



AGENDA

Utah Supreme Court Oversight Committee for the Office of Professional Conduct

Location: Webex
Date: May 19, 2020
Time: 4:00 to 5:30 p.m.

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| Action: Welcome and approval of the May 4, 2020 minutes. Tab 1: Draft meeting minutes for May 4, 2020. | Judge Diana Hagen |
| Discussion: Review proposed job description for Ethics and Discipline Committee Chair/Staff Counsel Tab 2: Job description | Judge Diana Hagen, Christine Greenwood, John Baldwin |
| Action: Approve OPC budget Tab 3: OPC budget | Billy Walker, John Baldwin |
| Action: Final questions/approval of OPC and Bar rules Tab 4: Updated summary of recommendations Tab 5: Bar rules (redline) Tab 6: Bar rules (clean) Tab 7: OPC rules (redline) Tab 8: OPC rules (clean) | 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

May 4, 2020

Webex

4:00–7:00 p.m.

Judge Diana Hagen, presiding

Attendees:

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

Staff:

Larissa Lee
Marina Kelaidis, Recording Secretary

Guests:

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

1. Welcome and approval of the April 13, 2020 minutes: (Judge Diana Hagen)

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

Judge Brooke Wells moved to approve the April 13, 2020 minutes. Art Berger seconded the motion, and it passed unanimously.

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

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

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

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

New Rule: OPC investigative subpoenas:

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

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

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

Diversion (split Rule 14-533)

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

Diversion referrals, authority, and responsibilities:

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

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

2. Rule 14-533(c–d)

Circumstances warranting diversion:

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

3. Rule 14-533(f–h)

Diversion contract:

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

4. Rule 14-533 (a)(1)–(a)(9)

Respondent’s participation:

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

5. Rule 14-533(j)

Terminating diversion:

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

6. Rule 14-533(k)

Diversion costs:

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

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

Discipline

Rule 14-509:

Grounds for discipline:

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

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

Rule 14-515:

Accessing disciplinary information:

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

Rule 14-516:

Disseminating disciplinary information:

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

Rule 14-518:

Interim discipline for threat of harm:

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

Rule 14-519:

Lawyers found guilty of a crime:

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

Rule 14-520:

Discipline by consent:

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

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

Rule 14-521:

Resignation with discipline pending:

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

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

Rule 14-522:

Reciprocal discipline:

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

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

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

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

Rule 14-531:

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

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

Rule 14-526:

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

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

Sanctions

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

Definitions:

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

Rule 14-602:

Purpose and nature of sanctions:

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

Rule 14-603:

Sanctions:

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

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

Rule 14-604:

Factors to be considered in imposing sanctions:

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

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

Rule 14-605: (Split into four rules)

1. Sanctions for violating duties owed to clients:

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

2. Sanctions for violating duties owed to the public:

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

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

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

4. Sanctions for violating duties owed as a professional.

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

Rule 14-606:

Prior discipline orders:

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

Rule 14-607:

Aggravation and mitigation:

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

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

Reinstatement

Rule 14-524:

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

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

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

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

Rule 14-525:

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

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

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

Rule 14-528:

Appeal by complainant:

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

Article 7. Admissions

Rule 14-701:

Definitions:

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

Rule 14-705:

Admission by motion:

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

Rule 14-712:

Qualifications for admission based on UBE:

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

Rule 14-718:
Licensing of Foreign Legal Consultants:

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

Article 8. Special Practice Rules

Rule 14-801:
Definitions:

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

Article 9. Lawyer's Fund for Client Protection

Rule 14-904:
Funding:

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

Rule 14-912:
Processing claims:

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

Chapter 15. Rules Governing Licensed Paralegal Practitioners

Rule 15-402:
Definitions:

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

Rule 15-701:
Definitions:

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

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

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

Tab 2

JOB TITLE: Ethics & Discipline Committee Chair / Staff Counsel

REPORTS TO: [_____]

STATUS: Exempt

EFFECTIVE DATE: [_____]

Basic Functions:

Oversee and administer the Ethics & Discipline Committee of the Utah Supreme Court in accordance with applicable rules.

Outline of Responsibilities:

1. Supervise the Committee, including its vice chairs, screening panels, and general operations.
2. Ensure that the Committee's work proceeds expeditiously.
3. Ensure that the Committee's rulings and screening panel determinations have a uniform basis for the judgments rendered.
4. Draft and distribute to all necessary parties rulings on:
 - a. Appeals from dismissals of complaints by the Office of Professional Conduct.
 - b. Exceptions to recommendations of screening panels.
 - c. Requests to place matters in or remove matters from abeyance.
 - d. Requests to continue screening panel hearings.
 - e. Requests for subpoenas submitted to the Committee.
 - f. Any other motions or requests submitted to the Committee.
5. Draft and issue final orders of discipline following exceptions or the expiration of the time to file exceptions or seek other relief following the completion of screening panel determinations.
6. Coordinate proceedings on complaints filed against members of the Committee, Office of Professional Conduct counsel, and Bar Commission members in accordance with all applicable rules.
7. Coordinate membership, meetings, and training for the Committee and its screening panels.
8. Provide the screening panels with information concerning ethics and judicial decisions necessary to their activities.
9. Conduct meetings of the Committee, including training meetings.
10. Make recommendations to the Supreme Court concerning appointments to and removals from the Committee and its screening panels.
11. Make reports to the Supreme Court concerning the screening panel activities and the overall work of the Committee.

12. Oversee the administration of and make recommendations to the Supreme Court regarding rules applicable to the Committee.
13. Accept and distribute documents filed with the Committee.
14. Schedule and coordinate screening panel hearings.
15. Provide notice of screening panel hearings to the complainant, the respondent, the Office of Professional Conduct, and any other persons whose attendance is required at screening panel hearings.
16. Provide notice of the disposition of each matter to the complainant, the respondent, and the Office of Professional Conduct.
17. Perform all administrative functions of the Committee and screening panels.
18. Maintain records of the Committee's activities.

Tab 3

Utah State Bar
Final FY2020 Budget
Based on Actual Results through 3/31/20
06 - Office of Prof Conduct

| | Actual FY 2018 | Actual FY 2019 | Projected FY 2020 | Draft Budget FY 2021 | \$ Change 2020 Projected vs 2021 Budget | % Change 2020 Projected vs 2021 Budget |
|---|-------------------|-------------------|----------------------|----------------------------|---|--|
| Revenue | | | | | | |
| 4095 · Miscellaneous Income | 5,059 | 6,269 | 4,569 | 6,687 | 2,119 | 46% |
| 4200 · Seminar Profit/Loss | 16,229 | 27,065 | 21,838 | 22,500 | 662 | 3% |
| Total Revenue | 21,288 | 33,333 | 26,406 | 29,187 | 2,781 | 11% |
| Expenses | | | | | | |
| Program Services | | | | | | |
| 5002 · Meeting facility-internal only | 460 | - | 95 | 95 | - | 0% |
| 5015 · Investigations | - | 118 | 325 | 480 | 155 | 48% |
| 5025 · Temp Labor/Proctors | - | - | 70 | - | (70) | -100% |
| 5040 · Witness & Hearing Expense | 1,733 | 2,011 | 2,029 | 5,000 | 2,971 | 146% |
| 5041 · Process Serving | 656 | 1,211 | 716 | 1,000 | 284 | 40% |
| 5075 · Food & Bev-external costs only | - | 659 | 331 | 335 | 4 | 1% |
| 5079 · Soft Drinks | - | 86 | 378 | 150 | (228) | -60% |
| 5702 · Travel - Lodging | 3,911 | 7,257 | 7,390 | - | (7,390) | -100% |
| 5703 · Travel - Transportation/Parking | 1,768 | 3,338 | 5,735 | - | (5,735) | -100% |
| 5704 · Travel - Mileage Reimbursement | 1,309 | 2,936 | 726 | - | (726) | -100% |
| 5705 · Travel - Per Diems | 684 | 1,723 | 2,278 | - | (2,278) | -100% |
| 5805 · ABA Annual Meeting | 5,866 | 5,350 | 1,573 | - | (1,573) | -100% |
| 5810 · ABA Mid Year Meeting | 7,197 | 2,364 | 5,060 | - | (5,060) | -100% |
| Total Program Services Expenses | 24,347 | 27,053 | 26,705 | 7,060 | (19,645) | -74% |
| Salaries & Benefits | | | | | | |
| 5510 · Salaries/Wages | 881,043 | 945,401 | 968,433 | 968,433 | - | 0% |
| 5605 · Payroll Taxes | 64,622 | 70,258 | 73,566 | 73,566 | - | 0% |
| 5610 · Health Insurance | 78,987 | 79,613 | 84,753 | 88,990 | 4,238 | 5% |
| 5620 · Health Ins/Medical Reimb | 941 | 1,195 | 1,652 | 1,652 | - | 0% |
| 5630 · Dental Insurance | 5,682 | 6,177 | 6,364 | 6,682 | 318 | 5% |
| 5640 · Life & LTD Insurance | 5,624 | 5,768 | 5,857 | 6,150 | 293 | 5% |
| 5650 · Retirement Plan Contributions | 78,849 | 86,153 | 95,596 | 95,596 | - | 0% |
| 5655 · Retirement Plan Fees & Costs | 6,558 | 6,775 | 7,162 | 7,305 | 143 | 2% |
| 5660 · Training/Development | 6,385 | 5,480 | 9,685 | 2,500 | (7,185) | -74% |
| Total Salaries/Benefit Expenses | 1,128,691 | 1,206,819 | 1,253,067 | 1,250,873 | (2,193) | 0% |
| General & Administrative | | | | | | |
| 7025 · Office Supplies | 5,135 | 6,738 | 6,577 | 4,500 | (2,077) | -32% |
| 7035 · Postage/Mailing, net | 5,630 | 4,994 | 4,175 | 4,000 | (175) | -4% |
| 7040 · Copy/Printing Expense | 14,665 | 17,855 | 18,819 | 13,000 | (5,819) | -31% |
| 7045 · Internet Service | - | 104 | 498 | 500 | 2 | 0% |
| 7050 · Computer Maintenance | 2,824 | 3,711 | 5,674 | 5,600 | (74) | -1% |
| 7055 · Computer Supplies & Small Equip | 589 | 2,482 | 2,617 | 1,800 | (817) | -31% |
| 7089 · Membership Database Fees | 8,087 | 11,133 | 2,360 | 5,000 | 2,640 | 112% |
| 7100 · Telephone | 12,937 | 14,441 | 16,386 | 15,000 | (1,386) | -8% |
| 7105 · Advertising | 360 | - | 150 | 225 | 75 | 50% |
| 7106 · Public Notification | 608 | 1,149 | - | 1,225 | 1,225 | #DIV/0! |
| 7110 · Publications/Subscriptions | 10,328 | 12,079 | 12,917 | 10,500 | (2,417) | -19% |
| 7120 · Membership/Dues | 4,810 | 4,745 | 4,460 | 4,500 | 40 | 1% |
| 7150 · E&O/Off & Dir Insurance | 14,253 | 14,327 | 14,441 | 14,441 | - | 0% |
| 7175 · O/S Consultants | - | 3,366 | 27,281 | 32,550 | 5,269 | 19% |
| 7195 · Other Gen & Adm Expense | - | 446 | 245 | 100 | (145) | -59% |
| Total General & Administrative Expenses | 85,437 | 109,184 | 132,227 | 112,941 | (19,287) | -15% |
| Building Overhead | | | | | | |
| 6015 · Janitorial Expense | 6,037 | 5,608 | 5,664 | 5,834 | 170 | 3% |
| 6020 · Heat | 4,275 | 3,871 | 3,526 | 3,632 | 106 | 3% |
| 6025 · Electricity | 8,838 | 8,570 | 8,496 | 8,750 | 255 | 3% |
| 6030 · Water/Sewer | 1,095 | 1,409 | 1,468 | 1,512 | 44 | 3% |
| 6035 · Outside Maintenance | 2,395 | 2,484 | 3,107 | 3,201 | 93 | 3% |
| 6040 · Building Repairs | 1,970 | 4,361 | 3,895 | 4,012 | 117 | 3% |
| 6045 · Bldg Mtnce Contracts | 7,767 | 6,700 | 7,110 | 7,323 | 213 | 3% |

Utah State Bar
Final FY2020 Budget
Based on Actual Results through 3/31/20
06 - Office of Prof Conduct

| | Actual FY 2018 | Actual FY 2019 | Projected FY 2020 | Draft Budget FY 2021 | \$ Change 2020 Projected vs 2021 Budget | % Change 2020 Projected vs 2021 Budget |
|---------------------------------------|-----------------------|-----------------------|-----------------------|----------------------------|---|--|
| 6050 · Bldg Mtnc Supplies | 1,019 | 986 | 152 | 156 | 5 | 3% |
| 6065 · Bldg Insurance/Fees | 3,298 | 3,247 | 3,390 | 3,492 | 102 | 3% |
| 6070 · Building & Improvements Depr | 10,344 | 10,196 | 10,419 | 10,419 | - | 0% |
| 6075 · Furniture & Fixtures Depr | 3,121 | 2,558 | 1,903 | 1,903 | - | 0% |
| 7065 · Computers, Equip & Sftwre Depr | 35,185 | 32,765 | 28,160 | 28,160 | - | 0% |
| Total Building Overhead Expenses | 85,342 | 82,755 | 77,290 | 78,395 | 1,104 | 1% |
| Total Expenses | 1,323,817 | 1,425,811 | 1,489,289 | 1,449,269 | (40,020) | -3% |
| Net Profit (Loss) | \$ (1,302,529) | \$ (1,392,478) | \$ (1,462,883) | \$ (1,420,082) | \$ 42,801 | -3% |

NOTES TO OPC BUDGET:

- 1 Aside from regular required services, the following computer or IT maintenance contracts have been included in the FY 20/21 budget above for accounts 7050 · Computer Maintenance, 7089 · Membership Database, 7100 · Telephone and 7175 · O/S Consultants

| Account | Amount | Vendor | Purpose |
|-----------------------------|---------------|------------|---|
| 7175 · O/S Consultant | \$775/month | Braintrace | Threat traffic monitoring |
| 7050 · Computer Maintenance | \$250/month | Euclid | Annual maintenance |
| 7175 · O/S Consultant | \$1,200/month | ClearLink | Computer virus protection, routine computer updates and server, workstation & network maintenance |
| 7100 · Telephone | \$88/quarter | ClearLink | Vulnerability scans |
| 7100 · Telephone | \$2,500/year | ClearLink | Firewall maintenance |
| 7100 · Telephone | \$540/month | ClearLink | Office 365 Windows subscription |
| 7089 · Membership Database | \$5,000/year | Unknown | JustWare/case management replacement beginning Jan. 2021 |

NOTE: The annual total cost of the items listed above is approximately \$40,000, which have been included in the FY 20/21 budget for accounts listed above.

- 2 In addition to the contractual amounts with ClearLink listed above, ancillary IT support provided by Euclid is charged at \$175/hour. It is anticipated and budgeted that OPC will incur approximately 10 hours during FY 20/21.
- 3 No major software upgrades are expected for the FY 20/21 for OPC.
- 4 No major computer/hardware purchases are expected for FY20/21 for OPC.
- 5 Each year, the Bar anticipates an operational reserve of \$200,000. Of that reserve, \$25,000 has been allocated to OPC.
- 6 Approximately 50% of the General Counsel Assistant's time is spent on disciplinary matters. 50% of the total benefits and salaries would amount to approximately \$30,700 per year. Currently, the entire cost is charged to the General Counsel department and no expense related to the General Counsel Assistant is charged to OPC.
- 7 Any disciplinary-related expenses billed to General Counsel remain as a General Counsel expense and are not charged to OPC.

Tab 4

Utah Supreme Court's Oversight Committee for the Office of Professional Conduct

Progress Report on ABA/Supreme Court 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; 14-103; 14-105 and title; 14-202; 14-208; 14-402; 11-502 (formerly 14-502); 11-520 (formerly 14-504); 11-520 (formerly 14-510); 14-701; 14-705; 14-712; 14-718; 14-801; 14-904; 14-912.

✚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.

Status: OPC launched its own website on November 6, 2019 (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 11-503 (formerly 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 proposed rule 11-503(b)(3) (formerly 11-501): “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: 11-502(m) (formerly 14-502), 11-520(a) (formerly 14-504)

✓2.2 OPC staff titles should be changed as follows – Chief Disciplinary Counsel, Deputy Chief Disciplinary Counsel, and Assistant Disciplinary Counsel.

Status: See Rule 11-503 (formerly 11-501) and proposed rule changes. Note: no provision for a Deputy Chief Disciplinary Counsel, added to 11-502(p) (formerly 14-502). All letterhead, name placards, etc. have been changed.

Rule changes: 11-502 (formerly 14-502).

✓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 require 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: Former rule 11-501(2)(b)(ii) provided that the Oversight Committee should develop the budget and submit it to the USB but did not include a provision for the USB to petition the Supreme Court for changes.

The Committee proposes having the OPC and Bar Commission jointly develop the OPC's budget (Rules 14-207(a)(1) and 11-520(b)(2)), then submit the budget to the Oversight Committee for approval (Rule 11-503(b)(2)(B)), the Bar Commission would then need to ratify the Oversight Committee's approved budget unless it petitions the Supreme Court for modifications, in which case the budget approved by the Supreme Court is final (Rule 14-207(a)(1)).

Rule changes: 14-207(a)(1); 11-520(b)(2) (formerly 14-504)); and 11-503(b)(2)(B) (formerly 11-501)).

✓**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

✓**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 11-562(b) (formerly 14-516) shift responsibility from the Bar's executive director to the OPC.

Rule changes: Rule 11-562(b) (formerly 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 Rule 11-524 Retaining records. Judge Hagen (Committee chair) discussed this rule with the Supreme Court on January 22, 2020.

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: See below for rule changes re notarization vs. declaration, and "complaint" for informal complaints and "action" for formal complaints. [Online form will be updated once rules are changed. The OPC does not recall that it was decided the complaint form would be provided in multiple languages.](#)

Rule changes: Declaration instead of notarization: 11-502(g) (formerly 14-502(g)); 11-530(b) (formerly 14-510(a)(2)). Removal of references to "formal" and "informal" passim. Instead, using "action" or "misconduct 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. “Request for assistance” was not used in the rules (it is on the OPC’s website, however). Changed “NOIC” to simply “notice” and “informal complaint” to “complaint.”

Rule changes: NOIC to “notice”: 11-502(n) (formerly 14-502(h)); 11-530(e), (f) (formerly 14-510(a)(5)), (a)(6)); 11-531(b) (formerly 14-510(b)(1)).

✓**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: New Rule 11-523 OPC investigative subpoenas.

✓**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: The Committee did not feel that it was necessary to list this out separately in Rule 11-560 (formerly 14-509) because this power is already spelled out in the Rules of Professional Conduct.

Rule changes: None.

✓**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. Added this requirement in 11-530(g)(2) (formerly 14-510).

Rule changes: 11-530(g)(2) (formerly 14-510).

✓**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: 11-567(a) (formerly 14-522).

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 to 11-511(a) and (b) (formerly 14-503(d)). The Committee also included that the Ethics and Discipline Committee Chair may appoint up to two licensed paralegal practitioners, because we combined chapters 14 and 15, articles 5 and 6.

Rule changes: 11-511(a) and (b) (formerly 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 to complete.](#)

✓**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: 11-510(a) (formerly 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).

(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 11-561(a) (formerly 14-515(a)) (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: 11-514 Disclosure, recusal, and disqualification (formerly 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: 11-534(a) Final Committee disposition (formerly 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: 11-534(b) (formerly 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: 11-536(a) (formerly 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 11-550 to 11-555 (formerly 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: Rules 11-550 to 11-555 (formerly 14-533) and 11-581(h) (formerly 14-603).

✓**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: Rules 11-550 11-551, 11-552, 11-554 (all formerly 14-533); 11-531(b)(7)(B) (formerly 14-510(b)(7)(B)).

✓**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 11-553 (formerly 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: Larissa will check in with Elizabeth/John on progress.

7. PROBATION AND INTERIM SUSPENSIONS

✓**7.1** The Supreme Court Advisory Committee on the 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: See proposed changes to Rule 11-563 (former rule 14-518). Changed “suspension” to “discipline” to allow for a broader range of measures while a discipline case is being litigated.

Rule changes: 11-563 (formerly 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 11-581(g) (formerly 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 (*see 11-563(a) (formerly 14-518)*)
- Use a preponderance of the evidence standard (*see 11-542(b) (formerly 14-517)*)
- Use the same procedure to obtain the interim suspension as the procedure for a temporary restraining order under URCP 65A (*see 11-563(a) (formerly 14-518)*)
- 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 (*see 11-563*)

Status: See proposed rule revisions (details above in italics).

Rule changes: 11-542 (formerly 14-517(b)); 11-563 (formerly 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: 11-564(a) and (b) (formerly 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 will work with Nancy on proposing language for both the OPC Oversight Committee and the URCP Committee to review.

✚**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: 11-536(f) (formerly 14-511(f)).

Tab 5

**OPC Oversight Committee
Proposed Bar Rule Changes**

| | |
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Chapter 14. Rules Governing the Utah State Bar.

Article 1. Integration and Management

Rule 14-102. Regulating ~~on of~~ the practice of law.

(a) ~~Vested~~ing of authority.

(a)(1) ~~Under the power vested to it by the Constitution of Utah, the Supreme Court by its constitutional power—hereby~~ authorizes and designates the Bar to administer rules and regulations ~~which that~~ govern the practice of law in Utah, including ~~the regulation of regulating legal representation by~~ Licensed Paralegal Practitioners. All persons authorized to practice law in Utah ~~shall~~ must be licensed by the Bar in accordance with this chapter and Chapter 15 of the Supreme Court Rules of Professional Practice.

(a)(2) The Supreme Court recognizes a compelling state interest in ~~its use of~~using the Bar to assist the Court in governing admission to the practice of law, ~~the conduct and discipline of persons admitted to practice law,~~ and ~~to improve~~ing the quality of legal services in the state. ~~The Court also finds that~~ the requirements imposed, the delegations made, and the authority granted to the Bar provide the best ways to promote these compelling state interests and ~~that~~ there are no less restrictive alternatives available to achieve those results.

Commented [LL1]: Recommendation 1.2

(b) Responsibilities of the Bar. ~~The Bar's~~ Purposes, duties, and responsibilities ~~of the Bar~~ include, ~~but are not limited to, the following:~~

(b)(1) ~~to advance~~advancing the administration of justice according to law;

(b)(2) ~~to aid~~aiding the courts in ~~carrying on~~ the administration of justice;

(b)(3) ~~to regulate~~regulating the admission of persons seeking to practice law;

~~b)(4) to regulate the licensing of Licensed Paralegal Practitioners; b)(5) to provide for the regulation and discipline of persons practicing law;~~

Commented [LL2]: Recommendation 1.2

(b)(~~6~~4) ~~to foster~~ing and ~~to maintain~~ing integrity, learning competence, public service, and high standards of conduct among those practicing law;

(b)(7) ~~to represent~~ representing the Bar before legislative, administrative, and judicial bodies;

(b)(8) ~~to prevent~~ preventing the unauthorized practice of law;

(b)(9) ~~to promote~~ promoting professionalism, competence, and excellence ~~in those practicing law~~ through continuing legal education and ~~by~~ other means;

(b)(10) ~~to provide~~ providing a service to the public, ~~to the judicial system, and to members of the Bar~~ members;

(b)(11) ~~to educate~~ educating the public about the rule of law and ~~their~~ responsibilities under the law; and

(b)(12) ~~to assist~~ assisting Bar members ~~of the Bar~~ in improving the quality and efficiency of their practice.

(c) **Qualifications.** ~~This chapter prescribes the qualifications, duties, and obligations of lawyers, and foreign legal consultants, and Licensed Paralegal Practitioners admitted for admission to practice law in Utah, the licensing qualifications for Licensed Paralegal Practitioners, the duties and obligations and the grounds for discipline of members, and Licensed Paralegal Practitioners, and the method of establishing such grounds, subject to the right of this~~ The Supreme Court is responsible for disciplining a Bar member or Licensed Paralegal Practitioner. ~~admitted to the Bar or a Licensed Paralegal Practitioners, shall be as prescribed in this chapter.~~

Commented [LL3]: Recommendation 1.2

(d) **Licensure required.** No suspended or disbarred person may ~~shall~~ practice law in Utah or hold ~~himself or herself~~ themselves out as one who may practice law in Utah. A person may only practice law in Utah if that person is unless;

(d)(1) a licensed lawyer ~~he or she has been admitted and is~~ an active ~~member of the Bar~~ member in good standing;

(d)(2) ~~or is~~ an inactive member in good standing providing pro bono legal services for or on behalf of a legal services organization approved by the Bar upon meeting certification and performance standards, conditions, and rules established by the Board;

1 ~~(d)(3) or has been~~ a foreign legal consultant licensed by the Bar ~~as a foreign legal~~
2 ~~consultant; or~~

3 ~~(d)(4) . No suspended or disbarred lawyer or foreign legal consultant shall practice law in~~
4 ~~Utah or hold himself or herself out as one who may practice law in Utah while suspended~~
5 ~~or disbarred. (e) **Licensure Required for Licensed Paralegal Practitioners.** No person~~
6 ~~shall practice as a Licensed Paralegal Practitioners or hold him or herself out as one who~~
7 ~~is a Licensed Paralegal Practitioners unless he or she has been licensed as a Licensed~~
8 ~~Paralegal Practitioners and is an active licensee of the Bar and in good standing. No~~
9 ~~delicensed Licensed Paralegal Practitioner shall practice law in Utah or hold him or~~
10 ~~herself out as one who may practice law in Utah while suspended or delicensed.~~

Rule 14-103. Bar Organization and management ~~of the Bar~~.

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

(a)(1) Number. ~~There shall be a Bar's~~ Board of Commissioners ~~of the Bar~~ consisting of ~~no fewer than~~ at least 13 but no more than 15 voting members, including 11 elected lawyers and two non-lawyers appointed by the Supreme Court.

(a)(2) Term. ~~The initial term of office of one of the non-lawyer commissioners shall be for two years. Except as~~ Unless otherwise provided, the term of office of each commissioner ~~shall be~~ 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 ~~prior to~~ before the expiration of the completed term of office, the remaining commissioners ~~shall~~ will:

(a)(~~4~~3)(A)(i) conduct a special election;

(a)(~~4~~3)(~~B~~A)(ii) appoint an interim successor from among the active ~~members of the Bar~~ members whose business mailing addresses on the Bar's records ~~of the Bar~~ are in the division from which the commissioner was elected, who ~~shall~~ will serve until the ~~following~~ next annual election;

or

(a)(~~4~~3)(~~C~~A)(iii) fill the vacancy ~~through~~ during the next regular annual election.

(a)(~~2~~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 ~~either~~ a one, two or full three-year term, provided that there would be ~~not more than three but not fewer than two~~ only two or three commissioners from the Third Division whose terms expire in any one year and ~~not more than five but not fewer than four~~ only four or five Board commissioners ~~on the Board~~ whose terms expire in any one year.

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

(b) **Board's powers.** The Board ~~is granted and~~ may exercise all powers necessary and proper to carry out ~~the its~~ duties and responsibilities ~~of the Bar and the purposes of these rules and shall have~~has all authority ~~which is~~ not specifically reserved to the Supreme Court. The Court specifically reserves the authority to:

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

(b)(2) approve all rules and regulations ~~formulated by the Board~~ for admission, licensure, professional conduct, client security fund, fee arbitration, ~~procedures of discipline and disability~~, legislative activities, unauthorized practice of law, and Bar Examination review and appeals; and

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

(c) **Territorial divisions.** The First Division includes the First Judicial District ~~shall be known as the First Division~~; the Second Division includes the Second Judicial District ~~shall be known as the Second Division~~; the Third Division includes the Third Judicial District ~~shall be known as the Third Division~~; the Fourth Division includes the Fourth Judicial District ~~shall be known as the Fourth Division~~; and the Fifth Division includes the Fifth, Sixth, Seventh, and Eighth Judicial Districts ~~shall be known as the Fifth Division~~.

(d) **Number of lawyer commissioners from each division.** Each division will have ~~There shall be~~ one lawyer commissioner ~~member of the Board from each of the divisions~~, except the Third Division ~~from which there shall be~~ will have seven lawyer commissioners. No more than one lawyer commissioner from any division except from the Third Division, and no more than seven lawyer commissioners from the Third Division, ~~shall~~may serve on the Board at the same time.

Commented [LL4]: Recommendation 1.2

(e) **Nomination and eligibility of lawyer commissioners.** To nominate a person for commissioner for a particular division, a member's ~~Lawyers whose~~ business mailing addresses on the Bar's records ~~must be of the Bar are within that a particular division.~~ shall alone have the right to nominate persons for the office of commissioner from that division. To be eligible for the office of lawyer commissioner in a division, the nominee's business mailing address on the Bar's records must be within that division. ~~as shown by the records of the Bar.~~ Nomination to the office of commissioner ~~shall~~ must be by written petition of at least ten-10 or more Bar members ~~of the Bar~~ in good standing. Any number of candidates may be nominated on a single petition. Nominating petitions ~~shall~~ will be provided to the executive director within a period ~~to be~~ fixed by the ~~rules made by the~~ Board's rules.

(f) **Commissioner Elections of commissioners.**

(f)(1) ~~The lawyers on the Board~~ Lawyer commissioners must ~~shall~~ be elected by ~~the vote of the~~ resident active Bar members ~~of the Bar~~ as follows:

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

(f)(1)(B) beginning ~~in the year~~ 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 the year~~ 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 ~~or two~~ candidates from the Third Division, receiving the greatest number of votes of that division ~~shall~~ will be the commissioner ~~from of~~ such division. ~~For the year 1983, the candidate from the Third Division receiving the fourth greatest number of votes shall be the commissioner for a two-year term.~~ A member ~~is limited to~~ may only ~~voteing~~ vote for commissioner candidates ~~for commissioner from the in the~~ division in which ~~his or her~~ the member's business mailing address on the Bar's records is located. ~~as shown by the records of the Bar.~~ The ballots

1 ~~shall will~~ be returned to the Bar offices in accordance with its rules. There ~~shall will~~ be an
2 annual election by the resident active ~~members of the Bar~~ members for the purpose of
3 filling vacancies. The Board ~~shall will~~ fix the time for holding the annual election and
4 prescribe such rules and regulations ~~in in regard thereto not in conflict with~~ accordance
5 with this chapter. The Board ~~shall must~~ ~~in accordance with its rules, give~~ mail annual
6 election notices ~~of the annual election by mail~~ at least 90 days ~~prior to~~ before the date on
7 which ~~ballots will be counted~~ the election closes.

8 ~~(f)(3) Those persons holding office as commissioners at the time of the adoption of these~~
9 ~~rules or who were elected under the existing statute will continue in office for the period~~
10 ~~of time elected to serve.~~

11 (g) President-elect's n ~~omination and election of president-elect~~. The Board ~~must shall~~
12 nominate at least one two active lawyers in good standing ~~on active status~~ to run for the office of
13 president-elect, to be elected by ~~the vote of the active~~ ~~members of the Bar~~ members. The
14 president and the president-elect ~~shall will~~ hold office until their successors are elected and
15 seated. A secretary, and such other assistants as the Board may require, may be selected from
16 within or without the Board to hold office at the pleasure of the Board and to be paid such
17 compensation as the Board ~~shall~~ determines.

18 (h) Board o ~~Officers and organization of Board~~. The Board ~~shall be is~~ organized and authorized
19 to conduct business ~~by the seating of~~ through its elected commissioners, and the Bar's a president
20 and president-elect ~~of the Bar~~. The president-elect for the previous year ~~shall will~~ automatically
21 succeed to the office of president. A president and ~~a~~ president-elect who are not elected
22 commissioners have the authority to vote on matters brought before the Board. In the event of a
23 tie vote, the matter at hand ~~will shall~~ fail to pass.

24 (i) Annual and special meetings notice. There ~~shall must~~ be an annual meeting of the Bar,
25 presided over by the Bar president ~~of the Bar~~, open to all members in good standing, and held at
26 such time and place as the Board may designate, for ~~the discussion of the~~ discussing Bar affairs
27 ~~of the Bar~~ and the administration of justice. Special Bar ~~meetings of the Bar~~ may be held at such
28 times and places as the Board ~~may~~ designates. Notice of all meetings ~~shall must~~ be published to

1 ~~the Bar's website~~~~given by mail to all members of the Bar~~ not fewer than 154 days ~~prior to~~ before
2 the date of such meeting.

3 (j) **Bylaws.** The Board ~~shall have power to~~ may adopt Bylaws, not ~~in~~ conflicting with any of these
4 rules' terms ~~of these rules~~, concerning ~~the~~ officer selection and tenure ~~of its officers~~, ~~the~~ creation
5 of sections and committees and their powers and duties, and generally for the control and
6 regulation of the business of the Board and of the Bar.

Rule 14-105 ~~Conduct of~~ Promulgating rules to regulate licensed lawyers, Licensed Paralegal Practitioners, and judicial officers; ~~complaints, investigations, and discipline.~~

Commented [LL5]: Recommendation 1.2

(a) **Formulating Rules.** The Board ~~shall~~ formulates rules governing the conduct of all persons admitted or licensed to practice in Utah, including foreign legal consultants and those licensed as Licensed Paralegal Practitioners, and Bar members of the Bar holding judicial office. ~~and shall investigate unethical, questionable or improper conduct of persons admitted to the practice of the law, including members of the Bar holding judicial office. The Board Supreme Court shall also~~ formulates rules governing procedures in cases involving alleged misconduct of Bar members of the Bar, including those holding judicial office.

Commented [LL6]: Recommendation 1.2

(b) **Court to approve rules and regulations.** All rules and regulations formulated by the Board ~~shall~~ must be submitted to and approved by the Supreme Court.

Rule 14-107. ~~Annual license, fees, disbursements of funds~~ Duties of lawyers, foreign legal consultants, and licensed paralegal practitioners.

(a) **Roster and current record information.** The Bar must collect, maintain, and have ready access to current information of Bar members, foreign legal consultants, and licensed paralegal practitioners including:

(a)(1) full name;

(a)(2) date of birth;

(a)(3) current physical addresses, and current telephone numbers for law office and residence, except that full-time judges are exempt from providing residential addresses and telephone numbers;

(a)(4) current e-mail address;

(a)(5) date of admission;

(a)(6) date of any transfer to or from inactive status;

(a)(7) all specialties in which certified;

(a)(8) other jurisdictions in which the lawyer is admitted and date of admission; and

(a)(9) nature, date, and place of any discipline imposed and any reinstatements.

(b) **Assessments.**

(b)(1) **Annual licensing fee.** To effectuate the Bar's purposes, every lawyer, foreign legal consultant, and licensed paralegal practitioner admitted or licensed to practice in Utah must pay to the Bar on or before July 1 of each year an annual license fee for each fiscal year to be fixed by the Bar Commission from time to time and approved by the Supreme Court. The fee must be sufficient to pay the costs of disciplinary administration and enforcement. The Bar administers the funds.

(b)(2) **Failure to renew annual license.** Failure to pay the annual licensing fee or provide the required annual licensing information will result in administrative suspension. Any lawyer, foreign legal consultant, or licensed paralegal practitioner who

Commented [LL7]: Moved over from 14-507. This is a Bar requirement, not an OPC requirement.

Commented [LL8]: Moved over from 14-508. This is a Bar requirement, not OPC.

1 practices law after failure to renew their license violates the Rules of Professional
2 Conduct or Licensed Paralegal Practitioner Rules of Professional Conduct and may be
3 disciplined. The executive director or their designee must give notice of such removal
4 from the rolls to such noncomplying member at the designated mailing address on the
5 Bar's records and to the state and federal courts in Utah.

6 (b)(3) **Reenrollment within three years of administrative suspension.** A lawyer,
7 foreign legal consultant, or licensed paralegal practitioner who is administratively
8 suspended for failing to pay licensing fees for three years or less may apply in writing for
9 reenrollment. The request should be made to the Utah State Bar Licensing Department
10 and include payment equal to the fees the lawyer, foreign legal consultant, or licensed
11 paralegal practitioner would have been required to pay had they remained an inactive
12 member to the date of the request for reenrollment and a \$200 reinstatement fee. Upon
13 receipt, the Bar will order reenrollment and so notify the courts. Reenrollment based on
14 failure to renew does not negate any orders of discipline.

15 (b)(4) **Reenrollment after three years of administrative suspension.** A lawyer, foreign
16 legal consultant, or licensed paralegal practitioner who is administratively suspended for
17 three years or more for failing to pay license fees must comply with the admissions
18 requirements set forth in the Supreme Court Rules of Professional Practice governing
19 admission for lawyers who have been administratively suspended for nonpayment for
20 three or more years before being reinstated.

Commented [LL9]: Bar removed confusing terminology re
"resignation."

1 **Rule 14-111. Practicing without a license prohibited.**

2 (a) Action or proceedings to enforce. Exception. ~~Pursuant to Rule 14-506(a) and 15-506(a), a~~ No
3 person who is not ~~duly admitted and~~ licensed to practice law in Utah as an attorney at law or as a
4 foreign legal consultant or Licensed Paralegal Practitioner ~~nor any person whose right or license~~
5 ~~to so practice has terminated either by disbarment, suspension, delicensure, failure to pay his or~~
6 ~~her license and other fees or otherwise, shall~~ may practice or assume to act or hold himself or
7 herself out to the public as a person qualified to practice law or to carry on the calling of an
8 attorney at law in Utah or Licensed Paralegal Practitioner. Such practice, or assumption to act or
9 holding out, by any such unlicensed ~~or disbarred, suspended or delicensed~~ person ~~shall~~ will not
10 constitute a crime, but this prohibition against the practice of law by any such person ~~shall~~ will be
11 enforced by such civil action or proceedings, including writ, contempt, or injunctive proceedings,
12 as may be necessary and appropriate, which action or which proceedings the Bar will institute
13 ~~shall be instituted by the Bar~~ after Board approval ~~by the Board~~.

14 (b) Nothing in this article ~~shall~~ will prohibit a person who is unlicensed as an attorney ~~at law or~~
15 ~~a~~ foreign legal consultant, or Licensed Paralegal Practitioner from personally representing that
16 person's own interests in a cause to which the person is a party in his or her own right and not as
17 assignee.

Commented [LL10]: Clarifies the Bar has jurisdiction over those who are not/have never had law license. OPC has this ability already within its rules, it's not needed in this rule.

Chapter 14. Rules Governing the Utah State Bar.

Article 2. Bylaws

Rule 14-202. Bar's ~~P~~urposes ~~of the Bar~~.

The purposes of the Bar are to:

- (a) advance the administration of justice according to law;
- (b) aid the courts in carrying on the administration of justice;
- (c) regulate the admission of persons seeking to practice law;
- ~~(d) provide for the regulation and discipline of persons practicing law;~~
- (~~e~~) foster and maintain integrity, learning, competence, public service, and high standards of conduct among those practicing law;
- (~~f~~) represent the Bar before the legislative, administrative, and judicial bodies;
- (~~g~~) prevent the unauthorized practice of law;
- (~~h~~) promote professionalism, competence, and excellence in those practicing law through continuing legal education and ~~by~~ other means;
- (~~i~~) provide services to the public, ~~to~~ the judicial system, and ~~to Bar~~ members ~~of the Bar~~;
- (~~j~~) educate the public about the rule of law and their responsibilities under the law;
- (~~k~~) assist Bar members ~~of the Bar~~ in improving the quality and efficiency of their practice;
- (~~k~~) ~~to~~ engage freely in all lawful activities and efforts, including ~~the solicitation of soliciting~~ grants and contributions that may reasonably be ~~intended or~~ expected to promote and advance these purposes; and
- (~~m~~) carry on any other business connected with or incidental to the foregoing objectives and purposes, and to have and exercise all the powers conferred ~~under law of Utah~~ upon corporations formed under the Utah Revised Nonprofit Corporation Act.

Commented [LL11]: Recommendation 1.2

1 **Rule 14-207. Finances.**

2 ~~(a) Annual licensing fees. The annual licensing fees to be paid each year by all members of the~~
3 ~~Bar shall be fixed by the Board with prior Supreme Court approval.~~

Commented [LL12]: This is already a requirement in 14-107.

4 ~~(b)~~ **Budget.** The Board ~~shall~~must prepare an annual budget ~~which shall that be~~is published for
5 comment ~~prior to~~before final adoption. The Board ~~shall~~must adopt the budget at its first regular
6 meeting following the reorganization meeting. No obligations ~~shall~~may be incurred unless within
7 the limits of the budget and within the scope of the authorized objectives of the Board.

8 (a)(1) OPC. The Bar's annual budget must include a budget for the OPC, including the
9 salaries of OPC counsel and staff, their expenses, and administrative costs. The budget
10 must be jointly developed by the Board and the OPC and approved by the Oversight
11 Committee. The Board must ratify the budget for the OPC approved by the Oversight
12 Committee unless the Board petitions the Supreme Court for modifications, in which case
13 the budget approved by the Supreme Court is final.

Commented [LL13]: Recommendation 2.6

Commented [LL14]: This is moved up from 14-505.

14 ~~(e)~~ **Section dues.**

15 ~~(e)(1) Bar~~ Sections ~~of the Bar~~ may, with ~~the Board~~ approval ~~of the Board~~, charge an
16 annual membership fee ~~in order~~ to obtain the commitment of members to section
17 activities and to provide revenue to carry out the section's purposes ~~of the section~~. The
18 amount of such membership fees ~~shall~~will be fixed by the section subject to the approval
19 of the Board.

20 ~~(e)(2) The Bar must hold any F~~unds raised by sections from membership fees ~~shall be~~
21 ~~held by the Bar~~as separately identifiable funds of the sections, and disbursed ~~ed~~ to the
22 sections as needed, to carry out the functions of the sections. Such funds ~~shall~~may not
23 revert to the general Bar fund at the end of the budget year, but ~~shall~~will continue to be
24 held as a separately identifiable fund.

25 ~~(d)~~ **Disbursements.**

26 ~~(d)(1) Bar F~~unds ~~of the Bar shall be~~ are disbursed only in accordance with the
27 provisions of law and by these Bylaws, and at the direction of the Board.

(d)(2) Checking accounts ~~shall~~must be maintained with banks to be designated by the Board in such amounts as the Board ~~shall~~will determine.

(d)(3) No check ~~shall~~may be drawn on ~~the Bar funds of the Bar~~ except as the Board authorized~~s by the Board~~.

(d)(4) Checks under ~~the amount of~~ \$1,000 ~~can~~may be signed by ~~any one of the members of the~~ Executive Committee member or by the executive director. Checks over~~the amount of~~ \$1,000 ~~shall~~must bear the signatures of any two ~~members of the~~ Executive Committee members or any one ~~member of the~~ Executive Committee member and the executive director, unless the funds come from the ~~except that there shall be~~ a revolving-fund account for day-to-day operating needs, in which case a check of any amount may ~~can~~ be signed by ~~any one of the members of the~~ Executive Committee member or by the executive director. The Board designates ~~The size of the revolving-fund account shall be designated annually by the Board~~ and ~~can~~may revise this ~~be revised~~ at any time ~~by Board action~~.

(e) Investing~~ment of~~ funds. The Board must direct any investment of Bar f ~~Funds of the Bar shall be invested at the direction of the Board.~~

1 **Rule 14-208. Special rules and regulations.**

2 (a) ~~Bar Admission to the Bar~~. The Board ~~shall~~must promulgate rules for applicant Bar
3 admission ~~of applicants to the Bar~~ pursuant to Article 1, Integration and Management, and ~~shall~~
4 must recommend to the Supreme Court for approval rules governing qualifications and
5 requirements for admission to the practice of law as a lawyer and as a foreign legal consultant
6 and for the examination of applicants:

7 ~~(b) Conduct and discipline. The Board shall promulgate rules governing the conduct and~~
8 ~~discipline of members of the Bar and shall recommend to the Supreme Court for approval rules~~
9 ~~governing the conduct of members of the Bar and rules governing the disciplinary and disability~~
10 ~~procedures in cases involving alleged misconduct or incapacity of members.~~

Commented [LL15]: Recommendation 1.2

11 ~~(e)~~ **Student practice rules.** The Board may promulgate and recommend to the Supreme Court
12 for approval rules governing student practice or student court assistance programs.

13 ~~(d)~~ **Sections, standing committees, special committees.** To facilitate ~~the accomplishment~~
14 ~~of accomplishing~~ the Bar's purposes and objectives ~~of the Bar~~, the Board ~~shall~~must create
15 appropriate sections, standing committees, and special committees ~~of the Bar~~ to which matters
16 may be referred, ~~for handling and/or recommendation to the Board~~. The Board may call for
17 regular or periodic reports from such committees and sections at times and to such extent as ~~shall~~
18 the Board deems ~~appear~~ appropriate ~~to the Board~~.

19 ~~(e)~~ **Committees.** The Board will select a chair and the members of each committee. Bar
20 Committees ~~of the Bar shall be~~ consist of:

21 ~~(e)~~(1) Standing committees, which ~~shall continue in existence~~ until abolished by the
22 Board. Standing committee Mmembers ~~shall be appointed to standing committees~~
23 ~~for serve in~~ staggered, three-year terms ~~of three years; and~~

24 ~~(e)~~(2) Ad hoc committees, ~~which, having been~~ created for a specific purpose, which
25 ~~shall will be terminated~~ terminate upon completion of that purpose. Ad hoc committee
26 Mmembership ~~on ad hoc committees shall be for the time~~ lasts through the committee's ~~is~~
27 ~~in~~ existence.

1 ~~(e)(3) The Board shall select a chair and the members of each committee.~~
2

Chapter 14. Rules Governing the Utah State Bar.

Article 4. Mandatory Continuing Legal Education

Rule 14-402. Definitions.

As used in this article:

(a) “**Active emeritus**” or “**active emeritus lawyer**” means a lawyer who has been a Bar member ~~of the Bar~~ for 50 years or who is 75 years of age as of July 1 of the current year and who qualifies for active emeritus status as defined under the Bar’s rules, regulations, and policies.

(b) “**Active status**” or “**active status lawyer**” means a lawyer who has elected to be on active status as defined under the Bar’s rules, regulations, and policies; state judges, federal judges and magistrates, court commissioners, active senior judges, and active justice court judges, both full and part time, meet CLE requirements through the Administrative ~~o~~Office of the Courts.

(c) “**Admission on motion applicant or lawyer**” means a lawyer who has applied or has been admitted for reciprocal admission as defined under Rule 14-705 ~~or has been admitted as such~~.

(d) “**Approved law school**” means an ABA approved law school as defined under Rule 14-701.

(e) “**Bar**” means the Utah State Bar.

(f) “**Bar Examination**” means the Bar Examination as defined in Rules 14-710 and 14-711 and includes the UBE, regardless of where the UBE was taken.

(g) “**Board**” means the Utah State Board of Mandatory Continuing Legal Education as set forth in Rule 14-403.

(h) “**Board of Bar Commissioners**” means the governing board of the Bar.

(i) “**Certificate of Compliance**” means a written report evidencing a lawyer’s completion of accredited CLE as required and defined under Rule 14-414.

1 (j) “**CLE**” means continuing legal education~~;~~.

2 (j)(1) “**Live CLE**” means a CLE program presented in a classroom setting where
3 the lawyer is in the same room as the presenter~~;~~.

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

7 (j)(3) “**Self-Study CLE Program**” means a program presented in a suitable
8 setting where the lawyer can view approved self-study activities~~;~~.

9 (k) “**Comity Certificate**” is a Certificate that is filed to show MCLE compliance with a
10 reciprocal jurisdiction~~;~~.

11 (l) “**Compliance Cycle**” means the period of ~~2-~~two years beginning July 1 through June
12 30~~;~~.

13 (m) “**Ethics**” means standards set by the Utah Rules of Professional Conduct with which
14 a lawyer must comply to remain authorized to practice law in Utah and remain in good
15 standing~~;~~.

16 (n) “**Full exam**” means all components of the Bar Examination as defined under Rule
17 14-710~~;~~.

18 (o) “**House Counsel**” means a lawyer admitted with a restricted House Counsel license
19 as defined in Rule 14-719, which is required and limits ~~his or her~~the lawyer’s practice of
20 law to the business of ~~his or her~~the lawyer’s employer~~;~~.

21 (p) “**Inactive status**” or “**inactive status lawyer**” means a lawyer who has elected to be
22 on inactive status as defined under the Bar’s rules, regulations~~,~~, and policies~~;~~.

23 (q) “**MCLE**” means mandatory continuing legal education as defined under this article~~;~~.

24 (r) “**Multi-State Compliance Reciprocity**” means Utah has established that MCLE
25 compliance in certain states (Idaho, Oregon, Washington) may be used as MCLE

1 compliance in Utah by an active lawyer whose principal practice is in one of the
2 established reciprocal states~~;~~.

3 (s) “**New admittee**” means a lawyer newly admitted to the Utah State Bar~~;~~.

4 (t) “**NLTP**” means the New Lawyer Training Program as set forth in Rule 14-404 and
5 Rule 14-808~~;~~.

6 (u) “**Presumptively approved sponsor**” means those CLE sponsors or providers who
7 qualify under the standards set forth in Rule 14-412~~;~~.

8 (v) “**Presumptive CLE accreditation**” means those CLE courses or activities that
9 qualify under the standards set forth in Rule 14-412~~;~~.

10 (w) “**Professionalism and Civility**” means conduct consistent with the tenets of the legal
11 profession by which a lawyer demonstrates civility, honesty, integrity, character, fairness,
12 competence, ethical conduct, public service, and respect for the rules of law, the courts,
13 clients, other lawyers, witnesses~~,~~ and unrepresented parties~~;~~.

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

Commented [LL16]: Recommendation 1.2

15 (y) “**OPC ethics school**” means the OPC biannual seminar on the Utah Rules of
16 Professional Conduct~~,~~ which provides six CLE credit hours~~;~~.

17 (z) “**Supreme Court**” means the Utah Supreme Court~~;~~ and

18 (aa) “**UBE Transfers**” means applicants who gain admission by transferring a uniform
19 bar exam score~~;~~.

1 **Rule 14-801. Definitions.**

2 As used in this article:

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

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

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

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

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

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

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

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

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

20 (d) “**B**ar” means the Utah State Bar.

21 (e) “**C**LE” means MCLE accredited continuing legal education.

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

24 (g) “**M**CLE” means Mandatory Continuing Legal Education as set forth in Rule 14-401 et seq.

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

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

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

Commented [LL17]: Recommendation 1.2

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

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

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

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

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

1 **Chapter 14. Rules Governing the Utah State Bar.**

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

3 **Rule 14-904. Funding.**

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

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

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

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

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

Commented [LL18]: Recommendation 1.2

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

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 [LL19]: 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~~ might 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.

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) ~~Reserved.~~

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

~~(e)(2)~~ “**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 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 [LL20]: Recommendation 1.2

Chapter 15. Rules Governing Licensed Paralegal Practitioners.

Article 7. Licensing.

Rule 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 ~~that~~ the Applicant graduated within a typical and reasonable ~~period of 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.

- 1 (j) “**Complete Application**” means an application that includes all fees and necessary
2 application forms, along with any required supporting documentation, character references, a
3 criminal background check, a photo, an official certificate of graduation and if applicable, a test
4 accommodation request with supporting medical documentation.
- 5 (k) “**Confidential Information**” is defined in Rule 15-720(a).
- 6 (l) “**Disbarred Lawyer**” means an individual who was once a licensed lawyer and is no longer
7 permitted to practice law.
- 8 (m) “**Executive Director**” means the executive director of the Utah State Bar or ~~her or his~~their
9 designee.
- 10 (n) “**First Professional Degree**” means a degree that prepares the holder for admission to the
11 practice of law (e.g. juris doctorate) by emphasizing competency skills along with theory and
12 analysis. An advanced, focused, or honorary degree in law is not recognized as a First
13 Professional Degree (e.g. master of laws or doctor of laws).
- 14 (o) “**Full-time**” means providing legal services as a paralegal for no fewer than 80 hours per
15 month.
- 16 (p) “**General Counsel**” means the General Counsel of the Utah State Bar or ~~her or his~~their
17 designee.
- 18 (q) “**Licensed Paralegal Practitioner**” means a person licensed by the Utah Supreme Court to
19 provide limited legal representation in the areas of (1) temporary separation, divorce, parentage,
20 cohabitant abuse, civil stalking, and custody and support; (2) forcible entry and detainer and
21 unlawful detainer; or (3) debt collection matters in which the dollar amount in issue does not
22 exceed the statutory limit for small claims cases.
- 23 (r) “**LPP**” means Licensed Paralegal Practitioner.
- 24 (s) “**LPP Administrator**” means the Bar employee in charge of LPP licensure or ~~his or her~~their
25 designee.
- 26 (t) “**LPP Admissions Committee**” means those Utah State Bar members or others appointed by
27 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 ~~Bar’s~~ 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

1 updating any information that has changed since the prior application was filed and submitting a
2 new criminal background check.

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

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

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

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

Tab 6

OPC Oversight Committee Proposed Bar Rule Changes

| | |
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Chapter 14. Rules Governing the Utah State Bar.

Article 1. Integration and Management

Rule 14-102. Regulating the practice of law.

(a) Vested authority.

(a)(1) The Supreme Court—by its constitutional power—authorizes and designates the Bar to administer rules and regulations that govern the practice of law in Utah, including regulating Licensed Paralegal Practitioners. All persons authorized to practice law in Utah must be licensed by the Bar in accordance with this chapter and Chapter 15 of the Supreme Court Rules of Professional Practice.

(a)(2) The Supreme Court recognizes a compelling state interest in using the Bar to assist the Court in governing admission to the practice of law and improving the quality of legal services in the state. The requirements imposed, the delegations made, and the authority granted to the Bar provide the best ways to promote these compelling state interests and there are no less restrictive alternatives available to achieve those results.

(b) Responsibilities of the Bar. The Bar’s purposes, duties, and responsibilities include:

(b)(1) advancing the administration of justice according to law;

(b)(2) aiding the courts in the administration of justice;

(b)(3) regulating the admission of persons seeking to practice law;

(b)(4) fostering and maintaining integrity, learning competence, public service, and high standards of conduct among those practicing law;

(b)(5) representing the Bar before legislative, administrative, and judicial bodies;

(b)(6) preventing the unauthorized practice of law;

(b)(7) promoting professionalism, competence, and excellence through continuing legal education and other means;

(b)(8) providing a service to the public, the judicial system, and Bar members;

(b)(9) educating the public about the rule of law and responsibilities under the law; and

(b)(10) assisting Bar members in improving the quality and efficiency of their practice.

1 (c) **Qualifications.** This chapter prescribes the qualifications, duties, and obligations of lawyers,
2 foreign legal consultants, and Licensed Paralegal Practitioners licensed to practice law in Utah.
3 The Supreme Court is responsible for disciplining a Bar member or Licensed Paralegal
4 Practitioner.

5 (d) **Licensure required.** No suspended or disbarred person may practice law in Utah or hold
6 themselves out as one who may practice law in Utah. A person may only practice law in Utah if
7 that person is:

8 (d)(1) a licensed lawyer and an active Bar member in good standing;

9 (d)(2) an inactive member in good standing providing pro bono legal services for or on
10 behalf of a legal services organization approved by the Bar upon meeting certification
11 and performance standards, conditions, and rules established by the Board;

12 (d)(3) a foreign legal consultant licensed by the Bar; or

13 (d)(4) a Licensed Paralegal Practitioner and an active licensee of the Bar in good
14 standing.

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.

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

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

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

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

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

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

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

(f) **Commissioner Elections.**

(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 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.

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

(j) Bylaws. The Board may adopt Bylaws, not conflicting with any of these rules' terms, concerning officer selection and tenure, creation of sections and committees and their powers

- 1 and duties, and generally for the control and regulation of the business of the Board and of the
- 2 Bar.

Rule 14-105 Promulgating rules to regulate licensed lawyers, Licensed Paralegal Practitioners, and judicial officers.

(a) **Formulating rules.** The Board formulates rules governing the conduct of all persons admitted or licensed to practice in Utah, including foreign legal consultants and those licensed as Licensed Paralegal Practitioners, and Bar members holding judicial office. The Supreme Court formulates rules governing procedures in cases involving alleged misconduct of Bar members, including those holding judicial office.

(b) **Court to approve rules and regulations.** All rules and regulations formulated by the Board must be submitted to and approved by the Supreme Court.

Rule 14-107. Duties of lawyers, foreign legal consultants, and licensed paralegal practitioners.

(a) **Roster and current record information.** The Bar must collect, maintain, and have ready access to current information of Bar members, foreign legal consultants, and licensed paralegal practitioners including:

(a)(1) full name;

(a)(2) date of birth;

(a)(3) current physical addresses, and current telephone numbers for law office and residence, except that full-time judges are exempt from providing residential addresses and telephone numbers;

(a)(4) current e-mail address;

(a)(5) date of admission;

(a)(6) date of any transfer to or from inactive status;

(a)(7) all specialties in which certified;

(a)(8) other jurisdictions in which the lawyer is admitted and date of admission; and

(a)(9) nature, date, and place of any discipline imposed and any reinstatements.

(b) Assessments.

(b)(1) **Annual licensing fee.** To effectuate the Bar's purposes, every lawyer, foreign legal consultant, and licensed paralegal practitioner admitted or licensed to practice in Utah must pay to the Bar on or before July 1 of each year an annual license fee for each fiscal year to be fixed by the Bar Commission from time to time and approved by the Supreme Court. The fee must be sufficient to pay the costs of disciplinary administration and enforcement. The Bar administers the funds.

(b)(2) **Failure to renew annual license.** Failure to pay the annual licensing fee or provide the required annual licensing information will result in administrative suspension. Any lawyer, foreign legal consultant, or licensed paralegal practitioner who practices law after failure to renew their license violates the Rules of Professional

1 Conduct or Licensed Paralegal Practitioner Rules of Professional Conduct and may be
2 disciplined. The executive director or their designee must give notice of such removal
3 from the rolls to such noncomplying member at the designated mailing address on the
4 Bar's records and to the state and federal courts in Utah.

5 (b)(3) **Reenrollment within three years of administrative suspension.** A lawyer,
6 foreign legal consultant, or licensed paralegal practitioner who is administratively
7 suspended for failing to pay licensing fees for three years or less may apply in writing for
8 reenrollment. The request should be made to the Utah State Bar Licensing Department
9 and include payment equal to the fees the lawyer, foreign legal consultant, or licensed
10 paralegal practitioner would have been required to pay had they remained an inactive
11 member to the date of the request for reenrollment and a \$200 reinstatement fee. Upon
12 receipt, the Bar will order reenrollment and so notify the courts. Reenrollment based on
13 failure to renew does not negate any orders of discipline.

14 (b)(4) **Reenrollment after three years of administrative suspension.** A lawyer, foreign
15 legal consultant, or licensed paralegal practitioner who is administratively suspended for
16 three years or more for failing to pay license fees must comply with the admissions
17 requirements set forth in the Supreme Court Rules of Professional Practice governing
18 admission for lawyers who have been administratively suspended for nonpayment for
19 three or more years before being reinstated.

20

Rule 14-111. Practicing without a license prohibited.

(a) Action or proceedings to enforce. Exception. No person who is not licensed to practice law in Utah as an attorney at law or as a foreign legal consultant or Licensed Paralegal Practitioner may practice or assume to act or hold himself or herself out to the public as a person qualified to practice law or to carry on the calling of an attorney at law in Utah or Licensed Paralegal Practitioner. Such practice, or assumption to act or holding out, by any such unlicensed person will not constitute a crime, but this prohibition against the practice of law by any such person will be enforced by such civil action or proceedings, including writ, contempt, or injunctive proceedings, as may be necessary and appropriate, which action or which proceedings the Bar will institute after Board approval.

(b) Nothing in this article will prohibit a person who is unlicensed as an attorney, foreign legal consultant, or Licensed Paralegal Practitioner from personally representing that person's own interests in a cause to which the person is a party in his or her own right and not as assignee.

Chapter 14. Rules Governing the Utah State Bar.

Article 2. Bylaws

Rule 14-202. Bar's purposes.

The purposes of the Bar are to:

- (a) advance the administration of justice according to law;
- (b) aid the courts in carrying on the administration of justice;
- (c) regulate the admission of persons seeking to practice law;
- (d) foster and maintain integrity, learning, competence, public service, and high standards of conduct among those practicing law;
- (e) represent the Bar before the legislative, administrative, and judicial bodies;
- (f) prevent the unauthorized practice of law;
- (g) promote professionalism, competence, and excellence in those practicing law through continuing legal education and other means;
- (h) provide services to the public, the judicial system, and Bar members;
- (i) educate the public about the rule of law and their responsibilities under the law;
- (j) assist Bar members in improving the quality and efficiency of their practice;
- (k) engage freely in all lawful activities and efforts, including soliciting grants and contributions that may reasonably be expected to promote and advance these purposes; and
- (l) carry on any other business connected with or incidental to the foregoing objectives and purposes, and to have and exercise all the powers conferred upon corporations formed under the Utah Revised Nonprofit Corporation Act.

Rule 14-207. Finances.

(a) **Budget.** The Board must prepare an annual budget that is published for comment before final adoption. The Board must adopt the budget at its first regular meeting following the reorganization meeting. No obligations may be incurred unless within the limits of the budget and within the scope of the authorized objectives of the Board.

(a)(1) **OPC.** The Bar's annual budget must include a budget for the OPC, including the salaries of OPC counsel and staff, their expenses, and administrative costs. The budget must be jointly developed by the Board and the OPC and approved by the Oversight Committee. The Board must ratify the budget for the OPC approved by the Oversight Committee unless the Board petitions the Supreme Court for modifications, in which case the budget approved by the Supreme Court is final.

(b) Section dues.

(b)(1) Bar sections may, with Board approval, charge an annual membership fee to obtain the commitment of members to section activities and to provide revenue to carry out the section's purposes. The amount of such membership fees will be fixed by the section subject to the approval of the Board.

(b)(2) The Bar must hold any funds raised by sections from membership fees as separately identifiable funds of the sections, and disburse to the sections as needed, to carry out the functions of the sections. Such funds may not revert to the general Bar fund at the end of the budget year, but will continue to be held as a separately identifiable fund.

(c) Disbursements.

(c)(1) Bar funds are disbursed only in accordance with the provisions of law and by these Bylaws, and at the direction of the Board.

(c)(2) Checking accounts must be maintained with banks to be designated by the Board in such amounts as the Board will determine.

(c)(3) No check may be drawn on Bar funds except as the Board authorizes.

1 (c)(4) Checks under \$1,000 may be signed by an Executive Committee member or by the
2 executive director. Checks over \$1,000 must bear the signatures of any two Executive
3 Committee members or any one Executive Committee member and the executive
4 director, unless the funds come from the revolving-fund account for day-to-day operating
5 needs, in which case a check of any amount may be signed by an Executive Committee
6 member or by the executive director. The Board designates the size of the revolving-fund
7 account annually and may revise this at any time.

8 (d) Investing funds. The Board must direct any investment of Bar funds.

Rule 14-208. Special rules and regulations.

(a) **Bar Admission.** The Board must promulgate rules for applicant Bar admission pursuant to Article 1, Integration and Management, and must recommend to the Supreme Court for approval rules governing qualifications and requirements for admission to the practice of law as a lawyer and as a foreign legal consultant and for the examination of applicants.

(b) **Student practice rules.** The Board may promulgate and recommend to the Supreme Court for approval rules governing student practice or student court assistance programs.

(c) **Sections, standing committees, special committees.** To facilitate accomplishing the Bar's purposes and objectives, the Board must create appropriate sections, standing committees, and special committees to which matters may be referred. The Board may call for regular or periodic reports from such committees and sections at times and to such extent as the Board deems appropriate.

(d) **Committees.** The Board will select a chair and the members of each committee. Bar Committees consist of:

(d)(1) Standing committees, which exist until abolished by the Board. Standing committee members serve in staggered, three-year terms; and

(d)(2) Ad hoc committees created for a specific purpose, which will terminate upon completion of that purpose. Ad hoc committee membership lasts through the committee's existence.

Chapter 14. Rules Governing the Utah State Bar.

Article 4. Mandatory Continuing Legal Education

Rule 14-402. Definitions.

As used in this article:

(a) “**Active emeritus**” or “**active emeritus lawyer**” means a lawyer who has been a Bar member for 50 years or who is 75 years of age as of July 1 of the current year and who qualifies for active emeritus status as defined under the Bar’s rules, regulations, and policies.

(b) “**Active status**” or “**active status lawyer**” means a lawyer who has elected to be on active status as defined under the Bar’s rules, regulations, and policies; state judges, federal judges and magistrates, court commissioners, active senior judges, and active justice court judges, both full and part time, meet CLE requirements through the Administrative Office of the Courts.

(c) “**Admission on motion applicant or lawyer**” means a lawyer who has applied or has been admitted for reciprocal admission as defined under Rule 14-705.

(d) “**Approved law school**” means an ABA approved law school as defined under Rule 14-701.

(e) “**Bar**” means the Utah State Bar.

(f) “**Bar Examination**” means the Bar Examination as defined in Rules 14-710 and 14-711 and includes the UBE, regardless of where the UBE was taken.

(g) “**Board**” means the Utah State Board of Mandatory Continuing Legal Education as set forth in Rule 14-403.

(h) “**Board of Bar Commissioners**” means the governing board of the Bar.

(i) “**Certificate of Compliance**” means a written report evidencing a lawyer’s completion of accredited CLE as required and defined under Rule 14-414.

(j) “**CLE**” means continuing legal education.

(j)(1) “**Live CLE**” means a CLE program presented in a classroom setting where the lawyer is in the same room as the presenter.

(j)(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.

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

(k) “**Comity Certificate**” is a Certificate that is filed to show MCLE compliance with a reciprocal jurisdiction.

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

(m) “**Ethics**” means standards set by the Utah Rules of Professional Conduct with which a lawyer must comply to remain authorized to practice law in Utah and remain in good standing.

(n) “**Full exam**” means all components of the Bar Examination as defined under Rule 14-710.

(o) “**House Counsel**” means a lawyer admitted with a restricted House Counsel license as defined in Rule 14-719, which is required and limits the lawyer’s practice of law to the business of the lawyer’s employer.

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

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

(r) “**Multi-State Compliance Reciprocity**” means Utah has established that MCLE compliance in certain states (Idaho, Oregon, Washington) may be used as MCLE compliance in Utah by an active lawyer whose principal practice is in one of the established reciprocal states.

(s) “**New admittee**” means a lawyer newly admitted to the Utah State Bar.

(t) “**NLTP**” means the New Lawyer Training Program as set forth in Rule 14-404 and Rule 14-808.

1 (u) “**Presumptively approved sponsor**” means those CLE sponsors or providers who
2 qualify under the standards set forth in Rule 14-412.

3 (v) “**Presumptive CLE accreditation**” means those CLE courses or activities that
4 qualify under the standards set forth in Rule 14-412.

5 (w) “**Professionalism and Civility**” means conduct consistent with the tenets of the legal
6 profession by which a lawyer demonstrates civility, honesty, integrity, character, fairness,
7 competence, ethical conduct, public service, and respect for the rules of law, the courts,
8 clients, other lawyers, witnesses, and unrepresented parties.

9 (x) “**OPC**” means the Office of Professional Conduct.

10 (y) “**OPC ethics school**” means the OPC biannual seminar on the Utah Rules of
11 Professional Conduct, which provides six CLE credit hours.

12 (z) “**Supreme Court**” means the Utah Supreme Court.

13 (aa) “**UBE Transfers**” means applicants who gain admission by transferring a uniform
14 bar exam score.

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.

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

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

1 (j) “**OPC**” means the Office of Professional Conduct.

2 (k) “**Supervising attorney,**” except as used in Rule 14-807, means an active Bar member who
3 generally supervises a volunteer attorney. The supervising attorney must:

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

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

10 (k)(3) assist the volunteer attorney’s legal service preparation to the extent that the
11 supervisory attorney considers it necessary; and

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

14

Chapter 14. Rules Governing the Utah State Bar.

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.

(h) Any proceeding on a claim will not be conducted according to technical rules relating to evidence, procedure, and witnesses. Any relevant evidence must be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs,

1 regardless of any common law or statutory rule that may make improper the admission of such
2 evidence over objection in court proceedings. The claimant has the duty to supply relevant
3 evidence to support the claim.

4 (i) The Board must determine the order and manner of payment and pay those claims it deems
5 meritorious. Unless the Board directs otherwise, no claim will be approved during a pending
6 disciplinary proceeding involving the same act or conduct as alleged in the claim. No
7 determination or hearing will take place until all disciplinary proceedings are complete.

8 (j) The Board must advise both the claimant and the lawyer of the status of the Board's
9 consideration of the claim and after having received the recommendation of the Committee, must
10 also be informed of the final determination.

11 (k) The claimant may request reconsideration within 28 days of the denial or determination of
12 the amount of the claim.

13

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

(y) “**OPC**” means the Office of Professional Conduct.

(z) Reserved.

1 (aa) “**Supreme Court**” means the Utah Supreme Court.

2

Chapter 15. Rules Governing Licensed Paralegal Practitioners.

Article 7. Licensing.

Rule 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

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

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

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

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

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

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

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

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

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

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

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

25 (u) “**NALA**” means the National Association of Legal Assistants.

26 (v) “**NALS**” means The Association for Legal Professionals.

27 (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 documents or correspondence, completing forms, preparing reports or charts, legal research, and interviewing clients or witnesses. Substantive Law-Related Experience does not include routine clerical or administrative duties. Substantive Law-Related Experience for licensure in landlord-

1 tenant and debt collection includes, but is not limited to, the provision of legal services as a
2 Paralegal supervised by a licensed attorney, paralegal student or law student in the areas of
3 bankruptcy, real estate, mortgage and/or banking law.

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

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

7 (hh) “**Updated Application**” means that an Applicant is required to amend and update the
8 Applicant’s application on an ongoing basis and correct any information that has changed since
9 the application was filed.

10

Tab 7

OPC Oversight Committee Proposed OPC Rule Amendments

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General provisions.

Rule ~~14-501~~11-501. Lawyer disciplinary and disability proceedings: Purpose, authority, scope, and structure of lawyer disciplinary and disability proceedings.

(a) The purpose of lawyer disciplinary and disability proceedings 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 those who have demonstrated by their conduct that they are unable or unlikely to properly discharge their professional responsibilities.

(b) Under Article VIII, Section 4 of the Constitution of Utah, the Utah Supreme Court has exclusive authority within Utah to adopt and enforce rules governing the practice of law, including ~~admission~~ licensure to practice law in Utah and the conduct and discipline of persons ~~admitted or~~ licensed to practice law.

(c) All disciplinary proceedings ~~shall~~ must be conducted in accordance with ~~this article and Article 6, Standards for Imposing Lawyer Sanctions~~ these rules. Formal disciplinary and disability proceedings are civil in nature. These rules ~~shall~~ will be construed ~~so as~~ to achieve substantial justice and fairness in disciplinary matters with dispatch and at the least expense to all concerned parties.

(d) The interests of the public, the courts, and the legal profession all require that disciplinary proceedings at all levels be undertaken and construed to secure the just and speedy resolution of every complaint.

(e) Unless provided otherwise, to the extent consistent with their limited license, licensed paralegal practitioners and foreign legal consultants must be treated in the same manner as lawyers for purposes of interpreting and implementing these rules.

Commented [LL1]: Combined articles 5 and 6 into one article (Chapter 11, Article 5).

Commented [LL2]: The committee has incorporated Chapter 15, articles 5 and 6 into existing Chapter 14, articles 5 and 6. These will then be combined into one article and moved into Chapter 11, Article 5.

Rule ~~14-502~~ 11-502. Definitions.

As used in this article:

(a) ~~“Action”~~ or “misconduct action” means a lawsuit filed by the OPC in district court alleging lawyer misconduct or seeking to transfer a lawyer to disability status.

Commented [LL3]: Recommendation 4.1. The committee has changed all references of “formal complaint” to “action.”

(b) “Bar” means the Utah State Bar.

(~~b~~c) ~~“Board Bar Commission”~~ or “Commission” means the Board of Bar Commissioners of the Utah State Bar.

(~~e~~d) ~~“Chief disciplinary counsel” means the lawyer the Supreme Court appoints to manage the OPC.~~

Commented [LL4]: Recommendation 1.2

(e) “Committee” means the Ethics and Discipline Committee of the Utah Supreme Court.

(~~d~~f) ~~“eComplainant” means either (1) the person who files a an informal complaint, or (2) the OPC when the OPC determines to open an investigation based on information it has received after opening an investigation.~~

(~~e~~) ~~OPC counse means senior counsel and any assistant counsel employed to assist senior counsel.~~

(~~f~~) ~~“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.~~

Commented [LL5]: Recommendation 4.1 only one reference to “complaint.” The committee recommends using the term “action” to clarify when the OPC brings a lawsuit in district court.

(g) “Complaint” means any written allegation of lawyer misconduct or incapacity containing a declaration under penalty of perjury as to the accuracy of the information provided.

Commented [LL6]: Recommendation 4.1 discontinue notary requirement, but a declaration, under penalty of perjury, should be required.

(~~g~~) ~~informal complain means any written, notarized allegation of misconduct by or incapacity of a lawyer which also contains a verification attesting to the accuracy of the information provided.~~

(h) ~~“Injury” means harm to a client, the public, the legal system, or the profession that 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.~~

Commented [LL7]: Paragraphs (h), (i), (j), (m), and (r) are from the former sanctions article 6.

(i) **“Intent”** means the conscious objective or purpose to accomplish a particular result.

(j) **“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.

(k) **“Lawyer”** includes those licensed to practice law in any jurisdiction of the United States, foreign legal consultants, and licensed paralegal practitioners, insofar as the licensed paralegal practitioner is authorized to practice under Utah Special Practice Rule 14-802, unless provided otherwise.

(l) **“Licensed”** includes lawyers admitted to the Bar, unless provided otherwise.

(m) **“Negligence”** means a lawyer’s failure 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.

(n) **“Notice”** means the notice ~~Notice of Informal Complaint~~ the OPC sends to the respondent after a preliminary investigation, which identifies the possible violation(s) of the Rules of Professional Conduct or Licensed Paralegal Practitioner Rules of Professional Conduct, raised by the complaint as the OPC has preliminarily determined.

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

(p) **“OPC counsel”** means chief disciplinary counsel, deputy chief disciplinary counsel, and any assistant disciplinary counsel.

(q) **“Oversight committee”** means the committee established in Rule 11-503 to oversee the OPC.

(r) **“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.

Commented [LL8]: Includes LPPs so that we can combine Chapters 14 and 15 (only for articles 5 and 6).

Commented [LL9]: The committee is using “licensed” rather than “admitted” wherever possible to clarify that LPPs are included unless specifically excluded.

Commented [LL10]: Recommendation 4.2. Remove references to “NOIC” and other confusing terminology and simplify. The committee recommends referring to this simply as the “notice.”

Commented [LL11]: Recommendation 1.2

(j)s) “**R**espondent” means a lawyer subject to the disciplinary jurisdiction of the ~~Utah~~ Supreme Court against whom ~~an informal or formal~~ complaint has been filed or an action has been initiated.

(k)t) “**R**ules of Professional Conduct” means the rules in Chapter 13 of the Supreme Court Rules of Professional Practice ~~Utah Rules of Professional Conduct (including the accompanying comments) initially adopted by the Utah Supreme Court in 1988, as amended from time to time~~ and “**L**icensed Paralegal Practitioner Rules of Professional Conduct” means the rules in Chapter 15, article 12 of the Supreme Court Rules of Professional Practice.

(l)u) “**S**creening panel” means Committee members ~~of the Committee~~ who participate in hearings and make determinations ~~under Rule 14-503~~.

~~(m) “senior counsel” means the lawyer appointed by the Board to manage the OPC; and~~

(n)v) “**S**upreme Court” means the Utah Supreme Court.

Rule ~~11-501~~ 11-503. Oversight Committee for the Office of Professional Conduct.

Intent:

~~To establish an oversight committee for the Office of Professional Conduct (“OPC”).~~

~~To establish a method for appointing committee members, membership terms, a meeting schedule, and committee purposes and responsibilities.~~

Applicability:

~~This rule shall apply to the Oversight Committee for the Office of Professional Conduct.~~

Statement of the Rule:

~~(1)~~ **Establishment.** The Oversight Committee for the Office of Professional Conduct (“Oversight Committee”) is established as a Supreme Court committee ~~of the Utah Supreme Court.~~

(a)(1)(A) Composition.

~~(a)(1)(A)(i)~~ The Oversight Committee ~~shall~~ consists of five voting members. Among the members, at least one ~~must be of whom is~~ a judge; one a member of the public; and one a past chair or past vice-chair of the Ethics and Discipline Committee. At least one of the members ~~shall~~ must have an accounting or finance background.

~~(a)(1)(A)(ii)~~ The ~~Executive D~~director of the Utah ~~State~~ Bar ~~shall~~ will be an ex-officio, non-voting member of the Oversight Committee.

~~(a)(2)~~ **Appointment and member roles.** The Utah Supreme Court appoints Committee members ~~shall be appointed by the Utah Supreme Court and who~~ may serve up to two consecutive staggered four-year terms. The Supreme Court ~~shall~~ will select a chair from among the Oversight Committee’s members. Oversight Committee members ~~shall~~ serve as officers of the court and not as representatives of any client, employer, or other organization or interest group. At the first meeting of the Oversight Committee in any calendar year, and at every meeting at which a new ~~member of the~~ Committee member first attends, each Committee member ~~shall~~ must briefly disclose the general nature of the member’s legal or other practice.

Commented [LL12]: The Committee would like the Court to consider allowing committee members to potentially come back in the future. There is a limited pool from which these committee members may come and it may be necessary to allow past committee member to serve again.

1 (a)(3) Meeting schedule. The Oversight Committee will meet as often as necessary to
2 accomplish its purposes but at least annually.

3 (a+)(4C) Vacancies. If there is an event of a vacancy on the Oversight Committee
4 vacancy, the Supreme Court ~~shall~~will appoint a new Committee member to serve for the
5 remainder of the unexpired term.

6 (a+)(5D) Absences. If the event that an Oversight Committee member fails to attend
7 two consecutive Committee meetings, the chair may notify the Supreme Court of those
8 absences and may request that the Supreme Court replace that Committee member.

9 (a+)(6E) Administrative support. The Administrative Office of the Courts shall
10 coordinate administrative support to the Committee.

11 (2b) Oversight committee purpose, responsibilities, and authority.

12 (b2)(1A) Oversight Committee Purpose of the Committee. The Oversight
13 Committee's purpose ~~of the Committee~~ is to assist the OPC in implementing ~~the~~ reforms
14 to the attorney discipline process adopted by the Utah Supreme Court and to provide
15 oversight for the OPC.

16 (b)(2)(B) Oversight Committee responsibilities. The following comprise the Oversight
17 Committee's responsibilities:

18 (b)(2)(A)(i) Develop and implement realistic performance metrics and conduct
19 annual evaluations of OPC and its Chief Disciplinary Counsel;

20 (b)(2)(B)(ii) Develop a- Approve the budget for the OPC and annually submit the
21 budget by May 1 to the Utah Supreme Court and ~~to the~~ Utah State Bar;

22 (b)(2)(C)(iii) Conduct a needs assessment for the OPC, setting forth a three- to
23 five-year funding plan for the disciplinary process, including technology and
24 staffing needs;

25 (b)(2)(D)(iv) Annually, in conjunction with OPC Chief Disciplinary Counsel
26 and the Chair of the Ethics and Discipline Committee chair, report to the Court
27 regarding the operations of the OPC and the general standing of disciplinary
28 matters and procedures; ~~and~~

(b)(2)(E)(B)(v) Develop and monitor formal policies for the OPC, including records retention policies.

(b)(2)(F) Recommend rules of administration and procedure to the Supreme Court;

(b)(2)(G) Recommend a chief disciplinary counsel to be appointed by the Supreme Court; and

(b)(2)(H) Monitor the OPC's workload and recommend to the Supreme Court adequate OPC staffing.

(b)(2)(E) **Authority.** The Oversight 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.

~~(3) **Meeting schedule.** The Committee shall meet as often as necessary to accomplish its purposes but at least annually.~~

(c) Complaints and appeals.

(c)(1) Any person may file with the Oversight Committee chair a complaint alleging malfeasance regarding the chief disciplinary counsel. If necessary, the Oversight Committee may enter a recommendation to the Supreme Court, which may take appropriate action.

(c)(2) If a complaint regarding the chief disciplinary counsel is received in the OPC's office, the chief disciplinary counsel must forward the complaint to the Oversight Committee chair within a reasonable time, but not more than 14 days after receipt.

(c)(3) Any person may file with the chief disciplinary counsel a complaint alleging malfeasance regarding OPC counsel or staff. The chief disciplinary counsel's decision regarding the complaint is final and not subject to appeal. The chief disciplinary counsel's decision may include an appropriate action taken against the person whom the complaint is filed.

(c)(4) A complaint must be in writing, stating the name and contact information of the complainant, the nature of the complaint, and the facts on which the complaint is based.

Commented [LL13]: Modeled after guardian ad litem oversight rule (CJA 4-906).

Draft: May 6, 2020

1 [\(c\)\(5\) Unless the appropriate action taken on a complaint is part of a formal proceeding,](#)
2 [any action taken is confidential.](#)

Rule ~~14-506~~11-504. Jurisdiction.

(a) **Persons practicing law.** The persons subject to the disciplinary jurisdiction of the Supreme Court and the OPC include any lawyer ~~admitted~~licensed to practice law in Utah, any lawyer admitted but currently not properly licensed to practice in Utah, any formerly ~~admitted~~licensed lawyer with respect to acts committed while admitted to practice in Utah or with respect to acts subsequent thereto, which amount to the practice of law or constitute a violation of any rule promulgated, adopted, or approved by the Supreme Court or any other disciplinary authority where the ~~attorney~~lawyer was licensed to practice or was practicing law at the time of the alleged violation, any lawyer specially admitted by a Utah court ~~of Utah~~ for a particular proceeding, and any other person not ~~admitted~~licensed in Utah who practices law or who renders or offers to render any legal services in Utah.

(b) **Incumbent and sitting judges.** Incumbent and sitting judges are subject to the OPC's jurisdiction ~~of OPC~~ only for conduct that occurred ~~prior to the~~before taking ~~of~~ office.

(c) **Former judges.** A former judge who has resumed the status of a lawyer is subject to the jurisdiction of the Supreme Court not only for conduct as a lawyer but also for misconduct that occurred while the lawyer was a judge and would have been grounds for lawyer discipline, provided that the misconduct was not the subject of a judicial disciplinary proceeding as to which there has been a final determination by the Supreme Court.

(d) **Part-time judges.** Part-time judges, while in office, are subject to lawyer disciplinary and disability proceedings for acts outside their judicial capacity.

Rule ~~14-529~~ 11-505. Statute of limitations.

(a) Individual complaints. A complaint against a lawyer must be filed with the OPC within four years of the time that the complainant discovers or reasonably should have discovered the alleged misconduct.

(b) OPC complaints. A complaint initiated by the OPC must be initiated within five years of the alleged misconduct.

(c) Fraud, conversion, conviction of a serious crime, and concealment. There is no statute of limitations for misconduct alleging fraud, conversion, or conviction of a serious crime, or for alleged misconduct the discovery of which the lawyer has concealed.

~~Proceedings under this article shall be commenced within four years of the discovery of the acts allegedly constituting a violation of the Rules of Professional Conduct.~~

Commented [LL14]: OPC's proposed language in response to *Dahlquist*.

Commented [LL15]: ABA recommends no statute of limitations for all lawyer discipline cases. The committee proposes this compromise for those cases involving fraud, concealment, etc.

Ethics and Discipline Committee.

Rule ~~14-503~~ 11-510. Ethics and Discipline Committee composition.

(a) **Composition.** The Supreme Court appoints the Committee ~~members shall be appointed by the Supreme Court.~~ The Committee ~~shall~~ consists of ~~eight~~ four public members and 21 ~~29~~ lawyers ~~of the Bar~~ who have demonstrated a high standard of professional conduct. All appointments ~~shall be~~ are for a term of ~~three years~~ with no committee member serving more than two consecutive terms unless appointed as a chair or vice chair of the Committee. The Supreme Court ~~shall~~ designates one lawyer member as Committee chair and four lawyer members as Committee vice chairs.

Commented [LL16]: Recommendation 5.4

(b) **Committee chair.** The Committee chair ~~shall~~ supervises the Committee and screening panels. The chair is responsible ~~to~~ for:

(b)(1) maintaining an adequate check on the screening panels' work ~~of the screening panels~~ to ensure that matters move forward expeditiously.

(b)(2) to determineing that screening panels have a uniform basis for the judgments rendered.

(b)(3) and to provideing the screening panels with information concerning ethics and judicial decisions necessary to their activities. ~~and~~

(b)(4) The chair shall makemaking recommendations to the Supreme Court concerning appointments to and removals from the screening panels and reports concerning ~~the screening panel~~ activities ~~of the screening panels~~ and the overall work of the Committee.

(c) **Vice chairs.** The Committee vice chairs ~~shall will~~ act ~~in the event of if~~ the chairs ~~is~~ are absent or resignations. In ~~the such~~ such event ~~of the chairs absence or resignation~~, a vice chair will become the chair. The chair may call upon any vice chair to assist in any of the Committee chair's duties.

(d) Removal. The Committee chair may recommend removal of a Committee member by notifying the Supreme Court of the recommendation of removal and reasons for the recommendation. The removal is effective when the Supreme Court accepts the recommendation.

Rule 11-511. ~~(d) Screening Panel composition; responsibilities, quorums.~~

Commented [LL17]: Recommendation 5.2

(a) Screening panel composition. The Committee members, except for the Committee chair and Committee-vice chairs, ~~shall be~~ are divided into four screening panel sections of five members each, including six-four ~~lawyers of the Bar and one-two~~ public members. Whenever a screening panel is assigned a complaint involving a licensed paralegal practitioner, the Committee chair may, as practical, appoint up to two licensed paralegal practitioners to the screening panel as voting members, with all of the responsibilities and duties of other members of the screening panel.

(b) Screening panel number. All screening panel hearings must have five panel members present unless all parties agree to fewer than five, but not fewer than three, panel members. A panel chair or vice chair and a public member must be present at each screening panel hearing.

(c) Chair and vice chair. The Supreme Court ~~shall will~~ name a chair and vice chair for each screening panel. The chair or, in the chair's ~~absence-of the chair, the~~ vice chair ~~shall~~ presides over ~~the~~ screening panel hearings. The panel chair may call upon the vice chair to assist in any of the panel chair's duties. Chairs or vice chairs from other panels may conduct hearings if the regular chair and vice chair are unable to attend. ~~In the event of~~ If the chair's is ~~removed~~ is or ~~resignations~~, the vice chair will become the chair, and the Court ~~shall will~~ appoint a ~~member of the~~ Committee member to serve as vice chair.

(d) Voting. ~~Two members of the Bar plus one public member shall constitute a quorum of a screening panel. The concurrence of a~~ A majority vote of those members present and voting at any proceeding ~~shall be~~ is required for a screening panel determination. If an even number of screening panel members participate in a proceeding, the chair, or vice chair if the chair is not present, shall may ~~not vote unless necessary to break a tie~~. The chair or vice chair ~~shall may~~, however, fully participate in the proceeding.

(e) Meetings. Each screening panel ~~shall~~ meets as is necessary to effectively and promptly carry out its duties. The chair may convene the entire Committee ~~may be convened~~ at such other times ~~by the chair~~ as necessary to effectively and promptly carry out ~~its~~ the Committee's duties.

(e) Removal, & Alternates. ~~The Committee chair may recommend removal of a Committee member by notifying the Supreme Court of the recommendation of removal and reasons for the~~

Commented [LL18]: Moved into 11-510(d).

1 ~~recommendation. The removal shall take effect upon the Supreme Court's acceptance of the~~
2 ~~recommendation.~~ Members of any screening panel may serve as alternate members on different
3 screening panels. The Committee chair and the Committee vice chairs may serve as alternate
4 members on all screening panels.

5 (f) **Responsibilities.**

6 ~~(f)(1) Informal~~ Complaints ~~shall be~~ are randomly assigned to a screening panels. The
7 screening panels ~~shall~~ review ~~and hear all complaints charging that a lawyer engaged in~~
8 ~~unethical or unprofessional conduct, and may consider any other relevant~~
9 ~~information~~ investigate, and hear all informal complaints charging that a lawyer engaged
10 ~~in unethical or unprofessional conduct~~ members. After such review, investigation,
11 ~~hearing, and analysis, the s~~ Screening panels ~~shall~~ determine the action to be taken on any
12 ~~informal~~ complaint ~~which~~ that, based ~~upon~~ applying these rules to the facts of the
13 particular case, is most consistent with the public interest and the Rules of Professional
14 Conduct or Licensed Paralegal Practitioner Rules of Professional Conduct.

15 ~~(f)(2) Except as~~ Unless otherwise provided in this article, whenever the OPC counsel may
16 be present before a screening panel during a hearing, the respondent may also be present.

Rule 11-512.(g) Respondent Subpoena petitions.

(a) **Who may request a subpoena.** Before the screening panel authorizes the OPC to commence an action against respondent, ~~Any party~~the Respondent ~~may or a screening panel,~~ for good cause ~~shown,~~ 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. ~~may petition under seal the district court for issuance of a subpoena, subpoena duces tecum, or any order allowing discovery prior to the filing of a formal complaint.~~ Except for good cause ~~shown,~~ all petitions under this rule ~~shall~~ require a ~~seven~~five-day written notice to the ~~OPC~~opposing party prior to the issuance of ~~before the Committee chair authorizes the~~ ~~an appropriate order of~~ subpoena.

(b)(1) **Subpoena Enforcement of subpoena.** A district court in the district in which the attendance or production is required may, upon proper application, enforce the attendance and testimony of any witnesses and the production of any documents subpoenaed.

(c)(2) **Quashing subpoena.** ~~The Committee chair or the court wherein the subpoena enforcement is being sought will hear and determine. Any attack on an issued subpoena as the validity of a subpoena so issued shall be heard and determined by the Committee chair or by the court wherein enforcement of the subpoena is being sought.~~ Any resulting order is not appealable ~~prior to the~~before entry of a final order in the proceeding.

(d)(3) **Witnesses and fees.** Subpoena fees, witness fees, and mileage ~~shall be~~are reimbursed in the amounts provided under Rule 45 of the Utah Rules of Civil Procedure.

Rule 11-513, (h)(1) Clerk of the Committee clerk.

(a) Confidentiality. The Committee clerk is subject to the confidentiality requirements of Rule ~~14-515~~ 11-561.

(b) Responsibilities. The ~~Clerk of the Committee~~ clerk is responsible for: ~~the~~

(b)(1) handling the Committee's administrative affairs ~~of the Committee,~~

(b)(2) accepting documents filed with the eCommittee,

(b)(3) handling screening panel calendars,

(b)(4) giving notice to persons whose attendance is requested,

(b)(5) notifying ~~those who have filed informal complaints~~ the complainant, the respondent, and the OPC of the times and dates their matters will be heard,

(b)(6) notifying the complainant, the respondent, and ~~any counsel of record~~ the OPC of the disposition of each matter, and

(b)(7) otherwise performing or providing the secretarial and administrative functions of the Committee and screening panels. ~~The Clerk is subject to confidentiality requirements of Rule 14-515. Except as otherwise provided in this article, whenever OPC counsel may be present before a screening panel during a hearing, the respondent may also be present.~~

Commented [LL19]: Moved into 11-511(f)(2).

~~(h)(2) OPC counsel shall within three months after the filing of an informal complaint of unprofessional or unethical conduct of a respondent, advise the party making the informal complaint concerning the initial consideration of the informal complaint, and shall promptly advise such party in writing of the subsequent disposition of the informal complaint and the reasons therefor.~~

Commented [LL20]: Moved into 11-530(c).

Rule 11-514. (a) Disclosure, recusal, and disqualification.

(a) Application. Disclosure, recusal, and disqualification apply to Committee members' participation in a screening panel hearing, exception, or other proceeding in which a respondent's conduct is considered under these rules.

(b) Disclosure.

(b)(1) Committee members must make disclosures before or, at the latest, at the start of a screening panel hearing or other hearing in which a respondent's conduct is considered.

(b)(2) Each Committee member must disclose to the parties any professional or personal relationship or conflict of interest with a party or a party's counsel in the proceeding that may affect an unbiased evaluation of the respondent.

(b)(3) Relationships that may affect an unbiased evaluation of the respondent include any contact or association that might influence a Committee member's ability to fairly and reasonably evaluate the conduct of any respondent or to assess that respondent without bias or prejudice, including but not limited to:

(b)(3)(A) family relationships to a party or lawyer of a party in the proceeding within the third degree of relationship;

(b)(3)(B) any business relationship between the Committee member and a party or lawyer of a party in the proceedings; and

(b)(3)(C) any personal litigation directly or indirectly involving a party or a lawyer of a party in the proceeding and the Committee member, the Committee member's family or the Committee member's business.

(b)(4) A Committee member exhibits bias or prejudice when the Committee member is predisposed to decide a cause or an issue in a way that does not leave the Committee member's mind open to exercising the Committee member's duties impartially in a particular case.

(c) Recusal.

(c)(1) As used in this rule, recusal is a voluntary act of self-disqualification by a Committee member.

1 (c)(2) After making a disclosure, a Committee member may voluntarily recuse if the
2 Committee member believes the relationship with the respondent or other parties will
3 affect an unbiased evaluation of the respondent.

4 (d) Disqualification procedures.

5 (d)(1) A respondent may move to disqualify a screening panel Committee member if
6 such member:

7 (d)(1)(A) makes a disclosure and does not voluntarily recuse, and that member's
8 impartiality might reasonably be questioned; or

9 (d)(1)(B) does not make a disclosure, but known circumstances suggest the
10 Committee member's impartiality might reasonably be questioned.

11 (d)(2) A motion to disqualify a screening panel Committee member must be submitted to
12 the Committee clerk for review by the screening panel chair or vice chair before or
13 during the screening panel hearing.

14 (d)(3) A motion to disqualify a Committee member from an exception or other hearing or
15 review must be submitted to the Committee clerk for review by the Committee chair or
16 vice chair before any hearing on the matter.

17 (e) Disqualification after committee service. A former Committee member may not personally
18 represent a respondent in any proceeding as provided in these rules within one year after
19 completing the former Committee member's service. In addition to the one-year prohibition, a
20 former Committee member may not personally represent a respondent in any proceedings as
21 provided in these rules in which the former Committee member previously participated during
22 their service on the Committee.

23 ~~-(i) **Annual report.** Senior counsel shall prepare and submit an annual report to the Supreme~~
24 ~~Court and the Board encompassing the scope and nature of the Committee work. The report shall~~
25 ~~be submitted on or about August 1 of each year for the preceding fiscal year and shall set forth~~
26 ~~the number of disciplinary cases investigated, the number brought before the Committee, formal~~
27 ~~complaints filed, dispositions, cases dismissed, informal ethics opinions issued, diversionary~~
28 ~~dispositions and such other information as may be helpful to the Supreme Court in~~
29 ~~comprehending the operations of the OPC as well as the efficiency and effectiveness of the~~

Commented [LL22]: Moved to 11-520(b)(4) (OPC rules).
The EDC doesn't prepare this report.

11-503(b)(2) outlines the Oversight Committee's
responsibilities with respect to the report but not the OPC's
responsibilities, this should not be deleted entirely but
moved to 11-520(b)(4).

Draft: May 6, 2020

1 ~~disciplinary system. Such report may contain Committee recommendations for rule amendments~~
2 ~~or changes in Committee procedure. The chair and senior counsel shall annually consult with the~~
3 ~~Board and the Supreme Court regarding the level of activity and general standing of disciplinary~~
4 ~~matters and procedures.~~

5

Office of Professional Conduct composition and responsibilities.

Rule ~~14-504~~11-520. Chief disciplinary counsel and OPC counsel.

(a) **Appointment and qualifications.** The Supreme Court Board ~~shall will~~ appoint a lawyer ~~admitted-licensed~~ to practice in Utah to serve as ~~senior~~-chief disciplinary counsel. Neither the ~~senior~~-chief disciplinary counsel nor any full-time assistant disciplinary counsel ~~shall may~~ engage in the private practice of law for payment.

Commented [LL23]: Recommendation 1.2

(b) Chief disciplinary counsel responsibilities. The chief disciplinary counsel has the following responsibilities:

Commented [LL24]: The following two paragraphs are adapted from the Guardian ad litem oversight rule (4-906).

(b)(1) Hire and manage OPC counsel and staff to ensure quality investigations, discipline, and sanctions.

(b)(2) Develop the budget for Oversight Committee approval.

(b)(3) Monitor and report to the Oversight Committee regarding the OPC's operations and the efficiency and effectiveness of the disciplinary system.

(b)(4) Prepare and submit an ~~annual report~~ to the Oversight Committee and Supreme Court on or about February 1 of each year for the preceding calendar year.

Commented [LL25]: Moved from former rule 14-503 (the OPC prepares this report, not the ED committee).

11-503(b)(2) outlines the Oversight Committee's responsibilities with respect to the report but not the OPC's responsibilities, this should not be deleted entirely but moved to 11-520(b)(4).

(b)(4)(A) The report must include:

(b)(4)(A)(1) the number of disciplinary cases investigated,

(b)(4)(A)(2) the number of disciplinary cases brought before the Committee,

(b)(4)(A)(3) actions filed,

(b)(4)(A)(4) dispositions, including diversionary dispositions,

(b)(4)(A)(5) cases dismissed,

(b)(4)(A)(6) informal ethics opinions issued, and

(b)(4)(A)(7) such other information as may be helpful to the Supreme Court in understanding the OPC's operations and the efficiency and effectiveness of the disciplinary system.

1 (b)(4)(B) Such report may contain recommendations for rule amendments or
2 changes in the OPC or Ethics and Discipline Committee procedure. The Oversight
3 Committee may amend the report before releasing it to the Supreme Court.

4
5 (c) OPC counsel.

6 (c)(1) Qualification and responsibilities. OPC counsel must be licensed to practice law in
7 Utah.

8 (c)(2) OPC counsel will be selected by the chief disciplinary counsel. An OPC counsel is
9 an at-will employee subject to dismissal by the chief disciplinary counsel with or without
10 cause.

11 (d) Disqualification and conflicts of interest. In addition to complying with the Rules of
12 Professional Conduct regarding successive government and private employment (Rule 1.11 of
13 the Rules of Professional Conduct), former OPC counsel may not personally represent a
14 respondent as to any complaint or action within one year after completing the former OPC
15 counsel's service. In addition to the one-year prohibition, former OPC counsel may not
16 personally represent a respondent in any complaint or action that the OPC investigated or
17 prosecuted during the term of the former OPC counsel's employment.

Rule 11-521, (b) OPC prosecutorial powers and duties.

(a) The ~~senior chief disciplinary~~ counsel ~~shall will~~ perform all prosecutorial functions and have the following powers and duties, which may be delegated to other staff:

(1) ~~S~~screen all information coming to the attention of the OPC to determine whether it is within the jurisdiction of the OPC in that it relates to misconduct by a lawyer or to the incapacity of a lawyer.

(2) ~~I~~investigate all information coming to the attention of the OPC which, if true, would be grounds for discipline or transfer to disability status, and investigate all facts pertaining to petitions for reinstatement or ~~readmission~~relicensure.

(3) Choose to dismiss, decline to prosecute, refer nonfrivolous and substantial complaints to the Committee for hearing, or petition the district court for transfer to disability status. ~~for each matter not covered in Rule 14-510 brought to the attention of the OPC;~~

~~(b)(3)(A) dismiss;~~

~~(b)(3)(B) decline to prosecute;~~

~~(b)(3)(C) refer non-frivolous and substantial informal complaints to the Committee for hearing; or~~

~~(b)(3)(D) petition to the district court for transfer to disability status;~~

(4) ~~P~~prosecute before the screening panels, the district courts, the Supreme Court, and any other courts, including but not limited to, any court of the United States all disciplinary cases and proceedings for transfer to or from disability status.

(5) ~~A~~attend the Character and Fitness Committee proceedings in all cases for ~~readmission~~relicensure, and represent the OPC before the district courts, Supreme Court, and any other courts including, but not limited to, any court of the United States in all cases for reinstatement and ~~readmission~~relicensure.

(6) ~~E~~mploy or appoint and supervise staff needed for the performance of prosecutorial functions and delegate such responsibilities as may be reasonably necessary to perform prosecutorial functions, including supervising attorneys who provide pro bono

1 services to the Bar, by supervising the practice of respondents who have been placed on
2 probation.

3 (a)(7) Notify each jurisdiction in which a respondent is ~~admitted~~-licensed of a transfer
4 to disability status or any public discipline imposed in Utah.

5 (a)(8) Seek reciprocal discipline where appropriate when informed of any public
6 discipline imposed by another court, another jurisdiction, or a regulatory body having
7 disciplinary jurisdiction.

8 (a)(9) Forward a certified copy of the judgment of conviction to the disciplinary agency
9 in each jurisdiction in which a lawyer is ~~admitted~~-licensed when the lawyer is convicted
10 of a crime in Utah which reflects adversely on the lawyer's honesty, trustworthiness, or
11 fitness as a lawyer.

12 (a)(10) Maintain ~~permanent~~ records of discipline and disability matters subject to any
13 expungement requirements and compile statistics to aid in the administration of the
14 system, including but not limited to, a log of all ~~informal~~-complaints received,
15 investigative files, statistical summaries of rules violated and dispositions, any transcripts
16 of proceedings, and other records as the Supreme Court requires to be maintained.

17 ~~(b)(11) expunge after seven years all records or other evidence of the existence of any~~
18 ~~informal complaint terminated by dismissal or a declination to prosecute;~~

Commented [LL26]: Moved to new rule 11-524 re
retaining records.

19 ~~(b)(11)(A) Notice to respondent. If the respondent was contacted by the OPC~~
20 ~~concerning the informal complaint, or the OPC otherwise knows that the~~
21 ~~respondent is aware of the existence of the informal complaint, the respondent~~
22 ~~shall be given prompt written notice of the expungement.~~

23 ~~(b)(11)(B) Effect of expungement. After a file has been expunged, any OPC~~
24 ~~response to an inquiry requiring a reference to the matter shall state that there is~~
25 ~~no record of such matter. The respondent may answer any inquiry requiring a~~
26 ~~reference to an expunged matter by stating that no informal complaint was made.~~

27 (a)(12) Provide informal guidance concerning professional conduct to lawyers of the
28 Bar requesting guidance, participate in through seminars ~~which that~~ will promote ethical
29 conduct, formulate diversionary programs, monitor probations, and disseminate

1 disciplinary results to the Bar and the public through the Utah Bar Journal and otherwise
2 as appropriate, while maintaining the confidentiality of respondents subject to private
3 discipline, ~~and~~

4 ~~(b)(13) along with the executive director annually formulate the budget for the OPC and~~
5 ~~submit the budget to the Board for approval. OPC counsel may petition the Supreme~~
6 ~~Court for review of modifications to the budget imposed by the Board.~~

Commented [LL27]: This was modified and moved to 14-207(a)(1).

7 ~~(e) Disqualification. In addition to complying with the Rules of Professional Conduct regarding~~
8 ~~successive government and private employment (Rule 1.11 of the Rules of Professional~~
9 ~~Conduct), a former OPC counsel shall not personally represent a lawyer following completion of~~
10 ~~the OPC counsel's service in any proceedings as provided in these rules which former OPC~~
11 ~~counsel investigated or prosecuted during his or her employment by OPC.~~

Commented [LL28]: This was modified and moved to Rule 11-520 (former rule 14-504(a)).

Rule 11-522. ~~(d) Effect of ethics advisory opinions.~~

(a) Effect of ethics advisory opinions. The OPC ~~shall~~may not prosecute a Utah lawyer for conduct that ~~is in compliance~~complies with an ethics advisory opinion that has not been withdrawn at the time of the conduct in question. No court is bound by an ethics opinion's interpretation of the ~~Utah~~ Rules of Professional Conduct or Licensed Paralegal Practitioner Rules of Professional Conduct.

(b) Reviewing, modifying, or withdrawing ethics advisory opinions.

~~(b)~~(1) The OPC may at any time request the Bar's Ethics Advisory Opinion Committee to review, modify, or withdraw an ethics advisory opinion and ~~if so,~~ any OPC investigation or prosecution is suspended pending the final outcome of the request. The Ethics Advisory Opinion Committee may issue a modified opinion, withdraw the opinion, or decline to take any action but ~~shall~~will report its action or recommendation to the ~~Board of~~ Bar Commissioners and the ~~Board~~Commission will take such final action as it deems appropriate.

~~(b)~~(2) The OPC may also request the Supreme Court to review, affirm, reverse, or otherwise modify an ethics advisory opinion.

Commented [LL29]: Recommendation 4.3

Rule 11-523. OPC investigative subpoenas.

(a) Power to subpoena. The OPC may request that the Committee chair approve serving 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. The OPC must mail or email 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 after the subpoena request is sent. Within 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 weighing:

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

(b)(2) 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 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.

(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.

Rule 11-524. Retaining records.

(a) No imposed discipline. The OPC must expunge (i.e. destroy) after three years all records or other evidence of the existence of complaints that the OPC dismisses or declines to prosecute.

(a)(1) Exception. On the OPC's application, notice to respondent, and a showing of good cause, the Oversight Committee may permit the OPC to retain such records for one additional period of time not to exceed three years.

(a)(2) Notice to respondent. If the OPC contacts the respondent regarding a complaint or otherwise knows the respondent is aware of a complaint, the OPC must give the respondent prompt written notice that a dismissed complaint has been expunged.

(b) Discipline and disability. The OPC must expunge after 30 years all records or other evidence of the existence of complaints that resulted in public reprimand, suspension, delicensure, resignation with discipline pending, admonition, disability, and probation running from the date the discipline expired.

(c) Disciplinary history letters. The OPC must expunge after three years all records of disciplinary history letters, running from the date of the letter.

(d) Requests for information. The OPC must expunge after three years any other requests for information, running from the date the OPC responds to the request.

(e) Effect of expungement. After a file or electronic record has been expunged, any OPC response to an inquiry requiring a reference to the matter must state that there is no record of such matter. The respondent may answer any inquiry requiring a reference to an expunged matter by stating that no complaint was made.

Commented [LL30]: Judge Hagen (Committee chair) discussed this rule with the Supreme Court on January 22, 2020.

1 ~~Rule 14-505. Expenses.~~

2 ~~(a) The salaries of OPC counsel and staff, their expenses, administrative costs, and the expenses~~
3 ~~of the members of the screening panels, shall be paid by the Bar.~~

4 ~~(b) The budget prepared by the executive director and senior counsel pursuant to Rule 14-~~
5 ~~504(b)(14) shall reasonably ensure the accomplishment of the goals of the disciplinary system;~~
6 ~~the professional development of the staff, and salaries that will encourage continued employment~~
7 ~~of competent professionals and support staff and will provide compensation approximately~~
8 ~~equivalent to current salaries in comparable service.~~

Commented [LL31]: Moved this language into 11-520 (former rule 14-504).

Commented [LL32]: Replaced with 11-503(b)(2)(B)

~~Rule 14-507. Roster of lawyers and current record information.~~

~~The Bar shall collect, maintain and have ready access to current information relating to members of the Bar including:~~

~~(a) full name;~~

~~(b) date of birth;~~

~~(c) current physical addresses, and current telephone numbers for law office and residence, except that full time judges are exempt from providing residential addresses and telephone numbers;~~

~~(d) current e-mail address;~~

~~(e) date of admission ;~~

~~(f) date of any transfer to or from inactive status;~~

~~(g) all specialties in which certified;~~

~~(h) other jurisdictions in which the lawyer is admitted and date of admission; and~~

~~(i) nature, date, and place of any discipline imposed and any reinstatements.~~

Commented [LL33]: This is a Bar requirement, not OPC.
We have moved this to Rule 14-107.

Rule 14-508. Periodic assessment of lawyers.

Commented [LL34]: This is a Bar requirement, not OPC.
We have moved this to Rule 14-107.

~~(a) **Annual licensing fee.** Every lawyer admitted to practice in Utah shall pay to the Bar on or before July 1 of each year an annual license fee for each fiscal year to be fixed by the Board from time to time and approved by the Supreme Court. The fee shall be sufficient to pay the costs of disciplinary administration and enforcement under this article.~~

~~(b) **Failure to renew annual license.** Failure to pay the annual licensing fee or provide the required annual licensing information shall result in administrative suspension. Any lawyer who practices law after failure to renew his or her license violates the Rules of Professional Conduct and may be disciplined. The executive director or his or her designee shall give notice of such removal from the rolls to such non-complying member at the designated mailing address on record at the Bar and to the state and federal courts in Utah.~~

~~(c) **Reenrollment within three years of administrative suspension.** A lawyer who is administratively suspended for failure to pay licensing fees for three years or less may apply in writing for reenrollment. The request should be made to the Utah State Bar Licensing Department and include payment equal to the amount of fees the lawyer would have been required to pay had the lawyer remained an inactive member to the date of the request for reenrollment and a \$200 reinstatement fee. Upon receiving the same, the Bar shall order reenrollment and so notify the courts. Re-enrollment based on failure to renew does not negate any orders of discipline.~~

~~(d) **Reenrollment after three years of administrative suspension.** A lawyer who is administratively suspended for three years or more for failure to pay license fees will be deemed to have resigned and shall comply with the admissions requirements set forth in the Supreme Court Rules of Professional Practice governing admission for lawyers who have resigned.~~

Prosecution and appeals.

~~Rule 14-510. Prosecution and appeals.~~

Rule 11-530. (a) Informal complaint of a Unprofessional conduct complaints.

~~(a)(1) Filing. The OPC or Any person, the OPC, or the Committee may initiate a~~ disciplinary proceeding ~~may be initiated~~ against any ~~member of the Bar member~~ lawyer ~~by any person, OPC counsel or the Committee, by filing with the Bar OPC, in writing, an written informal complaint in ordinary, plain and~~ concise language setting forth the acts or omissions claimed to constitute unprofessional conduct.

Commented [LL35]: Recommendation 1.2

(a)(1) If an individual initiates the complaint, filing is complete when the complaint is delivered to the OPC office in hard copy or electronic form, or through the OPC's website at opcuh.org. Upon filing, an informal complaint shall be processed in accordance with this article.

(a)(2) If the OPC initiates the complaint, filing is complete when the OPC delivers the complaint to the lawyer in hard copy or electronic form.

~~(b)(2) Form of informal eComplaint form.~~ The ~~informal~~ complaint need not be in any particular form or style and may be by letter or other informal writing, although the OPC may provide a form ~~may be provided by the OPC~~ to standardize the ~~informal complaint~~ format. ~~It is unnecessary that the~~ The informal complaint need not recite disciplinary rules, ethical canons, or a prayer requesting specific disciplinary action. The complainant must sign the informal complaint ~~shall be signed by the complainant and shall set forth~~ include the complainant's address, and may list the names and addresses of other witnesses. The ~~informal~~ complaint ~~shall must be notarized and~~ contain a ~~verification~~ declaration under penalty of perjury as attesting to the accuracy of the information ~~contained~~ in the complaint. ~~In accordance with Rule 14-504(b),~~ Complaints filed by the OPC are not required to contain ~~a verification~~ such a declaration. ~~The substance of the An informal~~ complaint's substance ~~shall~~ prevails over the form.

Commented [LL36]: Recommendation 4.1 Notarization of a complaint should be discontinued, but a declaration, under penalty of perjury, should be required.

~~(c)(3) Initial investigation. Upon the filing of an informal~~ On receiving a complaint, the OPC ~~counsel shall will~~ conduct a preliminary investigation to ascertain whether the ~~informal~~ complaint's allegations ~~is are~~ sufficiently clear ~~as to its allegations~~. If ~~it is~~ not, the OPC ~~counsel shall will~~ seek additional facts from the complainant, who must, upon the OPC's request, submit

~~a signed writing~~ documents or writings containing any additional facts ~~shall also be submitted in writing and signed by the complainant.~~ Within three months after filing a complaint of unprofessional or unethical conduct of a respondent, the OPC must advise the complainant concerning the initial investigation of the complaint.

Commented [LL37]: Formerly under 14-503(h)(2)

~~(d)(4) Potential Referral to Professionalism and Civility Counseling Board. The OPC counsel may—~~ In connection with any conduct that comes to ~~their~~ its attention, ~~whether by means of an informal complaint, a preliminary investigation, or any other means, OPC counsel may, at its discretion,~~ — refer any matter to the Professionalism and Civility Counseling Board established ~~pursuant to the~~ under Rule 14-303 ~~Supreme Court's Standing Order No. 7.~~ Such referral may be in addition to or in lieu of any further proceedings related to the subject matter of the referral. Such referral should be in writing and ~~—~~ at the discretion of the OPC counsel, — may include any or all information included in ~~an informal~~ the complaint or additional facts submitted by the complainant.

~~(e)(5) Notice of informal complaint to respondent. Upon completion of~~ On completing the preliminary investigation, the OPC counsel shall will determine whether the ~~informal~~ complaint can be resolved in the public interest, the respondent's interest, and the complainant's interest. ~~OPC counsel and/or the screening panel may use their efforts to resolve the informal complaint.~~ If the ~~informal~~ complaint cannot be ~~so~~ resolved or if it ~~sets forth~~ alleges facts ~~which~~ that, by their very nature, should be brought before the screening panel, or if good cause otherwise exists to bring the matter before the screening panel, the OPC counsel shall cause to be served must:

Commented [LL38]: Recommendation 4.2 Discontinue "NOIC"

(e)(1) serve the respondent with a notice identifying with particularity the possible violation(s) of the Rules of Professional Conduct or Licensed Paralegal Practitioner Rules of Professional Conduct raised by the complaint as the OPC has preliminarily determined;

(e)(2) attach a copy of the signed complaint; and

(e)(3) mail the documents ~~serve a NOIC by regular mail upon to~~ the respondent's s at the address as reflected in the Bar's records ~~of the Bar.~~

~~The NOIC shall have attached a true copy of the signed informal complaint against the respondent and shall identify with particularity the possible~~

violation(s) of the Rules of Professional Conduct raised by the informal complaint as preliminarily determined by OPC counsel.

(f)(6) **Answer to informal complaint.** Within 20 days after the respondent is served with the complaint and notice NOIC on the respondent, the respondent shall must file with the OPC counsel a signed, written and signed answer setting forth in full an explanation of explaining the facts surrounding the informal complaint, together with all defenses and responses to the claims of possible misconduct. For good cause shown, the OPC counsel may extend the time for the filing of an answer by the respondent not to exceed an additional 3028 days. Upon When the answer having been is filed or if the respondent fails to respond, the OPC counsel shall will refer the case to a screening panel to make a for investigation, consideration and determination or recommendation. The OPC counsel shall must forward a copy of the answer to the complainant.

Commented [LL39]: Recommendation 4.2 Discontinue "NOIC"

(g)(7) **Dismissal of informal Dismissing the complaint.**

(g)(1) **Reasons for dismissal.** The OPC counsel may dismiss an informal a complaint without referral to a screening panel hearing if the OPC determines the complaint is: An informal complaint which, upon consideration of all factors, is determined by OPC counsel to be

(g)(1)(A) frivolous, unintelligible, unsupported by fact, or fails to raise probable cause of any unprofessional misconduct;

(g)(1)(B) barred by the statute of limitations;

(g)(1)(C) more adequately addressed in another forum; or unsupported by fact or which does not raise probable cause of any unprofessional conduct;

(g)(1)(D) or one in which the OPC declines to prosecute; may be dismissed by OPC counsel without hearing by a screening panel.

(g)(2) **Notification and appeal.**

(g)(2)(A) When the OPC dismisses a complaint, it OPC counsel shall must:

(g)(2)(A)(i) notify the complainant and the respondent that it has dismissed the informal complaint;

(g)(2)(A)(ii) ~~and of such dismissal stating~~ the reasons ~~therefor~~for
dismissal; and

(g)(2)(A)(iii) include a notice of the complainant's right to appeal an OPC
decision to the Committee chair.

Commented [LL40]: Recommendation 4.5. Added requirement that OPC include notice of complainant's right to appeal to the Committee chair.

(g)(2)(B) The complainant may appeal ~~at the~~ dismissal ~~by OPC counsel~~ by filing
written notice with the ~~Clerk of the~~ Committee clerk within ~~15~~21 days after
~~notification of~~ the dismissal notification is mailed. ~~The complainant has no other
right of appeal in this chapter.~~ Upon

Commented [LL41]: This language is taken from 14-528 and fully incorporates 528 ("The complainant shall not have a right of appeal, except as provided in Rule 14-510(a)(7) to appeal a dismissal of a complaint.")

(g)(2)(C) On appeal, the Committee chair or a vice chair ~~shall~~ will conduct a de
novo review of the file, either affirm the dismissal or require the OPC ~~counsel~~ to
prepare a ~~NOIC~~ notice of the complaint (if necessary), and set the matter for
hearing by a screening panel. ~~In the event of~~ If the chair's ~~recusals~~, the chair ~~shall~~
will appoint the vice chair or one of the screening panel chairs to review and
determine the appeal.

Commented [LL42]: Recommendation 4.2 discontinue "NOIC"

Rule 11-531, (b) Proceedings before Committee and screening panels.

~~(a)(1)~~ **Review and investigation.** ~~In their role as fact finders and investigators, s~~ Screening panels ~~shall will~~ review all ~~informal~~ complaints ~~the OPC referreds~~ to them ~~by OPC counsel,~~ including all ~~the~~ facts developed ~~by in~~ the ~~informal~~ complaint, ~~the~~ answer, ~~the contents of the~~ ~~file~~ investigation, and ~~the~~ hearing, and ~~the~~ including the OPC's recommendations ~~of OPC~~ counsel.

(b) OPC's summary and notice of additional alleged violations. ~~Prior to~~ Before any screening panel hearing, ~~the~~ OPC may file with the clerk and serve on the respondent a summary of its investigation. If ~~filed~~ the OPC has determined, ~~after serving respondent with notice of the~~ complaint, that the respondent may have violated ~~the summary shall identify with particularity~~ any additional ~~violations of the~~ Rules of Professional Conduct or Licensed Paralegal Practitioner Rules of Professional Conduct, then the summary must identify with particularity all such additional alleged violations. The summary will serve as ~~notice of any additional violations the~~ OPC did not previously charge ~~as subsequently determined by OPC after service of the NOIC.~~ If the OPC provides ~~d to the a~~ summary to the screening panel, ~~the the~~ OPC must also provide the summary ~~shall also be provided to the respondent and shall will serve as notice of any additional~~ violations not previously charged by OPC in the NOIC. If ~~the~~ OPC alleges additional rule violations ~~are alleged in the summary,~~ the summary ~~shall must~~ be served on the respondent ~~no less than~~ at least seven ~~14~~ days ~~prior to before~~ the hearing. In cases where a judicial officer has not addressed or reported a respondent's alleged misconduct, the screening panel ~~should may~~ not consider this inaction to be evidence either that misconduct has occurred or has not occurred.

~~(c)(2)~~ **Respondent's appearance.** ~~The screening panel must, with at least 28 days' notice,~~ afford the respondent an opportunity to appear before the screening panel ~~B~~ before taking any action ~~is taken~~ that may result in ~~the recommendation recommending of~~ an admonition or public reprimand, or ~~the the~~ OPC's filing ~~of a~~ misconduct action in district court ~~formal complaint, the~~ screening panel ~~shall must,~~ upon at least 30 days' notice, afford the respondent an opportunity to appear before the screening panel. Respondent and any witnesses ~~the respondent~~ called ~~s by the~~ respondent may testify, and respondent may present oral argument ~~with respect to the informal~~ complaint.

Commented [LL43]: Recommendation 4.2 discontinue NOIC

(d) Respondent's brief. Respondent may ~~also~~ submit a written brief to the screening panel at least ~~107~~ days ~~prior to~~ before the hearing, which ~~shall~~ may not exceed 10 pages ~~in length~~ unless ~~permission for enlargement is extended by~~ the panel chair or vice chair allows an extension for good cause ~~shown~~. The OPC will forward Aa copy of the brief ~~shall be forwarded by OPC~~ counsel to the complainant. ~~If OPC identifies additional rule violations in the summary referenced in (b)(1), the respondent may file an additional written response addressing those alleged violations prior to the hearing.~~

Commented [LL44]: This is stated in (g) below. I'd recommend only stating it below.

(e)(3) Complainant's appearance. A complainant ~~shall have~~ s the right to appear before the screening panel personally and may testify, together with any witnesses the complainant ~~called by the complainant, may testify.~~

(f)(4) Right to hear evidence; cross-examination. The complainant and ~~the~~ respondent ~~shall~~ have the right to be present during ~~the~~ presentation of ~~the~~ evidence unless excluded by the screening panel chair for good cause ~~shown~~. Respondent may be represented by counsel, and complainant may be represented by counsel or ~~some~~ an other representative. Either complainant or respondent may request that the panel chair seek responses or pose questions to ~~from~~ the other party at the hearing ~~by posing questions or areas of inquiry to be asked by the panel chair~~. Direct cross-examination will ordinarily not be permitted ~~except~~ unless, upon request, ~~when~~ the panel chair deems that it would materially assist the panel in its deliberations.

(g)(5) Rule ~~V~~ violations ~~N~~ot ~~C~~harged by the OPC. During the screening panel hearing, but not after, the panel may find that rule violations have occurred not previously charged by the OPC ~~in the NOIC or summary memorandum have occurred~~. If so, the screening panel ~~shall~~ will give ~~the~~ respondent a reasonable opportunity to respond during the hearing. The respondent may address the additional charges at the hearing and ~~also may~~ file with the Committee ~~C~~lerk and serve on the OPC within two business days of the hearing a written response to the new charges along with supplemental materials related to the new charges. ~~Prior to~~ Before making a determination or recommendation, the response and any supplemental materials ~~shall~~ must be reviewed and considered by at least a quorum of the panel members present at the original hearing.

Commented [LL45]: Recommendation 4.2 discontinue NOIC

(h)(6) Hearing ~~R~~ecord. The proceedings of any screening panel hearing ~~before a screening panel~~ under this ~~subsection (b) rule~~ shall will be recorded at an level of audio quality level that

1 permits an accurate transcription of the proceedings. The Clerk ~~shall~~ will assemble and deliver
2 to the Committee chair a complete record of the proceedings ~~and deliver it to the chair of the~~
3 ~~Committee~~ upon the ~~rendering of the~~ panel's determination or recommendation to the Committee
4 chair. The record of the proceedings before the panel ~~shall~~ must be preserved for ~~not less than at~~
5 least one year ~~following after~~ delivery of the panel's determination or recommendation to the
6 ~~chair of the~~ Committee chair and for such additional ~~period time~~ as any further proceedings on
7 the matter are pending or might be instituted under this ~~section~~ rule.

8 ~~(i)(7)~~ **Screening panel determination or recommendation.** ~~Upon~~ After reviewing ~~of~~ all the
9 facts developed by the ~~informal~~ complaint, answer, investigation, and hearing, the screening
10 panel ~~shall~~ will make one of the following determinations or recommendations:

11 ~~(i)(1)(b)(7)(A)~~ The preponderance of evidence ~~presented~~ does not establish that the
12 respondent ~~was~~ engaged in misconduct, in which case the screening panel will dismiss
13 the informal complaint shall be dismissed. A letter of caution may also be issued with the
14 dismissal. The letter ~~shall~~ must be signed by ~~OPC counsel or~~ the screening panel chair or
15 vice chair and ~~shall~~ will serve as a guide for the future conduct of the respondent. The
16 complainant ~~shall~~ will ~~also~~ be confidentially notified of the caution;

17 ~~(b)(7)(B)~~ The informal complaint shall be referred to the Diversion Committee for
18 diversion. In this case, the specific material terms of the Diversion Contract agreed to by
19 the respondent are to be recorded as a part of the screening panel record, along with any
20 comments by the complainant. The screening panel shall have no further involvement in
21 processing the diversion. The Diversion Committee shall process the diversion in
22 accordance with Rule 14-533;

23 ~~(i)(2)(b)(7)(C)~~ The informal complaint ~~shall~~ must be referred to the Professionalism and
24 Civility Counseling Board established ~~pursuant to under~~ the Supreme Court's Standing
25 ~~Order No. 7~~ Rule 14-303;

26 ~~(i)(3)(b)(7)(D)~~ The informal complaint ~~shall~~ must be referred to the Committee chair with
27 an accompanying screening panel recommendation that the respondent be admonished;

1 (i)(4)(b)(7)(E) The ~~informal~~ complaint ~~shall~~ must be referred to the Committee chair with
2 an accompanying screening panel recommendation that the respondent receive a public
3 reprimand; ~~or~~

4 (i)(5)(b)(7)(F) ~~The OPC must file~~ A formal an action complaint shall must be filed
5 ~~against in district court against~~ the respondent if the panel finds ~~there is~~ probable cause to
6 believe there are grounds for public discipline ~~and that~~ merit a discipline action formal
7 ~~complaint is merited; or~~

8 (i)(6) ~~The OPC must file an action in district court~~ A formal complaint shall must also be
9 ~~filed~~ if the panel finds ~~there was~~ misconduct and the misconduct is similar to the
10 misconduct alleged in ~~a formal complaint~~ an action against the respondent that has been
11 recommended by a screening panel or is pending in district court at the time of the
12 hearing.

13 (j)(b)(8) **Aggravation and Mitigation.** The respondent and the OPC may present evidence and
14 argument as to mitigating and aggravating circumstances during the screening panel hearing, but
15 this evidence ~~shall~~ will not be considered ~~until after~~ unless the panel has determined the
16 respondent engaged in misconduct.

17 (k)(b)(9) **Multiple cases involving the same respondent.** More than one case involving the same
18 respondent may be scheduled before the same panel, but ~~if~~ in determining whether a rule has been
19 violated in one case, only the factual allegations in that case may be considered ~~a screening panel~~
20 ~~shall may not consider the fact it may be hearing multiple cases against the same respondent.~~

21 (l)(b)(10) **Recommendation of admonition or public reprimand.** A screening panel
22 recommendation that the respondent ~~should~~ be disciplined under ~~subsection~~ paragraph
23 ~~(b)(7)(D)(i)(3) or (b)(7)(E)(i)(4)~~ shall must be in writing and ~~shall~~ state the substance and nature
24 of the ~~informal~~ complaint and defenses and the basis upon which the screening panel has
25 concluded, by a preponderance of the evidence, that the respondent ~~should~~ be admonished or
26 publicly reprimanded. The screening panel must deliver A copies of the recommendation ~~shall~~
27 ~~be delivered~~ to the Committee chair, ~~and a copy served upon the~~ respondent, and the OPC.

Rule 11-532. ~~(e)~~ **Exceptions to screening panel determinations and recommendations.**

(a) Time to file. Within ~~30-28~~ days ~~of after~~ the date of service of the screening panel's determination or recommendation: ~~of the screening panel of a dismissal, dismissal with letter of caution, a referral to the Diversion Committee, a referral to the Professionalism Counseling Board, or the recommendation of an admonition, or the recommendation of a public reprimand,~~

(a)(1) the OPC may file ~~with the Clerk of the Committee~~ an exceptions to the determination or recommendation and may request a hearing, ~~and respondent will have 28 days to respond, and~~ The respondent shall then have 30 days within which to make a response, and the response shall include respondents exceptions, if any, to a recommendation of an admonition or reprimand.

(a)(2) ~~Within 30 days after service of the recommendation of an admonition or public reprimand on respondent,~~ the respondent may file an ~~with the Clerk of the Committee~~ exceptions to the determination or recommendation and may request a hearing, and the OPC ~~shall will~~ have 30-28 days ~~within which to file a re~~ respond ~~response.~~

(b) Reply. The Committee chair may allow a reply to any response.

(c) Actions. No exception may be filed to a screening panel determination that an action ~~formal complaint shall will~~ be filed against a respondent ~~pursuant to Rule 14-511.~~

(d) Requirements. All exceptions ~~shall must~~ include a memorandum, not ~~to exceed~~ exceeding 20 pages, stating the grounds for review, the relief requested, and the bases in law or in fact for the exceptions. All exceptions, responses, and replies must be filed with the Committee clerk.

(e) ~~(d)~~ **Procedure on exceptions.**

(e)(1) ~~(d)~~ Hearing not requested. If no hearing is requested, the Committee chair will review the record compiled before the screening panel.

(e)(2) ~~(d)~~ Hearing requested. If a request for a hearing is made, the Committee chair or a screening panel chair designated by the Committee chair ~~shall will~~ serve as the Exceptions Officer and hear the matter in an expeditious manner, with OPC counsel and the respondent having the opportunity to be present and give an oral presentation. The complainant need not appear personally.

1 (e)(3) Transcript Request. Upon request, the Committee chair ~~shall~~must extend the
2 deadlines for filing exceptions or responses no more than 60 days ~~in order~~ to allow a
3 party time to obtain a transcript of the screening panel proceedings, so long as the audio
4 or video recording is requested within 28 days. The requesting party will bear the costs
5 of such transcript ~~shall be borne by the requesting party. The party obtaining the~~
6 ~~transcript shall and must file it~~the transcript with the Committee Clerk at the time of or
7 before filing an exception or response, together with ~~an affidavit~~ a declaration under
8 penalty of perjury establishing the transcript's chain of custody ~~of the record~~.

9 (e)(4) Burden of proof. The party who files an exceptions ~~under subsection (e)~~ shall
10 ~~have~~has the burden of showing that the determination or recommendation of the
11 screening panel is unsupported by substantial evidence or is arbitrary, capricious, legally
12 insufficient, or otherwise clearly erroneous.

13 (e)(5) Record on exceptions. The proceedings of any hearing on an exceptions ~~under~~
14 ~~this subsection (d)~~ shall must be recorded at a level of audio quality that permits an
15 accurate transcription of the proceedings.

Rule 11-533. ~~(g)~~ General procedures.

Commented [LL46]: Moved from 14-510(g).

~~(g)(1)~~(a) **Testimony.** All testimony given before a screening panel or the Exceptions Officer ~~shall~~must be under oath.

~~(g)(2)~~(b) **Service.** To the extent applicable, serving or filing documents ~~under this Rule is to be~~must be made in accordance with Utah Rules of Civil Procedure 5(b)(1), 5(d) and 6(a).

~~(g)(3)~~(c) ~~Continuance~~ **Abeysance of disciplinary proceedings.** A disciplinary proceeding may be held in abeyance by the Committee chair at any time before a screening panel hearing, prior to the filing of a formal complaint when the allegations or the ~~informal~~ complaint contain matters of substantial similarity to the material allegations of pending criminal or civil litigation in which the respondent is involved. Requests for abeyance and requests to remove proceedings from abeyance must be filed with the Committee clerk.

Rule 11-534. ~~(e)~~ **Final Committee disposition.**

(a) Final, written determination. Either ~~upon the completion of~~ upon completing the exceptions procedure under Rule 11-532 subsection (d) or if no exceptions have been filed ~~under subsection (e)~~, the Committee chair ~~shall will issue a final, written determination~~ review the screening panel's findings and recommendations and will prepare the order to execute those findings and recommendations that either sustains, dismisses, or modifies the determination or recommendation of the screening panel. The Committee chair may not make changes to screening panel findings and recommendations, other than changes needed for clarity. If no exception is filed, the Committee chair need not issue a ~~No final, written determination is needed by the Committee chair to a screening panel determination to~~ for a dismissal; ~~or~~ or a dismissal with a letter of caution, ~~or a referral to the Diversion Committee if no exception is filed.~~

Commented [LL47]: Recommendation 5.9

(b) Public reprimand. If the screening panel recommends a public reprimand, the respondent may, within 28 days, file an exception in accordance with Rule 11-532, or elect a trial de novo with the district court by notifying the Committee chair, who will authorize the action in accordance with Rule 11-536.

Commented [LL48]: Recommendation 5.10

Rule 11-535.(f) Appeal of ~~Appealing~~ a final Committee determination to the Supreme Court.

(a)(1) Within ~~30~~28 days after ~~the Committee chair services of~~ a final, written ~~determination disposition, of the Committee chair under subsection (e),~~ the respondent or OPC may ~~file a request for review~~ appeal the disposition to the Supreme Court and ask the Court by the Supreme Court seeking to reverse or modification ~~of the final Committee determination disposition of the Committee. A request for review~~ An appeal under this ~~subsection rule~~ shall ~~is~~ only be available in cases where exceptions have been filed ~~under subsection (e). Until the time for filing an appeal expires, dissemination of disciplinary information pursuant to Rules 14-504(b)(13) or 14-516 shall~~ will be automatically stayed ~~during the period within which a request for review may be filed under this subsection.~~ If a timely ~~request for review~~ appeal is filed, the stay ~~shall~~ will remain in place pending ~~the Supreme Court's resolution by the Supreme Court~~ unless the Court orders otherwise ~~orders~~.

(b)(2) ~~A request for review~~ An appeal under this ~~subsection (f) rule~~ will be subject to the procedures set forth in Title III of the Utah Rules of Appellate Procedure. Documents submitted under this ~~Rule~~ shall ~~must~~ conform to the requirements of Rules 27(a) and 27(b) of the Utah Rules of Appellate Procedure.

(c)(3) A party requesting a transcription of the record below ~~shall~~ will bear the costs. The party obtaining the transcript ~~shall~~ must file it with the ~~appellate clerk~~ Clerk of the Court, together with an affidavit establishing the ~~transcript's chain of custody of the record.~~

(d)(4) The Supreme Court ~~shall~~ will conduct a review of the matter on the record.

(e)(5) The party requesting review ~~shall have~~ has the burden of demonstrating that the Committee action was:

(1)(A) ~~B~~ based on a determination of fact ~~that is~~ not supported by substantial evidence when viewed in light of the whole record before the Court;

(2)(B) ~~A~~ an abuse of discretion;

(3)(C) ~~A~~ arbitrary or capricious; or

(4)(D) ~~C~~ contrary to Chapter 11, Articles 5 and Chapter 14, Article 6 of Chapter 14 of the Supreme Court Rules of Professional Practice ~~of the Supreme Court.~~

Rule ~~14-511~~ 11-536. Proceedings subsequent to finding of probable cause Actions in district court.

(a) **Commencement of ing an action.** If the screening panel finds probable cause to believe that there are grounds for public discipline ~~and that merit filing an action a formal complaint is merited~~, OPC ~~counsel shall~~ will prepare and file ~~with the district court an action a formal complaint in district court~~ setting forth in plain and concise language the facts upon which the charge of unprofessional conduct is based and the applicable provisions of the Rules of Professional Conduct. The Committee chair must be given notice of the screening panel recommendation and a copy of the pleadings. ~~formal complaint shall be signed by the Committee chair or, in the chair's absence, by the Committee vice chair or a screening panel chair designated by the Committee chair.~~

Commented [LL49]: Recommendation 5.11

(b) **Venue.** The action ~~shall~~ must be brought ~~and the trial shall be held~~:

(b)(1) in the county in which an alleged offense occurred; or

(b)(2) in the county where the respondent resides, or practices law, or last practiced law in Utah; provided, however, that if the respondent is not a resident of Utah and the alleged offense is not committed in Utah, the ~~trial shall be held~~ action must be brought in a county designated by the Chief Justice of the Supreme Court. ~~The parties may stipulate to a change of venue in accordance with applicable law.~~

(c) **Style of proceedings.** All proceedings instituted by the OPC ~~shall~~ must be styled: "In the Matter of the Discipline of (name of respondent and respondent's Bar number), Respondent."

(d) **Change of judge as a matter of right.**

(d)(1) Notice of change.

(d)(1)(A) The respondent or OPC ~~counsel~~ may request reassignment to another district court judge from the same district, by filing a notice ~~indicating~~ stating:

(d)(1)(A)(i) ~~T~~he name of the assigned judge,

(d)(1)(A)(ii) the date on which the ~~formal complaint~~ action was filed, and

(d)(1)(A)(iii) that a good faith effort has been made to serve all parties, ~~change the judge assigned to the case.~~

(d)(1)(B) The notice ~~shall~~may not specify any reason for the change of judge.

(d)(1)(C) The party filing the notice ~~shall~~must send a copy of the notice to the assigned judge and to the presiding judge. ~~The party filing the notice may request reassignment to another district court judge from the same district, which request shall be granted.~~

(d)(1)(D) Under no circumstances ~~shall~~will more than one change of judge be allowed to each party under this rule.

(d)(2) Time. Unless extended by the court ~~upon a showing of~~for good cause, the notice must be filed within ~~30~~28 days after ~~the action~~commencements of the action or ~~prior to~~before the notice of trial setting, whichever occurs first. Failure to file a timely notice precludes any change of judge under this rule.

(d)(3) Assignment of action. Upon ~~the filing of~~filing a notice of change, the assigned judge ~~shall~~will take no further action in the case. The presiding judge ~~shall~~will promptly determine whether the notice is proper and, if so, ~~shall~~reassign the action. If the presiding judge is also the assigned judge, the clerk ~~shall~~will promptly send the notice to the Chief Justice of the Supreme Court, who ~~shall~~will determine whether the notice is proper and, if so, ~~shall~~reassign the action.

(d)(4) Rule 63 and Rule 63A unaffected. This rule does not affect any rights a party may have pursuant to Rule 63 or Rule 63A of the Utah Rules of Civil Procedure.

(e) **Actions tried to the bench; findings and conclusions.** All actions tried according to this article ~~shall~~will be tried to the bench, and the district court ~~shall~~will enter findings of fact and conclusions of law. Neither masters nor commissioners ~~shall~~may be ~~utilized~~used.

(f) **Sanctions hearing.** ~~Upon a finding of misconduct and as soon as reasonably practicable, within a target date of not more than 30 days after~~If the district court ~~enters its findings of fact and conclusions of law~~finds misconduct, it ~~shall~~will hold a hearing to receive relevant evidence in aggravation and mitigation, and ~~shall~~will ~~within five days thereafter,~~ enter an order sanctioning the respondent. Upon reasonable notice to the parties, the court, at its discretion, may hold the sanctions hearing immediately after the misconduct proceeding.

Commented [LL50]: Recommendation 8.4

1 (g) **Review.** Either the OPC or respondent may file with ~~Any discipline order by the district court~~
2 ~~may be reviewed by~~ the Supreme Court ~~through~~ a petition ~~for~~to review ~~pursuant to the Utah~~
3 ~~Rules of Appellate Procedure~~the discipline order.

4

1 **Rule ~~14-532~~ 11-537. Failure to answer charges.**

2 (a) **Failure to answer.** If having received actual notice of the charges filed, the respondent fails
3 to answer the charges within 20 days, the respondent ~~shall~~will be deemed to have admitted the
4 factual allegations.

5 (b) **Failure to appear.** If the Committee orders the respondent to appear and the respondent,
6 ~~having been ordered by the Committee to appear and~~ having received actual notice of that order,
7 fails to appear, the respondent ~~shall~~will ~~have been~~ deemed to have admitted the factual
8 allegations which were the subject of such appearance. The Committee may~~shall~~ not, absent
9 good cause, continue or delay proceedings because of the respondent's failure to appear.

10 (c) **Notice of consequences.** Any notice within the scope of paragraph (a) or (b) above ~~shall~~must
11 expressly state the consequences, as specified above, of the respondent's failure to answer or
12 appear.

13

Rule ~~14-527~~11-538. Appointment of trustee to protect clients' interest when lawyer disappears, dies, is suspended or ~~disbarred~~delicensed, or is transferred to disability status.

(a) **Protective appointment of trustee.** If a lawyer has ~~disappeared or~~ died or cannot be located, or if a respondent has been suspended, ~~or disbarred~~ delicensed, or transferred to disability status, and if there is evidence that the lawyer or respondent has not complied with the provisions of Rule ~~14-526~~11-570 and no partner, executor, or other responsible party capable of conducting the lawyer's or respondent's affairs is known to exist, a district judge of the judicial district in which the lawyer or respondent maintained a principal office may, on the OPC's request, appoint a trustee to inventory the lawyer's or respondent's files, notify the lawyer's or respondent's clients, distribute the files to the clients, return unearned fees and other funds, and take any additional action the judge authorizes.

(b) **Confidentiality.** No attorney-client relationship exists between the client and the trustee except to the extent necessary to maintain and preserve the client's confidentiality ~~of the client~~. The trustee ~~shall~~may not disclose any information contained in the files so inventoried without the consent of the client to whom such files relate, except as necessary to carry out the court's order ~~of the court~~ making the appointment.

(c) **Immunity.** Any person appointed as a trustee ~~shall~~ has ~~have~~ the immunity granted by Rule ~~14-513~~11-540.

1 **Rule ~~14-530~~11-539. Costs.**

2 (a) **Assessment.** The prevailing party in a ~~proceeding on a formal complaint~~misconduct action
3 may be awarded judgment for costs in accordance with Rule 54(d) of the Utah Rules of Civil
4 Procedure.

5 (b) **Offer of discipline by consent.** The OPC ~~counsel shall~~will not be deemed to have prevailed
6 in the action on any count of the complaint ~~in the formal complaint~~ unless the sanction imposed
7 exceeds any sanction to which the respondent conditionally consented under Rule ~~14-520(b)~~11-
8 565 ~~prior to~~before the hearing.

9 (c) **Disability cases.** Costs ~~shall~~will not be awarded in disability cases except pursuant to
10 paragraph (d).

11 (d) **Trusteeship.** Court-appointed trustees, including the OPC in cases in which ~~it~~the OPC is
12 appointed the trustee, may collect costs for ~~notification to~~notifying the respondent's clients,
13 including charges for copying, postage, publication, and fees from money collected.

14

1 ~~Rule 14-512. Sanctions.~~
2 ~~The imposition of sanctions against a respondent who has been found to have engaged in~~
3 ~~misconduct shall be governed by Chapter 14, Article 6, Imposing Lawyer Sanctions.~~

Commented [LL51]: This is unnecessary after combining Articles 5 and 6.

1 **Rule ~~14-513~~ 11-540. Immunity from civil suits.**

2 Participants in proceedings conducted under this article ~~shall be~~are entitled to the same
3 protections for statements made in the course of the proceedings as participants in judicial
4 proceedings. Except as provided in Utah Rules of Civil Procedure 65A and 65B, ~~T~~he district
5 courts, Committee members, special counsel appointed pursuant to Rule ~~14-517(f)~~ 11-542,
6 supervising attorneys engaged in pro bono assistance, trustees appointed pursuant to Rule ~~14-~~
7 ~~527~~ 11-538, and OPC counsel and staff ~~shall~~ will be immune from suit, ~~except as provided in~~
8 ~~Utah Rules of Civil Procedure 65A and 65B,~~ for any conduct committed in the course of their
9 official duties, including the investigatory stage. There is no immunity from civil suit for
10 intentional misconduct.

11

1 **Rule ~~14-514~~11-541. Service.**

2 ~~(a) Service of formal complaint or other petition. Service of the formal complaint upon the~~
3 ~~respondent in any disciplinary proceeding or the petition in any disability proceeding shall be~~
4 ~~made in accordance with the Utah Rules of Civil Procedure.~~

5 ~~(b) Service of other papers. Service of any other papers or notices required by this article shall~~
6 Serving documents on respondent in connection with an action must be made in accordance with
7 the Utah Rules of Civil Procedure.

8

9

Rule ~~14-517~~ 11-542. Additional rules of procedure.

(a) **Governing rules.** ~~Except as~~ Unless otherwise provided in this article, the Utah Rules of Civil Procedure, ~~the~~ Utah Rules of Appellate Procedure ~~governing civil appeals~~, and ~~the~~ Utah Rules of Evidence apply in ~~formal~~ discipline and disability actions ~~and disability actions~~.

(b) **Standard of proof.** ~~A Formal complaints of~~ misconduct action, petitions for reinstatement and ~~readmission~~ relicensure, and petitions for transfer to and from disability status ~~shall~~ will be established by a preponderance of the evidence. ~~A Motion~~ Motions for interim ~~suspension~~ discipline ~~pursuant to under~~ Rule ~~14-518~~ 11-563 ~~shall~~ will also be established by a preponderance of the clear and convincing evidence.

Commented [LL52]: Recommendation 7.3

(c) **Burden of proof.** The OPC carries the burden of proof in discipline proceedings and seeking ~~discipline or transfers~~ to disability status ~~is on the OPC~~. The respondent carries the burden of proof in ~~proceedings~~ seeking a reversal of a screening panel recommendation of discipline, ~~or seeking~~ reinstatement, ~~readmission~~, relicensure, or transfer from disability status ~~is on the respondent~~.

(d) **Related pending litigation.** ~~Upon a showing of good cause, a~~ Either party may request a stay of an ~~formal~~ action or ~~a~~ disability proceeding ~~may be stayed~~ because of substantial similarity to the material allegations of a pending criminal, civil, or disciplinary action.

(e) **The complainant's actions.** Disciplinary proceedings will not be abated due to:

(e)(1) Neither unwillingness of the complainant's unwillingness to prosecute an informal or formal complaint, nor

(e)(2) settlement or compromise between the complainant and the respondent; or

(e)(3) nor restitution by the respondent, shall, in and of itself, justify abatement of disciplinary proceedings.

(f) ~~Informal and formal complaints~~ Complaints and actions against OPC counsel, Committee members, the ~~Board~~ Bar Commission, or lawyers employed by the ~~Utah State Bar~~. The Committee chair will assign a screening panel ~~A any informal~~ complaint ~~or actions~~ filed against OPC counsel, ~~a members of the~~ Committee member, ~~a Board~~ Bar Commission member, ~~or a lawyer employed by the Utah State Bar, or a member of the Board shall be assigned by the Chair to a screening panel.~~ The ~~chair of the~~ assigned panel chair shall ~~will~~ review the ~~informal~~

complaint and any additional material, ~~if any~~, that the screening panel chair asks the respondent to provide.

(f)(1) A ~~n informal~~ complaint will be dismissed without hearing by a screening panel if ~~high, upon~~ after consideration of all factors, the chair determines the complaint is ~~is determined by the screening panel chair to be~~

(f)(1)(A) frivolous ~~or~~ unintelligible;

(f)(1)(B) barred by the statute of limitations;

(f)(1)(C) is ~~is~~ being or should have been addressed in another more appropriate forum; or

(f)(1)(D) unsupported by fact or ~~which~~ does not raise **probable cause** of any unprofessional conduct, ~~shall be dismissed without hearing by a screening panel.~~

(f)(2) The ~~chair of the~~ screening panel chair shall must notify the complainant of the dismissal and stating the reasons ~~therefor~~ for dismissal.

(f)(3) The complainant may appeal ~~a~~ the screening panel chair's dismissal ~~by the chair of the screening panel~~ to the Committee chair within 15 ~~4~~ days after notification of the dismissal is mailed.

(f)(4) Upon appeal, the Committee chair ~~shall must~~ conduct a de novo review of the file, and either affirm or reverse the dismissal.

(f)(5) If the screening panel chair determines not to dismiss the complaint, or the Committee chair reverses the dismissal on appeal, the Committee chair ~~shall must~~ request that the Supreme Court appoint a special counsel to present the case, and if necessary, a special screening panel. In all other respects, the matter ~~shall will~~ proceed in accordance with this article. Special counsel ~~shall must~~ be a lawyer outside of the OPC appointed by the Supreme Court to act as counsel for investigation and prosecution of the disciplinary complaint. Special counsel ~~shall must~~ notify the OPC of the results of the investigation.

Diversion.

Rule 14-53311-550. Diversion referrals, authority, and responsibilities.

Commented [LL53]: Recommendation 6.1 and 6.2.

(a) **Referral to diversion.** In a matter involving less serious misconduct ~~as outlined in subsection Rule 11-551(e), upon receipt of an informal~~ upon receiving a complaint and before the matter is submitted to a screening panel ~~filing a formal complaint~~, the respondent may have the option of electing to have the matter referred to diversion, the appropriateness of which the OPC will be determined by the chair of the Diversion Committee after consultation with OPC. The option for diversion also may be initiated by OPC or the Ethics and Discipline Committee screening panel. ~~(b) Diversion Committee.~~

Commented [LL54]: Paragraph (c) actually defines only serious misconduct. It isn't until paragraph (d) that it elaborates on what qualifies as less serious misconduct.

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

Commented [LL55]: Recommendation 6.2 eliminate diversion committee

~~(b)(2) Authority and responsibility.~~ The ~~Diversion Committee~~ OPC may negotiate and execute diversion contracts, assign monitoring to a lawyers or licensed paralegal practitioner assistance program, determine of the lawyer compliance with the terms of diversion contracts, and determine if the lawyer fulfilledment or any materially breached the of diversion contracts, subject to review under subsection (j)(3) of this rule, and adopt such policies and procedures as may be appropriate to accomplish its duties under this rule. The ~~Diversion Committee~~ OPC shall have 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 and the Diversion Committee on a regular basis.

Commented [LL56]: Recommendation 6.2: designating a monitor for compliance who will be responsible to report to 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

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

Rule 11-551. 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 [LL57]: Recommendation 6.2 eliminate diversion committee

Commented [LL58]: Recommendation 6.2 eliminate diversion committee

Rule 11-552.(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.~~

Commented [LL59]: Recommendation 6.2 eliminate diversion committee

(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.

(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.

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

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

5 ~~(b)(12)(A)~~ the signatures of respondent, ~~his~~respondent's counsel (if any), and the ~~chair~~
6 ~~of the Diversion Committee~~OPC;

Commented [LL60]: Recommendation 6.2 eliminate diversion committee

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

14 ~~(b)(32)(C)~~ the necessary terms providing for oversight of ~~fulfillment of~~fulfilling the
15 contract terms, including provisions for those involved to report any alleged breach of the
16 contract to the OPC;

17 ~~(b)(42)(D)~~ the necessary terms providing that respondent will pay all costs incurred in
18 connection with the contract and those costs further specified ~~pursuant to~~under
19 ~~subsection~~Rule 11-555(k) and any costs associated with the complaints to be deferred;
20 and

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

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

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

28 ~~(g) Affidavit supporting diversion. A diversion contract must be supported by the respondents~~
29 ~~or the respondents lawyers 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.~~

~~(b)~~(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 11-553. 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 11-554.(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 [LL61]: Recommendation 6.2

1 **Rule 11-555, (4) Diversion Costs.**

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

8

Discipline.

Rule ~~14-509~~11-560. 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)~~11-570; or
- (e) fail to notify the OPC of public discipline in another jurisdiction in accordance with Rule ~~14-522(a)~~11-567(a).

Rule ~~14-515~~ 11-561. Accessing ~~to~~ 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 ~~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)~~ 11-542, and special counsel employees or assistants, ~~shall~~ must keep the proceeding confidential, ~~except that~~ but 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 [LL62]: 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 ~~is~~ 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 on of~~ 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~~

Commented [LL63]: Replaced with 11-503(b)(3)

~~(e)(12) if~~ the request for information is approved by the OPC and there is requestor compliance complies 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 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 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. ~~Q~~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)~~11-542, 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~~ 11-562. Dissemination of ~~Dissemination~~ 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~~delicensure, 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~~delicensure, 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.

Rule ~~14-518~~ 11-563. Interim ~~suspension~~ discipline for threat of harm.

Commented [LL64]: Recommendations 7.1 and 7.3

(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.

Commented [LL65]: Recommendation 7.3 (permit OPC to request and Court to impose other types of interim orders to protect the public)

Commented [LL66]: Recommendation 7.3

(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~~ under Rule ~~14-527~~ 11-538, to protect the interests of the respondent's clients; and

(b)(~~21~~)(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.

- 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~~11-570 as ordered by the
3 district 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.

9

Rule 14-51911-564. Lawyers ~~found guilty~~ convicted of a crime.

Commented [LL67]: 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 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~~ 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 reflects 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 [LL68]: 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)~~11-563.
- (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 constitute a suspension of the respondent for the purpose of Rule ~~14-526~~11-570.

Rule ~~14-520~~ 11-565. Discipline by consent.

(a) **Discipline by consent** ~~prior to~~ before the matter is submitted to a screening panel ~~filing of formal complaint~~. A respondent against whom a ~~n informal~~ complaint has been filed may, ~~prior to the filing of a formal complaint~~ before the matter is submitted to a screening panel, tender a proposal for discipline by consent, including a conditional admission to the ~~informal~~ complaint or portions thereof in exchange for a disciplinary sanction and final disposition of the ~~informal~~ complaint. The proposal ~~shall~~ must include a waiver of right to a screening panel hearing. The respondent must submit the proposal ~~shall~~ to the OPC, who ~~shall~~ 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 ~~is approved by the Committee chair~~, the sanction ~~shall~~ will be imposed as provided in this rule. If the proposal is rejected by the Committee chair, the proposal and admission ~~shall~~ will be withdrawn and cannot be used against the respondent in subsequent proceedings.

(b) **Discipline by consent after filing of formal complaint** a misconduct action. A respondent against whom an ~~n action~~ formal complaint has been filed may tender a conditional admission to the allegations in the OPC's ~~formal~~ complaint or to a particular count thereof in exchange for a stated form of discipline and final disposition of the ~~formal complaint~~ action. The proposal ~~shall~~ must be submitted to ~~the OPC-counsel~~, who ~~shall~~ 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 ~~shall~~ will either approve or reject the proposal. If the district court approves the proposal and the stated form of discipline includes public discipline, it ~~shall~~ will enter the appropriate disciplinary order as provided in paragraph (d). If the district court rejects the proposal, the proposal and conditional admission ~~shall~~ 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 ~~shall~~ will be predicated ~~upon~~:

- (c)(1) the ~~informal~~ complaint and ~~any NOIC~~ the OPC's notice to the respondent if no ~~formal complaint~~ action has been filed;
- (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~~11-566. Resignation with discipline pending.

(a) A respondent may resign by voluntarily relinquishing their license; ~~prior to before the adjudication of~~ a pending complaint is adjudicated; only with the Supreme Court's consent ~~of the Supreme Court~~ and upon such terms as the Supreme Court may impose for the public's 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)~~ 11-570 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~~ 1 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.

(d) If the Supreme Court accepts the resignation, it will ~~shall~~ 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 ~~readmission~~ relicensure.

1 (e) A respondent whose resignation is accepted must comply with Rule ~~14-525~~11-591 and may
2 not apply for ~~readmission~~relicensure until five years after the effective date of the resignation
3 unless the Supreme Court orders otherwise in ~~the~~its order accepting the resignation.

4

Rule ~~14-522~~ 11-567. 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, Upon being publicly disciplined by another court, another jurisdiction, or a regulatory body having disciplinary jurisdiction, a lawyer admitted to practice in Utah shall such lawyer must inform the OPC of the discipline or transfer within ~~30~~28 days. If the OPC receives notification inform the OPC of the discipline. Upon notification from any source that a lawyer within the Supreme Court's jurisdiction ~~of the Supreme Court~~ has been publicly disciplined or transferred to disability inactive status by ~~another court, another jurisdiction, or a regulatory body having disciplinary jurisdiction~~ any other jurisdiction, the OPC ~~shall~~ must obtain a certified copy of the disciplinary order.

Commented [LL69]: Recommendation 4.7

(b) ~~Notice served upon~~ Serving notice on lawyer. ~~Upon receipt of~~ On receiving a certified copy of an order demonstrating that a lawyer ~~admitted~~ licensed to practice in Utah has been publicly disciplined or transferred to disability inactive status by another court, ~~another~~ jurisdiction, or ~~a~~ regulatory body having disciplinary jurisdiction, the OPC ~~shall~~ 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 ~~30~~28 days from service of the notice, of any claim by the lawyer predicated ~~upon~~ the grounds set forth in paragraph (d), that ~~the imposition of the~~ imposing equivalent discipline or transfer in Utah would be ~~unwarranted, and~~ 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 ~~shall~~ will be deferred until the stay expires.

(d) **Discipline to be imposed.** Upon the expiration of ~~30~~28 days from service of the notice ~~pursuant to~~ under paragraph (b), the district court ~~shall~~ 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 ~~upon~~ the face of the record from which the discipline or transfer is predicated that:

Commented [LL70]: Committee/Supreme Court needs to decide whether this should be deleted. Question about which jurisdiction's "equivalent" discipline should be imposed? See *In re Discipline of Welker*.

(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; ~~or~~

(d)(3) the misconduct ~~established~~ 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 ~~shall~~ will enter such other order as it deems appropriate. The burden is on the ~~respondent~~ lawyer seeking different discipline or transfer to demonstrate that the imposition of equivalent discipline or transfer is not appropriate.

(e) ~~Conclusiveness of adjudication in o~~ 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 ~~the an~~ other court, jurisdiction, or regulatory body ~~that a respondent has been guilty of misconduct or should be transferred to disability inactive status shall~~ will establish conclusively the misconduct or the disability for purposes of a disciplinary or disability proceeding in Utah.

Rule 14-523 11-568. 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 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

1 incapacitated, including designating qualified experts to~~the examination~~ of the lawyer ~~by~~
2 ~~qualified experts designated by the district court~~. If, ~~upon due consideration of the matter~~, the
3 district court concludes that the lawyer is incapacitated from continuing to practice law, it ~~shall~~
4 will enter an order transferring the lawyer to disability status for an indefinite period and until the
5 further order ~~of the district court~~. Any pending disciplinary proceedings against the lawyer ~~shall~~
6 will be held in abeyance.

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

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

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

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

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

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

1 (d)(6) Granting petition for transfer to active status. The district court ~~shall~~will grant the
2 petition for transfer to active status ~~upon~~ 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.
9

1 **Rule ~~14-531~~11-569. Noncompliance with child support order, child visitation order,**
2 **subpoena or order relating to paternity, or child support proceeding.**

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

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

10

Rule ~~14-526~~ 11-570. 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 ~~entry 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 ~~issuance 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~~ relicensure. 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~~

(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~~ 11-580. Purpose and nature of sanctions.

Commented [LL71]: These definitions are incorporated into article 5, because we will be merging both articles 5 and 6 into Chapter 11, article 5.

~~(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.~~

(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.

(c) Public nature of lawyer discipline proceedings. The 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:

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

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

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

Rule ~~14-603~~ 11-581. Sanctions.

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

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

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

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

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

Commented [LL72]: Redundant of Rule 11-591 (former Rule 14-525).

(d) **Interim suspension or interim discipline.** Interim suspension ~~is the temporarily~~ suspension ~~of~~ a lawyer from the practice of law. Interim suspension or interim discipline may be imposed as set forth in Rules ~~14-518~~ 11-563 and ~~14-519~~ 11-564.

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

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

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

Commented [LL73]: Recommendation 7.2

(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;

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

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

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

7 (g)(1)(E) have not committed acts warranting delicensure.

8 (g)(2) Probation may include the following conditions:

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

11 (g)(2)(B) restitution;

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

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

14 (g)(2)(E) requirement that the lawyer pass the Multistate Professional
15 Responsibility Exam;

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

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

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

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

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

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

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

25 (g)(4) A respondent may terminate their probation by filing with the district court and
26 serving on the OPC an affidavit stating that the respondent has fully complied with the

1 requirements of the probation order. The OPC may file an objection and thereafter the
2 court will conduct a hearing.

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

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

10 (h)(1) Rule 11-550 governs diversion matters before the matter is submitted to a
11 screening panel.

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

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

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

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

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

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

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

(h)(6) If the lawyer does not complete the diversion conditions 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~~ 11-566.

(i) Other sanctions and remedies. Other sanctions and remedies ~~which may be imposed that a~~ court may impose 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

(i)(6) a requirement that the lawyer attend continuing education courses.

(k) Reciprocal discipline. Reciprocal discipline ~~is the imposition of~~ is imposing a disciplinary sanction on a lawyer who has been disciplined in another court, another jurisdiction, or a regulatory body having disciplinary jurisdiction.

Rule ~~14-604~~11-582. 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.
~~The following factors should be considered in imposing a sanction after a finding of lawyer misconduct:~~

(a)(1) the presumptive sanction based on:

(a)(1)(A) the duty violated;

(b)(1)(B) the lawyer's mental state;

(c)(1)(C) the potential or actual injury caused by the lawyer's misconduct; ~~a~~ and

~~(d)~~ (2) the existence of aggravating or mitigating factors.

(b) Multiple charges of misconduct.

(b)(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.

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

Commented [LL74]: See *Tyler Larsen* case re multiple charges of misconduct.

Rule 14-60511-583. 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.

Commented [LL75]: The language from the next four rules comes almost entirely from the ABA model rules. The intention is to give the OPC, the public, and the Court more guidance in determining sanctions.

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:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(a)(1) knowingly engages in professional misconduct as defined in Rule 8.4(a), (d), (e), or (f) of the Rules of Professional Conduct with the intent to benefit the lawyer or another or to deceive the court, and causes serious or potentially serious injury to a party, the public, or the legal system, or causes serious or potentially serious interference with a legal proceeding; or~~

~~(a)(2) engages in serious criminal conduct, a necessary element of which includes intentional interference with the administration of justice, false swearing,~~

1 ~~misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution, or~~
2 ~~importation of controlled substances; or the intentional killing of another; or an attempt~~
3 ~~or conspiracy or solicitation of another to commit any of these offenses; or~~

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

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

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

11 ~~(b)(2) engages in criminal conduct that does not contain the elements listed in Rule 14-~~
12 ~~605(a)(2) but nevertheless seriously adversely reflects on the lawyer's fitness to practice~~
13 ~~law.~~

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

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

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

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

21 ~~(d)(1) negligently engages in professional misconduct as defined in Rule 8.4(a), (d), (e),~~
22 ~~or (f) of the Rules of Professional Conduct and causes little or no injury to a party, the~~
23 ~~public, or the legal system or interference with a legal proceeding, but exposes a party,~~
24 ~~the public, or the legal system to potential injury or causes potential interference with a~~
25 ~~legal proceeding; or~~

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

Rule 11-584. 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:

(b)(1) Delicensure is generally appropriate when a lawyer in an official or governmental position knowingly misuses the position with the intent to obtain a significant benefit or

Commented [LL76]: Although the ABA model rules use "knowingly" here, the committee recommends using "negligently" because it is more consistent with the scienter required for reprimand in other rules.

1 advantage for himself or another, or with the intent to cause serious or potentially serious
2 injury to a part or to the integrity of the legal process.

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

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

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

Rule 11-585. 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

1 serious injury or potentially serious injury to a party or causes serious or potentially
2 serious interference with a legal proceeding.

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

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

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

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

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

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

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

24 (c)(1)(C) improperly communicates with someone in the legal system other than a
25 witness, judge, or juror with the intent to influence or affect the outcome of the
26 proceeding, and causes significant or potentially significant interference with the
27 outcome of the legal proceeding.

28 (c)(2) Suspension is generally appropriate when a lawyer engages in communication with
29 an individual in the legal system when the lawyer knows that such communication is

1 improper, and causes injury or potential injury to a party or causes interference or
2 potential interference with the outcome of the legal proceeding.

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

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

Rule 11-586. 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 [LL77]: Although the proposed regulatory reform rules and standing order will potential relax the rules around advertising, solicitation, etc., it's still possible for an attorney to exert duress, etc. in advertising/soliciting/etc.

Rule ~~14-606~~11-587. Prior discipline orders.

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

Commented [LL78]: This language is from the ABA model rules on Sanctions.

(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.~~

~~(b) When a lawyer engages in misconduct similar to that for which the lawyer has previously been disciplined, the appropriate sanction will generally be one level more~~

1 ~~severe than the sanction the lawyer previously received, provided that the harm requisite~~
2 ~~for the higher sanction is present.~~
3

Rule ~~14-607~~11-588. Aggravation and mitigation.

(a) Application. After ~~misconduct has been established~~the presumptive sanction has been determined, aggravating and mitigating circumstances may be considered and weighed in ~~deciding what sanction to impose~~deciding whether departure from the presumptive sanction 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:

- (a)(1)** prior record of discipline;
- (a)(2)** dishonest or selfish motive;
- (a)(3)** a pattern of misconduct;
- (a)(4)** multiple offenses;
- (a)(5)** obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary authority;
- (a)(6)** submission of false evidence, false statements, or other deceptive practices during the disciplinary process;
- (a)(7)** refusal to acknowledge the wrongful nature of the misconduct involved, either to the client or to the disciplinary authority;
- (a)(8)** vulnerability of victim;
- (a)(9)** substantial experience in the practice of law;
- (a)(10)** lack of good faith effort to make restitution or to rectify the consequences of the misconduct involved; and
- (a)(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:

- (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.

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

3 (e~~d~~)(1) forced or compelled restitution;2

4 (e~~d~~)(2) withdrawal of complaint against the lawyer;2

5 (e~~d~~)(3) resignation prior to completion of disciplinary proceedings;2

6 (e~~d~~)(4) complainant's recommendation as to sanction;2 and

7 (e~~d~~)(5) failure of injured client to complain.
8

Reinstatement.

Rule ~~14-524~~11-590. Reinstatement following a suspension of no more than six months ~~or~~
~~less~~ or probation.

A respondent who has been suspended for no more than six months ~~or placed on probation~~ ~~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~~ 11-591. 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 or relicensure. The court must determine whether the lawyer seeking reinstatement or relicensure has demonstrated the requisite honesty, integrity, and fitness to practice law. The court may consider the respondent's actions taken during the suspension or delicensure including:

(e)(4)(A)(i) lack of candor;

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

(e)(4)(A)(iii) false or misleading statements or omissions;

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

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

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

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

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

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

Commented [LL79]: These factors are from *In re Discipline of Jardine* and other jurisdictions using similar language in their reinstatement cases.

(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 a~~ respondent lawyer shall will be required to retake and 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 ~~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 ~~receiving service of~~ the petition, ~~the OPC counsel may file an objection thereto~~ based solely ~~upon~~ substantial procedural irregularities. If ~~an objection is filed the OPC objects~~, the district court ~~shall will~~ hold a hearing and enter its findings and order. If no objection is filed, the district court ~~shall will~~ enter its order based ~~upon~~ the petition.

Draft: May 6, 2020

- 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.~~

Commented [LL80]: This language has been fully incorporated into Rule 11-530 (former rule 14-510(a)(7)).

Tab 8

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General provisions.

Rule 11-501. Lawyer disciplinary and disability proceedings: purpose, authority, scope, and structure.

(a) The purpose of lawyer disciplinary and disability proceedings 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 those who have demonstrated by their conduct that they are unable or unlikely to properly discharge their professional responsibilities.

(b) Under Article VIII, Section 4 of the Constitution of Utah, the Utah Supreme Court has exclusive authority within Utah to adopt and enforce rules governing the practice of law, including licensure to practice law in Utah and the conduct and discipline of persons licensed to practice law.

(c) All disciplinary proceedings must be conducted in accordance with [LL1]these rules. Formal disciplinary and disability proceedings are civil in nature. These rules will be construed to achieve substantial justice and fairness in disciplinary matters with dispatch and at the least expense to all concerned parties.

(d) The interests of the public, the courts, and the legal profession all require that disciplinary proceedings at all levels be undertaken and construed to secure the just and speedy resolution of every complaint.

(e) Unless provided otherwise, to the extent consistent with their limited license, licensed paralegal practitioners and foreign legal consultants must be treated in the same manner as lawyers for purposes of interpreting and implementing these rules. [LL2]

Rule 11-502. Definitions.

As used in this article:

(a) “**Action**” [LL3] or “**misconduct action**” means a lawsuit filed by the OPC in district court alleging lawyer misconduct or seeking to transfer a lawyer to disability status.

(b) “**Bar**” means the Utah State Bar.

(c) “**Bar Commission**” or “**Commission**” means the Board of Bar Commissioners of the Utah State Bar.

(d) “**Chief disciplinary counsel**” means the lawyer the Supreme Court [LL4] appoints to manage the OPC.

(e) “**Committee**” means the Ethics and Discipline Committee of the Supreme Court.

(f) “**Complainant**” means either (1) the person who files a complaint, or (2) the OPC after opening an investigation.

(g) “**Complaint**” means any written allegation of lawyer misconduct or incapacity containing a declaration under penalty of perjury [LL5] as to the accuracy of the information provided.

(h) “**Injury**[LL6]” means harm to a client, the public, the legal system, or the profession that 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.

(i) “**Intent**” means the conscious objective or purpose to accomplish a particular result.

(j) “**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.

(k) “**Lawyer**[LL7]” includes those licensed to practice law in any jurisdiction of the United States, foreign legal consultants, and licensed paralegal practitioners, insofar as the licensed paralegal practitioner is authorized to practice under Utah Special Practice Rule [14-802](#), unless provided otherwise.

(1) “**Licensed**[LL8]” includes lawyers admitted to the Bar, unless provided otherwise.

(m) “**Negligence**” means a lawyer’s failure 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.

(n) “**Notice**” [LL9] means the notice the OPC sends to the respondent after a preliminary investigation, which identifies the possible violation(s) of the Rules of Professional Conduct or Licensed Paralegal Practitioner Rules of Professional Conduct, raised by the complaint as the OPC has preliminarily determined.

(o) “**OPC**” means the [LL10]Office of Professional Conduct.

(p) “**OPC counsel**” means chief disciplinary counsel, deputy chief disciplinary counsel, and any assistant disciplinary counsel.

(q) “**Oversight committee**” means the committee established in Rule 11-503 to oversee the OPC.

(r) “**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.

(s) “**Respondent**” means a lawyer subject to the disciplinary jurisdiction of the Supreme Court against whom a complaint has been filed or an action has been initiated.

(t) “**Rules of Professional Conduct**” means the rules in Chapter 13 of the Supreme Court Rules of Professional Practice and “**Licensed Paralegal Practitioner Rules of Professional Conduct**” means the rules in Chapter 15, article 12 of the Supreme Court Rules of Professional Practice.

(u) “**Screening panel**” means Committee members who participate in hearings and make determinations.

(v) “**Supreme Court**” means the Utah Supreme Court.

Rule 11-503. Oversight Committee for the Office of Professional Conduct.

(a) **Establishment.** The Oversight Committee for the Office of Professional Conduct (“Oversight Committee”) is established as a Supreme Court committee.

(a)(1) **Composition.**

(a)(1)(A) The Oversight Committee consists of five voting members. Among the members, at least one must be a judge; one a member of the public; and one a past chair or past vice-chair of the Ethics and Discipline Committee. At least one of the members must have an accounting or finance background.

(a)(1)(B) The executive director of the Utah Bar will be an ex-officio, non-voting member of the Oversight Committee.

(a)(2) **Appointment and member roles.** The Utah Supreme Court appoints Committee members who may serve up to two consecutive^[LL11] staggered four-year terms. The Supreme Court will select a chair from among the Oversight Committee’s members. Oversight Committee members serve as officers of the court and not as representatives of any client, employer, or other organization or interest group. At the first meeting of the Oversight Committee in any calendar year, and at every meeting at which a new Committee member first attends, each Committee member must briefly disclose the general nature of the member’s legal or other practice.

(a)(3) **Meeting schedule.** The Oversight Committee will meet as often as necessary to accomplish its purposes but at least annually.

(a)(4) **Vacancies.** If there is an Oversight Committee vacancy, the Supreme Court will appoint a new Committee member to serve for the remainder of the unexpired term.

(a)(5) **Absences.** If an Oversight Committee member fails to attend two consecutive Committee meetings, the chair may notify the Supreme Court of those absences and may request that the Supreme Court replace that Committee member.

(a)(6) **Administrative support.** The Administrative Office of the Courts shall coordinate administrative support to the Committee.

1 **(b) Oversight committee purpose, responsibilities, and authority.**

2 **(b)(1) Oversight Committee purpose.** The Oversight Committee’s purpose is to assist
3 the OPC in implementing reforms to the attorney discipline process adopted by the Utah
4 Supreme Court and to provide oversight for the OPC.

5 **(b)(2) Oversight Committee responsibilities.** The following comprise the Oversight
6 Committee’s responsibilities:

7 **(b)(2)(A)** Develop and implement realistic performance metrics and conduct
8 annual evaluations of OPC and its chief disciplinary counsel;

9 **(b)(2)(B)** Approve the budget for the OPC and annually submit the budget by
10 May 1 to the Utah Supreme Court and Utah Bar;

11 **(b)(2)(C)** Conduct a needs assessment for the OPC, setting forth a three- to five-
12 year funding plan for the disciplinary process, including technology and staffing
13 needs;

14 **(b)(2)(D)** Annually, in conjunction with chief disciplinary counsel and the Ethics
15 and Discipline Committee chair, report to the Court regarding the operations of
16 the OPC and the general standing of disciplinary matters and procedures;

17 **(b)(2)(E)** Develop and monitor formal policies for the OPC, including records
18 retention policies;

19 **(b)(2)(F)** Recommend rules of administration and procedure to the Supreme
20 Court;

21 **(b)(2)(G)** Recommend a chief disciplinary counsel to be appointed by the
22 Supreme Court; and

23 **(b)(2)(H)** Monitor the OPC’s workload and recommend to the Supreme Court
24 adequate OPC staffing.

25 **(b)(3) Authority.** The Oversight Committee does not have authority to interfere with the
26 prosecutorial independence of the OPC, but is granted access to confidential information
27 as necessary to carry out its duties.

(c) Complaints and appeals.[LL12]

(c)(1) Any person may file with the Oversight Committee chair a complaint alleging malfeasance regarding the chief disciplinary counsel. If necessary, the Oversight Committee may enter a recommendation to the Supreme Court, which may take appropriate action.

(c)(2) If a complaint regarding the chief disciplinary counsel is received in the OPC's office, the chief disciplinary counsel must forward the complaint to the Oversight Committee chair within a reasonable time, but not more than 14 days after receipt.

(c)(3) Any person may file with the chief disciplinary counsel a complaint alleging malfeasance regarding OPC counsel or staff. The chief disciplinary counsel's decision regarding the complaint is final and not subject to appeal. The chief disciplinary counsel's decision may include an appropriate action taken against the person whom the complaint is filed.

(c)(4) A complaint must be in writing, stating the name and contact information of the complainant, the nature of the complaint, and the facts on which the complaint is based.

(c)(5) Unless the appropriate action taken on a complaint is part of a formal proceeding, any action taken is confidential.

Rule 11-504. Jurisdiction.

(a) **Persons practicing law.** The persons subject to the disciplinary jurisdiction of the Supreme Court and the OPC include any lawyer licensed to practice law in Utah, any lawyer admitted but currently not properly licensed to practice in Utah, any formerly licensed lawyer with respect to acts committed while admitted to practice in Utah or with respect to acts subsequent thereto, which amount to the practice of law or constitute a violation of any rule promulgated, adopted, or approved by the Supreme Court or any other disciplinary authority where the lawyer was licensed to practice or was practicing law at the time of the alleged violation, any lawyer specially admitted by a Utah court for a particular proceeding, and any other person not licensed in Utah who practices law or who renders or offers to render any legal services in Utah.

(b) **Incumbent and sitting judges.** Incumbent and sitting judges are subject to the OPC's jurisdiction only for conduct that occurred before taking office.

(c) **Former judges.** A former judge who has resumed the status of a lawyer is subject to the jurisdiction of the Supreme Court not only for conduct as a lawyer but also for misconduct that occurred while the lawyer was a judge and would have been grounds for lawyer discipline, provided that the misconduct was not the subject of a judicial disciplinary proceeding as to which there has been a final determination by the Supreme Court.

(d) **Part-time judges.** Part-time judges, while in office, are subject to lawyer disciplinary and disability proceedings for acts outside their judicial capacity.

Rule 11-505. Statute of limitations.[LL13]

(a) **Individual complaints.** A complaint against a lawyer must be filed with the OPC within four years of the time that the complainant discovers or reasonably should have discovered the alleged misconduct.

(b) **OPC complaints.** A complaint initiated by the OPC must be initiated within five years of the alleged misconduct.

(c) **Fraud, conversion, conviction of a serious crime, and concealment.** There is no statute of limitations for misconduct alleging fraud, conversion, or conviction of a serious crime, or for alleged misconduct the discovery of which the lawyer has concealed.[LL14]

Ethics and Discipline Committee.

Rule 11-510. Ethics and Discipline Committee composition.

(a) **Composition.** The Supreme Court appoints the Committee members. The Committee consists of four public members and 21 lawyers who have demonstrated a high standard of professional conduct. All appointments are for a term of three years with no committee member serving more than two consecutive terms unless appointed as a chair or vice chair of the Committee[LL15]. The Supreme Court designates one lawyer member as Committee chair and four lawyer members as Committee vice chairs.

(b) **Committee chair.** The Committee chair supervises the Committee and screening panels. The chair is responsible for:

(b)(1) maintaining an adequate check on the screening panels' work to ensure that matters move forward expeditiously;

(b)(2) determining that screening panels have a uniform basis for the judgments rendered;

(b)(3) providing the screening panels with information concerning ethics and judicial decisions necessary to their activities; and

(b)(4) making recommendations to the Supreme Court concerning appointments to and removals from the screening panels and reports concerning screening panel activities and the overall work of the Committee.

(c) **Vice chairs.** The Committee vice chairs will act if the chair is absent or resigns. In such event, a vice chair will become the chair. The chair may call upon any vice chair to assist in any of the Committee chair's duties.

(d) **Removal.** The Committee chair may recommend removal of a Committee member by notifying the Supreme Court of the recommendation of removal and reasons for the recommendation. The removal is effective when the Supreme Court accepts the recommendation.

Rule 11-511. Screening panel composition; responsibilities.

(a) **Screening panel composition.** The Committee members, except for the Committee chair and vice chairs, are divided into four screening panel sections of five members each, including four lawyers and one public member. Whenever a screening panel is assigned a complaint involving a licensed paralegal practitioner, the Committee chair may, as practical, appoint up to two licensed paralegal practitioners to the screening panel as voting members, with all of the responsibilities and duties of other members of the screening panel.

(b) **Screening panel number.** All screening panel hearings must have five panel members present unless all parties agree to fewer than five, but not fewer than three, panel members. A panel chair or vice chair and a public member must be present at each screening panel hearing.

(c) **Chair and vice chair.** The Supreme Court will name a chair and vice chair for each screening panel. The chair or, in the chair's absence, vice chair presides over screening panel hearings. The panel chair may call upon the vice chair to assist in any of the panel chair's duties. Chairs or vice chairs from other panels may conduct hearings if the regular chair and vice chair are unable to attend. If the chair is removed or resigns, the vice chair will become the chair, and the Court will appoint a Committee member to serve as vice chair.

(d) **Voting.** A majority vote of those members present and voting at any proceeding is required for a screening panel determination. If an even number of screening panel members participate in a proceeding, the chair, or vice chair if the chair is not present, may not vote. The chair or vice chair may, however, fully participate in the proceeding.

(e) **Meetings.** Each screening panel meets as is necessary to effectively and promptly carry out its duties. The chair may convene the entire Committee at such other times as necessary to effectively and promptly carry out the Committee's duties.

(e) **Alternates.** [LL16]. Members of any screening panel may serve as alternate members on different screening panels. The Committee chair and the Committee vice chairs may serve as alternate members on all screening panels.

(f) Responsibilities.

(f)(1) Complaints are randomly assigned to a screening panel. The screening panels review and hear all complaints charging that a lawyer engaged in unethical or

1 unprofessional conduct, and may consider any other relevant information. Screening
2 panels determine the action to be taken on any complaint that, based on applying these
3 rules to the facts of the particular case, is most consistent with the public interest and the
4 Rules of Professional Conduct or Licensed Paralegal Practitioner Rules of Professional
5 Conduct.

6 (f)(2) Unless otherwise provided in this article, whenever the OPC may be present before
7 a screening panel during a hearing, the respondent may also be present.

Rule 11-512. Respondent subpoena petitions.

(a) **Who may request a subpoena.** 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. 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.

(b) **Subpoena enforcement.** A district court in the district in which the attendance or production is required may, upon proper application, enforce the attendance and testimony of any witnesses and the production of any documents subpoenaed.

(c) **Quashing subpoena.** The Committee chair or the court wherein the subpoena enforcement is being sought will hear and determine any attack on an issued subpoena. Any resulting order is not appealable before entry of a final order in the proceeding.

(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.

Rule 11-513. Committee clerk.

(a) **Confidentiality.** The Committee clerk is subject to the confidentiality requirements of Rule 11-561.

(b) **Responsibilities.** The clerk is responsible for:

(b)(1) handling the Committee's administrative affairs,

(b)(2) accepting documents filed with the Committee,

(b)(3) handling screening panel calendars,

(b)(4) giving notice to persons whose attendance is requested,

(b)(5) notifying the complainant, the respondent, and the OPC of the times and dates their matters will be heard,

(b)(6) notifying the complainant, the respondent, and the OPC of the disposition of each matter, and

(b)(7) otherwise performing or providing the secretarial and administrative functions of the Committee and screening panels. [LL17]

Rule 11-514. Disclosure, recusal, and disqualification[LL18].

(a) **Application.** Disclosure, recusal, and disqualification apply to Committee members' participation in a screening panel hearing, exception, or other proceeding in which a respondent's conduct is considered under these rules.

(b) **Disclosure.**

(b)(1) Committee members must make disclosures before or, at the latest, at the start of a screening panel hearing or other hearing in which a respondent's conduct is considered.

(b)(2) Each Committee member must disclose to the parties any professional or personal relationship or conflict of interest with a party or a party's counsel in the proceeding that may affect an unbiased evaluation of the respondent.

(b)(3) Relationships that may affect an unbiased evaluation of the respondent include any contact or association that might influence a Committee member's ability to fairly and reasonably evaluate the conduct of any respondent or to assess that respondent without bias or prejudice, including but not limited to:

(b)(3)(A) family relationships to a party or lawyer of a party in the proceeding within the third degree of relationship;

(b)(3)(B) any business relationship between the Committee member and a party or lawyer of a party in the proceedings; and

(b)(3)(C) any personal litigation directly or indirectly involving a party or a lawyer of a party in the proceeding and the Committee member, the Committee member's family or the Committee member's business.

(b)(4) A Committee member exhibits bias or prejudice when the Committee member is predisposed to decide a cause or an issue in a way that does not leave the Committee member's mind open to exercising the Committee member's duties impartially in a particular case.

(c) **Recusal.**

(c)(1) As used in this rule, recusal is a voluntary act of self-disqualification by a Committee member.

1 (c)(2) After making a disclosure, a Committee member may voluntarily recuse if the
2 Committee member believes the relationship with the respondent or other parties will
3 affect an unbiased evaluation of the respondent.

4 **(d) Disqualification procedures.**

5 (d)(1) A respondent may move to disqualify a screening panel Committee member if
6 such member:

7 (d)(1)(A) makes a disclosure and does not voluntarily recuse, and that member's
8 impartiality might reasonably be questioned; or

9 (d)(1)(B) does not make a disclosure, but known circumstances suggest the
10 Committee member's impartiality might reasonably be questioned.

11 (d)(2) A motion to disqualify a screening panel Committee member must be submitted to
12 the Committee clerk for review by the screening panel chair or vice chair before or
13 during the screening panel hearing.

14 (d)(3) A motion to disqualify a Committee member from an exception or other hearing or
15 review must be submitted to the Committee clerk for review by the Committee chair or
16 vice chair before any hearing on the matter.

17 **(e) Disqualification after committee service.** A former Committee member may not personally
18 represent a respondent in any proceeding as provided in these rules within one year after
19 completing the former Committee member's service. In addition to the one-year prohibition, a
20 former Committee member may not personally represent a respondent in any proceedings as
21 provided in these rules in which the former Committee member previously participated during
22 their service on the Committee.

Office of Professional Conduct composition and responsibilities.

Rule 11-520. Chief disciplinary counsel and OPC counsel.

(a) **Appointment and qualifications.** The Supreme Court [LL19] will appoint a lawyer licensed to practice in Utah to serve as chief disciplinary counsel. Neither the chief disciplinary counsel nor any full-time assistant disciplinary counsel may engage in the private practice of law for payment.

(b) **Chief disciplinary counsel responsibilities**[LL20]. The chief disciplinary counsel has the following responsibilities:

(b)(1) Hire and manage OPC counsel and staff to ensure quality investigations, discipline, and sanctions.

(b)(2) Develop the budget for Oversight Committee approval.

(b)(3) Monitor and report to the Oversight Committee regarding the OPC's operations and the efficiency and effectiveness of the disciplinary system.

(b)(4) Prepare and submit an **annual report** [LL21] to the Oversight Committee and Supreme Court on or about February 1 of each year for the preceding calendar year.

(b)(4)(A) The report must include:

(b)(4)(A)(1) the number of disciplinary cases investigated,

(b)(4)(A)(2) the number of disciplinary cases brought before the Committee,

(b)(4)(A)(3) actions filed,

(b)(4)(A)(4) dispositions, including diversionary dispositions,

(b)(4)(A)(5) cases dismissed,

(b)(4)(A)(6) informal ethics opinions issued, and

(b)(4)(A)(7) such other information as may be helpful to the Supreme Court in understanding the OPC's operations and the efficiency and effectiveness of the disciplinary system.

1 (b)(4)(B) Such report may contain recommendations for rule amendments or changes in the OPC
2 or Ethics and Discipline Committee procedure. The Oversight Committee may amend the report
3 before releasing it to the Supreme Court.

4 (c) **OPC counsel.**

5 (c)(1) Qualification and responsibilities. OPC counsel must be licensed to practice law in
6 Utah.

7 (c)(2) OPC counsel will be selected by the chief disciplinary counsel. An OPC counsel is
8 an at-will employee subject to dismissal by the chief disciplinary counsel with or without
9 cause.

10 (d) **Disqualification and conflicts of interest.** In addition to complying with the Rules of
11 Professional Conduct regarding successive government and private employment (Rule 1.11 of
12 the Rules of Professional Conduct), former OPC counsel may not personally represent a
13 respondent as to any complaint or action within one year after completing the former OPC
14 counsel's service. In addition to the one-year prohibition, former OPC counsel may not
15 personally represent a respondent in any complaint or action that the OPC investigated or
16 prosecuted during the term of the former OPC counsel's employment.

Rule 11-521. OPC prosecutorial powers and duties.

(a) The chief disciplinary counsel will perform all prosecutorial functions and have the following powers and duties, which may be delegated to other staff:

(a)(1) Screen all information coming to the attention of the OPC to determine whether it is within the jurisdiction of the OPC in that it relates to misconduct by a lawyer or to the incapacity of a lawyer.

(a)(2) Investigate all information coming to the attention of the OPC which, if true, would be grounds for discipline or transfer to disability status, and investigate all facts pertaining to petitions for reinstatement or relicensure.

(a)(3) Choose to dismiss, decline to prosecute, refer nonfrivolous and substantial complaints to the Committee for hearing, or petition the district court for transfer to disability status.

(a)(4) Prosecute before the screening panels, the district courts, the Supreme Court, and any other courts, including but not limited to, any court of the United States all disciplinary cases and proceedings for transfer to or from disability status.

(a)(5) Attend the Character and Fitness Committee proceedings in all cases for relicensure, and represent the OPC before the district courts, Supreme Court, and any other courts including, but not limited to, any court of the United States in all cases for reinstatement and relicensure.

(a)(6) Employ or appoint and supervise staff needed for the performance of prosecutorial functions and delegate such responsibilities as may be reasonably necessary to perform prosecutorial functions, including supervising attorneys who provide pro bono services to the Bar, by supervising the practice of respondents who have been placed on probation.

(a)(7) Notify each jurisdiction in which a respondent is licensed of a transfer to disability status or any public discipline imposed in Utah.

(a)(8) Seek reciprocal discipline where appropriate when informed of any public discipline imposed by another court, another jurisdiction, or a regulatory body having disciplinary jurisdiction.

1 (a)(9) Forward a certified copy of the judgment of conviction to the disciplinary agency
2 in each jurisdiction in which a lawyer is licensed when the lawyer is convicted of a crime
3 in Utah which reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a
4 lawyer.

5 (a)(10) Maintain records of discipline and disability matters subject to any expungement
6 requirements and compile statistics to aid in the administration of the system, including
7 but not limited to, a log of all complaints received, investigative files, statistical
8 summaries of rules violated and dispositions, any transcripts of proceedings, and other
9 records as the Supreme Court requires to be maintained.

10 [(LL22)](a)(11) Provide informal guidance concerning professional conduct to lawyers through
11 seminars that will promote ethical conduct, formulate diversionary programs, monitor
12 probations, and disseminate disciplinary results to the Bar and the public through the Utah Bar
13 Journal and otherwise as appropriate while maintaining the confidentiality of respondents subject
14 to private discipline.[(LL23)] [(LL24)]

Rule 11-522. Ethics advisory opinions.

(a) **Effect of ethics advisory opinions.** The OPC may not prosecute a Utah lawyer for conduct that complies with an ethics advisory opinion that has not been withdrawn at the time of the conduct in question. No court is bound by an ethics opinion's interpretation of the Rules of Professional Conduct or Licensed Paralegal Practitioner Rules of Professional Conduct.

(b) Reviewing, modifying, or withdrawing ethics advisory opinions.

(b)(1) The OPC may at any time request the Bar's Ethics Advisory Opinion Committee to review, modify, or withdraw an ethics advisory opinion and any OPC investigation or prosecution is suspended pending the final outcome of the request. The Ethics Advisory Opinion Committee may issue a modified opinion, withdraw the opinion, or decline to take any action but will report its action or recommendation to the Bar Commission and the Commission will take such final action as it deems appropriate.

(b)(2) The OPC may also request the Supreme Court to review, affirm, reverse, or otherwise modify an ethics advisory opinion.

Rule 11-523. OPC investigative subpoenas[LL25].

(a) **Power to subpoena.** The OPC may request that the Committee chair approve serving 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. The OPC must mail or email 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 after the subpoena request is sent. Within 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 weighing:

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

(b)(2) 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 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.

(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.

Rule 11-524. Retaining records.[LL26]

(a) **No imposed discipline.** The OPC must expunge (i.e. destroy) after three years all records or other evidence of the existence of complaints that the OPC dismisses or declines to prosecute.

(a)(1) **Exception.** On the OPC's application, notice to respondent, and a showing of good cause, the Oversight Committee may permit the OPC to retain such records for one additional period of time not to exceed three years.

(a)(2) **Notice to respondent.** If the OPC contacts the respondent regarding a complaint or otherwise knows the respondent is aware of a complaint, the OPC must give the respondent prompt written notice that a dismissed complaint has been expunged.

(b) **Discipline and disability.** The OPC must expunge after 30 years all records or other evidence of the existence of complaints that resulted in public reprimand, suspension, delicensure, resignation with discipline pending, admonition, disability, and probation running from the date the discipline expired.

(c) **Disciplinary history letters.** The OPC must expunge after three years all records of disciplinary history letters, running from the date of the letter.

(d) **Requests for information.** The OPC must expunge after three years any other requests for information, running from the date the OPC responds to the request.

(e) **Effect of expungement.** After a file or electronic record has been expunged, any OPC response to an inquiry requiring a reference to the matter must state that there is no record of such matter. The respondent may answer any inquiry requiring a reference to an expunged matter by stating that no complaint was made.

Prosecution and appeals.

Rule 11-530. Unprofessional conduct complaints.

(a) **Filing.** The OPC or any person may initiate a disciplinary proceeding against any lawyer by filing a written complaint in concise language setting forth the acts or omissions claimed to constitute unprofessional conduct.

(a)(1) If an individual initiates the complaint, filing is complete when the complaint is delivered to the OPC office in hard copy or electronic form, or through the OPC's website at opcutah.org.

(a)(2) If the OPC initiates the complaint, filing is complete when the OPC delivers the complaint to the lawyer in hard copy or electronic form.

(b) **Complaint form.** The complaint need not be in any particular form or style and may be by letter or other informal writing, although the OPC may provide a form to standardize the format. The complaint need not recite disciplinary rules, ethical canons, or a prayer requesting specific disciplinary action. The complainant must sign the complaint and include the complainant's address and may list the names and addresses of other witnesses. The complaint must [LL27]contain a declaration under penalty of perjury as to the accuracy of the information in the complaint. Complaints filed by the OPC are not required to contain such a declaration. A complaint's substance prevails over the form.

(c) **Initial investigation.** On receiving a complaint, the OPC will conduct a preliminary investigation to ascertain whether the complaint's allegations are sufficiently clear. If not, the OPC will seek additional facts from the complainant, who must, upon the OPC's request, submit documents or writings containing any additional facts. Within three months after filing a complaint of unprofessional or unethical conduct of a respondent, the OPC must advise the complainant concerning the initial investigation of the complaint.[LL28]

(d) **Referral to Professionalism and Civility Counseling Board.** The OPC may—in connection with any conduct that comes to its attention—refer any matter to the Professionalism and Civility Counseling Board established under Rule [14-303](#). Such referral may be in addition to or in lieu of any further proceedings related to the subject matter of the referral. Such referral should be in

writing and—at the discretion of the OPC—may include any or all information included in the complaint or additional facts submitted by the complainant.

(e) **Notice to respondent**[LL29]. On completing the preliminary investigation, the OPC will determine whether the complaint can be resolved in the public interest, the respondent’s interest, and the complainant’s interest. If the complaint cannot be resolved or if it alleges facts that, by their very nature, should be brought before the screening panel, or if good cause otherwise exists to bring the matter before the screening panel, the OPC must:

(e)(1) serve the respondent with a notice identifying with particularity the possible violation(s) of the Rules of Professional Conduct or Licensed Paralegal Practitioner Rules of Professional Conduct raised by the complaint as the OPC has preliminarily determined;

(e)(2) attach a copy of the signed complaint; and

(e)(3) mail the documents to the respondent’s address as reflected in the Bar’s records.

(f) **Answer to complaint.** Within 21 days after the respondent is served with the **complaint and notice**[LL30], the respondent must file with the OPC a signed, written answer explaining the facts surrounding the complaint, together with all defenses and responses to the claims of possible misconduct. For good cause, the OPC may extend the time for filing an answer not to exceed an additional 28 days. When the answer is filed or if the respondent fails to respond, the OPC will refer the case to a screening panel to make a determination or recommendation. The OPC must forward a copy of the answer to the complainant.

(g) **Dismissing the complaint.**

(g)(1) **Reasons for dismissal.** The OPC may dismiss a complaint without referral to a screening panel hearing if the OPC determines the complaint is:

(g)(1)(A) frivolous, unintelligible, unsupported by fact, or fails to raise **probable cause** of any unprofessional misconduct;

(g)(1)(B) barred by the statute of limitations;

(g)(1)(C) more adequately addressed in another forum; or

(g)(1)(D) one in which the OPC declines to prosecute.

(g)(2) Notification and appeal.

(g)(2)(A) When the OPC dismisses a complaint, it must:

(g)(2)(A)(i) notify the complainant and the respondent that it has dismissed the complaint;

(g)(2)(A)(ii) state the reasons for dismissal; and

(g)(2)(A)(iii) include a notice of the complainant's right to appeal an OPC decision to the Committee chair. [LL31]

(g)(2)(B) The complainant may appeal the dismissal by filing written notice with the Committee clerk within 21 days after the dismissal notification is mailed. The complainant has no other right of appeal in this chapter.[LL32]

(g)(2)(C) On appeal, the Committee chair or a vice chair will conduct a de novo review of the file, either affirm the dismissal or require the OPC to prepare a **notice of the complaint** (if necessary)[LL33], and set the matter for hearing by a screening panel. If the chair recuses, the chair will appoint the vice chair or one of the screening panel chairs to review and determine the appeal.

Rule 11-531. Proceedings before Committee and screening panels.

(a) **Review.** Screening panels will review all complaints the OPC refers to them, including all facts developed in the complaint, the answer, the contents of the file, and the hearing, and including the OPC's recommendations.

(b) **OPC's summary and notice of additional alleged violations.** Before any screening panel hearing, the OPC may file with the clerk and serve on the respondent a summary of its investigation. If the OPC has determined, after serving respondent with notice of the complaint, that the respondent may have violated any additional Rules of Professional Conduct or Licensed Paralegal Practitioner Rules of Professional Conduct, then the summary must identify with particularity all such additional alleged violations. The summary will serve as notice^[LL34] of any additional violations the OPC did not previously charge. If the OPC provides a summary to the screening panel, the OPC must also provide the summary to the respondent. If the OPC alleges additional rule violations in the summary, the summary must be served on the respondent at least 14 days before the hearing. In cases where a judicial officer has not addressed or reported a respondent's alleged misconduct, the screening panel may not consider this inaction to be evidence either that misconduct has occurred or has not occurred.

(c) **Respondent's appearance.** The screening panel must, with at least 28 days' notice, afford the respondent an opportunity to appear before the screening panel before taking any action that may result in recommending an admonition or public reprimand, or the OPC's filing a misconduct action in district court. Respondent and any witnesses the respondent calls may testify, and respondent may present oral argument with respect to the complaint.

(d) **Respondent's brief.** Respondent may submit a written brief to the screening panel at least 7 days before the hearing, which may not exceed 10 pages unless the panel chair or vice chair allows an extension for good cause. The OPC will forward a copy of the brief to the complainant.

(e) **Complainant's appearance.** A complainant has the right to appear before the screening panel personally and may testify, together with any witnesses the complainant calls.

(f) **Right to hear evidence; cross-examination.** The complainant and respondent have the right to be present during presentation of evidence unless excluded by the screening panel chair for

good cause. Respondent may be represented by counsel, and complainant may be represented by counsel or another representative. Either complainant or respondent may request that the panel chair seek responses or pose questions to the other party at the hearing. Direct cross-examination will ordinarily not be permitted unless, upon request, the panel chair deems that it would materially assist the panel in its deliberations.

(g) **Rule violations not charged by the OPC.** During the screening panel hearing, but not after, the panel may find that rule violations have occurred not previously charged by the OPC. If so, the screening panel will give respondent a reasonable opportunity to respond during the hearing. The respondent may address the additional charges at the hearing and may file with the Committee clerk and serve on the OPC within two business days of the hearing a written response to the new charges along with supplemental materials related to the new charges. Before making a determination or recommendation, the response and any supplemental materials must be reviewed and considered by the panel members present at the original hearing.

(h) **Hearing record.** The proceedings of any screening panel hearing under this rule will be recorded at an audio quality level that permits an accurate transcription of the proceedings. The clerk will assemble and deliver to the Committee chair a complete record of the proceedings upon the panel's determination or recommendation to the Committee chair. The record of the proceedings before the panel must be preserved for at least one year after delivery of the panel's determination or recommendation to the Committee chair and for such additional time as any further proceedings on the matter are pending or might be instituted under this rule.

(i) **Screening panel determination or recommendation.** After reviewing all the facts developed by the complaint, answer, investigation, and hearing, the screening panel will make one of the following determinations or recommendations:

(i)(1) The preponderance of evidence does not establish that the respondent engaged in misconduct, in which case the screening panel will dismiss the complaint. A letter of caution may also be issued with the dismissal. The letter must be signed by the screening panel chair or vice chair and will serve as a guide for the future conduct of the respondent. The complainant will be confidentially notified of the caution;

(i)(2) The complaint must be referred to the Professionalism and Civility Counseling Board established under Rule [14-303](#);

(i)(3) The complaint must be referred to the Committee chair with an accompanying screening panel recommendation that the respondent be admonished;

(i)(4) The complaint must be referred to the Committee chair with an accompanying screening panel recommendation that the respondent receive a public reprimand;

(i)(5) The OPC must file an action in district court against the respondent if the panel finds probable cause to believe there are grounds for public discipline that merit a discipline action; or

(i)(6) The OPC must file an action in district court if the panel finds misconduct and the misconduct is similar to the misconduct alleged in an action against the respondent that has been recommended by a screening panel or is pending in district court at the time of the hearing.

(j) **Aggravation and mitigation.** The respondent and the OPC may present evidence and argument as to mitigating and aggravating circumstances during the screening panel hearing, but this evidence will not be considered unless the panel has determined the respondent engaged in misconduct.

(k) **Multiple cases involving the same respondent.** More than one case involving the same respondent may be scheduled before the same panel, but in determining whether a rule has been violated in one case, only the factual allegations in that case may be considered.

(l) **Recommendation of admonition or public reprimand.** A screening panel recommendation that the respondent be disciplined under paragraph (i)(3) or (i)(4) must be in writing and state the substance and nature of the complaint and defenses and the basis upon which the screening panel has concluded, by a preponderance of the evidence, that the respondent be admonished or publicly reprimanded. The screening panel must deliver copies of the recommendation to the Committee chair, respondent, and the OPC.

Rule 11-532. Exceptions to screening panel determinations and recommendations.

(a) **Time to file.** Within 28 days of the date of service of the screening panel's determination or recommendation:

(a)(1) the OPC may file an exception to the determination or recommendation and may request a hearing, and respondent will have 28 days to respond, and

(a)(2) the respondent may file an exception to the determination or recommendation and may request a hearing, and the OPC will have 28 days to respond.

(b) **Reply.** The Committee chair may allow a reply to any response.

(c) **Actions.** No exception may be filed to a screening panel determination that an action will be filed against a respondent.

(d) **Requirements.** All exceptions must include a memorandum, not exceeding 20 pages, stating the grounds for review, the relief requested, and the bases in law or in fact for the exceptions. All exceptions, responses, and replies must be filed with the Committee clerk.

(e) Procedure on exceptions.

(e)(1) Hearing not requested. If no hearing is requested, the Committee chair will review the record compiled before the screening panel.

(e)(2) Hearing requested. If a request for a hearing is made, the Committee chair or a screening panel chair designated by the Committee chair will serve as the Exceptions Officer and hear the matter in an expeditious manner, with OPC counsel and the respondent having the opportunity to be present and give an oral presentation. The complainant need not appear personally.

(e)(3) Transcript Request. Upon request, the Committee chair must extend the deadlines for filing exceptions or responses no more than 60 days to allow a party time to obtain a transcript of the screening panel proceedings, so long as the audio or video recording is requested within 28 days. The requesting party will bear the costs of such transcript and must file the transcript with the Committee clerk at the time of or before filing an exception or response, together with a declaration under penalty of perjury establishing the transcript's chain of custody.

1 (e)(4) Burden of proof. The party who files an exception has the burden of showing that
2 the determination or recommendation of the screening panel is unsupported by
3 substantial evidence or is arbitrary, capricious, legally insufficient, or otherwise clearly
4 erroneous.

5 (e)(5) Record on exceptions. The proceedings of any hearing on an exception must be
6 recorded at a level of audio quality that permits an accurate transcription of the
7 proceedings.

8

1 **Rule 11-533. General procedures.[LL35]**

2 (a) **Testimony.** All testimony given before a screening panel or the Exceptions Officer
3 must be under oath.

4 (b) **Service.** To the extent applicable, serving or filing documents must be made in
5 accordance with Utah Rules of Civil Procedure 5(b)(1), 5(d) and 6(a).

6 (c) **Abeyance of disciplinary proceedings.** A disciplinary proceeding may be held in
7 abeyance by the Committee chair at any time before a screening panel hearing, when the
8 allegations or the complaint contain matters of substantial similarity to the material
9 allegations of pending criminal or civil litigation in which the respondent is involved.
10 Requests for abeyance and requests to remove proceedings from abeyance must be filed
11 with the Committee clerk.

Rule 11-534. Final Committee disposition.

(a) **Final, written determination.** Either upon completing the exception procedure under Rule 11-532 or if no exception has been filed, the Committee chair will review the screening panel's findings and recommendations and will prepare the order to execute those findings and recommendations. The Committee chair may not make changes to screening panel findings and recommendations, other than changes needed for clarity. [LL36] If no exception is filed, the Committee chair need not issue a final, written determination for a dismissal or a dismissal with a letter of caution.

(b) **Public reprimand.** If the screening panel recommends a public reprimand, the respondent may, within 28 days, file an exception in accordance with Rule 11-532, or elect a trial de novo with the district court by notifying the Committee chair, who will authorize the action in accordance with Rule 11-536.

Rule 11-535. Appealing a final Committee determination to the Supreme Court.

(a) Within 28 days after the Committee chair serves a final, written disposition, the respondent or OPC may appeal the disposition to the Supreme Court and ask the Court to reverse or modify the final Committee disposition. An appeal under this rule is only available in cases where exceptions have been filed. Until the time for filing an appeal expires, dissemination of disciplinary information will be automatically stayed. If a timely appeal is filed, the stay will remain in place pending the Supreme Court's resolution unless the Court orders otherwise.

(b) An appeal under this rule will be subject to the procedures set forth in Title III of the Utah Rules of Appellate Procedure. Documents submitted under this rule must conform to the requirements of Rules 27(a) and 27(b) of the Utah Rules of Appellate Procedure.

(c) A party requesting a transcript of the record below will bear the costs. The party obtaining the transcript must file it with the appellate clerk, together with an affidavit establishing the transcript's chain of custody.

(d) The Supreme Court will conduct a review of the matter on the record.

(e) The party requesting review has the burden of demonstrating that the Committee action was:

(e)(1) based on a determination of fact not supported by substantial evidence when viewed in light of the whole record before the Court;

(e)(2) an abuse of discretion;

(e)(3) arbitrary or capricious; or

(e)(4) contrary to Chapter 11, Article 5 of the Supreme Court Rules of Professional Practice.

Rule 11-536. Actions in district court.

(a) **Commencing an action.** If the screening panel finds **probable cause** to believe there are grounds for public discipline that merit filing an action, OPC will file an action in district court. The Committee chair must be given notice of the screening panel recommendation and a copy of the pleadings.

(b) **Venue.** The action must be brought:

(b)(1) in the county in which an alleged offense occurred; or

(b)(2) in the county where the respondent resides, practices law, or last practiced law in Utah; provided, however, that if the respondent is not a resident of Utah and the alleged offense is not committed in Utah, the action must be brought in a county designated by the Chief Justice of the Supreme Court.

(c) **Style of proceedings.** All proceedings instituted by the OPC must be styled: “In the Matter of the Discipline of (name of respondent and respondent’s Bar number), Respondent.”

(d) **Change of judge as a matter of right.**

(d)(1) Notice of change.

(d)(1)(A) The respondent or OPC may request reassignment to another district court judge from the same district by filing a notice stating:

(d)(1)(A)(i) the name of the assigned judge,

(d)(1)(A)(ii) the date on which the action was filed, and

(d)(1)(A)(iii) that a good faith effort has been made to serve all parties.

(d)(1)(B) The notice may not specify any reason for the change of judge.

(d)(1)(C) The party filing the notice must send a copy of the notice to the assigned judge and to the presiding judge.

(d)(1)(D) Under no circumstances will more than one change of judge be allowed to each party under this rule.

1 (d)(2) Time. Unless extended by the court for good cause, the notice must be filed within
2 28 days after the action commences or before the notice of trial setting, whichever occurs
3 first. Failure to file a timely notice precludes any change of judge under this rule.

4 (d)(3) Assignment of action. Upon filing a notice of change, the assigned judge will take
5 no further action in the case. The presiding judge will promptly determine whether the
6 notice is proper and, if so, reassign the action. If the presiding judge is also the assigned
7 judge, the clerk will promptly send the notice to the Chief Justice of the Supreme Court,
8 who will determine whether the notice is proper and, if so, reassign the action.

9 (d)(4) Rule 63 and Rule 63A unaffected. This rule does not affect any rights a party may
10 have pursuant to Rule 63 or Rule 63A of the Utah Rules of Civil Procedure.

11 (e) **Actions tried to the bench; findings and conclusions.** All actions tried according to this
12 article will be tried to the bench, and the district court will enter findings of fact and conclusions
13 of law. Neither masters nor commissioners may be used.

14 (f) **Sanctions hearing.** [LL37] If the district court finds misconduct, it will hold a hearing to
15 receive relevant evidence in aggravation and mitigation, and will enter an order sanctioning the
16 respondent. Upon reasonable notice to the parties, the court, at its discretion, may hold the
17 sanctions hearing immediately after the misconduct proceeding.

18 (g) **Review.** Either the OPC or respondent may file with the Supreme Court a petition to review
19 the discipline order.

20

1 **Rule 11-537. Failure to answer charges.**

2 (a) **Failure to answer.** If having received actual notice of the charges filed, the respondent fails
3 to answer the charges within 21 days, the respondent will be deemed to have admitted the factual
4 allegations.

5 (b) **Failure to appear.** If the Committee orders the respondent to appear and the respondent,
6 having received actual notice of that order, fails to appear, the respondent will be deemed to have
7 admitted the factual allegations which were the subject of such appearance. The Committee may
8 not, absent good cause, continue or delay proceedings because of the respondent's failure to
9 appear.

10 (c) **Notice of consequences.** Any notice within the scope of paragraph (a) or (b) above must
11 expressly state the consequences, as specified above, of the respondent's failure to answer or
12 appear.

13

Rule 11-538. Appointment of trustee to protect clients' interest when lawyer disappears, dies, is suspended or delicensed, or is transferred to disability status.

(a) **Protective appointment of trustee.** If a lawyer has died or cannot be located, or if a respondent has been suspended, delicensed, or transferred to disability status, and if there is evidence that the lawyer or respondent has not complied with the provisions of Rule 11-570 and no partner, executor, or other responsible party capable of conducting the lawyer's or respondent's affairs is known to exist, a district judge of the judicial district in which the lawyer or respondent maintained a principal office may, on the OPC's request, appoint a trustee to inventory the lawyer's or respondent's files, notify the lawyer's or respondent's clients, distribute the files to the clients, return unearned fees and other funds, and take any additional action the judge authorizes.

(b) **Confidentiality.** No attorney-client relationship exists between the client and the trustee except to the extent necessary to maintain and preserve the client's confidentiality. The trustee may not disclose any information contained in the files so inventoried without the consent of the client to whom such files relate, except as necessary to carry out the court's order making the appointment.

(c) **Immunity.** Any person appointed as a trustee has the immunity granted by Rule 11-540.

Rule 11-539. Costs.

(a) **Assessment.** The prevailing party in a misconduct action may be awarded judgment for costs in accordance with Rule 54(d) of the Utah Rules of Civil Procedure.

(b) **Offer of discipline by consent.** The OPC will not be deemed to have prevailed in the action on any count of the complaint unless the sanction imposed exceeds any sanction to which the respondent conditionally consented under Rule 11-565 before the hearing.

(c) **Disability cases.** Costs will not be awarded in disability cases except pursuant to paragraph (d).

(d) **Trusteeship.** Court-appointed trustees, including the OPC in cases in which it is appointed the trustee, may collect costs for notifying the respondent's clients, including charges for copying, postage, publication, and fees from money collected.

1 **Rule 11-540. Immunity from civil suits.**

2 Participants in proceedings conducted under this article are entitled to the same protections for
3 statements made in the course of the proceedings as participants in judicial proceedings. Except
4 as provided in Utah Rules of Civil Procedure 65A and 65B, the district courts, Committee
5 members, special counsel appointed pursuant to Rule 11-542, supervising attorneys engaged in
6 pro bono assistance, trustees appointed pursuant to Rule 11-538, and OPC counsel and staff will
7 be immune from suit, for any conduct committed in the course of their official duties, including
8 the investigatory stage. There is no immunity from civil suit for intentional misconduct.

9

1 **Rule 11-541. Service.**

2 Serving documents on respondent in connection with an action must be made in accordance with
3 the Utah Rules of Civil Procedure.

4

Rule 11-542. Additional rules of procedure.

(a) **Governing rules.** Unless otherwise provided in this article, the Utah Rules of Civil Procedure, Utah Rules of Appellate Procedure, and Utah Rules of Evidence apply in discipline and disability actions.

(b) **Standard of proof.** A misconduct action, petition for reinstatement and relicensure, and petition for transfer to and from disability status will be established by a preponderance of the evidence. A motion for interim discipline under Rule 11-563 will also be established by a preponderance of the evidence[LL38].

(c) **Burden of proof.** The OPC carries the burden of proof in discipline proceedings and transfers to disability status. The respondent carries the burden of proof in seeking a reversal of a screening panel recommendation of discipline, reinstatement, relicensure, or transfer from disability status.

(d) **Related pending litigation.** Either party may request a stay of an action or disability proceeding because of substantial similarity to the material allegations of a pending criminal, civil, or disciplinary action.

(e) **The complainant's actions.** Disciplinary proceedings will not be abated due to:

(e)(1) the complainant's unwillingness to prosecute a complaint;

(e)(2) settlement or compromise between the complainant and the respondent; or

(e)(3) restitution by the respondent.

(f) **Complaints and actions against OPC counsel, Committee members, the Bar Commission, or lawyers employed by the Bar.** The Committee chair will assign a screening panel any complaint or action filed against OPC counsel, a Committee member, a Bar Commission member, or a lawyer employed by the Utah State Bar. The assigned panel chair will review the complaint and any additional material that the screening panel chair asks the respondent to provide.

(f)(1) A complaint will be dismissed without hearing by a screening panel if, after consideration of all factors, the chair determines the complaint is:

(f)(1)(A) frivolous or unintelligible;

1 (f)(1)(B) barred by the statute of limitations;

2 (f)(1)(C) being or should have been addressed in another more appropriate forum;

3 or

4 (f)(1)(D) unsupported by fact or does not raise probable cause of any

5 unprofessional conduct.

6 (f)(2) The screening panel chair must notify the complainant of the dismissal and the
7 reasons for dismissal.

8 (f)(3) The complainant may appeal the screening panel chair's dismissal to the
9 Committee chair within 14 days after notification of the dismissal is mailed.

10 (f)(4) Upon appeal, the Committee chair must conduct a de novo review of the file, and
11 either affirm or reverse the dismissal.

12 (f)(5) If the screening panel chair determines not to dismiss the complaint, or the
13 Committee chair reverses the dismissal on appeal, the Committee chair must request that
14 the Supreme Court appoint a special counsel to present the case, and if necessary, a
15 special screening panel. In all other respects, the matter will proceed in accordance with
16 this article. Special counsel must be a lawyer outside of the OPC appointed by the
17 Supreme Court to act as counsel for investigation and prosecution of the disciplinary
18 complaint. Special counsel must notify the OPC of the results of the investigation.

19

Diversion.

Rule 11-550. Diversion referrals, authority, and responsibilities.[LL39]

(a) **Referral to diversion.** In a matter involving less serious misconduct in Rule 11-551, [LL40] upon receiving a complaint and before the matter is submitted to a screening panel, the respondent may have the option of electing to have the matter referred to diversion, the appropriateness of which the OPC will determine. [LL41]

(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. 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[LL42].

(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 11-551. 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 [LL43] 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 [LL44] 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 11-552. Diversion contract.

(a) Contract requirements.

(a)(1) If the respondent agrees or elects to participate in diversion, the terms of the diversion must be set forth in a written contract. The contract will be between the respondent and the OPC. [LL45]

(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 [LL46];

(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

1 disclose confidential information, respondent must sign a limited conditional waiver of
2 confidentiality permitting the professional or service to make the necessary disclosures
3 for the respondent to fulfill their duties under the contract;

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

7 (b)(4) the necessary terms providing that respondent will pay all costs incurred in
8 connection with the contract and those costs further specified under Rule 11-555 and any
9 costs associated with the complaints to be deferred; and

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

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

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

15

1 **Rule 11-553. 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 11-554. Terminating diversion.

(a) **Fulfilling the contract.** The contract terminates when the respondent fulfills the contract terms and gives the OPC [LL47] 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 11-555. Diversion Costs.**

2 Respondent must pay an initial fee of \$250 upon entering diversion, and a monthly fee of \$50
3 during diversion, unless the contract specifies otherwise. All such fees are payable to the Bar's
4 general fund.

5

Discipline.

Rule 11-560. Grounds for discipline.

It 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) violate a valid court or Committee order imposing discipline;

(c) be publicly disciplined in another jurisdiction;

(d) fail to comply with the requirements of Rule 11-570; or

(e) fail to notify the OPC of public discipline in another jurisdiction in accordance with Rule 11-567(a).

Rule 11-561. Accessing disciplinary information.

(a) **Confidentiality.** Before the OPC initiates an action or issues a public reprimand, OPC counsel, OPC staff, the Committee, Committee volunteers, Committee staff, Committee employees, special counsel appointed pursuant to Rule 11-542, and special counsel employees or assistants^[LL48], 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, 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 such a way as to preserve the confidentiality of the information that is the subject of the application.

1 (e) **Request for nonpublic information.** Nonpublic information is confidential, other than as
2 authorized for disclosure under paragraph (a), unless the request for information is approved by
3 the OPC and the requestor complies with paragraphs (f) and (g).

4 (f) **Notice to the respondent.** Except as provided in paragraph (g), if the Committee decides to
5 provide nonpublic information requested pursuant to paragraph (e), and if the respondent has not
6 signed an express written waiver permitting the party requesting the information to obtain the
7 nonpublic information, the respondent must be notified in writing at the respondent's mailing
8 address as shown by Bar records of the information that has been requested and by whom,
9 together with a copy of the information proposed to be released. The notice must advise the
10 respondent that the information will be released 21 days after the notice's mailing unless the
11 respondent objects to the disclosure. If the respondent timely objects to the disclosure, the
12 information must remain confidential unless the requesting party obtains a court order
13 authorizing its release.

14 (g) **Release without notice.** If a requesting party as outlined in paragraph (e) has not obtained an
15 express written waiver from the respondent to obtain nonpublic information, and requests that
16 the information be released without giving notice to the respondent, the requesting party must
17 certify that:

18 (g)(1) the request will further an ongoing investigation into the respondent's misconduct;

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

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

22 (h) **Disclosure without notice.** The OPC may disclose nonpublic information without notice to
23 the respondent if:

24 (h)(1) disclosure furthers an ongoing OPC investigation into the respondent's
25 misconduct; and

26 (h)(2) disclosure is essential to that investigation.

27 (i) **Participants' duty.** OPC counsel, OPC staff, the Committee, Committee volunteers,
28 Committee staff, Committee employees, special counsel appointed pursuant to Rule 11-542, and
29 special counsel employees or assistants in a proceeding under these rules must maintain

1 confidentiality. Unless otherwise authorized, persons receiving private records under paragraph
2 (e) will not provide access to the records to anyone else.

3

Rule 11-562. 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 11-563. [LL49]Interim discipline[LL50] 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 [LL51]** 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 under Rule 11-538, 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 11-570 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 11-564. Lawyers found guilty of a crime.[LL52]

(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. [LL53] 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 11-563.

(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 11-570.

9

Rule 11-565. Discipline by consent.

(a) **Discipline by consent before the matter is submitted to a screening panel.** 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

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

1 (d) **Affidavit of consent.** A respondent whose proposal for discipline by consent has been
2 approved, must submit an affidavit to the Committee chair or the district court as appropriate,
3 consenting to the approved disciplinary sanction and affirming that:

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

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

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

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

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

12 (d)(6) the respondent submits consent because the respondent knows that if a misconduct
13 action predicated on the allegations under investigation were filed, or the pending action
14 were prosecuted, the respondent could not successfully defend against the charges upon
15 which the discipline is based.

Rule 11-566. Resignation with discipline pending.

(a) A respondent may resign by voluntarily relinquishing their license before a pending complaint is adjudicated only with the Supreme Court's consent and upon such terms as the Supreme Court may impose for the public's protection.

(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 11-570 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 11-591 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 11-567. Reciprocal discipline.

(a) **Duty to notify the OPC of discipline or transfer to disability inactive status**[LL54]. 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 imposing equivalent [LL55] 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

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

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

5 (e) **Other jurisdictions' final adjudications.** Except as provided in paragraphs (c) and (d)
6 above, a respondent who has been found guilty of misconduct or is transferred to disability
7 inactive status in a final adjudication of another court, jurisdiction, or regulatory body will
8 establish conclusively the misconduct or the disability for purposes of a disciplinary or disability
9 proceeding in Utah.

10

Rule 11-568. 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 examine the lawyer. If the district court concludes that the lawyer is incapacitated from continuing to practice law, it will enter an order transferring the lawyer to disability status for an

indefinite period and until the further order. Any pending disciplinary proceedings against the lawyer will be held in abeyance.

(d) Reinstatement from disability status.

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

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

(d)(3) Examination. On filing a petition for transfer to active status, the district court may take or direct whatever action it deems necessary or proper to determine whether the disability has been removed, including directing designated qualified experts to examine the lawyer. In its discretion, the district court may direct the lawyer to pay the examination expense.

(d)(4) Waiver of privilege. When filing a petition for reinstatement to active status, the lawyer will be required to disclose the name of each psychiatrist, psychologist, physician, or other health care provider and hospital or other institution by whom or in which the lawyer has been examined or treated related to the disability since the transfer to disability status. The lawyer must furnish written consent to each listed provider to divulge information and records relating to the disability if requested by 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 that the lawyer has successfully completed an examination for relicensure.

(d)(6) Granting petition for transfer to active status. The district court will grant the petition for transfer to active status on 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

1 to be competent, the district court may dispense with further evidence that the lawyer's
2 disability has been removed and may immediately order the lawyer's reinstatement to
3 active status upon terms as are deemed proper and advisable.

4

Rule 11-569. 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 11-570. 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 suspension and consequent disqualification to further participate as a lawyer in the matter;

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

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

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

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

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

17

Sanctions.

[LL56]Rule 11-580. 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 11-581. Sanctions.

(a) **Scope.** A disciplinary sanction is imposed on a lawyer upon the Committee's or the court's finding 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 11-563 and 11-564.

(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**[LL57]. 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 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 11-550 governs diversion matters before the matter is submitted to a screening panel.

(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.

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

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

(i) **Resignation with discipline pending.** Resignation with discipline pending is a form of public discipline that allows a respondent to resign from the practice of law while either an informal or

1 formal complaint is pending against the respondent. Resignation with discipline pending may be
2 imposed as set forth in Rule 11-566.

3 (j) **Other sanctions and remedies.** Other sanctions and remedies that a court may impose
4 include:

5 (j)(1) restitution;

6 (j)(2) assessment of costs;

7 (j)(3) limitation upon practice;

8 (j)(4) appointment of a receiver;

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

11 (j)(6) a requirement that the lawyer attend continuing education courses.

12 (k) **Reciprocal discipline.** Reciprocal discipline is imposing a disciplinary sanction on a lawyer
13 who has been disciplined in another court, another jurisdiction, or a regulatory body having
14 disciplinary jurisdiction.

Rule 11-582. 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:

(a)(1) the presumptive sanction based on:

(a)(1)(A) the duty violated,

(a)(1)(B) the lawyer's mental state,

(a)(1)(C) the potential or actual injury caused by the lawyer's misconduct; and

(a)(2) the existence of aggravating or mitigating factors.

(b) **Multiple charges of misconduct.**[LL58]

(b)(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.

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

Rule 11-583. Sanctions for violating duties owed to clients.^[LL59]

(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:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Rule 11-584. 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[LL60] 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:

(b)(1) Delicensure is generally appropriate when a lawyer in an official or governmental position knowingly misuses the position with the intent to obtain a significant benefit or

1 advantage for himself or another, or with the intent to cause serious or potentially serious
2 injury to a part or to the integrity of the legal process.

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

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

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

13

Rule 11-585. 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 proceeding, and causes significant or potentially significant interference with the outcome of the legal proceeding.

(c)(2) Suspension is generally appropriate when a lawyer engages in communication with an individual in the legal system when the lawyer knows that such communication is

1 improper, and causes injury or potential injury to a party or causes interference or
2 potential interference with the outcome of the legal proceeding.

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

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

11

Rule 11-586. 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^[LL61] 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 11-587. Prior discipline orders.

The following [LL62]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 11-588. Aggravation and mitigation.

(a) **Application.** After the presumptive sanction has been determined, aggravating and mitigating circumstances may be considered and weighed in deciding whether departure from the presumptive sanction 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:

(c)(1) absence of a prior record of discipline;

(c)(2) absence of a dishonest or selfish motive;

(c)(3) personal or emotional problems;

(c)(4) timely good faith effort to make restitution or to rectify the consequences of the misconduct involved;

(c)(5) full and free disclosure to the client or the disciplinary authority prior to the discovery of any misconduct or cooperative attitude toward proceedings;

(c)(6) inexperience in the practice of law;

(c)(7) good character or reputation;

(c)(8) physical disability;

(c)(9) mental disability or impairment, including substance abuse when:

(bc)(9)(A) the respondent is affected by a substance abuse or mental disability;
and

(c)(9)(B) the substance abuse or mental disability causally contributed to the misconduct; and

(c)(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

(c)(9)(D) the recovery arrested the misconduct and the recurrence of that misconduct is unlikely;

(c)(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;

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

(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:

- 1 (d)(1) forced or compelled restitution,
- 2 (d)(2) withdrawal of complaint against the lawyer,
- 3 (d)(3) resignation prior to completion of disciplinary proceedings,
- 4 (d)(4) complainant's recommendation as to sanction, and
- 5 (d)(5) failure of injured client to complain.

6

Reinstatement.

Rule 11-590. Reinstatement following a suspension of no more than six months or probation.

A respondent who has been suspended for no more than six months or placed on probation pursuant to disciplinary proceedings will be reinstated at the end of the suspension or probation 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 11-591. 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 cooperate in its investigation of the respondent. A copy of the Character and Fitness Committee's report and recommendation 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 [LL63] honesty, integrity, and fitness for reinstatement or relicensure. The court must determine whether the lawyer seeking reinstatement or relicensure has demonstrated the requisite honesty, integrity, and fitness to practice law. The court may consider the respondent's actions taken during the suspension or delicensure including:

(e)(4)(A)(i) lack of candor;

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

(e)(4)(A)(iii) false or misleading statements or omissions;

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

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

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

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

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

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

(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, a respondent lawyer will be required to retake and 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.

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

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

1 (j) **Reciprocal reinstatement or relicensure.** If a respondent has been suspended or delicensed
2 solely because of discipline imposed by another court, another jurisdiction, or a regulatory body
3 having disciplinary jurisdiction, and if the respondent is later reinstated or relicensed by that
4 court, jurisdiction or regulatory body, the respondent may petition for reciprocal reinstatement or
5 relicensure in Utah. The respondent must file with the district court and serve the OPC with a
6 petition for reciprocal reinstatement or relicensure. The petition must include a certified or
7 otherwise authenticated copy of the order of reinstatement or relicensure from the other court,
8 jurisdiction, or regulatory body. Within 21 days of receiving the petition, the OPC may object
9 based solely on substantial procedural irregularities. If the OPC objects, the district court will
10 hold a hearing and enter its findings and order. If no objection is filed, the district court will enter
11 its order based on the petition.

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