information**" in this article includes: information subject to the attorney-client
4 privilege, attorney work product, test materials and applications of examinees. correspondence
5 and written decisions of the Board, Admissions Committee, Bar Examiner Committee, Character
6 and Fitness Committee, and Test Accommodations Committee; and the identity of individuals
7 participating in the drafting, reviewing, grading and scoring of the Bar Examination.

8 (ll) "**Reapplication for Admission**" means that for two years after the filing of an original
9 application, an Applicant may reapply by completing a Reapplication for Admission form
10 updating any information that has changed since the prior application was filed and submitting a
11 new criminal background check.

12 (mm) "**Student Applicant**" means any person who satisfies the requirements of Rule 14-703(a)
13 who has never been admitted as an attorney in any jurisdiction.

14 (nn) "**Supreme Court**" means the Utah Supreme Court.

15 (oo) "**Test Accommodations Committee**" means those Bar members or others appointed by the
16 Board or president of the Bar who are charged with the review of requests from Applicants
17 seeking to take the Bar Examination with test accommodations and who make determinations
18 thereon.

19 (pp) "**Unapproved Law School**" means a law school that is not fully or provisionally approved
20 by the ABA. For an Unapproved Law School's graduates to be eligible for admission, the law
21 school must be accredited in the jurisdiction where it exists, provide legal education that is the
22 substantial equivalent of the legal education provided by an Approved Law School, and not be
23 based on correspondence or internet study.

24 (qq) "**UBE**" means the Uniform Bar Examination as prepared by the NCBE.

25 (rr) "**Updated Application**" means that an Applicant is required to amend and update their
26 application on an ongoing basis and correct any information that has changed since the
27 application was filed.

- 1 (ss) “**Written Component**” means that part of the Bar Examination that consists of MEE and
- 2 MPT questions.

Rule 14-705. Admission by Motion.

(a) **Reciprocal admission.** An Applicant is eligible to be admitted by motion if the Applicant meets all the requirements of this rule. Admission by Motion is not a right; the burden of proof is on the Applicant to establish by clear and convincing evidence that the Applicant:

(a)(1) has paid the prescribed nonrefundable fee and filed the required Complete Application as a Motion Applicant;

(a)(2) is at least 21 years old;

(a)(3) has been admitted by bar examination to practice law before the highest court of a U.S. state, territory or the District of Columbia;

(a)(4) holds a First Professional Degree in law from an Approved Law School;

(a)(5) has successfully passed the MPRE;

(a)(6) has demonstrated that the U.S. state, territory or the District of Columbia that licenses the Applicant reciprocally allows the admission of licensed Utah lawyers under terms and conditions similar to those set forth in this rule;

(a)(7) has been Actively licensed and lawfully engaged in the Full-time Practice of Law as defined in Rule 14-701 in the reciprocal jurisdiction(s) where licensed for 60 of the 84 months immediately preceding the date application for admission is filed. For admission purposes, any time practicing at an office located in Utah will not be counted as time practicing in a reciprocal jurisdiction;

(a)(8) is a member in good standing in all jurisdictions where currently admitted;

(a)(9) has a proven record of ethical, civil, and professional behavior and has never been disbarred or resigned with discipline pending, or their equivalent, in any jurisdiction and is not currently subject to lawyer discipline or the subject of a pending disciplinary matter; and

(a)(10) is of good moral character and satisfies the requirements of Rule 14-708;

1 (b) **Application form and content.** The Board may require additional proof of any facts stated
2 in the application. If the Applicant fails or refuses to furnish any information or proof, or to
3 answer any Board inquiry pertinent to the pending application, the Board may deny the
4 application without hearing.

5 (c) **Timing of application and admission.** An application may be filed at any time but the
6 Applicant must be able to demonstrate that the Applicant satisfies the requirements of this rule as
7 of the date the application is filed. Processing of the application and the character and fitness
8 investigation require a minimum of four months to complete.

9 (c)(1) An Applicant not eligible for admission pursuant to this rule may qualify for
10 admission as an Attorney Applicant pursuant to Rule 14-704.

11 (c)(2) Upon approval the Applicant must comply with Rule 14-716 concerning licensing
12 and enrollment fees.

13 (d) **Practice pending admission.** Only persons who are active, licensed Bar members in good
14 standing may engage in the practice of law in Utah. However, a Motion Applicant with a
15 pending Bar application may be eligible to practice for a limited period on satisfying Rule 14-
16 809 and receiving a Practice Pending Admission Certificate.

Rule 14-712. Qualifications for admission based on UBE.

(a) **Application and admission timing.** An application may be filed at any time. Processing the application and character and fitness investigation require a minimum of four months to complete.

(b) **UBE score transferability.** An Applicant who has taken and completed the UBE in a single administration in a jurisdiction other than Utah may transfer the UBE score by filing an application, provided:

(b)(1) the Applicant meets all the requirements of Rule 14-703 or Rule 14-704;

(b)(2) the Applicant has not been denied by any jurisdiction on character and fitness grounds;

(b)(3) the UBE score is 270 or above; and

(b)(4) the Bar receives the Applicant's UBE score no later than nine months after filing the application. To transfer a UBE score, an Applicant must send a written transfer request, along with the prescribed fee, to the NCBE.

(c) **Time limits on transferability.** Transferring the UBE score is subject to the following time limits:

(c)(1) the UBE score is transferable for all Applicants only if the application is filed within 36 months of the UBE's administration in which the passing score was earned; or

(c)(2) the UBE may be transferable for up to five years from the administration of the UBE in which the passing score was earned if the Attorney Applicant can prove by clear and convincing evidence they have been admitted to a U.S. state, territory, or the District of Columbia and have been Actively engaged in the Full-time Practice of Law as defined in Rule 14-701(b), (t) and (ff) for at least one-half of the time since the score was earned.

Rule 14-718. Licensing of Foreign Legal Consultants.

(a) **Requirements of Foreign Legal Consultants.** The burden of proof is on the Applicant to establish by clear and convincing evidence that the Applicant:

(a)(1) is a member in good standing of a recognized legal profession in a foreign country, the members of which are admitted to practice as attorneys or counselors at law or the equivalent and are subject to effective regulation and discipline by a duly constituted professional body or a public authority; and

(a)(2) has paid the prescribed fee and filed a Complete Application as a Foreign Legal Consultant Applicant;

(a)(3) is of the good moral character and satisfies the requirements of Rule 14-708;

(a)(4) intends to practice as a legal consultant in this state and to maintain an office in this state for that purpose; and

(a)(5) has passed the MPRE.

(b) **Proof required.** An Applicant must file with the Bar's Admissions Office:

(b)(1) a certificate from the professional body or public authority in such foreign country having final jurisdiction over professional discipline, certifying as to the Applicant's admission to practice and the date, and the Applicant's good standing as such attorney or counselor at law or the equivalent;

(b)(2) a duly authenticated English translation of such certificate, if it is not in English; and

(b)(3) such other evidence as to the Applicant's educational and professional qualifications, good moral character and general fitness, and compliance with the requirements of this rule as the Bar may require.

(c) **Scope of practice.** A person licensed to practice as a Foreign Legal Consultant under this rule may render legal services in this state with respect to the law of the foreign county in which

such person is admitted to practice law. The Foreign Legal Consultant may not violate any provision of Rule 14-802 and may not:

(c)(1) appear for a person other than herself or himself as attorney in any court, or before any magistrate or other judicial officer, in Utah other than as permitted under Rule 14-802 or upon qualified admission pro hac vice pursuant to Rule 14-806; or

(c)(2) render professional legal advice on the law of this state or of the United States;

(c)(3) be, or in any way hold herself or himself out as a Bar member; or

(c)(4) carry on a practice under, or use in connection with such practice, any name, title or designation other than the following:

(c)(4)(A) the Foreign Legal Consultant's own name;

(c)(4)(B) the name of the law firm or other entity with which the Foreign Legal Consultant is affiliated, in each case only in conjunction with the title "Foreign Legal Consultant" as set forth below;

(c)(4)(C) the Foreign Legal Consultant's authorized title in the foreign country in which the Foreign Legal Consultant is admitted to practice, in each case only in conjunction with the title "Foreign Legal Consultant" as set forth below; and

(c)(4)(D) the title "Foreign Legal Consultant," which must be used in conjunction with the words "admitted to the practice of law only in [name of the foreign country in which the Foreign Legal Consultant is admitted to practice]."

(d) **Rights and obligations.** A person licensed as a Foreign Legal Consultant will be considered a lawyer affiliated with the Bar as permitted by this rule and will be entitled and subject to:

(d)(1) the rights and obligations set forth in the Utah Rules of Professional Conduct or arising from the other conditions and requirements that apply to a Bar member under rules adopted by the Supreme Court; and

(d)(2) attorney-client privilege, work-product privilege and similar professional privileges.

1 (e) **Subject to disciplinary proceedings.** A person licensed to practice as a Foreign Legal
2 Consultant is subject to professional discipline in the same manner and to the same extent as Bar
3 members and specifically is subject to discipline by the Supreme Court as delegated by rule and
4 is otherwise governed by Chapter 13, the Utah Rules of Professional Conduct; Chapter 14,
5 Article 5, Lawyer Discipline and Disability; Article 6, Standards for Imposing Lawyer Sanctions;
6 and other applicable Supreme Court rules.

7 (f) **Requirements for licensure.** Every person licensed to practice as a Foreign Legal Consultant
8 must:

9 (f)(1) attend the OPC ethics school before receiving a license to practice as a Foreign
10 Legal Consultant; and

11 (f)(2) execute and file with the Bar, in such form and manner as the Supreme Court may
12 prescribe:

13 (f)(2)(A) their understanding of, and commitment to observe, the Utah Rules of
14 Professional Conduct and other Supreme Court rules, and to the extent applicable
15 to the legal services authorized under paragraph (c) of this rule;

16 (f)(2)(B) written notice to the OPC of any change in the Foreign Legal
17 Consultant's membership status, good standing, or authorization to practice law in
18 any jurisdiction where licensed, including the commencement of all formal
19 disciplinary proceedings and of all final disciplinary actions taken in any other
20 jurisdiction.

21 (g) **License fees.** A person licensed as a Foreign Legal Consultant must pay annual license fees
22 equal to the fees paid by a Bar member on Active status.

23 (h) **Revocation of license.** If a licensed Foreign Legal Consultant no longer meets the
24 requirements for licensure set forth in paragraph (a) or (g), their license will be revoked
25 following the procedures set forth in Chapter 14, Article 5, Lawyer Discipline and Disability;
26 and Article 6, Standards for Imposing Lawyer Sanctions.

1 (i) **Admission to Bar.** If a licensed Foreign Legal Consultant is subsequently admitted as a Bar
2 member under Chapter 14, Article 7, Admission to the Utah State Bar, the license granted to
3 such person to practice law as a Bar member supersedes the Foreign Legal Consultant license.

4

Article 8. Special Practice Rules

Rule 14-801. Definitions.

As used in this article:

(a) “**Active status**” means a Bar licensing category as defined by Rule 14-203(a) and Rule 14-802, and the Bar’s rules, regulations and policies;

(b) “**Approved legal services organization**” means a Utah nonprofit legal services organization approved by the Bar as set forth herein. A legal services organization seeking approval must file a petition with the Bar, attaching copies of its Articles of Incorporation and Bylaws, if any, and certifying that it is a nonprofit organization, reciting with specificity:

(b)(1) the structure of the organization and whether it accepts funds from its clients;

(b)(2) the major sources of funds used by the organization;

(b)(3) the criteria used to determine potential clients’ eligibility for legal services performed by the organization;

(b)(4) the types of legal and nonlegal service the organization performs;

(b)(5) the names of all Bar members employed by the organization or who regularly perform legal work for the organization; and

(b)(6) the existence and extent of malpractice insurance that will cover the volunteer attorneys, with such documentation being updated on an annual basis;

(c) “**Attorney applicant**” means a lawyer applicant as defined by Rule 14-701;

(d) “**Bar**” means the Utah State Bar;

(e) “**CLE**” means MCLE accredited continuing legal education;

(f) “**Inactive status**” means a Bar licensing category as defined by Rule 14-203(a), Rule 14-802, and the Bar’s rules, regulations and policies;

(g) “**MCLE**” means Mandatory Continuing Legal Education as set forth in Rule 14-401 et seq.;

1 (h) “**Mentoring Completion Certification**” means the certification form in the NLTP appendix
2 of forms.

3 (i) “**NLTP**” means the Bar’s New Lawyer Training Program as set forth in Rule 14-808;

4 (j) “**OPC**” means the Office of Professional Conduct;

5 (k) “**Supervising attorney,**” except as used in Rule 14-807, means an active Bar member who
6 generally supervises a volunteer attorney. The supervising attorney must:

7 (k)(1) be employed by an approved legal services organization;

8 (k)(2) assume professional responsibility as contemplated by Rule 5.1 of the Utah Rules
9 of Professional Conduct for supervising the conduct of any litigation, administrative
10 proceeding or other legal services in which the volunteer attorney participates providing,
11 however, that concurrent administrative or judicial appearance is at the discretion of the
12 supervising attorney;

13 (k)(3) assist the volunteer attorney’s legal service preparation to the extent that the
14 supervisory attorney considers it necessary; and

15 (k)(4) ensure along with the agency that the volunteer attorney has appropriate and
16 adequate training, knowledge and competency to perform the legal service permitted.

Rule 14-806. Admission pro hac vice.

(a) **Applicability.** An attorney who is not a Bar member but is admitted to practice law in another state or in any court of the United States or Territory or insular possession of the United States may apply to be admitted pro hac vice in accordance with this rule before appearing as counsel before any state or local court or administrative or governmental body in the State of Utah.

(b) **Application of rule.** This rule applies to:

(b)(1) All actions or proceedings pending before a court of Utah:

(b)(2) All actions or proceedings pending before an administrative or governmental body in this state, unless the rules of that body provide otherwise;

(b)(3) All arbitration or alternative dispute resolution procedures in this state that are court annexed, court ordered, or mandated by statute or administrative rule; and

(b)(4) All services incident to any of the proceedings in paragraphs (b)(1) through (b)(3), including, but not limited to, discovery and settlement negotiations.

(b)(5) This rule does not apply to arbitration or alternative dispute resolution procedures in which the parties engage voluntarily or by private agreement.

(c) **Permission to appear.** Nonresident counsel may be permitted to appear in a particular case or proceeding if the court or administrative or governmental body in which the matter is pending determines that admission pro hac vice will serve the interests of the parties and the efficient and just administration of the case. Resident counsel may be permitted only if they have received a Practice Pending Admission Certificate.

(d) **Admission is discretionary.** Admission pro hac vice under this rule is discretionary with the court or administrative or governmental body in which the application for admission is made. The court may revoke admission pro hac vice upon its own motion or the motion of a party if, after notice and a hearing, the court or administrative or governmental body determines that admission pro hac vice is inappropriate. Admission pro hac vice must be denied or, if granted,

1 revoked if the court or administrative of governmental body determines that the process is being
2 used to circumvent the normal requirements for attorneys to practice of law in Utah.

3 (e) **Eligibility.** Nonresident counsel who has been retained to represent a client in an action or
4 proceedings described in paragraph (b) may file a written application to appear as counsel in that
5 action or proceedings if the following conditions are met:

6 (e)(1) The lawyer is not a member of the Utah State Bar;

7 (e)(2) The lawyer is not a resident of Utah;

8 (e)(3) The lawyer is not regularly employed in Utah;

9 (e)(4) The lawyer is an active member licensed and in good standing in another state,
10 territory or insular possession of the United States; and

11 (e)(5) The lawyer associates with an active Utah State Bar member in good standing who
12 is a Utah resident and whose law office is in the Utah, hereinafter called “local counsel.”

13 (f) **Factors in determining admission and revocation.** In determining whether to enter or
14 revoke the order of admission pro hac vice, the court or administrative or governmental body
15 may consider any relevant information, including whether nonresident counsel:

16 (f)(1) is familiar with Utah rules of evidence and procedure, including applicable local
17 rules;

18 (f)(2) is available to opposing parties;

19 (f)(3) has particular familiarity with the legal affairs of the party relevant to the case;

20 (f)(4) complies with the rulings and orders of the court or administrative or governmental
21 body;

22 (f)(5) has caused delay or been disruptive; and

23 (f)(6) has been disciplined in any other jurisdiction within the prior five years.

24 (g) **Application Procedure.** The non-member attorney seeking admission pro hac vice must
25 complete under oath and submit to the Bar an application form available from the Utah State

1 Bar. The applicant must complete a separate application for each matter in which the applicant
2 wants to appear. The application must include the following:

3 (g)(1) identify the court or administrative or governmental body for which the applicant
4 wishes to appear, and the case number or other identifying information for the matter
5 in which the applicant wishes to appear;

6 (g)(2) the name of the party on whose behalf the applicant wishes to appear;

7 (g)(3) the name, number, court or administrative or governmental body of other cases
8 pending or closed within the prior five years for which the applicant appeared pro
9 hac vice;

10 (g)(4) a statement whether the applicant is currently suspended or disbarred from the
11 practice of law in any state, or whether the applicant has been disciplined within the
12 prior five years, or is the subject of any pending disciplinary proceedings in any state;

13 (g)(5) a statement that the applicant submits to the disciplinary authority and
14 procedures of the Utah State Bar, is familiar with the rules or procedure and evidence,
15 including applicable local rules, will be available for depositions, hearings, and
16 conferences, and will comply with the rulings and orders of the court;

17 (g)(6) the name, address, Bar identification number, telephone number, and e-
18 mail address of the member of the Utah State Bar to serve as local counsel;

19 (g)(7) an original certificate of good standing from the jurisdiction or jurisdictions in
20 which the applicant is admitted dated no more than 60 days prior to the date of
21 application; and

22 (g)(8) an application fee equal to the current dues paid by active members of the
23 Utah State Bar for the licensing year in which the application is filed. The fee must be
24 paid to the Utah State Bar.

25 (h) **Limited Exception to Original and Annual Fee.** The application fee and annual fee will be
26 waived for:

1 (h)(1) non-member attorneys providing legal services without compensation or an
2 expectation of compensation through a charitable, religious, civic, community,
3 governmental, or educational organization in a matter designed primarily to address the
4 needs of people of limited means. A non-member seeking a fee waiver to provide pro
5 bono representation shall include in the application a verification that all clients
6 represented in the action are of limited means and that no attorney fee shall be paid by
7 the client.

8 (h)(2) attorneys who are employees of and representing the United States of America
9 or any of its departments or agencies.

10 **(i) Acknowledgment of Supporting Documentation and Receipt of Filing**

11 **Fee.** Upon receiving a complete application and fee, the Bar shall issue an Acknowledgement
12 of Supporting Documentation and Receipt of Filing Fee (hereinafter “Acknowledgement”). In
13 making the Acknowledgement, the Bar may attach copies or comment on any submitted material
14 that may be appropriate for a tribunal to consider with an application for pro hac vice admission.

15 **(j) Filing with the Tribunal.** Once the Bar issues an Acknowledgement, local counsel must file
16 the original Acknowledgement along with the following documents: (1) an original motion for
17 admission pro hac vice; (2) a copy of the application and all supporting documents; (3) a copy of
18 the certificate of good standing; (4) an original proposed order; and (5) any submissions from the
19 Bar together with proof of service on all parties in accordance with the Utah Rules of Civil
20 Procedure or, to the extent they differ from the civil rules, the governing rules of the
21 administrative or governmental body.

22 **(k) Names and Appearances.** The name, bar number, and address of local counsel must appear
23 on all notices, orders, pleadings and other documents filed in the case or proceeding in which the
24 non-member attorney is appearing pursuant to this rule. Local counsel is required to
25 personally appear and participate in pre-trial conferences, hearings and other proceedings before
26 the court or the administrative or governmental body if the court or administrative or
27 governmental body, or agency deems such appearances or participation appropriate. Local
28 counsel shall accept joint responsibility with the non-member attorney to the client, opposing

1 counsel and parties and to the court or administrative or governmental body. Local counsel must
2 continue as the local counsel of record in the case unless another member of the Utah State Bar is
3 substituted as local counsel.

4 (l) **Appearances by non-member attorneys.** An applicant shall not appear in a proceeding
5 subject to this rule until the court or administrative or governmental body where the action is
6 pending enters an order granting the motion for pro hac vice.

7 (m) **Continuing Duty to Advise of Changes in Status.** Out-of-state counsel admitted pro hac
8 vice has a continuing duty during the period of such admission to promptly advise the Bar of a
9 disposition made of pending charges or the institution of any new disciplinary proceedings or
10 investigations. The Bar shall then advise any court or administrative or governmental body
11 where the attorney has been admitted pro hac of any such information. Out-of-state counsel shall
12 promptly advise the Bar if permission to appear pro hac vice pursuant to this rule is revoked by
13 any court or administrative or governmental body.

14 (n) **Annual Renewal.** On or before the anniversary date of the filing of the initial application
15 with the Bar, the local counsel must certify to the Bar that the non-resident attorney continues to
16 act as counsel in the cause or that the cause has been finally adjudicated. In the event
17 that non-member attorney shall remit to the Bar an annual fee equal to the current dues paid
18 by active members of the Utah State Bar for the licensing year in which the renewal is filed
19 within 28 days of the anniversary date.

20 (o) **Failure to Renew.** Any non-member attorney, who continues to appear pro hac vice in a
21 cause and fails to pay the renewal fee set forth in (n) of this rule, shall be suspended from
22 appearing in any proceeding subject to the rule after 28 days of the anniversary date. The
23 Executive Director of the Utah State Bar shall notify the non-member attorney and local counsel
24 of the suspension and shall file a certified copy of the notice with the court or administrative or
25 governmental body, or agency that approved the pro hac vice application. The non-member may
26 be reinstated upon payment of the fees set forth in paragraph (n) of this rule and a \$50 late
27 penalty. Upon payment of all accrued fees and late penalty, the Executive Director shall reinstate

1 the non-member attorney and shall certify reinstatement to the appropriate court or
2 administrative or governmental body.

3 (p) **Appellate Matters and Other Forms of Review.** Out-of-state counsel admitted in a lower
4 tribunal on a case or matter that is appealed must file a notice of appearance in the appellate
5 court or reviewing tribunal. A new application to the Bar is not required.

6 (q) **Applicable laws.** An attorney admitted pro hac vice shall comply with and is subject to Utah
7 statutes, rules of the Supreme Court, including the Rules of Professional Conduct and **Article**
8 **5, Lawyer Discipline and Disability**, the rules of the court in which the attorney appears, and the
9 rules of the Code of Judicial Administration.

10

Article 9. Lawyers' Fund for Client Protection

Rule 14-904. Funding.

(a) The Supreme Court will provide for funding by the lawyers licensed in this state in amounts adequate for the proper payment of claims and costs of administering the Fund subject to paragraph (c).

(b) All determinations regarding funding will be within the discretion of the Board, subject to the Supreme Court's approval.

(c) The Bar has authority to assess its members for purposes of maintaining the Fund at sufficient levels to pay eligible claims in accordance with these rules. The Committee must report annually to the Commission on a timely basis as to known prospective claims as well as total claims paid to date so that an appropriate assessment can be made for the upcoming fiscal year. After the assessment at the beginning of the fiscal year is determined, the Fund balance must be set in an amount of at least \$200,000. The Bar will then report to the Supreme Court as to known prospective claims as well as total claims paid to date after which the final assessment and fund balance will be set with the Court's approval.

(d) A lawyer's failure to pay any fee assessed under paragraph (c) is cause for administrative suspension from practice until payment is received.

(e) Any lawyer whose actions have caused payment of funds to a claimant from the Fund must reimburse the Fund for all monies paid out as a result of the lawyer's conduct with interest at legal rate, in addition to payment of the assessment for the procedural costs of processing the claim and reasonable attorney fees incurred by the Office of Professional Conduct or any other attorney or investigator engaged by the Committee to investigate and process the claim as a condition of continued practice.

(e)(1) In lawyer discipline cases for which the Fund pays an eligible claim, the lawyer's license to practice will be administratively suspended for non-payment until the lawyer has reimbursed the Fund.

Rule 14-912. Processing claims.

(a) Whenever it appears that a claim is not eligible for reimbursement pursuant to these rules, the claimant must be advised of the reasons why the claim may not be eligible for reimbursement, and that unless additional facts to support eligibility are submitted to the Committee, the claim file will be closed. The Fund chair may appoint themselves or any Committee member to determine the eligibility of claims.

(b) A certified copy of an order disciplining a lawyer for the same dishonest act or conduct alleged in the claim, or a final judgment imposing civil or criminal liability therefor, is evidence that a lawyer committed such dishonest act or conduct.

(c) The Office of Professional Conduct must be promptly notified of each and every claim.

(d) The lawyer alleged to have engaged in dishonest conduct must be provided a copy of the claim and given an opportunity to respond to the Committee in writing within 21 days of receiving the claim.

(e) The Committee may request that testimony be presented. The lawyer or lawyer's representative must be given an opportunity to be heard if they so request within 21 days of receiving a notice from the Committee that the Committee will process the claim.

(f) The Committee may make a finding of dishonest conduct for purposes of adjudicating a claim. Such a determination is not a finding of dishonest conduct for the purposes of professional discipline and further, represents only a recommendation to the Board. A claim may only be considered if the individual lawyer involved has been disciplined to a threshold level of a public reprimand or is no longer in practice.

(g) The claim will be determined on the basis of all available evidence, and notice must be given to the claimant and the lawyer of the final decision by the Board after a recommendation has been made by the Committee. The recommendation for approving or denying a claim requires the affirmative votes of a majority of the Committee members and a quorum of the voting Board members.

1 (h) Any proceeding on a claim will not be conducted according to technical rules relating to
2 evidence, procedure, and witnesses. Any relevant evidence must be admitted if it is the sort of
3 evidence on which responsible persons are accustomed to rely in the conduct of serious affairs,
4 regardless of any common law or statutory rule that may make improper the admission of such
5 evidence over objection in court proceedings. The claimant has the duty to supply relevant
6 evidence to support the claim.

7 (i) The Board must determine the order and manner of payment and pay those claims it deems
8 meritorious. Unless the Board directs otherwise, no claim will be approved during a pending
9 disciplinary proceeding involving the same act or conduct as alleged in the claim. No
10 determination or hearing will take place until all disciplinary proceedings are complete.

11 (j) The Board must advise both the claimant and the lawyer of the status of the Board's
12 consideration of the claim and after having received the recommendation of the Committee, must
13 also be informed of the final determination.

14 (k) The claimant may request reconsideration within 28 days of the denial or determination of
15 the amount of the claim.

16

Chapter 15. Rules Governing Licensed Paralegal Practitioners

Article 4. Mandatory Continuing Licensed Paralegal Practitioner Education

Rule 15-402. Definitions.

As used in this article:

(a) Reserved.

(b) “**Accredited CLE**” means a CLE course that has been approved the Board in accordance with Rule 15-410.

(c) “**Active status**” or “**active status “licensed paralegal practitioner**” means a licensed paralegal practitioner who has elected to be on active status as defined under the Bar’s rules, regulations, and policies.

(d) “**Approved law school**” means an ABA approved law school as defined under Rule 14-701.

(e) “**Approved paralegal education program**” means a program offered by an accredited school as that term is defined in Rule 15-701.

(f) “**Bar**” means the Utah State Bar.

(g) Reserved.

(h) “**Board**” means the Utah State Board of Mandatory Continuing Legal Education as set forth in Rule 14-403.

(i) “**Board of Bar Commissioners**” means the governing board of the Bar.

(j) “**Certificate of Compliance**” means a written report evidencing a licensed paralegal practitioner’s completion of accredited CLE as required and defined under Rule 15-414.

(k) “**CLE**” means continuing legal education.

(k)(1) “**Live CLE**” means a CLE program presented in a classroom setting where the licensed paralegal practitioner is in the same room as the presenter.

(k)(2) “**Live Attendance**” means in person attendance at a Utah state courthouse where a course is streamed by live audio-visual communication from another Utah state courthouse or from the Law and Justice Center.

(k)(3) “**Self-Study CLE Program**” means a program presented in a suitable setting where the licensed paralegal practitioner can view approved self-study activities.

(l) Reserved.

(m) “**Compliance Cycle**” means the period of two years beginning July 1 through June 30.

(n) “**Ethics**” means standards set by the Utah Rules of Professional Conduct with which a licensed paralegal practitioner must comply to remain authorized to certify as a licensed paralegal practitioner in Utah and remain in good standing.

(o) Reserved.

(p) Reserved.

(q) “**Inactive status**” or “**inactive status licensed paralegal practitioner**” means a licensed paralegal practitioner who has elected to be on inactive status as defined under the Bar’s rules, regulations and policies.

(r) “**MCLE**” means mandatory continuing legal education as defined under this article.

(s) Reserved.

(t) “**New licensee**” means a licensed paralegal practitioner newly licensed by the Utah State Bar.

(u) Reserved.

(v) “**Presumptively approved sponsor**” means those CLE sponsors or providers who qualify under the standards set forth in Rule 15-412.

(w) “**Presumptive CLE accreditation**” means those CLE courses or activities that qualify under the standards set forth in Rule 15-412.

(x) “**Professionalism and Civility**” means conduct consistent with the tenets of the legal profession by which a licensed paralegal practitioner demonstrates civility, honesty, integrity,

1 character, fairness, competence, ethical conduct, public service, and respect for the rules of law,
2 the courts, clients, lawyers, other licensed paralegal practitioners, witnesses and unrepresented
3 parties.

4 (y) “**OPC**” means the Office of Professional Conduct.

5 (z) Reserved.

6 (aa) “**Supreme Court**” means the Utah Supreme Court.

7

15-701. Definitions.

As used in this article:

(a) “**ABA**” means the American Bar Association.

(b) “**Accredited Program**” means a course of instruction in paralegal studies from a program officially recognized as meeting the standards and requirements of a regional or national accrediting organization that is approved by the U.S. Department of Education, or a paralegal school or paralegal studies program that has been fully or provisionally approved by the ABA Standing Committee on Paralegals.

(c) “**Accredited School**” means a school officially recognized as meeting the standards and requirements of a regional or national accrediting organization that is approved by the U.S. Department of Education.

(d) “**Applicant**” means each person requesting licensure as a Licensed Paralegal Practitioner.

(e) “**Approved Law School**” means a law school which is fully or provisionally approved by the ABA pursuant to its Standards and Rules of Procedure for Approval of Law Schools. To qualify as approved, the law school must have been fully or provisionally approved at the time of the Applicant’s graduation, or at the time of the Applicant’s enrollment, provided the Applicant graduated within a typical and reasonable time.

(f) “**Associate Degree**” means an undergraduate academic degree conferred by a college upon completion of the curriculum required for an associate degree.

(g) “**Bachelor’s Degree**” means an academic degree conferred by a college or university upon completion of the undergraduate curriculum.

(h) “**Bar**” means the Utah State Bar, including its employees, committees and the Board.

(i) “**Board**” means the Board of Bar Commissioners.

(j) “**Complete Application**” means an application that includes all fees and necessary application forms, along with any required supporting documentation, character references, a

criminal background check, a photo, an official certificate of graduation and if applicable, a test accommodation request with supporting medical documentation.

(k) “**Confidential Information**” is defined in Rule 15-720(a).

(l) “**Disbarred Lawyer**” means an individual who was once a licensed lawyer and is no longer permitted to practice law.

(m) “**Executive Director**” means the executive director of the Utah State Bar or their designee.

(n) “**First Professional Degree**” means a degree that prepares the holder for admission to the practice of law (e.g. juris doctorate) by emphasizing competency skills along with theory and analysis. An advanced, focused, or honorary degree in law is not recognized as a First Professional Degree (e.g. master of laws or doctor of laws).

(o) “**Full-time**” means providing legal services as a paralegal for no fewer than 80 hours per month.

(p) “**General Counsel**” means the General Counsel of the Utah State Bar or their designee.

(q) “**Licensed Paralegal Practitioner**” means a person licensed by the Utah Supreme Court to provide limited legal representation in the areas of (1) temporary separation, divorce, parentage, cohabitant abuse, civil stalking, and custody and support; (2) forcible entry and detainer and unlawful detainer; or (3) debt collection matters in which the dollar amount in issue does not exceed the statutory limit for small claims cases.

(r) “**LPP**” means Licensed Paralegal Practitioner.

(s) “**LPP Administrator**” means the Bar employee in charge of LPP licensure or their designee.

(t) “**LPP Admissions Committee**” means those Utah State Bar members or others appointed by the Board or president of the Bar who are charged with recommending standards and procedures for licensure of LPPs, with implementation of this article, reviewing requests for test accommodations, and assessing the qualifications of applicants.

(u) “**NALA**” means the National Association of Legal Assistants.

(v) “**NALS**” means The Association for Legal Professionals.

(w) “**NFPA**” means the National Federation of Paralegal Associations.

(x) “**National Certification**” means Certified Paralegal (CP or CLA) credential from the National Association of Legal Assistants (NALA); the Professional Paralegal (PP) credential from the National Association of Legal Professionals (NALS); or the Registered Paralegal (RP) credential from the National Federation of Paralegal Associations (NFPA).

(y) “**OPC**” means the Office of Professional Conduct.

(z) “**Paralegal**” means a person qualified through education, training, or work experience, who is employed or retained by a lawyer, law office, governmental agency, or the entity in the capacity or function which involves the performance, under the ultimate direction and supervision of an attorney, of specifically delegated substantive legal work, which work, for the most part, requires a sufficient knowledge of legal concepts that absent such assistance, the attorney would perform.

(aa) “**Paralegal Certificate**” means verification that an individual has successfully completed a paralegal studies program from an Accredited Program that includes at least 15 credit hours of paralegal studies. The certificate must be offered, taught, and granted by an Accredited Program.

(bb) “**Paralegal Studies**” and “**Paralegal Studies Degree**” mean course work that prepares a holder to work as a paralegal.

(cc) “**Privileged Information**” in this article includes: information subject to the attorney-client privilege, attorney work product, test materials and applications of examinees; correspondence and written decisions of the Board and LPP Admissions Committee, and the identity of individuals participating in the drafting, reviewing, grading and scoring of the LPP Licensure Examination.

(dd) “**Reapplication for Licensure**” means that for two years after the filing of an original application, an Applicant may reapply by completing a Reapplication for Licensure form updating any information that has changed since the prior application was filed and submitting a new criminal background check.

(ee) “**Substantive Law-Related Experience**” means the provision of legal services as a Paralegal, paralegal student or law student including, but not limited to, drafting pleadings, legal

1 documents or correspondence, completing forms, preparing reports or charts, legal research, and
2 interviewing clients or witnesses. Substantive Law-Related Experience does not include routine
3 clerical or administrative duties. Substantive Law-Related Experience for licensure in landlord-
4 tenant and debt collection includes, but is not limited to, the provision of legal services as a
5 Paralegal supervised by a licensed attorney, paralegal student or law student in the areas of
6 bankruptcy, real estate, mortgage and/or banking law.

7 (ff) “**Supreme Court**” means the Utah Supreme Court.

8 (gg) “**Unapproved Law School**” means a law school that is not fully or provisionally approved
9 by the ABA.

10 (hh) “**Updated Application**” means that an Applicant is required to amend and update the
11 Applicant’s application on an ongoing basis and correct any information that has changed since
12 the application was filed.

13

Tab 6

OPC OVERSIGHT COMMITTEE PROGRESS REPORT

Summary of Recommendations

1. OPC GOVERNANCE, PUBLIC TRUST, AND CONFIDENCE

✓1.1 The Office of Professional Conduct's name should be changed to the Office of Legal Professional Conduct (OPC). The new name better describes the function of the office and is broad enough to include the new Licensed Paralegal Practitioner.

Status: Recommendation not accepted by the Supreme Court. Name to stay the same.

✓1.2 It is important for the public to understand that the OPC is not a part of the Utah State Bar (USB), and that the OPC is part of the Supreme Court's regulation of the practice of law. The OPC and the USB should take steps to help the public understand that OPC operates independently from the USB.

Status: Receptionist answers phone "Utah Law and Justice Center." Building signage has changed to Utah Law and Justice Center. Headings on daily room schedules say Utah Law and Justice Center. Signs that refer to Character and Fitness Screening Panels now refer to Supreme Court Screening Panels. Receptionist for OPC answers the phone "Office of Professional Conduct." Chrome lettering behind the reception desk has been replaced with "Utah Law and Justice Center." TV monitors behind the reception desk include more info about tenant schedules instead of exclusively bar activities and schedules. Outdoor banners have changed to say Utah Law and Justice Center.

Rule changes: 14-102(a)(2), (b)(4)-(5), (c); 14-103(b)(2); 14-105(a) and title; 14-202(d); 14-208(b); 14-402(x); 14-502(i); 14-502(i), (m); 14-504(a); 14-510(a)(1); 14-701(ee); 14-705(b)(1); 14-712(d)(2); 14-718(f)(1); 14-801(j); 14-904(e); 14-912(c).

✚1.3 OPC should create a website that is separate from the USB website, and the website should:

- ✚Include information about all components of the disciplinary process
 - **Status:** Some information but not all components of disciplinary process. Waiting for rule changes and then will update website to reflect new rules.
 - <https://www.opcutah.org/the-purpose-of-the-opc/>
- ✚Provide links to rules and uniform downloadable forms, including a complaint form in multiple languages
 - **Status:** English only currently, Committee would like a Spanish complaint form.
 - <https://www.opcutah.org/rules/>; <https://www.opcutah.org/file-a-request-for-assistance/>
- ✓Remove warning language to a complainant that is currently included on the website, that is inconsistent with OPC practice, and might discourage complaints
 - **Status:** Warning language regarding confidentiality does not exist on the website and has been removed from the initial letter the OPC sends to the complainant.

- ✓ Include the names of attorneys who have received a public disciplinary action within the past 10 years, and the status of the disciplinary actions
 - **Status:** <https://www.opcutah.org/attorney-public-discipline/> includes a searchable pdf of past bar journal notices of public discipline. **Any plans to update this?**

Status: OPC launched its own website on November 6, 2019, with the url OPCutah.org. See above in blue regarding outstanding individual requirements.

✓1.4 To increase public confidence in the disciplinary process, OPC should contact civic organizations, organizations that serve underrepresented populations in the state, and specialty bar associations, and offer to provide talks and information about the lawyer discipline process.

Status: This must be an ongoing effort. Judge Hagen and Keith Call authored an article for the State Bar Journal to inform attorneys about the reforms for the OPC and the discipline process. OPC spoke to the Inns of Court in October. The OPC speaks at various CLE events and the website has an easy to find request form for OPC speakers at CLE events.

✓1.5 OPC governance should be more transparent to the public and attorneys. An OPC Oversight Committee should be created with 5 voting members, including a judge, a member of the public (with an accounting background), the State Court Administrator or the administrator's designee, 2 attorneys (one of whom is a past chair or vice-chair of the Ethics and Discipline Committee), and the Executive Director of the Bar, as an ex-officio non-voting member. The oversight committee, independent of the USB, should be authorized to:

- Assist OPC and the USB with implementing the recommendations adopted by the Supreme Court
- Develop realistic performance metrics and conduct annual performance evaluations for OPC Chief Disciplinary Counsel
- Develop an annual budget for OPC and submit the annual budget to the Supreme Court and to the USB
- Conduct a needs assessment for OPC, setting forth a 3 to 5 year funding plan for the disciplinary process, including technology and staffing needs
- Annually, and in conjunction with OPC Chief Disciplinary Counsel and the Chair of the Ethics and Discipline Committee, report to the Court regarding the operations of the OPC and the general standing of disciplinary matters and procedures
- Develop formal policies for OPC such as records retention policies

Status: The Supreme Court adopted Rule 11-501, which created the OPC Oversight Committee, including its membership and duties. The Bar Executive Director is an ex-officio, non-voting member.

✓1.6 The oversight committee should not have authority to interfere with the prosecutorial independence of the OPC but should have access to confidential information as necessary to carry out its duties.

Status: See 11-501(2)(C): “Authority. The Committee does not have authority to interfere with the prosecutorial independence of the OPC, but is granted access to confidential information as necessary to carry out its duties.”

2. OPC STAFF AND BUDGET

✓2.1 The Supreme Court should appoint the OPC Chief Disciplinary Counsel.

Status: The oversight committee recommended and the Supreme Court appointed the Chief Disciplinary Counsel. See also proposed rule changes.

Rule changes: 14-502(m), 14-504(a)

✓2.2 OPC staff titles should be changed as follows – Chief Disciplinary Counsel, Deputy Chief Disciplinary Counsel, and Assistant Disciplinary Counsel.

Status: See Rule 11-501 and proposed rule changes. Note: no provision for a Deputy Chief Disciplinary Counsel, added to 14-502(e). All letterhead, name placards, etc. have been changed.

Rule changes: 14-502(e), (m).

✓2.3 OPC should be provided with funding to hire an investigator as part of the OPC staff and to hire forensic experts as needed.

Status: The OPC budget now includes funding for an investigator, who has been hired, and includes funding for a forensic expert to be used when needed.

✓2.4 OPC should create a policy and budget that requires more standardized training for staff, including training on substantive law, use of technology, behavioral health, and effective investigation techniques.

Status: The OPC budget includes funding for training and technology.

✓2.5 The USB should continue to fund the OPC budget without creating a separate, direct assessment to fund the disciplinary process.

Status: Done.

✓2.6 The USB should adopt the budget created by the Oversight Committee unless the USB petitions the Supreme Court for a different budget for the OPC, and the Supreme Court approves a different budget for the OPC, in which case, the USB should adopt the budget approved by the Supreme Court.

Status: 11-501(2)(b)(ii) provides that the Oversight Committee should submit the budget to the USB but does not include a provision for the USB to petition the Supreme Court for changes. See proposed revisions to Rule 14-207(b) for this recommendation.

Rule changes: 11-501(2)(b)(ii); 14-207(b).

✓**2.7** OPC Chief Disciplinary Counsel should evaluate OPC technology needs and take steps to update current equipment and software, and acquire needed IT staff.

Status: The State Bar's new Director of Technology and new Technology Administrator focus on the hardware, database, and software needs of OPC, including monthly meetings with OPC senior staff, and more direct daily attention with the software provider when problems occur. The budget includes additional hardware and software purchases as needed. The State Bar upgraded servers, which benefits OPC.

✓**2.8** OPC should create a budget to assist the Ethics and Discipline Committee with implementing enhanced training for Ethics and Discipline Committee Screening Panel volunteers.

Status: The OPC budget includes funding for Ethics and Discipline Committee training.

3. OPC RECORDS **START HERE @ NEXT COMMITTEE MEETING**

✚**3.1** OPC should continue the current practice of providing information about disciplinary actions by phone, or other means, for actions more than 10 years old. OPC should publish on its website, the names of attorneys who have been publicly disciplined in the last 10 years. The USB should continue to publish attorney licensure status on the USB website.

Status: OPC's website includes searchable disciplinary information from the Utah Bar Journal issues going back to 1988. Proposed revisions to Rule 14-516 shift responsibility from the Bar executive director to the OPC. **Should this recommendation be included in the rules?**

Rule changes: 14-516 Dissemination of disciplinary information shifts responsibility for notifying the public of discipline from the Bar executive director to the OPC.

✚**3.2** OPC should collect the following information from an attorney who is the subject of a disciplinary action: years of practice, county of practice, and practice area involved in the complaint. OPC should publish the following aggregate data as part of its annual report: years of practice for attorneys subject to disciplinary action, the number of attorneys in a particular county who were disciplined in the past year, and the number of attorneys in a particular practice area who were disciplined in the past year.

Status: This information was not included in the last annual report. **JustWare, the OPC's case management software, currently lists the number or years each attorney has been**

practicing. The other information suggested can be pulled from the Bar's licensing software, but funding will be needed for the programming to make this happen and also for the programming that will be required to enable the OPC to run a report to obtain the information.

✓**3.3** A Rule of Lawyer Discipline and Disability should be adopted to formalize the current record retention practices for OPC and OPC should find a more secure location in the Law and Justice Center to store discipline records.

Status: See proposed records retention rule.

4. COMPLAINT INTAKE PROCESS

✚**4.1** The complaint process should be more accessible to the public. OPC should modify its intake process as follows:

- OPC should develop an online complaint form available in multiple languages and should accept online submission of a complaint
- Notarization of a complaint should be discontinued, but a declaration, under penalty of perjury, should be required
- References in rules to formal and informal complaints should be replaced with "complaints"

Status: The OPC does not recall that it was decided the complaint form would be provided in multiple languages. Online form will be updated once rules are changed. See below for rule changes re notarization vs. declaration, and "complaint" for informal complaints and "action" for formal complaints.

Rule changes: Declaration instead of notarization: 14-502(f) 14-510(a)(2). Removal of references to "formal" and "informal" passim. Instead, using "action" for formal complaints and "complaint" for informal complaints.

✓**4.2** OPC should continue to conduct an informal screening /investigation stage of a complaint before deciding to refer a complaint to the screening panel, but OPC should discontinue using confusing terminology related to a complaint, such as "Requests for Assistance," "informal complaints," and "Notice of Informal Complaints" (NOIC). Rules that include the confusing terminology should be amended.

Status: See revisions throughout all of the rules.

Rule changes: NOIC: 14-502(h now g); 14-510(a)(5), (a)(6), (a)(7)(B), (b)(1), (b)(5). Requests for assistance: not in rules

✓**4.3** OPC should have the authority to compel an attorney to provide information to OPC during an initial investigation of a complaint. The Rules of Lawyer Discipline and Disability

should give OPC the authority to issue investigative subpoenas prior to a matter being referred to a Screening Panel and upon the approval of the Chair of the Ethics and Discipline Committee.

Status: See proposed rule changes.

Rule changes: 14-504(e); 14-509(f).

✓**4.4** The Court should amend Rule 14-509 of the Rules of Lawyer Discipline and Disability to make a lawyer's willful failure to comply with a subpoena validly issued by OPC or a Screening Panel, or knowing failure to respond to a lawful demand from OPC counsel, a separate ground for discipline.

Status: See proposed rule changes.

Rule changes: 14-509(f).

✓**4.5** If OPC dismisses a complaint, OPC should continue its current practice of providing notice to the complainant of the decision to dismiss the complaint and notice of a complainant's right to appeal an OPC decision to the Chair of the Ethics and Discipline Committee.

Status: Rule already required notice to the complainant but not notice of a complainant's right to appeal to the Committee chair.

Rule changes: 14-510(a)(7)(B).

✓**4.6** Discipline by consent should be encouraged at all stages of the proceeding.

Status: This has been discussed and everyone is on board.

✓**4.7** The Court should amend the rules to allow OPC to initiate reciprocal disability inactive status proceedings when another jurisdiction has made a determination of disability.

Status: See proposed rule changes.

Rule changes: 14-522(a)

5. ETHICS AND DISCIPLINE COMMITTEE SCREENING PANELS

(a) Role of Screening Panels

✓**5.1** The Ethics and Discipline Committee Screening Panels provide complainants an important opportunity to tell their story, and provide important due process to an attorney accused of violating a rule of professional conduct. The Committee supports the role of the

Screening Panels in the attorney discipline process and does not support the ABA Report's suggestions to diminish the function of the Screening Panels.

Status: No changes.

(b) Membership and Training

+5.2 The number of screening panel members who sit for a hearing varies between Screening Panels. The Screening Panel hearings should be standardized. The Screening Panel members required for a hearing should be reduced from 8 members to 5 members, with one of the 5 being a public member. All Screening Panel hearings should require 5 panel members unless all parties agree to fewer than 5 panel members.

Status: See proposed rule changes. EDC information is still on the Bar's website. Should this be removed as the OPC information has? <https://www.utahbar.org/ethics-discipline-committee/>

Rule changes: 14-503(d).

✓5.3 The Supreme Court and the Chair of the Ethics and Discipline Committee have done a good job of increasing diversity of members related to gender, race, ethnicity, geography, and firm size. They should continue their efforts to increase diversity of the members on Screening Panels. The volunteer solicitation process should include communication with community groups and bar associations that represent minority or underrepresented populations. The applications, the application process, and volunteer opportunities should be prominently displayed on the Court website, the USB website, and the OPC website.

Status: The Supreme Court is tracking all of the diversity initiatives described above. Larissa will work on adding links for application and application process to the Supreme Court's website. This will likely take several months.

✓5.4 Terms for members of the Ethics and Discipline Committee should be limited to 3 years with a maximum of 2 consecutive terms, unless a member is appointed chair or vice chair of a screening panel, in which case, the member may serve more than 2 terms.

Status: See proposed rule changes.

Rule change: 14-503(a).

+5.5 The Chair of the Ethics and Discipline Committee and OPC Chief Disciplinary Counsel should implement enhanced training for Screening Panel volunteers.

Status: The OPC invites panel members to attend various national trainings. The Ethics and Discipline Committee holds lunchtime training held over the summer (approx. 90% of screening panel members attend, those who don't attend receive informal training from

the vice chair). Larissa emailed Christine Greenwood to see if the Committee wants a rule re minimum training requirements for screening panel volunteers (01.22.2020).

(c) Process

✓**5.7** Rule 14-515 should be amended to apply the confidentiality restrictions for disciplinary proceedings only to non-party participants unless the Screening Panel Chair issues an order of confidentiality for the parties based on a showing of good cause. If the Screening Panel Chair issues an order of confidentiality for the parties, the rule should establish enforcement mechanisms for the order of confidentiality through a petition filed with the District Court, under seal.

Status: See amended rule 14-515 (effective Nov. 1, 2019).

✓**5.8** The Court should adopt a disqualification and abstention rule applicable to Screening Panel members who serve on a particular case. Screening Panel members and OPC staff should be barred from representing a lawyer in a discipline case for one year after service on a panel or committee.

Status: See proposed rule changes.

Rule changes: 14-503(i)

✓**5.9** The Ethics and Discipline Committee Chair should continue to review the Screening Panel's findings and recommendations for complaints that are resolved without a recommendation to file an action in the District Court. The Ethics and Discipline Committee Chair should not make changes to Screening Panel findings and recommendations, other than changes needed for clarity, and should prepare the order to execute the Screening Panel's findings and recommendations.

Status: See proposed rule changes.

Rule changes: 14-510(e)(1)

✓**5.10** When the Screening Panel recommends a public reprimand, the respondent should be permitted to choose one of three options: accept the public reprimand; file an exception with the Chair of the Ethics and Discipline Committee with the right to appeal the ruling on the exception; or elect a trial de novo with the District Court.

Status: See proposed rule changes.

Rule changes: 14-510(e)(2)

✓**5.11** When the Screening Panel recommends the filing of a complaint with the District Court, the Ethics and Discipline Committee Chair should be given notice of the Screening Panel recommendation and a copy of the complaint, but should not approve the recommendation or sign the complaint filed with the District Court.

Status: See proposed rule changes.

Rule changes: 14-511(a).

6. Diversion Programs

✓**6.1** The Court should streamline the diversion process and OPC should enhance the use of diversion.

Status: Proposed rule changes to 14-533. Added well-being hour to OPC Ethics School. OPC will emphasize mitigation factors with respondent and has added that to its checklist, with the goal to match up better diversions.

Rule changes: 14-533

✓**6.2** The Diversion Committee should be eliminated and OPC should be responsible for overseeing and operating the diversion programs, including, negotiating the diversion contract with the attorney tailored to the specific case, and designating a monitor for compliance who will be responsible to report to OPC.

Status: See rule changes.

Rule changes: 14-510(b)(7)(B), (e); 14-533(a), (b), (d), (f), (j now i), (k now j).

✓**6.3** The OPC should establish diversion programs that educate lawyers on practice management and trust account management.

Status: OPC will hold a trust accounting CLE once per year and OPC ethics school twice per year. Referral to counseling services and other programs in 14-533.

✚**6.4** The USB should increase public awareness of the USB's voluntary fee dispute program to increase its use among attorneys and clients.

Status: Check in with Elizabeth/John on progress.

7. PROBATION AND INTERIM SUSPENSIONS

✓**7.1** The Supreme Court Advisory Committee on Rules of Professional Conduct should consider amending rules to better address potential harm to the public and profession that may occur while an attorney discipline case is being litigated.

Status: We have this procedure under 14-518.

Rule changes: 14-518

✓7.2 Rules 14-603 Sanctions, and 14-504 OPC Counsel, should be amended to provide details relating to probation, including:

- Change the nature of probation so that it can be used as a set of conditions accompanied with a sanction, rather than using it as the sanction itself
- Provide guidance regarding when probation is appropriate
- Provide a non-exclusive list of standard terms and conditions for probation, such as
 - Behavioral health treatment
 - Restitution
 - Completion of the MPRE
 - Completion of a course of study
 - Regular, periodic reports to OPC
 - Payment of disciplinary costs

Status: See proposed revisions to 14-603(g).

Rule changes: 14-603(g).

✓7.3 Utah Rule of Professional Practice 14-518 Interim Suspension for Threat of Harm, should be amended to:

- Permit an interim suspension based on serious harm to the public
- Use a preponderance of the evidence standard
- Use the same procedure to obtain the interim suspension as the procedure for a temporary restraining order under URCP 65A
- Permit OPC to request and the Court to impose other types of interim orders to protect the public, such as supervision or limited practice while a case is pending

Status: See proposed rule revisions.

Rule changes: 14-517(b); 14-518.

✓7.4 Amend Rule 14-519 Lawyers convicted of a crime:

- Permit interim suspension after a finding or admission of guilt (as opposed to a conviction of guilt), including a plea in abeyance
- Clarify that the hearing permitted before the interim suspension, is only for the purpose of determining whether a finding or admission of guilt was for a serious crime or misdemeanor that reflects adversely on the lawyer's honesty, trustworthiness, or fitness to practice law

Status: See proposed rule revisions.

Rule changes: 14-519(a), (b).

8. COMPLAINTS FILED IN DISTRICT COURT

✓**8.1** The ABA Report recommended that the Court undertake a study regarding the feasibility of retaining District Courts as the adjudicators in discipline cases. The report suggested that the Court consider using lawyer and non-lawyer adjudicators for disciplinary matters who would submit findings and recommendations to the Court for entering a final order. The committee believed that the trier of fact should continue to be the District Court.

Status: The committee recommends no changes. The OPC still strongly recommends that we have a central presiding judge at district court level, similar to Colorado, Oregon, California, and Arizona. This was recommended by the ABA and rejected by the ABA review committee.

+**8.2** The Utah Rules of Civil Procedure Advisory Committee should adopt rules to apply to attorney discipline cases filed in District Court to require active case management for attorney discipline cases, including:

- Requiring a Rule 16 scheduling conference at the beginning of attorney discipline cases, similar to the now completed Case Management Pilot Program for Tier III cases
- Promulgating specific Rule 26 requirements and deadlines for attorney discipline cases similar to Rules 26.1 to 26.3

Status: Larissa emailed Nancy to see if this is on the Civil Rules Committee's radar (01.22.2020). Do we need to propose language for the committee?

+**8.3** The District Courts should make it a priority to train judges about the attorney disciplinary process. The training could be included at judicial conferences, at new judge orientation, and in bench books.

Status: Once the rules changes are adopted, the Committee will ensure the judges are appropriately trained.

✓**8.4** Utah Rule of Professional Practice 14-511(f) should be amended to remove the requirement that the court hold a sanctions hearing within 30 days after it enters findings of fact and conclusions of law, and to remove the requirement that the court issue its order sanctioning the defendant within 5 days after the sanctions hearing. Instead, a disciplinary action filed in District Court should follow the time requirements that are applied to all cases in District Court under the Rules of Civil Procedure, except as modified by an active case management program.

Status: See proposed rule revisions.

Rule changes: 14-511(f).