

AGENDA

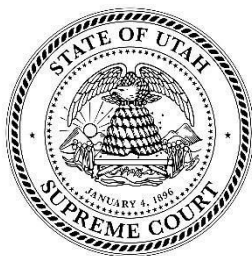
Utah Supreme Court Oversight Committee for the Office of Professional Conduct

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

Action: Welcome and approval of the May 19, 2020 minutes. Tab 1: Draft meeting minutes for May 19, 2020.	Judge Diana Hagen
Discussion & Action: Review public comments and make any necessary amendments to the rule drafts. Tab 2: Public comments Tab 3: Redline of the rules Tab 4: Clean copy of the rules	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 19, 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
Christine Greenwood, Ethics and Discipline Committee

1. Welcome and approval of the May 4, 2020 minutes: (Judge Diana Hagen)

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

Judge Hagen moved to approve the May 4, 2020 minutes. Margaret Plane seconded the motion, and it passed unanimously.

2. Discussion—Review proposed job description for Ethics and Discipline Committee Chair/Staff Counsel: (Judge Diana Hagen, Christine Greenwood, John Baldwin)

Christine Greenwood gave a brief overview of the position description. Billy Walker agreed with Ms. Greenwood that it would be best for this position to take the place of the volunteer Chair of the Ethics and Discipline Committee as well as the clerk.

Mr. Baldwin informed the group that the OPC Oversight Committee will assume all supervisory responsibilities of the employee while the Bar will provide the location and the resources for the position. The Committee questioned if there were any potential conflicts of interest with having the Chair of a Supreme Court Committee as a paid employee of the Bar. To address this potential conflict of interest, Judge Hagen suggested for the position to serve as staff counsel to the Chair, rather than replace the Chair of the Committee. Larissa Lee suggested that it may also be easier to replace Ms. Greenwood when the time comes if there is a staff attorney to support the Chair. Previously the Chair position has been difficult to fill with a volunteer due to the heavy workload.

Mr. Baldwin suggested titling the position something other than “Chair,” such as “Executive Director.” Margaret Plane agreed that this may be an appropriate solution to have the position act as staff counsel to the “Executive Director” or “Chief Administrative Officer” of the Committee. If the OPC Oversight Committee does supervise the staff attorney position, Ms. Lee suggested renaming the Committee to address the public perception of what exactly the OPC Oversight Committee is overseeing. The Committee agreed that a paid position is necessary for carrying out the duties of the Ethics and Discipline Committee. The present issue is how to fit the position within the Supreme Court’s structure, and the Committee will seek guidance from the Court.

Mr. Baldwin reported that the Bar Commission will be reviewing this position proposal at its next meeting in June, without a proposed budget. The Committee will present the position description to the Supreme Court at its next Court Conference on May 27, 2020. After the Court’s review, the Committee will then submit the position proposal to the Bar Commission in January as a proposed budget amendment.

Judge Hagen moved to approve the proposed job description for the Ethics and Discipline Committee Chair / Staff Counsel. Roger Smith seconded the motion, and it passed unanimously.

3. **Action—Approve OPC Budget:** (Billy Walker, John Baldwin)

Judge Hagen gave a brief overview of the proposed OPC budget. The Bar has asked the Court to consider implementing budget cuts to the current fiscal year, and the Court has deferred this decision to the OPC Oversight Committee. Billy Walker reported the OPC has already allocated all of the funds for the current fiscal year. Additionally, the Bar has requested for the Committee to review the proposed budget for the next fiscal year to determine any potential areas for budget cuts. Roger Smith recommended the budget for fiscal year 2021 as proposed already reflects aggressive budget cuts and is concerned that any additional cuts would make it difficult for the OPC to adequately carry out its functions. Mr. Walker agreed that the proposed budget reductions for 2021 are aggressive, but attainable. Mr. Walker reported that he worked on the budget proposal with the Bar’s Financial Administrator and made the appropriate cuts to the areas in which they felt it was obtainable. If the funds from the Bar are available in January, and

the cuts were too aggressive, they will be able to propose any necessary budget amendments then.

Mr. Smith suggested that there may be a formula error in the proposed budget as some of the numbers do not reflect accurate totals, specifically in the General and Administrative Expenses column. Mr. Baldwin will report the Committee's concerns to the Bar's Financial Administrator and circulate a correct budget proposal via email. The Committee will vote on the budget via email once the corrected budget is received.

Margaret Plane recommended amending Rule 14-207(a)(1) to better describe the process for approving the OPC's budget proposal.

Judge Hagen moved to approve the recommended changes to Rule 14-207(a)(1). Margaret Plane seconded the motion, and it passed unanimously.

Judge Hagen moved to recommend no changes to the OPC's fiscal year 2020 budget. Art Berger seconded the motion, and it passed unanimously.

4. Action—Final questions/approval of OPC and Bar rules: (Judge Diana Hagen)

Judge Hagen asked the Committee for any additional discussion on the proposed rule changes to the OPC and Bar rules.

Ms. Plane recommended amending OPC Rule 11-511(d), to better describe the voting process in the event of a tie.

The Committee agreed to repeal the definition of "screening panel" in OPC Rule 11-502.

Margaret Plane moved to repeal the definition of "screening panel" from Rule 11-502. Judge Hagen seconded the motion, and it passed unanimously.

Ms. Plane recommended for the Committee to review all of the rules for capitalization consistency of "Licensed Paralegal Practitioner." The Committee agreed it is proper for this term not to be capitalized.

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

The meeting adjourned at 5:35 p.m. The next meeting will be scheduled after the Supreme Court reviews and votes on the OPC's proposed rule changes.

Tab 2

UTAH COURT RULES – PUBLISHED FOR COMMENT

The Supreme Court and Judicial Council invite comments about amending these rules. To view the proposed amendment, click on the rule number.

To submit a comment or view the comments of others, click on “Continue Reading.” To submit a comment, scroll down to the “Leave a Reply” section, and type your comment in the “Comment” field. Type your name and email address in the designated fields and click “Post Comment.”

Comments cannot be acknowledged, but all will be considered. Comments are saved to a buffer for review before publication.

HOME LINKS

Posted: July 28, 2020

Utah Courts

Supreme Court Rules of Professional Practice, Office of Professional Conduct – Comment Period Closed September 11, 2020

The proposed amendments reflect the recommended reforms to lawyer discipline and disability proceedings and sanctions contained in the American Bar Association/Office of Professional Conduct Committee’s **Summary of Recommendations** (October 2018).

Proposed Amendments to the Supreme Court Rules of Professional Practice related to the Discipline, Disability, and Sanctions Rules

This entry was posted in **Office of Professional Conduct**.

« Code of Judicial Administration – Comment Period Closed September 24, 2020

Code of Judicial Administration – Comment Period Extended to September 8, 2020 »

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To view all comments submitted during a particular comment period, click on the comment deadline date. To view all comments to an amendment, click on the rule number.

CATEGORIES

- Alternate Dispute Resolution
- Code of Judicial Administration
- Code of Judicial Conduct
- Fourth District Court Local Rules
- Licensed Paralegal Practitioners Rules of Professional Conduct
- Rules Governing Licensed Paralegal Practitioner
- Rules Governing the State Bar

UTAH COURTS

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4 thoughts on “Supreme Court Rules of Professional Practice, Office of Professional Conduct – Comment Period Closed September 11, 2020”

Tom B.
July 28, 2020 at 3:53 pm

The Rules do not clearly state whether the OPC must file a new complaint when it takes over a case from a non-participating Complainant or if it just “slips” into the Complainant’s spot. The OPC should be required to provide clear notice to the Respondant if it is taking over the case.

J. Bogart
August 4, 2020 at 6:22 am

I have a number of concerns about the proposed Rules.

Rule 11-503:

(c)(3)-(5): OPC is not a private entity. Disciplinary actions should be available in some form to the members of the Bar and the public. OPC attorneys are, after all, acting in a public trust. Misconduct by OPC counsel affects the reputation and integrity of the OPC, hence should be public.

11-5048(a):

Those subject to the jurisdiction of the Supreme Court and OPC includes “any formerly licensed Lawyer with respect to acts committed while admitted to practice of law or with respect to acts subsequent thereto” – so if Rule 8.4(g) is adopted, a former lawyer could be subject to OPC sanctions for conduct after ceasing to practice? Or will “law related” condition limit that scope?

Rule 11-512:

Where is the subpoena power found? Is there a statute providing this authority? Is the Supreme Court just saying it can delegate this to an informal proceeding? How exactly would a third party come to be within the jurisdiction of the Committee or its Chair? On what basis does this authority exist? How is it

- [-Rules of Appellate Procedure](#)
- [-Rules of Civil Procedure](#)
- [-Rules of Criminal Procedure](#)
- [-Rules of Evidence](#)
- [-Rules of Juvenile Procedure](#)
- [-Rules of Professional Conduct](#)
- [-Rules of Professional Practice](#)
- [-Rules of Small Claims Procedure](#)
- [ADR101](#)
- [ADR103](#)
- [Appendix B](#)
- [Appendix F](#)
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- [CJA01-0201](#)
- [CJA01-0204](#)
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- [CJA01-0205](#)
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that third-parties are being forced to bear the costs of a subpoena in what is plainly not a civil or criminal case? And why is it that third parties should carry such a burden?

From what court is the subpoena issued? And how is it that a subpoena issues from a court that does not have a case before it? The existing rule (14-503(g)) requires application to a court — a court issues the subpoena. That at least is formally and procedurally defensible. Handing off subpoena powers to parties to a private, informal proceeding is something quite different. Because there is no case before a court, no subpoena could properly issue and whatever document is sent out is without legal authority.

What is a “proper application” under 512(b)? I suppose it is something other than a motion or the Rule would say a motion. So what is an application? And who gets served with the application? The subject of the subpoena? What kind of service? Absent personal service, i.e., under URCP 4, how does the court even pretend to have jurisdiction over the third party? Does the court apply the standard rules about motions on subpoenas? Can it shift the costs?

There are separate rules for enforcing and quashing a subpoena. But the rule on quashing gives no indication of how a request to quash is made. Is it a letter to the chair of the Committee or to the Court or what? Would a third party have to bear the costs of creating a case for the court to hear the request? Is the request made by a motion? I am at a loss to see why a third party is denied appeal rights about subpoenas in this context. I doubt that such a provision is constitutional under either the US or Utah constitutions. This provision makes the denial of a request to quash unreviewable — no one would file the appeal after the final order in the proceedings, which can be expected, on the current OPC level of productivity, to come 3 or 4 years later. The chair of the Committee can quash a subpoena because?? How could a person who is not a judge quash a subpoena, which is an order of the court?

Does URCP 45 govern the geographic scope of subpoena? E.g., is production limited to the county of residence? How about payment for costs? Does 45(a) apply? Why not say how this Rule relates to Rule 45?

11-520(a):

Is the Chief Disciplinary Counsel an at-will employ, like other lawyers in the OPC? Shouldn't the Rule say one way or the other? If Chief Counsel is not an at-will employee, what are the conditions of employment? And why treat that person differently from the other lawyers?

11-523:

All of the questions and concerns set out above re 11-512. Why are the provision of 523 different from 512? Here Rule 45 plays a direct role in determining whether a subpoena may be quashed, but not in 512. It is difficult to identify an reasonable grounds for such a difference.

I take it that the import of 512 and 523 is that the OPC and Respondent may subpoena one another for information? That implies civil discovery rules do not apply and that would imply there is no case, hence no power of subpoena. It is curious that

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523 provides for a subpoena against the Respondent expressly, but 512 gives no express power to subpoena OPC. Why?

11-524:

(A) says that both OPC and the Respondent can lie about whether a complaint was made? Why is it not sufficient to say that the Complaint was unfounded? Or was dismissed? Or OPC has no record of a complaint and does not keep unfounded complaints for more than three years?

11-530(g)(2)(B):

The deadline for an appeal by a Complainant of dismissal is based on time from mailing of the notice of dismissal. So Notice of Dismissal is mailed, not served. But any appeal must be served on OPC. Served how? By mail? By email? Why not have OPC serve the Notice of Dismissal on the Complainant? The Complainant is obviously a party to the proceeding, so why is it not treated as one? How does the Complainant's "notice of appeal" get from the OPC to the Committee Chair or Vice-Chair? How long may OPC hold the Notice of Appeal before forwarding to the Committee?

I am little puzzled by the requirement that complainants must aver under penalty of perjury but OPC makes no similar averments. The filings are not with a court so there is nothing like even Rule 11 as a condition for OPC filings and statements. Coupled with the secrecy of any complaint re or discipline of OPC counsel, it makes OPC counsel more or less supervised in name only.

Rule 11-537:

These provisions appear to concern proceedings before the Committee. Perhaps say that in the title of the Rule or in the body.

Rule 11-542(f)(2), (3)

The notice should be served on the Complainant, and a reasonable period for appeal allowed, i.e., 21 days. Complaints about OPC counsel et al. should not be given special treatment abbreviating the rights and opportunities of the Complainant. It is already a rather cosy arrangement – the complaint is considered by people who work quite closely with OPC et al. and have ongoing work relationships. In that context appearance of neutrality in process is more important.

Rule 11-565(d)

Respondent should be able to submit a declaration. State law says so (§78B-18a-101 et seq.), so the Rule should also say affidavit or declaration.

Rule 11-569

Doesn't this belong in the Rules of Professional Conduct? As is, a lawyer can be suspended from practice for contempt re child support but that is not professional misconduct. Seems odd. What would OPC do with the notice of suspension?

Rule 11-581(g)(4)

Respondent should be able to submit a declaration. State law

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- CJA07-0101
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says so (§78B-18a-101 et seq.), so the Rule should also say affidavit or declaration.

Rule 11-590

Respondent should be able to submit a declaration. State law says so (§78B-18a-101 et seq.), so the Rule should also say affidavit or declaration.

Sarah Sandberg
September 5, 2020 at 7:32 pm

My comment concerns recommendation 5.2 “Membership and Training.” I have been a public member on the ethics and discipline screening panel for two years. I think it is a mistake to reduce the public members from 2 to 1. There are two reasons for this:

1) I think the public viewpoint is important, and will be lost with only 1 member.

It doesn’t happen often, but several times the other non-lawyer and I have had very different views on a case than the lawyers. Sometimes the lawyers assume things we don’t, or vice versa. I’m thinking of a session a couple of months ago where in the initial vote, the other non-lawyer and I voted for one thing and all the lawyers voted the other way. It was a very “12 Angry Men” session—during the discussion, one by one, the lawyers changed their vote and ultimately everyone agreed with us. It was all very friendly and professional, but the discussion was heated. I’m pretty tough, but I’m not sure how it would have gone if I was the only non-lawyer in there. I might have caved.

You’re probably familiar with the research on token people. If there’s 1 minority, or 1 woman in a room, their voices tend not to be heard. If there are 2 or more, there’s a better chance they’ll be heard. I think the same dynamic applies here.

2) If a public member must attend or the session is cancelled, it’s nice to have 2 public members available.

At most sessions the other public member and I are both in attendance. But if one of us has to miss, we check in with the other one to make sure they can cover for us. We’ve made accommodations for each other. I moved a family vacation because they had a wedding they wanted to attend, and I didn’t want the committee to suffer. This would obviously be more difficult if there was only 1 public member.

Todd Wahlquist
September 9, 2020 at 2:45 pm

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- CJA09-109
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- CJA10-1-602
- CJA11-0101
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- CJA14-0515
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- CJC03
- CJC03.7
- CJC04
- CJC05
- CJCApPLICABILITY
- Fourth District Local Rule 10-1-407
- LPP1.00
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- LPP1.010
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11-503(a)(1)

One of the primary recommendations of the ABA was that the OPC be taken out from underneath the Bar and put under the supervision of the Supreme Court. The Oversight Committee is a Supreme Court Committee. So, why is the Executive Director of the Bar an ex-officio, non-voting member of the Oversight Committee?

11-503(c)

The rule allows someone to file a complaint alleging malfeasance by the Chief Disciplinary Counsel, but there is no mechanism for anyone to contact the Committee regarding general concerns about the OPC’s process for handling bar complaints. In my opinion, the current Chief Disciplinary Counsel of the OPC is beyond reproach with regard to integrity and the uniform application of the rules. Malfeasance seems extremely unlikely. However, the OPC is not infallible with regard to its procedures. One of the Committee’s duties is to “develop and implement realistic performance metrics.” But if the Committee relies solely on the OPC’s representations, how can the Committee properly assess the OPC’s performance? I have reached out to the Committee asking for the opportunity to discuss concerns but have received no response. If the Committee is truly going to “Oversee” the OPC then it needs to be receptive to the input of those outside the OPC. Outlining a mechanism for this in the rule would seem reasonable.

11-512(a)

This rule requires a Respondent to give the OPC 7 days notice before the Committee chair can authorize a subpoena. However, under rule 11-531(b), if the OPC is going to add new rule allegations against a Respondent at the screening panel phase, the OPC has to give the Respondent its summary outlining the new allegations 14 days before the hearing. The problem is that a subpoena demanding the production of documents must allow the person being served with the subpoena at least 14 days to comply. So, if the OPC notifies a Respondent about new allegations 14 days before the hearing, and if the Respondent needs to subpoena documents in order to defend against the allegations, there is not enough time because the Respondent has to wait 7 days before the Committee chair can even issue the subpoena. The reality is that if the OPC is going to add rules at the screening panel phase, they know they are going to do that long before the hearing ever takes place. Months pass between when the OPC notifies the Respondent they are referring the case to a screening panel, and when the hearing actually takes place. And, with few exceptions, nothing happens during those months. The OPC already has all the information it is going to get. It is not uncommon for an OPC investigation to last more than a year before the case is heard by a screening panel. There is no reason a Respondent can’t be given more than 14 days notice of new rule violations. In short, when a Respondent’s livelihood is on the line, he/she should be given sufficient time to subpoena documents that could help preserve that livelihood. These two rules conflict in that regard.

- LPP1.06
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11-514(e)

Committee members are disqualified from representing any Respondents for a year after they leave the Committee. This is the kind of rule that often gets glossed over because we are used to seeing things like this. But what is the purpose? Who does this serve? What interest is being protected? If a former Committee member has no prior relationship with a Respondent then what is the harm in the former Committee member representing them? How does that harm the Respondent? How does that harm the OPC? How does that harm the Committee? If the concern is that the former Committee member might be appearing before a screening panel of which he/she was formally a member, then the 1 year prohibition does not address this concern. Committee members can sit for 2 consecutive terms of 3 years each.

11-520(b)(A)

The report should include statistics about how long it takes cases to get resolved. Delay was a major point of emphasis in the ABA's report regarding the disciplinary system and statistics that address delay should be included in the annual report.

11-520(d)

Again, what is the purpose of this? See comments above regarding 11-514(e). Rule 1.11 of the Rules of Professional Conduct provides sufficient protections related to former prosecutors. This seems like a solution in search of a problem.

11-530(c)

One of the primary concerns raised in the ABA review of the system was the length of time it takes to resolve cases. This rule requires the OPC to advise a complainant of the status within three months, but it doesn't impose any requirement for disposition. It is not uncommon for cases to take over a year, and sometime up to two years, to resolve. These cases hang over the heads of respondents and are a source of anxiety. I am aware of cases where attorneys self-reported serious misconduct and the cases are still pending more than two years later. There should be a mechanism in place for respondents to have a case dismissed for failure to prosecute. If there are questions about an attorney's fitness to practice law then it should not take over a year to do something about it.

11-534(a)

Under 11-510(b) the Committee chair is responsible for "determining that screening panels have a uniform basis for judgments rendered;" But under 11-524(a) the chair is powerless to do anything about it if they find the panels do not have a uniform basis for judgments. This rule takes away the chair's authority to dismiss or modify a screening panel recommendation. How can the Chair do his/her job if all they are doing is rubber-stamping a panel's determination?

11-561(a)

"Before the OPC initiates an Action or issues a public reprimand...." Can the OPC now issue public reprimands?

- LPP15.0515
- LPP15.0516
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- LPP15.0518
- LPP15.0519
- LPP15.0520
- LPP15.0522
- LPP15.0523
- LPP15.0525
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- LPP15.0528
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- LPP15.0530
- LPP15.0531
- LPP15.0532
- LPP15.0533
- LPP15.0601
- LPP15.0602
- LPP15.0603
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- LPP15.0605
- LPP15.0606
- LPP15.0607
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- LPP15.0902
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- LPP3.03
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- LPP3.05
- LPP4.01
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- LPP4.03
- LPP5.01
- LPP5.02
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- LPP5.04
- LPP5.05
- LPP5.06
- LPP6.01

11-561(e) and (f)

Paragraph (e) says information is confidential unless the request for information is approved by the OPC. However, paragraph (f) says a Respondent is only entitled to notice of disclosure if “the Committee decides to provide nonpublic information...” What if the OPC decides to disclose the information? Then the Respondent does not get notice?

11-561(i)

Complainants are not bound by the confidentiality rule. This is problematic. During the course of an OPC investigation, the Complainants receive copies of information provided by a Respondent and obtained by the OPC. They also receive a copy of the file at a screening panel hearing. This could include documents that were obtained by 3rd parties. If complainants are not bound by the confidentiality rule, then there should be protections in place that prevent them from getting copies of all the documents in the OPC’s investigation file. There is nothing to discourage a complainant who is dissatisfied with the outcome of the OPC investigation from taking matters into their own hands and distributing confidential information on social media.

11-563(b)

Giving the courts alternatives to immediate suspension is a good change. Immediately suspending an attorney based on an incomplete investigation was too harsh. Allowing limits on practice areas and supervision is a good idea.

11-563(d)

This rule allows a respondent to move to dissolve or modify interim discipline. However, it says the motion “will be heard and determined as expeditiously as justice requires.” Paragraph (a) of the rule requires a court to hold a hearing that could suspend an attorney within 14 days of the attorney being served. If an attorney can be suspended within 14 days, why shouldn’t he/she have the right to have that suspension dismissed or modified within 14 days? Their livelihood can be put on hold in 14 days, but their ability to undue that sanction is at the mercy of a court’s calendar? If the sanction is justified then there is no harm in holding the hearing within 14 days. But if the sanction is not justified then the respondent can suffer serious harm by having to wait.

11-565

This rule allows a Respondent to stipulate to discipline before a matter is submitted to a screening panel and after a complaint is filed in district court. However, it does not allow stipulated discipline during the time between when a matter is referred to a screening panel and when a formal complaint is filed. This often takes months. It would conserve OPC, committee and court resources if a respondent could stipulate to discipline during that window. It is not uncommon for either the OPC or Respondent to learn new facts or see them differently during a screening panel hearing. What is the benefit of having to wait for a formal complaint to be filed before a Respondent can stipulate to discipline?

- LPP6.03
- LPP6.04
- LPP6.05
- LPP7.01
- LPP7.02
- LPP7.03
- LPP7.04
- LPP7.05
- LPP8.01
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- Office of Professional Conduct
- Petition to Increase Bar Admission Fees
- Petition to Increase Licensing Fees.
- Regulatory Reform
- RGLPP15-0401
- RGLPP15-0402
- RGLPP15-0403
- RGLPP15-0404
- RGLPP15-0405
- RGLPP15-0406
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- RGLPP15-0408
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- RGLPP15-0413
- RGLPP15-0414
- RGLPP15-0415
- RGLPP15-0416
- RGLPP15-0417
- RGLPP15-0510
- RGLPP15-0701
- RGLPP15-0703
- RGLPP15-0705
- RGLPP15-0707
- RGLPP15-0714
- RGLPP15-0908
- RPC Preamble
- RPC Terminology
- RPC01.00
- RPC01.01
- RPC01.02
- RPC01.03
- RPC01.04
- RPC01.05
- RPC01.06
- RPC01.07
- RPC01.08
- RPC01.09
- RPC01.10

11-581(g)

This rule provides guidelines for imposing probation. That is a good addition. However, the rule requires a respondent to demonstrate some form of “disability.” What does that mean? Who gets to decide what qualifies as a disability? Going through a traumatic divorce or health crisis with a family member could lead to a lapse that constitutes a rule violation, but would that qualify as a “disability?” Probation could be a rehabilitative sanction that benefits many lawyers, but it can’t serve its purpose if “disability” is too narrowly defined.

11-584

I think it is great to spell out in this manner when various sanctions are appropriate. Hopefully this can lead to early resolution of many disciplinary cases. However, there is one gap that has always troubled me. A lawyer can be delicensed for selling marijuana, but only suspended for rape. The rule lists several ways a lawyer can lose his/her license based on how money is handled, but completely ignores sexual offenses.

Also, it does not make sense that if an attorney engages in conduct involving dishonesty, fraud, deceit or misrepresentation the only options for sanctions are delicensure or reprimand. Why not suspension? A reprimand is for negligent conduct. How can you be negligently dishonest? How can a misrepresentation reflect adversely on your fitness to practice law if it was negligent? That makes no sense. The rule should allow for suspension in cases that do not warrant delicensure.

- [RPC01.11](#)
- [RPC01.12](#)
- [RPC01.13](#)
- [RPC01.14](#)
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- [RPC01.16](#)
- [RPC01.17](#)
- [RPC01.18](#)
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- [StandingOrder08](#)
- [Uncategorized](#)
- [URAP 21A](#)
- [URAP001](#)

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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]: Chapter 15, articles 5 and 6 have been combined with former Chapter 14, articles 5 and 6 into Chapter 11, Article 5.

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

2 As used in this article:

3 (a) "Action" means a lawsuit filed by the OPC in district court alleging Lawyer
4 misconduct or seeking to transfer a Lawyer to disability status.

Commented [LL2]: Recommendation 4.1.

5 (b) "Bar" means the Utah State Bar.

6 (c) "BoardBar Commission" or "Commission" means the Board of Bar
7 Commissioners of the Utah State Bar.

8 (d) "Chief Disciplinary Counsel" means the lawyer the Supreme Court
9 appoints to manage the OPC.

Commented [LL3]: Recommendation 1.2

10 (e) "Committee" means the Ethics and Discipline Committee of the Utah
11 Supreme Court. (e) ~~OPC counsel means senior counsel and any assistant counsel~~
12 ~~employed to assist senior counsel;~~

13 (f) "Complainant" means either (1) the person who files a an informal
14 Complaint, or (2) the OPC when the OPC determines to open an investigation
15 based on information it has received after opening an investigation.

16 (f) ~~"formal complaint" means a complaint filed in the district court alleging~~
17 ~~misconduct by a lawyer or seeking the transfer of a lawyer to disability status;~~

Commented [LL4]: Recommendation 4.1

18 (g) "Complaint" means any written allegation of Lawyer misconduct or
19 incapacity containing a declaration under penalty of perjury as to the accuracy of
20 the information provided.

Commented [LL5]: Recommendation 4.1

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

24 (h) "injury" means harm to a client, the public, the legal system, or the
25 profession that results from a lawyer's misconduct. The level of injury can range
26 from "serious" injury to "little or no" injury; a reference to "injury" alone
27 indicates any level of injury greater than "little or no" injury.

1 (i) “intent” means the conscious objective or purpose to accomplish a particular
2 result.

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

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

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

11 (m) “negligence” means a Lawyer’s failure to heed a substantial risk that
12 circumstances exist or that a result will follow, which failure is a deviation from
13 the standard of care that a reasonable Lawyer would exercise in the situation.

14 (n) “~~NOIC~~Notice” means the notice~~Notice of Informal Complaint~~ the OPC
15 sends~~sent~~ to the rRespondent after a preliminary investigation, which identifies
16 the possible violation(s) of the Rules of Professional Conduct or Licensed
17 Paralegal Practitioner Rules of Professional Conduct, raised by the Complaint as
18 the OPC has preliminarily determined.

Commented [LL6]: Recommendation 4.2.

19 (i) “OPC” means the Bar’s Office of Professional Conduct.

Commented [LL7]: Recommendation 1.2

20 (p) “OPC Counsel” means Chief Disciplinary Counsel, deputy chief disciplinary
21 counsel, and any assistant disciplinary counsel.

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

24
25 (r) “potential injury” means the harm to a client, the public, the legal system, or
26 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) "**R**espondent" means a Lawyer subject to the disciplinary jurisdiction of the Utah Supreme Court against whom an ~~an informal or formal~~ eComplaint 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 **P**ractitioner **R**ules of Professional Conduct" means the rules in Chapter 15, article 12 of the Supreme Court Rules of Professional Practice;

(~~l~~**t**) "**s**creening **p**anel" means ~~members of the Committee who participate in hearings and make determinations under Rule 14-503;~~

(~~m~~**n**) "**s**enior **c**ounsel" means ~~the lawyer appointed by the Board to manage the OPC; an~~

(~~n~~**u**) "**S**upreme Court" means the Utah Supreme Court.

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

2 **Intent:**

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

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

6 **Applicability:**

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

8 **Statement of the Rule:**

9 ~~(1a)~~ **Establishment.** The Oversight Committee for the Office of Professional Conduct
10 ~~(“Oversight Committee”)~~ is established as a Supreme Court ~~committee of the Utah~~
11 ~~Supreme Court.~~

12 **(1)(A) Composition.**

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

18 (A)(ii) The ~~E~~xecutive ~~D~~irector of the Utah ~~State~~-Bar ~~shall~~ will be an ex-
19 officio, non-voting member of the Oversight Committee.

20 **(2B) Appointment and member roles.** The Utah Supreme Court appoints
21 Oversight Committee members ~~shall be appointed by the Utah Supreme Court~~
22 ~~and who~~ may serve up to two consecutive staggered four-year terms. The
23 Supreme Court ~~shall~~ will select a chair from among the Oversight Committee’s
24 members. Oversight Committee members ~~shall~~ serve as officers of the court and
25 not as representatives of any client, employer, or other organization or interest
26 group. At the first meeting of the Oversight Committee in any calendar year, and
27 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.

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

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

(5D) Absences. ~~If the event that 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.

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

(2b) Oversight ~~e~~Committee purpose, responsibilities, and authority.

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

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

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

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

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

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

(E)(v) Develop and monitor formal policies for the OPC, including records retention policies;

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

(G) Recommend a Chief Disciplinary Counsel to be appointed by the Supreme Court; and

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

(3E) **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.

(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.

(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

1 Oversight Committee chair within a reasonable time, but not more than 14 days
2 after receipt.

3 (3) Any person may file with the Chief Disciplinary Counsel a complaint alleging
4 malfeasance regarding OPC Counsel or staff. The Chief Disciplinary Counsel's
5 decision regarding the complaint is final and not subject to appeal. The Chief
6 Disciplinary Counsel's decision may include an appropriate action taken against
7 the person who is the subject of the complaint.

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

11 (5) Unless the appropriate action taken on a complaint is part of a formal
12 proceeding, any action taken is confidential.

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

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

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

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

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

24

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

2 (a) **Individual Complaints.** A Complaint must be filed with the OPC within four years
3 of the time that the Complainant discovers or reasonably should have discovered the
4 alleged misconduct.

5 (b) **OPC Complaints.** A Complaint initiated by the OPC must be initiated within five
6 years of the alleged misconduct.

7 (c) **Fraud, conversion, conviction of a serious crime, and concealment.** There is no
8 statute of limitations for misconduct alleging fraud, conversion, or conviction of a
9 serious crime, or for alleged misconduct concealed by the lawyer.

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

Ethics and Discipline Committee.

Rule 14-50311-510. 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 beare for a term of three years with no
Committee member serving more than two 2 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 [LL8]: Recommendation 5.4

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

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

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

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

(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
absentet or resignations. In the 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

Draft: July 28, 2020

1 [recommendation. The removal is effective when the Supreme Court accepts the](#)
2 [recommendation.](#)
3

1 Rule **11-511. (d) Screening Ppanel composition; responsibilities, quorums.**

2 ~~(d)~~(a) **Screening panel composition.** The Committee members, except for the
3 Committee chair and ~~Committee~~vice chairs, ~~shall be~~are divided into four screening
4 panel sections of five members each, including six-four ~~four~~ lawyers of the Bar and one~~two~~
5 public members. Whenever a screening panel is assigned a Complaint involving a
6 licensed paralegal practitioner, the Committee chair may, as practical, assign up to two
7 Committee members who are licensed paralegal practitioners to the screening panel.

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

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

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

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

(e) **Removal, a 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 recommendation. The removal shall take effect upon the Supreme Court's acceptance of the recommendation. 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.**

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

(2) Except as Unless otherwise provided in this article, whenever the OPC counsel may 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 ~~where~~ for good cause ~~is~~ 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's ~~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 ~~14-51~~11-561.

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

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

(2) accepting documents filed with the eCommittee,

(3) handling screening panel calendars,

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

(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,

(6) notifying the eComplainant, the ~~r~~Respondent, and ~~any counsel of record~~ the OPC of the disposition of each matter, and

(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.~~

~~(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.~~

Rule 11-514.(i) 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.

(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.

(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.

(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:

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

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

(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.

~~) 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 members mind open to exercising the Committee members duties impartially in a particular case.~~

(c) Recusal.

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

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

(d) Disqualification procedures.

(1) A Respondent may move to disqualify a screening panel member if such member:

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

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

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

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

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

~~-(i) **Annual report.** Senior counsel shall prepare and submit an annual report to the Supreme Court and the Board encompassing the scope and nature of the Committee~~

~~work. The report shall be submitted on or about August 1 of each year for the preceding fiscal year and shall set forth the number of disciplinary cases investigated, the number brought before the Committee, formal complaints filed, dispositions, cases dismissed, informal ethics opinions issued, diversionary dispositions and such other information as may be helpful to the Supreme Court in comprehending the operations of the OPC as well as the efficiency and effectiveness of the disciplinary system. Such report may contain Committee recommendations for rule amendments or changes in Committee procedure. The chair and senior counsel shall annually consult with the Board and the Supreme Court regarding the level of activity and general standing of disciplinary matters and procedures.~~

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 [LL11]: Recommendation 1.2

(b) Chief Disciplinary Counsel responsibilities. The Chief Disciplinary Counsel has the following responsibilities:

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

(2) Develop the budget for Oversight Committee approval.

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

(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.

(A) The report must include:

(i) the number of disciplinary cases investigated,

(ii) the number of disciplinary cases brought before the Committee,

(iii) Actions filed,

(iv) dispositions, including diversionary dispositions,

(v) cases dismissed,

(vi) informal ethics advisory opinions issued by the Bar, and

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

5
6 (c) OPC Counsel.

7 (1) Qualification and responsibilities. OPC Counsel must be licensed to practice
8 law in Utah.

9 (2) OPC Counsel will be selected by the Chief Disciplinary Counsel. An OPC
10 Counsel is an at-will employee subject to dismissal by the Chief Disciplinary
11 Counsel with or without cause.

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

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

(a) The ~~senior Chief Disciplinary e~~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 ~~I~~Lawyer or to the incapacity of a ~~L~~awyer;

(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) 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.

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

(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.

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

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

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

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

~~(b)(11)(B) Effect of expungement. After a file has been expunged, any OPC response to an inquiry requiring a reference to the matter shall 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 informal complaint was made.~~

~~(12) Provide informal guidance concerning professional conduct to lawyers of the Bar requesting guidance, participate in through seminars which that will promote ethical conduct, formulate diversionary programs, monitor probations, and disseminate disciplinary results to the Bar and the public through the Utah Bar Journal and otherwise as appropriate, while maintaining the confidentiality of Respondents subject to private discipline, and~~

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

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

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

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

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

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

15 (2) The OPC may also request the Supreme Court to review, affirm, reverse_z or
16 otherwise modify an ethics advisory opinion.

17

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:

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

(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. After three years, the OPC must destroy all records or other evidence of the existence of Complaints that the OPC dismisses or declines to prosecute.

(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.

(2) Effect of no imposed discipline. After a file or electronic record related to a Complaint that the OPC dismisses or declines to prosecute has been destroyed, 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 such matter by stating that no Complaint was made.

(b) Discipline and disability. The OPC must retain for 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 retain for three years all records of disciplinary history letters, running from the date of the letter.

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

2 ~~(a) The salaries of OPC counsel and staff, their expenses, administrative costs, and the~~
3 ~~expenses 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~~
5 ~~14-504(b)(14) shall reasonably ensure the accomplishment of the goals of the~~
6 ~~disciplinary system, the professional development of the staff, and salaries that will~~
7 ~~encourage continued employment of competent professionals and support staff and~~
8 ~~will provide compensation approximately equivalent to current salaries in comparable~~
9 ~~service.~~

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.

Rule 14-508. Periodic assessment of lawyers.

~~(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 u~~Unprofessional conduct~~ Complaints.

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

Commented [LL13]: Recommendation 1.2

(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. Upon filing, an informal complaint shall be processed in accordance with this article.

(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 e~~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 eComplaint ~~need not~~ recite disciplinary rules, ethical canons, or a prayer requesting specific disciplinary action. The Complainant must sign the ~~informal e~~Complaint ~~shall be signed by the complainant~~ and ~~shall set forth~~include the eComplainant's address, and may list the names and addresses of other witnesses. The ~~informal e~~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 e~~Complaint. ~~In accordance with Rule 14-504(b),~~ ecomplaints filed by the OPC are not required to contain ~~a verification~~such a declaration. ~~The substance of the~~An informal eComplaint's substance ~~shall prevail~~ over the form.

Commented [LL14]: Recommendation 4.1

(ca)(3) **Initial investigation.** ~~Upon the filing of an informal~~ Upon receiving a eComplaint, ~~the~~ OPC ~~counsel shall will~~ conduct a preliminary investigation to ascertain whether the ~~informal eComplaint's allegations is are~~ sufficiently clear ~~as to its~~ ~~allegations~~. If ~~it is~~ ~~the allegations are~~ not sufficiently clear, ~~the~~ OPC ~~counsel shall will~~ seek additional facts from the eComplainant, ~~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, the OPC must advise the Complainant concerning the initial investigation of the Complaint.

(da)(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~~ eComplaint or additional facts submitted by ~~at the~~ eComplainant.

(ea)(5) **Notice of informal complaint to Respondent.** ~~Upon completion of~~ Upon ~~completing~~ the preliminary investigation, ~~the~~ OPC ~~counsel shall will~~ determine whether the ~~informal eComplaint~~ can be resolved in the public interest, the ~~Respondent's interest,~~ and the eComplainant's interest. ~~OPC counsel and/or the screening panel may use their efforts to resolve the informal complaint.~~ If the ~~informal eComplaint~~ 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 [LL15]: Recommendation 4.2

(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;

(2) attach a copy of the signed Complaint; and

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

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 201 days after the Respondent is served ~~ice of~~ with the Complaint and Notice ~~NOIC on the respondent~~, the ~~r~~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 ~~r~~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.

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

(1) **Reasons for dismissal.** The OPC ~~counsel may~~ dismiss ~~an informal 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~~

Commented [LL16]: Recommendation 4.2

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

(B) barred by the statute of limitations;

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

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

(2) Notification and appeal.

(A) When the OPC dismisses a Complaint, it ~~OPC counsel shall must:~~

(i) notify the ~~e~~Complainant ~~and the Respondent that the OPC has dismissed the informal eComplaint;~~

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

(iii) include a notice of the Complainant's right to appeal an OPC decision to the Committee chair.

Commented [LL17]: Recommendation 4.5.

(B) The ~~e~~Complainant may appeal ~~at the~~ dismissal ~~by OPC counsel~~ by filing written notice with the ~~Clerk of the~~ Committee clerk within ~~1521~~ days after ~~notification of~~ the dismissal notification is mailed and serving the notice on the OPC. The Complainant has no other right of appeal in this article. ~~Upon~~

(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 (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 [LL18]: Recommendation 4.2

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

(a)(1) Review and investigation. ~~In their role as fact finders and investigators,~~
screening panels ~~shall will~~ review all ~~informal~~ Complaints ~~the OPC refer~~ eds 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 ~~r~~Respondent
a summary of its investigation. If ~~filed~~ the OPC has determined, after serving
Respondent with the Notice, 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 r~~Respondent ~~and shall 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 ~~r~~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 ~~r~~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~~efore 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 an Action ~~formal complaint, the screening panel shall, upon at least 30~~
~~days' notice, afford the respondent an opportunity to appear before the screening panel.~~

Commented [LL19]: Recommendation 4.2

1 Respondent and any witnesses the Respondent ~~called by the respondent~~ may testify,
 2 and ~~R~~Respondent may present oral argument with respect to the ~~informal e~~Complaint.

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

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

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

23 (g)(5) Rule V violations Nnot Echarged by the OPC. During the screening panel
 24 hearing, but not after, the panel may find that rule violations have occurred not
 25 previously charged by the OPC ~~in the NOIC or summary memorandum have occurred.~~
 26 If so, the screening panel ~~shall will~~ give ~~the R~~Respondent a reasonable opportunity to
 27 respond during the hearing. The ~~R~~Respondent may address the additional charges at the
 28 hearing and ~~also may~~ file with the Committee Clerk and serve on the OPC within two
 29 business days of the hearing a written response to the new charges along with

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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.

~~(h)(6)~~ **Hearing ~~R~~record.** The proceedings of any screening panel hearing ~~before a screening panel~~ under this ~~subsection (b)~~rule ~~shall~~ will be recorded at an ~~an~~ level of audio quality level that permits an accurate transcription of the proceedings. The ~~C~~clerk ~~shall~~ will assemble and deliver to the Committee chair a complete record of the proceedings ~~and deliver it to the chair of the Committee~~ upon the ~~rendering of the~~ panel's determination or recommendation to the Committee chair. The record of the proceedings before the panel ~~shall~~ must be preserved for ~~not less than~~ at least one year ~~following after~~ delivery of the panel's determination or recommendation to the ~~chair of the~~ Committee chair and for such additional ~~period~~ time as any further proceedings on the matter are pending or might be instituted under this ~~section~~rule.

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

~~(1)(b)(7)(A)~~ The preponderance of evidence ~~presented~~ does not establish that the ~~r~~Respondent ~~was~~ engaged in misconduct, in which case the screening panel will dismiss the informaleComplaint ~~shall be dismissed~~. A letter of caution may also be issued with the dismissal. The letter ~~shall~~ must be signed by ~~OPC counsel or~~ the screening panel chair or vice chair and ~~shall~~ will serve as a guide for the future conduct of the ~~r~~Respondent. The eComplainant ~~shall~~ will also be confidentially notified of the caution;

~~(b)(7)(B)~~ The informal complaint shall be referred to the Diversion Committee for diversion. In this case, the specific material terms of the Diversion Contract agreed to by the respondent are to be recorded as a part of the screening panel record, along with any comments by the complainant. The screening panel shall

1 have no further involvement in processing the diversion. The Diversion
2 Committee shall process the diversion in accordance with Rule 14-533;

3 (2b)(7)(C) The ~~informal~~ Complaint shall must be referred to the Professionalism
4 and Civility Counseling Board established ~~pursuant to~~ under the Supreme
5 Court's Standing Order No. 7 Rule 14-303;

6 (3b)(7)(D) The ~~informal~~ Complaint shall must be referred to the Committee chair
7 with an accompanying screening panel recommendation that the ~~r~~Respondent be
8 admonished;

9 (4b)(7)(E) The ~~informal~~ Complaint shall must be referred to the Committee chair
10 with an accompanying screening panel recommendation that the ~~r~~Respondent
11 receive a public reprimand; ~~or~~

12 (5b)(7)(F) ~~The OPC must file a formal an Action complaint shall be filed~~
13 ~~against~~ against the ~~r~~Respondent if the panel finds ~~there is~~ probable cause to
14 believe there are grounds for public discipline ~~and that~~ merit an Action ~~formal~~
15 ~~complaint is merited; or~~

16 (6) The OPC must file an Action ~~A formal complaint shall also be filed~~ if the
17 panel finds ~~there was~~ misconduct and the misconduct is similar to the
18 misconduct alleged in ~~a formal complaint~~ an Action against the ~~r~~Respondent that
19 has been recommended by a screening panel or is pending in district court at the
20 time of the hearing.

21 (b)(8) **Aggravation and Mitigation.** The ~~r~~Respondent and the OPC may present
22 evidence and argument as to mitigating and aggravating circumstances during the
23 screening panel hearing, but this evidence ~~shall will~~ not be considered ~~until after~~ unless
24 the panel has determined the ~~r~~Respondent engaged in misconduct.

25 (b)(9) **Multiple cases involving the same rRespondent.** More than one case involving
26 the same ~~r~~Respondent may be scheduled before the same panel, but ~~in~~ determining
27 whether a rule has been violated in one case, only the factual allegations in that case

1 ~~may be considered.~~a screening panel shall not consider the fact it may be hearing
2 ~~multiple cases against the same respondent.~~

3 ~~(b)(10)~~ **Recommendation of admonition or public reprimand.** A screening panel
4 recommendation that the ~~r~~Respondent ~~should~~ be disciplined under ~~subsection~~
5 ~~paragraph (b)(7)(D)(i)(3)~~ or ~~(b)(7)(E)(i)(4)~~ ~~shall~~ must be in writing and ~~shall~~ state the
6 substance and nature of the ~~informal~~ Complaint and defenses and the basis upon
7 which the screening panel has concluded, by a preponderance of the evidence, that the
8 ~~r~~Respondent ~~should~~ be admonished or publicly reprimanded. The screening panel
9 must deliver ~~A~~copies of the recommendation ~~shall be delivered~~ to the Committee
10 chair, ~~and a copy served upon the~~ ~~r~~Respondent, and the OPC.

11

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,~~

(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.~~

(2) Within 30 days after service of the recommendation of an admonition or public reprimand on respondent, the ~~r~~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~~ 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 ~~r~~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.

(ed) Procedure on exceptions.

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

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

6 (3) **Transcript Request.** Upon request, the Committee chair ~~shall~~must extend the
7 deadlines for filing exceptions or responses no more than 60 days in order to
8 allow a party time to obtain a transcript of the screening panel proceedings, so
9 long as the audio or video recording is requested within 28 days. The requesting
10 party will bear ~~T~~the costs of such transcript ~~shall be borne by the requesting~~
11 ~~party. The party obtaining the transcript shall and must~~ file ~~it~~the transcript with
12 the ~~Committee C~~lerk at the time of or before filing an exception or response,
13 together with ~~an affidavit~~ a declaration under penalty of perjury establishing the
14 transcript's chain of custody ~~of the record.~~

15 (4) **Burden of proof.** The party who files an exceptions ~~under subsection (c) shall~~
16 ~~have~~has the burden of showing that the determination or recommendation of the
17 screening panel is unsupported by substantial evidence or is arbitrary,
18 capricious, legally insufficient, or otherwise clearly erroneous.

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

1 **Rule 11-533.(g) General procedures.**

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

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

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

14

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

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

Commented [LL21]: Recommendation 5.8

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

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17

Rule 11-535.(f) Appeal ofAppealing 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 the OPC may ~~file a request for review~~appeal the disposition to the Supreme Court and ask the Court by the Supreme Court seeking to reversal 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:

(15)(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;

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

(35)(C) ~~A~~arbitrary or capricious; or
(45)(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~~.

1 **Rule 14-511-536. Proceedings subsequent to finding of probable cause**Actions in
2 district court.

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

Commented [LL23]: Recommendation 5.10

13 (b) **Venue**. The a **Action** ~~shall~~ must be brought ~~and the trial shall be held:~~
14 (1) in the county in which an alleged offense occurred; or
15 (2) in the county where the ~~r~~Respondent resides, ~~or~~ practices law, or last
16 practiced law in Utah; provided, however, that if the ~~r~~Respondent is not a
17 resident of Utah and the alleged offense is not committed in Utah, the ~~trial shall~~
18 ~~be held~~ Action must be brought in a county designated by the Chief Justice of the
19 Supreme Court. ~~The parties may stipulate to a change of venue in accordance~~
20 ~~with applicable law.~~

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

24 ~~(d) Change of judge as a matter of right.~~

25 ~~(1) Notice of change.~~ The respondent or OPC counsel may, by filing a
26 notice indicating the name of the assigned judge, the date on which the formal
27 complaint was filed, and that a good faith effort has been made to serve all
28 parties, change the judge assigned to the case. The notice shall not specify any

reason for the change of judge. The party filing the notice shall 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. Under no circumstances shall more than one change of judge be allowed to each party under this rule.

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

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

(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.

(ed) **Actions tried to the bench; findings and conclusions.** All ~~a~~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.

(fe) **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 ~~r~~Respondent. Upon reasonable notice to the parties, the court, at its discretion, may hold the sanctions hearing immediately after the misconduct proceeding.

Commented [LL24]: Recommendation 8.4

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

5

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
3 ~~Respondent~~ fails to answer the charges within ~~20~~1 days, the ~~Respondent~~ ~~shall~~will be
4 deemed to have admitted the factual allegations.

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

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

14

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

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

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

20 (c) **Immunity.** Any person appointed as a trustee ~~shall~~ has have the immunity granted
21 by Rule ~~14-513~~11-540.
22

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

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

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

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

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

15

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

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
4 judicial proceedings. Except as provided in Utah Rules of Civil Procedure 65A and 65B,
5 ~~T~~he district courts, Committee members, special counsel appointed pursuant to Rule
6 ~~14-517(f)~~11-542, supervising attorneys engaged in pro bono assistance, trustees
7 appointed pursuant to Rule ~~14-527~~11-538, and OPC ~~e~~Counsel and staff ~~shall~~ will be
8 immune from suit, ~~except as provided in Utah Rules of Civil Procedure 65A and 65B,~~
9 for any conduct committed in the course of their official duties, including the
10 investigatory stage. There is no immunity from civil suit for 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~~
3 ~~the respondent in any disciplinary proceeding or the petition in any disability~~
4 ~~proceeding shall be 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~~
6 ~~article shall~~ Serving documents on Respondent in connection with an Action must be
7 made in accordance with the Utah Rules of Civil Procedure.

8

9

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

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

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

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

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

19 (e) **The eComplainant's actions.** An Action will not be abated due to:

20 (1) Neither unwillingness of the eComplainant's unwillingness to prosecute a n
21 informal or formal eComplaint; ~~nor~~

22 (2) settlement or compromise between the eComplainant and the rRespondent;
23 or

24 (3) nor restitution by the rRespondent; ~~shall, in and of itself, justify abatement of~~
25 ~~disciplinary proceedings.~~

26 (f) **Informal and formal complaints**Complaints against OPC eCounsel, Committee
27 members, the ~~Board~~Bar Commission, or lLawyers employed by the ~~Utah State~~ Bar.

1 The Committee chair will assign a screening panel ~~Any informal e~~Complaint filed
2 against OPC ~~e~~Counsel, ~~a members of the~~ Committee member, ~~a Board~~Bar Commission
3 member, or a ~~l~~lawyer employed by the Utah State Bar, ~~or a member of the Board shall~~
4 ~~be assigned by the Chair to a screening panel~~. The ~~chair of the~~ assigned panel chair shall
5 will review the ~~informal e~~Complaint and any additional material, ~~if any~~, that the
6 screening panel chair asks the ~~r~~Respondent to provide.

7 (1) ~~An informal e~~Complaint will be dismissed without hearing by a screening
8 panel if high, upon after ~~consideration of~~ all factors, the chair determines the
9 Complaint is ~~is determined by the screening panel chair to be~~

10 (A) frivolous ~~or~~ unintelligible;

11 (B) barred by the statute of limitations;

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

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

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

19 (3) The ~~e~~Complainant may appeal ~~a the screening panel chair's~~ dismissal ~~by the~~
20 ~~chair of the screening panel~~ to the Committee chair within 154 days after
21 notification of the dismissal is mailed.

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

24 (5) If the screening panel chair determines not to dismiss the ~~e~~Complaint, or the
25 Committee chair reverses the dismissal on appeal, the Committee chair ~~shall~~
26 must request that the Supreme Court appoint a special counsel to present the
27 case, and if necessary, a special screening panel. In all other respects, the matter

1 ~~shall~~will proceed in accordance with this article. Special counsel ~~shall~~must be a
2 lawyer outside of the OPC appointed by the Supreme Court to act as counsel for
3 investigation and prosecution of the ~~disciplinary e~~Complaint. Special counsel
4 ~~shall~~must notify the OPC of the results of the investigation.
5

Diversion.

Rule 11-550. Diversion referrals, authority, and responsibilities.

Commented [LL26]: Recommendation 6.1 and 6.2.

(a) **Referral to diversion.** In a matter involving less serious misconduct ~~as outlined in~~ under 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 ~~r~~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 [LL27]: Recommendation 6.2

(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.

(b)(2) **Authority and responsibility.** The ~~Diversion Committee~~ OPC may negotiate and execute diversion contracts, assign monitoring to a ~~lawyer~~ or assistance program, determine ~~if the Lawyer~~ compliance with the ~~terms of~~ diversion contracts, and determine ~~if the Lawyer~~ fulfillment 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 ~~sub~~committees 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 [LL28]: Recommendation 6.2

1 (e) **Notice to eComplainant.** The OPC will notify the eComplainant, if any, of the
2 proposed decision to refer the rRespondent to diversion, and the eComplainant may
3 submit written comments. The eComplainant will be notified when the eComplaint is
4 diverted and when the eComplaint is dismissed. All notices will be sent to the
5 eComplainant's address ~~of record on file with the~~ according to the OPC's records. Such
6 decision to divert or dismiss is not appealable.

7 ~~(f)~~(d) **Effect of ~~non-participation~~not participating in diversion.** The rRespondent has
8 the right to decline to participate in diversion. If the rRespondent chooses not to
9 participate in diversion, the matter proceeds ~~pursuant to the Rules of Lawyer Discipline~~
10 ~~and Disability~~ under these rules.

11

12

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:

- (1) the misconduct involves the misappropriation of client funds;
- (2) the misconduct results in or is likely to result in substantial prejudice to a client or other person, absent adequate provisions for restitution;
- (3) the ~~Respondent~~**Respondent** has been sanctioned in the last three years;
- (4) the misconduct is of the same nature as misconduct for which the ~~Respondent~~**Respondent** has been sanctioned in the last three years;
- (5) the misconduct involves dishonesty, deceit, fraud, or misrepresentation;
- (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~~**Respondent's** honesty, trustworthiness or fitness as a **lawyer**; or
- (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:

- (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;
- (2) whether participation ~~ioning~~**ing** in diversion is likely to improve the ~~Respondent's~~**Respondent's** future professional conduct and accomplish the goals of **lawyer** discipline;
- (3) whether aggravating or mitigating factors exist; and
- (4) whether diversion was already tried.

Commented [LL29]: Recommendation 6.2

Commented [LL30]: Recommendation 6.2

Draft: July 28, 2020

Rule 11-552.(f) Diversion contract.

(a)(1) Contract requirements.

(1) If the ~~r~~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 ~~r~~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.~~

(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.

(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.

(4) The ~~r~~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.

(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 ~~R~~espondent's particular situation. Use of a lawyer's or licensed paralegal

Commented [LL31]: Recommendation 6.2

practitioner assistance program to assess appropriate conditions for diversion
~~shall~~ will not conflict that entity from providing services under the contract.

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

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

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

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

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

(42)(D) the necessary terms providing that Respondent will pay all costs
incurred in connection with the contract and those costs further specified
~~pursuant to under subsection~~ Rule 11-555(k) and any costs associated with the
~~e~~ Complaints to be deferred; and

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

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

Commented [LL32]: Recommendation 6.2

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

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

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

1 **Rule 11-553. Respondent's participation in diversion.**

2 (a) Diversion may require the Respondent's participation ~~of the respondent~~ in one or
3 more of the following:

4 (1) fee arbitration;

5 (2) mediation;

6 (3) law office management assistance;

7 (4) lawyer or licensed paralegal practitioner assistance programs;

8 (5) psychological and behavioral counseling;

9 (6) monitoring;

10 (7) restitution;

11 (8) continuing legal education programs including, but not limited to, ethics
12 school; or

13 (9) any other program or corrective course of action to address the ~~R~~Respondent's
14 conduct.

15

Commented [LL33]: Recommendation 6.2

1 **Rule 11-554.(j) Termination of diversion.**

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

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

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

25

1 Rule 11-555.(k) Diversion Costs.
2 ~~Upon entering diversion, r~~ Respondent ~~shall~~ must pay an initial fee of \$250 upon
3 entering diversion. ~~During diversion, respondent shall~~ must pay and a monthly fee of
4 \$50 during diversion, per month unless the contract specifies otherwise. All such fees
5 are payable to the Bar's general fund. ~~These fees may be waived upon a hardship~~
6 ~~request, the validity or appropriateness of which shall be determined by the chair of the~~
7 ~~Diversion Committee or his 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~~se rules, the~~ Rules of Professional Conduct, or the 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).

1 **Rule ~~14-515~~11-561. Accessing ~~to~~ disciplinary information.**

2 (a) **Confidentiality.** ~~Prior to the~~Before the OPC filing of a formal complaint~~initiates an~~
3 Action or ~~the issuancees~~ of a public reprimand ~~pursuant to Rule 14-510 in a discipline~~
4 ~~matter,~~ OPC Ccounsel, OPC ~~employees~~staff, the Committee, Committee volunteers,
5 Committee staff, Committee employees, special counsel appointed pursuant to Rule ~~14-~~
6 ~~517(f)~~11-542, and special counsel employees or assistants, ~~shall~~ must keep the
7 proceeding confidential, ~~except that~~but the OPC may disclose the pendency, subject
8 matter, and status of an investigation ~~may be disclosed by OPC counsel~~ if the
9 proceeding is based upon allegations ~~that have been~~ disseminated through the mass
10 media, or include either the conviction of a crime or reciprocal public discipline. The
11 proceeding ~~shall is not~~not be deemed confidential to the extent:

- 12 (1) the ~~r~~Respondent has given an express written waiver of confidentiality;
- 13 (2) there is a need to notify another person or organization ~~—~~, including the Bar's
14 Lawyer's Fund for Client Protection or Licensed Paralegal Practitioners' Fund for
15 Client Protection —, ~~in order~~ to protect the public, the administration of justice, or
16 the legal profession; ~~or~~
- 17 (3) the information is required in a subsequent Lawyer sanctions hearing; or
- 18 (4) a referral is made to the Professionalism and Civility Counseling Board
19 ~~pursuant to Rule 14-510 (a)(4) or (b)(6)(C)-~~, in the~~which~~ event ~~of such a referral,~~
20 OPC Ccounsel, ~~members of the~~ Committee members, ~~and of any~~ screening panel
21 members, and ~~members of the~~ Professionalism and Civility Counseling Board
22 members may share all information between and among them with the
23 expectation that such information will in all other respects be subject to
24 applicable confidentiality rules or exceptions.

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

Commented [LL34]: Recommendation 5.6, amendments effective Nov. 1, 2019.

(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 (e)(2) 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~~ the information ~~which that~~ has been requested and by whom, together with a copy of the information proposed to be released. The notice ~~shall~~ must advise the Respondent that the information ~~shall will~~ be released ~~at the end of~~ 21 days ~~following after the notice's~~ mailing ~~of the notice~~ unless the Respondent objects to the disclosure. If the Respondent timely objects to the disclosure, the information ~~shall~~ must remain confidential unless the requesting party obtains a court order authorizing its release.

(g) **Release without notice.** If a requesting party as outlined in paragraph (e) ~~(2)~~ has not obtained an express written waiver from the ~~R~~Respondent to obtain nonpublic information, and requests that the information be released without giving notice to the ~~R~~Respondent, the requesting party ~~shall~~ must certify that:

- (1) the request ~~is made in furtherance of~~ will further an ongoing investigation into the Respondent's misconduct ~~by the respondent;~~
- (2) the information is essential to that investigation; and
- (3) ~~disclosure of~~ disclosing the existence of the investigation to the ~~R~~Respondent would seriously prejudice that investigation.

(h) **Disclosure without notice.** ~~The~~ OPC ~~can~~ may disclose nonpublic information without notice to the ~~R~~Respondent if:

- (1) ~~disclosure is made in furtherance of~~ disclosure furthers an ongoing OPC investigation into the Respondent's misconduct ~~by the respondent;~~ and
- (2) ~~the information that is sought through~~ disclosure is essential to that investigation.

(i) **Duty of ~~P~~participants' duty.** OPC ~~C~~ounsel, 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.

1 Rule ~~14-516~~11-562. ~~Dissemination of~~Disseminating disciplinary information.

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

8 (b) **Notice to the public.** The ~~executive director~~OPC ~~shall~~will ~~publish~~cause notices of
9 admonition, public reprimand, suspension, ~~disbarment~~delicensure, resignation with
10 discipline pending, transfer to disability status, and petitions for reinstatement or
11 ~~readmission~~relicensure to the OPC's website and ~~be published in~~ the Utah Bar Journal.

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

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

1 ~~Rule 14-518~~11-563. ~~Interim suspension~~discipline for threat of harm.

Commented [LL35]: Recommendations 7.1 and 7.3

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

Commented [LL36]: Recommendation 7.3

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

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

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

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

22 (1) If an order is entered:

23 ~~(b)(1)(A)~~ (A) the district court may appoint a trustee, ~~pursuant to~~under Rule
24 ~~14-527~~11-538, to protect the interests of the ~~R~~espondent's clients; and

25 ~~(b)(2)(B)~~ (B) the OPC may file ~~a formal complaint~~an Action ~~in the district~~
26 ~~court~~ without presenting the matter to a screening panel.

Commented [LL37]: Recommendation 7.3

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

4 (c) **Notice to clients.** A ~~r~~Respondent ~~suspended~~subject to interim discipline pursuant to
5 paragraph (b) ~~shall~~must comply with the notice requirements in Rule ~~14-526~~11-570 as
6 ordered by the district court.

7 (d) **Motion ~~for dissolution of~~to dissolve or modify interim ~~suspension~~discipline.** On
8 ~~two 48 hours' days~~ notice to the OPC ~~counsel~~, a ~~r~~Respondent suspended pursuant to
9 paragraph (b) may appear and move ~~for dissolution or modification of the~~to dissolve
10 or modify the order of ~~suspension~~discipline, and ~~in that event, the~~such motion ~~shall~~
11 will be heard and determined as expeditiously as ~~the ends of~~ justice requires.

Rule ~~14-519~~11-564. ~~Lawyers~~ Finding of guilt or entry of a plea to~~convicted of a crime.~~

(a) ~~Transmittal of~~Duty to report judgment of any finding of guilt or plea to a
crime conviction. After a finding of guilt or entry of a plea of guilty or no contest –
including the entry of a plea in abeyance – for any crime, except for misdemeanor traffic
offenses or traffic ordinance violations not involving the use of alcohol or drugs:

(1) The Lawyer must notify the OPC in writing of such a finding or plea within
14 days after it is entered and include the following information:

(a) name, bar number, and current address;

(b) the court in which the finding or plea was entered; and

(c) the case number in which the finding or plea was entered.

(2) The court must forward documentation that the Lawyer has been found
guilty of or has entered a plea to a crime to the OPC within 28 days after the
finding or plea is entered. ~~The court in which a lawyer is convicted of any felony~~
~~or any misdemeanor which reflects adversely on the lawyer's honesty,~~
~~trustworthiness, or fitness as a lawyer shall, within 30 days after the conviction,~~
~~transmit a certified copy of the judgment of conviction to OPC counsel.~~

(b) **Motion for interim suspension.** On being advised that a ~~IL~~Lawyer has been
~~convicted found guilty~~ of or has entered a plea of guilty or no contest for a felony or
misdemeanor~~crime which that~~ reflects adversely on the ~~IL~~Lawyer's honesty,
trustworthiness, or fitness ~~as a lawyer to practice law, the~~ OPC ~~shall~~must determine
whether the crime warrants interim suspension. ~~Upon a determination~~After
determining that the crime warrants interim suspension, the OPC ~~shall~~must file an
~~formal complaint~~Action, ~~accompanied by the certified copy of the judgment of~~
~~conviction,~~ and concurrently file a motion for immediate interim suspension. ~~An action~~
~~is commenced under this rule when both the petition for interim suspension and the~~
~~formal complaint are filed.~~ The ~~r~~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 that~~does not~~ reflects adversely

on the ~~R~~espondent's honesty, trustworthiness, or fitness ~~as a lawyer to practice law~~, or that the ~~R~~espondent is not the individual who was found guilty of or had entered a plea of guilty or no contest~~convicted~~. The ~~R~~espondent is not entitled to an evidentiary hearing but may request an informal hearing, solely to determine whether the finding of guilt or plea 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~~Action shall be dismissed and OPC counsel shall~~ and will process the matter as it does any other information coming to the OPC's attention~~of the OPC~~.

Commented [LL39]: Recommendation 7.4

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

(d) ~~Dissolution of~~ Dissolving interim suspension. Interim suspension may be dissolved as provided in Rule ~~14-518(d)~~ 11-563.

(e) ~~Conviction~~ Documentation as conclusive evidence. Except as provided in paragraph (b), ~~a certified copy of a judgment of conviction documentation that the Respondent has been found guilty of or has entered a plea to a crime~~ constitutes conclusive evidence that the ~~R~~espondent committed the crime.

(f) **Automatic reinstatement from interim suspension**~~upon reversal of conviction~~. If a ~~R~~espondent suspended solely under ~~the provisions of~~ paragraph (c) demonstrates that the underlying ~~conviction~~ finding of guilt or plea has been reversed or vacated, the order for interim suspension ~~shall~~ will be vacated and the ~~R~~espondent placed on active status. ~~The vacating of~~ Vacating the interim suspension ~~shall~~ will not automatically terminate any disciplinary proceeding then pending against the ~~R~~espondent, the disposition of which ~~shall~~ will be determined based ~~on the basis of~~ the available evidence other than ~~conviction~~ the reversed or vacated finding of guilt or plea.

1 (g) **Notice to clients and other of interim suspension.** An interim suspension under
2 this rule ~~shall~~ constitutes a suspension of the ~~r~~Respondent for the purpose of Rule ~~14-~~
3 ~~526~~11-570.

4

1 **Rule ~~14-520~~11-565. Discipline by consent.**

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

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

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

- (1) the ~~informal~~Complaint and ~~any NOIC~~Notice if no ~~formal complaint~~Action has been filed;
- (2) the ~~formal complaint~~Action, if filed;
- (3) the approved proposal for discipline by consent; and
- (4) an affidavit of consent by the ~~R~~Respondent to be disciplined.

(d) **Affidavit of consent.** A ~~R~~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:

- (1) the consent is freely and voluntarily entered;
- (2) the ~~R~~Respondent is not acting under coercion or duress;
- (3) the ~~R~~Respondent is fully aware of the implications of submitting the consent;
- (4) the ~~R~~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;
- (5) for purposes of disciplinary proceedings, the ~~R~~Respondent acknowledges that the material facts so alleged are true; and
- (6) the ~~R~~Respondent submits consent because the ~~R~~Respondent knows that if ~~an informal or formal complaint~~the Complaint or Action were predicated ~~upon~~ the ~~matters~~allegations under investigation were filed, or the pending ~~Action~~formal charges were prosecuted, the ~~R~~Respondent could not successfully defend against the charges upon which the discipline is based.

1 **Rule ~~14-521~~11-566. Resignation with discipline pending.**

2 (a) A ~~Respondent~~ may resign by ~~resign from the Bar~~ voluntarily relinquishing the
3 Respondent's license, ~~prior to before~~ the adjudication of a pending ~~e~~Complaint is
4 adjudicated, only with the Supreme Court's consent ~~of the Supreme Court~~ and upon
5 such terms as the Supreme Court may impose for the public's protection ~~of the public~~.

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

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

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

10 (3) stating that the ~~Respondent's~~ resignation is freely and voluntarily tendered
11 and that it is submitted without coercion or duress;

12 (4) verifying that the ~~Respondent~~ is fully aware of the implications of submitting
13 the resignation;

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

17 (6) agreeing to comply with these rules, including Rule ~~14-526(b)~~11-570
18 regarding notice to clients and return of clients' property; and

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

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

- 1 (d) If the Supreme Court accepts the resignation, it ~~will~~shall enter an order specifying
2 the effective date of the resignation. The order may include additional or alternative
3 terms and conditions deemed appropriate, including conditions precedent to
4 ~~readmission~~relicensure.
- 5 (e) A ~~Respondent~~Respondent whose resignation is accepted must comply with Rule ~~14-525~~11-591
6 and may not apply for ~~readmission~~relicensure until five years after the effective date of
7 the resignation unless the Supreme Court orders otherwise in ~~the~~its order accepting the
8 resignation.

9

Commented [LL40]: Recommendation 4.7

1 Rule ~~14-522~~11-567. Reciprocal discipline.

2 (a) Duty to notify the OPC of discipline or transfer to disability inactive status. When
3 another court, jurisdiction, or regulatory body having disciplinary jurisdiction publicly
4 disciplines or transfers to disability inactive status a Lawyer licensed to practice in
5 Utah. ~~Upon being publicly disciplined by another court, another jurisdiction, or a~~
6 ~~regulatory body having disciplinary jurisdiction, a lawyer admitted to practice in Utah~~
7 ~~shall such Lawyer must inform the OPC of the discipline or transfer~~ within ~~30~~28 days. ~~If~~
8 ~~the OPC receives notification inform the OPC of the discipline. Upo~~On notification from
9 any source that a ~~I~~Lawyer within the Supreme Court's jurisdiction ~~of the Supreme~~
10 ~~Court~~ has been publicly disciplined or transferred to disability inactive status by
11 ~~another court, another jurisdiction, or a regulatory body having disciplinary~~
12 ~~jurisdiction~~any other jurisdiction, the OPC ~~shall~~ must obtain a certified copy of the
13 disciplinary order.

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

- 19 (1) a copy of the order from the other court, jurisdiction, or regulatory body; and
20 (2) a notice giving the Lawyer the right to inform the OPC, within ~~30~~28 days
21 from service of the notice, of any claim by the Lawyer predicated ~~upon~~ the
22 grounds set forth in paragraph (d), that ~~the imposition of the~~imposing equivalent
23 discipline or transfer in Utah would be ~~unwarranted, and~~unwarranted and
24 stating the reasons for that claim.

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

(d) Discipline to be imposed.

~~(1) Upon the expiration of~~ After 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:

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

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

(~~3C~~) the misconduct ~~established~~-warrants substantially different discipline in Utah or is not misconduct in this jurisdiction; or

(D) 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 ~~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~~imposing 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.

1 **Rule ~~14-523~~11-568. Proceedings in which Lawyer is declared to be incompetent or**
2 **alleged to be incapacitated.**

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

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

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

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

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

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

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

12 (1) **Court order.** No Lawyer transferred to disability status may resume active
13 status except by district court order ~~of the district court.~~

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

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

25 (4) **Waiver of privilege.** ~~When~~ with the filing ~~of~~ a petition for reinstatement to
26 active status, the Lawyer ~~shall~~ will be required to disclose the name of each
27 psychiatrist, psychologist, physician, or other health care provider and hospital
28 or other institution by whom or in which the Lawyer has been examined or

1 treated related to the disability since the transfer to disability status. The Lawyer
2 ~~shall~~must furnish written consent to each listed provider to divulge information
3 and records relating to the disability if requested by the district court or the
4 district court's appointed experts.

5 (5) **Learning in law; Bar E**examination. The district court may also direct that the
6 Lawyer establish proof of competence and learning in law, which proof may
7 include the Bar's certification ~~by the Bar of that the Lawyer has~~ successfully
8 ~~completion~~ed of an examination for ~~admission to practice~~relicensure.

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

12 (7) **Judicial declaration of competence**. If a Lawyer transferred to disability
13 status on the basis of a judicial determination of incompetence is subsequently
14 judicially declared to be competent, the district court may dispense with further
15 evidence that the Lawyer's disability has been removed and may immediately
16 order the Lawyer's reinstatement to active status upon terms as are deemed
17 proper and advisable.
18

- 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
4 noncompliance with a child support order, child visitation order, or a subpoena or
5 order relating to a paternity or child support proceeding, a district court may suspend
6 the Lawyer's license to engage in the practice of law consistent with applicable law
7 and, if suspended, ~~shall~~will also impose conditions of reinstatement.
- 8 (b) If a district court suspends a Lawyer's license to engage in the practice of law, the
9 court ~~shall~~will provide a copy of the order to the OPC.

10

1 **Rule ~~14-526~~11-570. Notice of disability or suspension; return of clients' property;**
2 **refund of unearned fees.**

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

14 (b) **Notice to clients and others.** In every case in which a ~~r~~R respondent is ~~disbarred~~
15 ~~delicensed~~ or suspended for more than six months, the ~~r~~R respondent ~~shall~~ must, within
16 ~~20~~1 days after the order is entered ~~of the entry of the order~~, accomplish the following
17 acts:

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

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

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

(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~~;

(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 ~~r~~Respondent's ~~disbarment~~ delicensure or suspension and consequent disqualification to further participate as a Lawyer in the matter;

(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

(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 ~~r~~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 ~~r~~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~~

- 1 ~~(j) “Rules of Professional Conduct” means the Utah Rules of Professional Conduct~~
- 2 ~~(including the accompanying comments) initially adopted by the Supreme Court in~~
- 3 ~~1988, as amended from time to time.~~

1 **Rule ~~14-602~~11-580. Purpose and nature of sanctions.**

2 ~~_(a) Summary. This article is based on the Black Letter Rules contained in the Standards~~
3 ~~for Imposing Lawyer Sanctions prepared by the American Bar Association's Center for~~
4 ~~Professional Responsibility. They have been substantially revised by the Supreme~~
5 ~~Court. Notably, ABA Standards 4 through 8 have been reduced into a single Rule 14-~~
6 ~~605.~~

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

13 ~~(c)~~ **Public nature of ~~lawyer discipline proceedings~~sanctions.** The Ultimate
14 disposition of Lawyer discipline ~~shall~~will be public in cases of ~~disbarment~~delicensure,
15 suspension, and reprimand; and nonpublic in cases of admonition.

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

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

27 (2) consideration of the appropriate weight of such factors in light of the stated
28 goals of Lawyer discipline; and

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

1 **Rule ~~14-603~~11-581. Sanctions.**

2 (a) **Scope.** A disciplinary sanction is imposed on a Lawyer upon the Committee's or the
3 court's~~a~~ finding ~~or acknowledgement~~ that the Lawyer has engaged in professional
4 misconduct.

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

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

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

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

17 (d) **Interim suspension or interim discipline.** Interim suspension ~~is the temporarily~~
18 ~~suspension of~~ a Lawyer from the practice of law. Interim suspension or interim
19 discipline may be imposed as set forth in Rules ~~14-518~~11-563 and ~~14-519~~11-564.

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

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

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

Commented [LL41]: Recommendation 7.2

1 (1) Requirements. To be placed on probation, a Respondent must demonstrate
2 that the Respondent:

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

5 (B) is unlikely to harm the public during the period of rehabilitation and
6 the necessary conditions of probation can be adequately supervised;

7 (C) has a disability which is temporary or minor and does not require
8 treatment and transfer to disability status;

9 (D) has not committed acts involving dishonesty, fraud, deceit, or
10 misrepresentation; and

11 (E) has not committed acts warranting delicensure.

12 (2) Conditions. Probation may include the following conditions:

13 (A) no further violations of the Rules of Professional Conduct or Licensed
14 Paralegal Practitioner Rules of Professional Conduct;

15 (B) restitution;

16 (C) assessment of costs;

17 (D) limitation on practice;

18 (E) requirement that the Lawyer pass the Multistate Professional
19 Responsibility Exam;

20 (F) requirement that the Lawyer take continuing legal education courses;

21 (G) mental health counseling and treatment;

22 (H) abstinence from drugs and alcohol;

23 (I) medical evaluation and treatment;

24 (J) periodic reports to the court and the OPC; and

1 (K) monitoring of all or part of Respondent's work by a supervising
2 attorney.

3 (3) Costs. The Respondent is responsible for all costs of evaluation, treatment,
4 and supervision. Failing to pay these costs before probation terminates is a
5 violation of probation.

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

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

16 (h) Diversion. Diversion is an alternative to a sanction if completed. Diversion allows a
17 Lawyer to practice law under specified conditions. Diversion may be public or non-
18 public.

Commented [LL42]: Recommendation 6.1.

19 (1) Rule 11-550 governs diversion matters before the matter is submitted to a
20 screening panel.

21 (2) For an Action, the following criteria will determine the appropriateness of a
22 diversion:

23 (A) The misconduct does not involve the misappropriation of funds or
24 property; fraud, dishonesty, deceit or misrepresentation; or the
25 commission of a misdemeanor adversely reflecting on the Lawyer's fitness
26 to practice law or any felony;

(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

(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.

(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 physical or mental condition beyond the Respondent's control and whether there is sufficient evidence connecting the condition to the misconduct.

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

(5) If the Lawyer completes the diversion conditions, the Action will be dismissed with prejudice.

(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.

(hi) Resignation with discipline pending. Resignation with discipline pending is a form of public discipline ~~which~~ that allows a ~~r~~Respondent to resign from the practice of law while either ~~a~~an informal or formal Complaint or Action is pending against the ~~r~~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:

- (1) restitution;
- (2) assessment of costs;
- (3) limitation upon practice;

- 1 ~~i~~(4) appointment of a receiver;
- 2 ~~i~~(5) a requirement that the Lawyer take the Bar Examination or professional
- 3 responsibility examination; and
- 4 ~~i~~(6) a requirement that the Lawyer attend continuing education courses.
- 5 ~~(i)~~ **Reciprocal discipline.** Reciprocal discipline ~~is the imposition of~~ is imposing a
- 6 disciplinary sanction on a Lawyer who has been disciplined in another court, another
- 7 jurisdiction, or a regulatory body having disciplinary jurisdiction.

8

1 **Rule ~~14-604~~11-582. Factors to be considered in imposing sanctions.**

2 (a) The Committee and the court must consider the following factors in imposing
3 sanctions after a finding of Lawyer misconduct.~~The following factors should be~~
4 ~~considered in imposing a sanction after a finding of lawyer misconduct:~~

5 (1) the presumptive sanction based on:

6 (A) the duty violated;

7 (B) the Lawyer's mental state;

8 (C) the potential or actual injury caused by the Lawyer's misconduct;~~a~~
9 and

10 (2) the existence of aggravating or mitigating factors.

11 (b) Multiple charges of misconduct.

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

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

1 **Rule ~~14-605~~11-583. Imposition of sanctions.** Sanctions for violating duties owed to
2 clients.

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

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

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

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

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

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

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

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

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

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

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

7 (1) Delicensure is generally appropriate when a Lawyer, without the informed
8 consent of client(s):

9 (A) engages in representation of a client knowing that the Lawyer's
10 interests are adverse to the client's with the intent to benefit the Lawyer or
11 another, and causes serious or potentially serious injury to the client;

12 (B) simultaneously represents clients that the Lawyer knows have adverse
13 interests with the intent to benefit the Lawyer or another, and causes
14 serious or potentially serious injury to a client; or

15 (C) represents a client in a matter substantially related to a matter in
16 which the interests of a present or former client are materially adverse,
17 and knowingly uses information relating to the representation of a client
18 with the intent to benefit the Lawyer or another, and causes serious or
19 potentially serious injury to a client.

20 (2) Suspension is generally appropriate when a Lawyer knows of a conflict of
21 interest and does not fully disclose to a client the possible effect of that conflict,
22 and causes injury or potential injury to a client.

23 (3) Reprimand is generally appropriate when a Lawyer is negligent in
24 determining whether the representation of a client may be materially affected by
25 the Lawyer's own interests, or whether the representation will adversely affect
26 another client, and causes injury or potential injury to a client.

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

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

(1) Delicensure is generally appropriate when:

(A) a Lawyer abandons the practice and causes serious or potentially serious injury to a client;

(B) a Lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or

(C) a Lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.

(2) Suspension is generally appropriate when:

(A) a Lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or

(B) a Lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

(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.

(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:

1 (1) Delicensure is generally appropriate when a Lawyer's course of conduct
2 demonstrates that the Lawyer does not understand the most fundamental legal
3 doctrines or procedures, and the Lawyer's conduct causes injury or potential
4 injury to a client.

5 (2) Suspension is generally appropriate when a Lawyer engages in an area of
6 practice in which the Lawyer knows the Lawyer is not competent, and causes
7 injury or potential injury to a client.

8 (3) Reprimand is generally appropriate when a Lawyer:

9 (A) demonstrates failure to understand relevant legal doctrines or
10 procedures and causes injury or potential injury to a client, or

11 (B) is negligent in determining whether the Lawyer is competent to handle
12 a legal matter and causes injury or potential injury to a client.

13 (4) Admonition is generally appropriate when a Lawyer engages in an isolated
14 instance of negligence in determining whether the Lawyer is competent to
15 handle a legal matter, and causes little or no actual or potential injury to a client.

16 (f) **Lack of candor.** The following sanctions are generally appropriate in cases where a
17 Lawyer engages in fraud, deceit, or misrepresentation directed toward a client:

18 (1) Delicensure is generally appropriate when a Lawyer knowingly deceives a
19 client with the intent to benefit the Lawyer or another, and causes serious or
20 potentially serious injury to a client.

21 (2) Suspension is generally appropriate when a Lawyer knowingly deceives a
22 client, and causes injury or potential injury to the client.

23 (3) Reprimand is generally appropriate when a Lawyer negligently fails to
24 provide a client with accurate or complete information, and causes injury or
25 potential injury to the client.

(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, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution, or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses; or~~

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

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

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

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

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

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

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

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

~~(d)(1) negligently engages in professional misconduct as defined in Rule 8.4(a), (d), (e), or (f) of the Rules of Professional Conduct and causes little or no injury to a party, the public, or the legal system or interference with a legal proceeding, but exposes a party, the public, or the legal system to potential injury or causes potential interference with a legal proceeding; or~~

~~(d)(2) engages in any professional misconduct not otherwise identified in this rule that 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.

(1) Delicensure is generally appropriate when:

(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

(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.

(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.

(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.

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

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

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

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

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

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

(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.

(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.

(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.

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

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

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

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

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

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

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

19 (1) Delicensure is generally appropriate when a Lawyer:

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

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

1 (C) improperly communicates with someone in the legal system other
2 than a witness, judge, or juror with the intent to influence or affect the
3 outcome of the proceeding, and causes significant or potentially
4 significant interference with the outcome of the legal proceeding.

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

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

14 (4) Admonition is generally appropriate when a Lawyer engages in an isolated
15 instance of negligence in improperly communicating with an individual in the
16 legal system, and causes little or no: (A) actual or potential injury to a party, or
17 (B) actual or potential interference with the outcome of the legal proceeding.
18

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.

Rule ~~14-606~~11-587. Prior discipline orders.

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

(a) Delicensure is generally appropriate when a Lawyer:

(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

(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:

(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

(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 severe than the sanction the lawyer previously received, provided that the harm requisite for the higher sanction is present.

1 **Rule ~~14-607~~11-588. Aggravation and mitigation.**

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

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

8 Aggravating circumstances may include:

- 9 (1) prior record of discipline;
- 10 (2) dishonest or selfish motive;
- 11 (3) a pattern of misconduct;
- 12 (4) multiple offenses;
- 13 (5) obstruction of the disciplinary proceeding by intentionally failing to comply
14 with rules or orders of the disciplinary authority;
- 15 (6) submission of false evidence, false statements, or other deceptive practices
16 during the disciplinary process;
- 17 (7) refusal to acknowledge the wrongful nature of the misconduct involved,
18 either to the client or to the disciplinary authority;
- 19 (8) vulnerability of victim;
- 20 (9) substantial experience in the practice of law;
- 21 (10) lack of good faith effort to make restitution or to rectify the consequences of
22 the misconduct involved; and
- 23 (11) illegal conduct, including the use of controlled substances.

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

- (1) absence of a prior record of discipline;
- (2) absence of a dishonest or selfish motive;
- (3) personal or emotional problems;
- (4) timely good faith effort to make restitution or to rectify the consequences of the misconduct involved;
- (5) full and free disclosure to the client or the disciplinary authority prior to the discovery of any misconduct or cooperative attitude toward proceedings;
- (6) inexperience in the practice of law;
- (7) good character or reputation;
- (8) physical disability;
- (9) mental disability or impairment, including substance abuse when:
 - (A) the ~~R~~espondent is affected by a substance abuse or mental disability; and
 - (B) the substance abuse or mental disability causally contributed to the misconduct; and
 - (C) the ~~R~~espondent's recovery from the substance abuse or mental disability is demonstrated by a meaningful and sustained period of successful rehabilitation; and
 - (D) the recovery arrested the misconduct and the recurrence of that misconduct is unlikely;
- (10) unreasonable delay in disciplinary proceedings, provided that the ~~R~~espondent did not substantially contribute to the delay and provided further that the ~~R~~espondent has demonstrated prejudice resulting from the delay;
- (11) interim reform in circumstances not involving mental disability or impairment;
- (12) imposition of other penalties or sanctions;

(13) remorse; and

(14) remoteness of prior offenses.

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

(1) forced or compelled restitution;z

(2) withdrawal of ~~e~~Complaint against the ~~L~~lawyer;z

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

(4) ~~e~~Complainant's recommendation as to sanction;z and

(5) failure of injured client to complain.

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 ~~upon~~ 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.

1 **Rule ~~14-525~~11-591. Reinstatement following a suspension of more than six months;**
2 **~~readmission~~relicensure.**

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

13 (b) **Petition.** A petition for reinstatement or ~~readmission~~ relicensure ~~shall must~~ be
14 verified, filed with the district court, and ~~shall must~~ specify with particularity the
15 manner in which the ~~Respondent~~ Respondent meets each of the criteria specified in paragraph (e)
16 or, if not, why there is otherwise good and sufficient reason for reinstatement or
17 ~~readmission~~ relicensure. With specific reference to paragraph (e)(4), ~~prior to the~~ before
18 filing ~~of a~~ petition for reinstatement or readmission relicensure, the ~~Respondent~~ Respondent must
19 receive a report and recommendation from the Bar's Character and Fitness Committee.
20 In addition to receiving the report and recommendation from the Character and Fitness
21 Committee, the ~~Respondent~~ Respondent must satisfy all other requirements as set forth in Chapter
22 14, Article 7, Admissions. ~~Prior to Before~~ or as part of the ~~Respondent's~~ Respondent's petition, the
23 ~~Respondent~~ Respondent may request to modification or ~~abatement of~~ conditions of discipline,
24 reinstatement or ~~readmission~~ relicensure.

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

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

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

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

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

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

(A) the ~~Respondent~~ is applying for reinstatement or ~~readmission~~ relicensure, and

(B) ~~shall inform each complainant that the eComplainant 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.

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

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

(3) If the Respondent was suffering from a physical or mental disability or impairment which was a causative factor of the Respondent's misconduct,

1 including substance abuse, the disability or impairment has been removed.

2 Where substance abuse was a causative factor in the ~~Respondent's~~ misconduct,
3 the ~~Respondent~~ ~~shall~~may not be reinstated or ~~readmitted~~ relicensed unless the
4 Respondent:

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

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

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

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

20 (A) Factors considered in determining honesty, integrity, and fitness for
21 reinstatement or relicensure. The court must determine whether the
22 Lawyer seeking reinstatement or relicensure has demonstrated the
23 requisite honesty, integrity, and fitness to practice law. The court may
24 consider the Respondent's actions taken during the suspension or
25 delicensure including:

26 (i) lack of candor;

27 (ii) unlawful conduct;

- (iii) false or misleading statements or omissions;
- (iv) acts involving dishonesty, fraud, deceit, or misrepresentation;
- (v) abuse of the legal process;
- (vi) neglecting financial responsibilities;
- (vii) violating court order;
- (viii) evidence of mental or emotional instability; and
- (ix) evidence of drug or alcohol dependency;

(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:

- (i) how recent the conduct occurred,
- (ii) seriousness of the conduct,
- (iii) cumulative effect of the conduct,
- (iv) evidence of rehabilitation, and
- (v) positive social contributions while suspended.

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

(6) In cases of suspensions for one year or more, ~~the a R~~espondent ~~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.

(7) In all cases of ~~disbarment~~delicensure, ~~the a R~~espondent ~~lawyer 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.

(8) The ~~r~~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 ~~r~~Respondent's conduct.

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

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

(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 ~~r~~Respondent ~~shall~~ will have the burden of demonstrating by a preponderance of the evidence that the ~~r~~Respondent has met each of the criteria in paragraph (e) or, if not, that there is good and sufficient reason why the ~~r~~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 ~~r~~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 ~~r~~Respondent's reinstatement or ~~readmission~~ relicensure if the ~~r~~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 ~~r~~Respondent's returns to practice.

1 (j) **Reciprocal reinstatement or ~~readmission~~relicensure**. If a ~~r~~Respondent has been
2 suspended or ~~disbarred-delicensed~~ solely ~~on the basis~~because of discipline imposed by
3 another court, another jurisdiction, or a regulatory body having disciplinary
4 jurisdiction, and if the ~~r~~Respondent is later reinstated or ~~readmitted~~relicensed by that
5 court, jurisdiction or regulatory body, the ~~r~~Respondent may petition for reciprocal
6 reinstatement or ~~readmission~~relicensure in Utah. The ~~r~~Respondent ~~shall~~must file with
7 the district court and serve~~upon the~~ OPC~~counsel with~~ a petition for reciprocal
8 reinstatement or ~~readmission~~relicensure, ~~as the case may be~~. The petition ~~shall~~must
9 include a certified or otherwise authenticated copy of the order of reinstatement or
10 ~~readmission~~relicensure from the other court, jurisdiction, or regulatory body. Within
11 ~~20~~1 days of ~~receiving service of~~ the petition, ~~the~~ OPC~~counsel~~ may ~~file an~~ objection
12 ~~thereto~~ based solely ~~upon~~ substantial procedural irregularities. If ~~an objection is filed~~the
13 OPC objects, the district court ~~shall~~will hold a hearing and enter its findings and order.
14 If no objection is filed, the district court ~~shall~~will enter its order based ~~upon~~ the
15 petition.

16

Draft: July 28, 2020

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

Chapter 15 Rules Governing Licensed Paralegal Practitioners

Article 5. Licensed Paralegal Practitioner Discipline and Disability

Rule 15-501. Purpose, authority, scope and structure of licensed paralegal practitioner disciplinary and disability proceedings.

(a) The purpose of licensed paralegal practitioner 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 licensed paralegal practitioners 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.

(c) All disciplinary proceedings shall be conducted in accordance with this article and Article 6, Standards for Imposing Licensed Paralegal Practitioner Sanctions. Formal disciplinary and disability proceedings are civil in nature. These rules shall 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.

Commented [LL43]: All Chapter 15, Articles 5 and 6 rules have been incorporated into the Chapter 11, Article 5 rules.

Rule 15-502. Definitions.

As used in this article:

(a) "Bar" means the Utah State Bar;

(b) "Board" means the Board of Commissioners of the Utah State Bar;

(c) "Committee" means the Ethics and Discipline Committee of the Utah Supreme Court;

(d) "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;

(e) "formal complaint" means a complaint filed in the district court alleging misconduct by a licensed paralegal practitioner or seeking the transfer of a licensed paralegal practitioner to disability status;

(f) "informal complaint" means any written, notarized allegation of misconduct by or incapacity of a licensed paralegal practitioner which also contains a verification attesting to the accuracy of the information provided;

(g) "Lawyer Rule" or "Lawyer Rules" means the rules of Lawyer Discipline and Disability in Chapter 14, Article 5 of the Rules of Professional Practice of the Supreme Court.

(h) "NOIC" means Notice of Informal Complaint sent to the respondent after a preliminary investigation;

(i) "OPC" means the Bar's Office of Professional Conduct;

(j) "OPC counsel" means senior counsel and any assistant counsel employed to assist senior counsel;

(k) "respondent" means a licensed paralegal practitioner subject to the disciplinary jurisdiction of the Utah Supreme Court against whom an informal or formal complaint has been filed;

- 1 ~~(l) "Licensed Paralegal Practitioner Rules of Professional Conduct" means the rules in~~
- 2 ~~Article 12, Licensed Paralegal Practitioner Rules of Professional Conduct;~~
- 3 ~~(m) "Rule" means, except where indicated otherwise, one of the rules of Licensed~~
- 4 ~~Paralegal Practitioner Discipline and Disability;~~
- 5 ~~(n) "screening panel" means members of the Committee who participate in hearings~~
- 6 ~~and make determinations under Rule 15-503;~~
- 7 ~~(o) "senior counsel" means the lawyer appointed by the Board to manage the OPC; and~~
- 8 ~~(p) "Supreme Court" means the Utah Supreme Court.~~

1 **Rule 15-503. Ethics and Discipline Committee.**

2 ~~(a) Rule 14-503 of the Lawyer Rules is incorporated with regard to licensed paralegal~~
3 ~~practitioners as Rule 15-503 and shall apply to complaints involving licensed paralegal~~
4 ~~practitioners.~~

5 ~~(b) Whenever a screening panel is assigned a complaint involving a licensed paralegal~~
6 ~~practitioner, the Committee chair may appoint up to two licensed paralegal~~
7 ~~practitioners to the screening panel. A licensed paralegal practitioner member shall be a~~
8 ~~voting member, and shall have all of the responsibilities and duties of other members of~~
9 ~~the screening panel.~~

Draft: July 28, 2020

- 1 **Rule 15-504. OPC counsel.**
- 2 ~~Lawyer Rule 14-504 is incorporated with regard to licensed paralegal practitioners as~~
- 3 ~~Rule 15-504. All provisions of Lawyer Rule 14-504 shall apply to licensed paralegal~~
- 4 ~~practitioners as they do to lawyers.~~

Draft: July 28, 2020

1 **Rule 15-505. Reserved.**

Rule 15-506. Jurisdiction.

~~(a) Persons practicing as a licensed paralegal practitioner. The persons subject to the disciplinary jurisdiction of the Supreme Court and the OPC include any licensed paralegal practitioner, and any formerly licensed paralegal practitioner with respect to acts committed while licensed 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 licensed paralegal practitioner was licensed to practice or was practicing law at the time of the alleged violation, and any other person not licensed in Utah who practices law as a licensed paralegal practitioner or who renders or offers to render any legal services as a licensed paralegal practitioner in Utah.~~

~~(b) Reserved.~~

~~(c) Reserved.~~

~~(d) Reserved.~~

Draft: July 28, 2020

1 **Rule 15-507. Reserved.**

Rule 15-508. Periodic assessment of licensed paralegal practitioners.

(a) Annual licensing fee. Every licensed paralegal practitioner licensed 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 licensed paralegal practitioner who practices law after failure to renew his or her license violates the Licensed Paralegal Practitioner 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 licensed paralegal practitioner at the designated mailing address on record at the Bar and to the state courts in Utah. The non-complying licensed paralegal practitioner may apply in writing for relicensure by tendering the license fees and/or the required information and an additional \$100 reinstatement fee. Upon receiving the same, the Bar shall order relicensure and so notify the courts. Relicensure based on failure to renew does not negate any orders of discipline.

- 1 **Rule 15-509. Grounds for discipline.**
- 2 ~~It shall be a ground for discipline for a licensed paralegal practitioner to:~~
- 3 ~~(a) violate the Licensed Paralegal Practitioner Rules of Professional Conduct;~~
- 4 ~~(b) willfully violate a valid order of a court or a screening panel imposing discipline;~~
- 5 ~~(c) be publicly disciplined in another jurisdiction;~~
- 6 ~~(d) fail to comply with the requirements of Rule 15-526(d); or~~
- 7 ~~(e) fail to notify the OPC of public discipline in another jurisdiction in accordance with~~
- 8 ~~Rule 15-522(a).~~

Rule 15-510. Prosecution and appeals.

(a) Informal complaint of unprofessional conduct.

(a)(1) Filing. A disciplinary proceeding may be initiated against any licensed paralegal practitioner by any person, OPC counsel or the Committee, by filing with the Bar, in writing, an informal complaint in ordinary, plain and concise language setting forth the acts or omissions claimed to constitute unprofessional conduct. Upon filing, an informal complaint shall be processed in accordance with this article.

(a)(2) Form of informal complaint. The informal complaint need not be in any particular form or style and may be by letter or other informal writing, although a form may be provided by the OPC to standardize the informal complaint format. It is unnecessary that the informal complaint recite disciplinary rules, ethical canons or a prayer requesting specific disciplinary action. The informal complaint shall be signed by the complainant and shall set forth the complainant's address, and may list the names and addresses of other witnesses. The informal complaint shall be notarized and contain a verification attesting to the accuracy of the information contained in the complaint. In accordance with Rule 15-504(b), complaints filed by OPC are not required to contain a verification. The substance of the informal complaint shall prevail over the form.

(a)(3) Initial investigation. Upon the filing of an informal complaint, OPC counsel shall conduct a preliminary investigation to ascertain whether the informal complaint is sufficiently clear as to its allegations. If it is not, OPC counsel shall seek additional facts from the complainant; additional facts shall also be submitted in writing and signed by the complainant.

(a)(4) Potential Referral to Professionalism Counseling Board. In connection with any conduct that comes to their 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 Counseling Board

1 established pursuant to Rule 14-303. Such referral may be in addition to or in
2 lieu of any further proceedings related to the subject matter of the referral. Such
3 referral should be in writing and, at the discretion of OPC counsel, may include
4 any or all information included in an informal complaint or additional facts
5 submitted by a complainant.

6 (a)(5) Notice of informal complaint. Upon completion of the
7 preliminary investigation, OPC counsel shall determine whether the informal
8 complaint can be resolved in the public interest, the respondent's interest and the
9 complainant's interest. OPC counsel and/or the screening panel may use their
10 efforts to resolve the informal complaint. If the informal complaint cannot be so
11 resolved or if it sets forth facts which, by their very nature, should be brought
12 before the screening panel, or if good cause otherwise exists to bring the matter
13 before the screening panel, OPC counsel shall cause to be served a NOIC by
14 regular mail upon the respondent at the address reflected in the records of the
15 Bar. The NOIC shall have attached a true copy of the signed informal complaint
16 against the respondent and shall identify with particularity the possible
17 violation(s) of the Licensed Paralegal Practitioner Rules of Professional Conduct
18 raised by the informal complaint as preliminarily determined by OPC counsel.

19 (a)(6) Answer to informal complaint. Within 20 days after service of the NOIC on
20 the respondent, the respondent shall file with OPC counsel a written and signed
21 answer setting forth in full an explanation of the facts surrounding the informal
22 complaint, together with all defenses and responses to the claims of possible
23 misconduct. For good cause shown, OPC counsel may extend the time for the
24 filing of an answer by the respondent not to exceed an additional 30 days. Upon
25 the answer having been filed or if the respondent fails to respond, OPC counsel
26 shall refer the case to a screening panel for investigation, consideration and
27 determination or recommendation. OPC counsel shall forward a copy of the
28 answer to the complainant.

(a)(7) Dismissal of informal complaint. An informal complaint which, upon consideration of all factors, is determined by OPC counsel to be frivolous, unintelligible, barred by the statute of limitations, more adequately addressed in another forum, unsupported by fact or which does not raise probable cause of any unprofessional conduct, or which OPC declines to prosecute may be dismissed by OPC counsel without hearing by a screening panel. OPC counsel shall notify the complainant of such dismissal stating the reasons therefor. The complainant may appeal a dismissal by OPC counsel by filing written notice with the Clerk of the Committee within 15 days after notification of the dismissal is mailed. Upon appeal, the Committee chair shall conduct a de novo review of the file, either affirm the dismissal or require OPC counsel to prepare a NOIC, and set the matter for hearing by a screening panel. In the event of the chair's recusal, the chair shall appoint the vice chair or one of the screening panel chairs to review and determine the appeal.

(b) Proceedings before Committee and screening panels.

(b)(1) Review and investigation. In their role as fact finders and investigators, screening panels shall review all informal complaints referred to them by OPC counsel, including all the facts developed by the informal complaint, answer, investigation and hearing, and the recommendations of OPC counsel. Prior to any hearing OPC may file with the clerk and serve on the respondent a summary of its investigation. If filed, the summary shall identify with particularity any additional violations of the Licensed Paralegal Practitioner Rules of Professional Conduct as subsequently determined by OPC after service of the NOIC. If provided to the screening panel, the summary shall also be provided to the respondent and shall serve as notice of any additional violations not previously charged by OPC in the NOIC. If additional rule violations are alleged in the summary, the summary shall be served on the respondent no less than seven days prior to the hearing. In cases where a judicial officer has not addressed or reported a respondent's alleged misconduct, the screening panel should not

1 consider this inaction to be evidence either that misconduct has occurred or has
2 not occurred.

3 (b)(2) Respondent's appearance. Before any action is taken that may result in the
4 recommendation of an admonition or public reprimand or the filing of a formal
5 complaint, the screening panel shall, upon at least 30 days' notice, afford the
6 respondent an opportunity to appear before the screening panel. Respondent
7 and any witnesses called by the respondent may testify, and respondent may
8 present oral argument with respect to the informal complaint. Respondent may
9 also submit a written brief to the screening panel at least 10 days prior to the
10 hearing, which shall not exceed 10 pages in length unless permission for
11 enlargement is extended by the panel chair or vice chair for good cause shown.
12 A copy of the brief shall be forwarded by OPC counsel to the complainant. If
13 OPC identifies additional rule violations in the summary referenced in (b)(1), the
14 respondent may file an additional written response addressing those alleged
15 violations prior to the hearing.

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

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

28 (b)(5) Rule Violations Not Charged by OPC. During the screening panel hearing,
29 but not after, the panel may find that rule violations not previously charged by

1 OPC in the NOIC or summary memorandum have occurred. If so, the screening
2 panel shall give the respondent a reasonable opportunity to respond during the
3 hearing. The respondent may address the additional charges at the hearing and
4 also file with the Clerk and serve on OPC within two business days of the
5 hearing a written response to the new charges along with supplemental materials
6 related to the new charges. Prior to making a determination or recommendation,
7 the response and any supplemental materials shall be reviewed and considered
8 by at least a quorum of the panel members present at the original hearing.

9 (b)(6) Hearing Record. The proceedings of any hearing before a screening panel
10 under this subsection (b) shall be recorded at a level of audio quality that permits
11 an accurate transcription of the proceedings. The Clerk shall assemble a complete
12 record of the proceedings and deliver it to the chair of the Committee upon the
13 rendering of the panel's determination or recommendation to the Committee
14 chair. The record of the proceedings before the panel shall be preserved for not
15 less than one year following delivery of the panel's determination or
16 recommendation to the chair of the Committee and for such additional period as
17 any further proceedings on the matter are pending or might be instituted under
18 this section.

19 (b)(7) Screening panel determination or recommendation. Upon review of all the
20 facts developed by the informal complaint, answer, investigation and hearing,
21 the screening panel shall make one of the following determinations or
22 recommendations:

23 (b)(7)(A) The preponderance of evidence presented does not establish that
24 the respondent was engaged in misconduct, in which case the informal
25 complaint shall be dismissed. A letter of caution may also be issued with
26 the dismissal. The letter shall be signed by OPC counsel or the screening
27 panel chair and shall serve as a guide for the future conduct of the
28 respondent. The complainant shall also be confidentially notified of the
29 caution;

(b)(7)(B) The informal complaint shall be referred to the Diversion Committee for diversion. In this case, the specific material terms of the Diversion Contract agreed to by the respondent are to be recorded as a part of the screening panel record, along with any comments by the complainant. The screening panel shall have no further involvement in processing the diversion. The Diversion Committee shall process the diversion in accordance with Rule 15-533.

(b)(7)(C) The informal complaint shall be referred to the Professionalism Counseling Board established pursuant to the Supreme Court's Standing Order No. 7;

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

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

(b)(7)(F) A formal complaint shall be filed against the respondent if the panel finds there is probable cause to believe there are grounds for public discipline and that a formal complaint is merited. A formal complaint shall also be filed if the panel finds there was misconduct and the misconduct is similar to the misconduct alleged in a formal complaint against the respondent that has been recommended by a screening panel or is pending in district court at the time of the hearing.

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

~~(b)(9) Multiple cases involving the same respondent. More than one case involving the same respondent may be scheduled before the same panel. In determining whether a rule has been violated in one case, a screening panel shall not consider the fact it may be hearing multiple cases against the same respondent.~~

~~(b)(10) Recommendation of admonition or public reprimand. A screening panel recommendation that the respondent should be disciplined under subsection (b)(7)(D) or (b)(7)(E) shall be in writing and shall state the substance and nature of the informal complaint and defenses and the basis upon which the screening panel has concluded, by a preponderance of the evidence, that the respondent should be admonished or publicly reprimanded. A copy of the recommendation shall be delivered to the Committee chair and a copy served upon the respondent and OPC.~~

~~(c) Exceptions to screening panel determinations and recommendations. Within 30 days after the date of service of the determination 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, OPC may file with the Clerk of the Committee exceptions to the determination or recommendation and may request a hearing. The respondent shall then have 30 days within which to make a response, and the response shall include respondent's exceptions, if any, to a recommendation of an admonition or reprimand. Within 30 days after service of the recommendation of an admonition or public reprimand on respondent, the respondent may file with the Clerk of the Committee exceptions to the recommendation and may request a hearing, and OPC shall have 30 days within which to file a response. The Committee chair may allow a reply to any response. No exception may be filed to a screening panel determination that a formal complaint shall be filed against a respondent pursuant to Rule 15-511. All exceptions shall include a memorandum, not to exceed 20 pages, stating the grounds for review, the relief requested and the bases in law or in fact for the exceptions.~~

~~(d) Procedure on exceptions.~~

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

~~(d)(2) Hearing requested. If a request for a hearing is made, the Committee chair or a screening panel chair designated by the Committee chair shall 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.~~

~~(d)(3) Transcript Request. Upon request the Committee chair shall extend the deadlines for filing exceptions or responses in order to allow a party time to obtain a transcript of the screening panel proceedings. The cost of such transcript shall be borne by the requesting party. The party obtaining the transcript shall file it with the Clerk, together with an affidavit establishing the chain of custody of the record.~~

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

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

~~(e) Final Committee disposition. Either upon the completion of the exceptions procedure under subsection (d) or if no exceptions have been filed under subsection (c), the Committee chair shall issue a final, written determination that either sustains, dismisses, or modifies the determination or recommendation of the screening panel. No final written determination is needed by the Committee chair to a screening panel determination to a dismissal, a dismissal with a letter of caution, or a referral to the Diversion Committee if no exception is filed.~~

~~(f) Appeal of a final Committee determination.~~

~~(f)(1) Within 30 days after service of a final, written determination of the Committee chair under subsection (c), the respondent or OPC may file a request for review by the Supreme Court seeking reversal or modification of the final determination of the Committee. A request for review under this subsection shall only be available in cases where exceptions have been filed under subsection (c). Dissemination of disciplinary information pursuant to Rules 15-504(b)(12) or 15-516 shall be automatically stayed during the period within which a request for review may be filed under this subsection. If a timely request for review is filed, the stay shall remain in place pending resolution by the Supreme Court unless the Court otherwise orders.~~

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

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

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

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

~~(f)(5)(A) Based on a determination of fact that is not supported by substantial evidence when viewed in light of the whole record before the Court;~~

~~(f)(5)(B) An abuse of discretion;~~

~~(f)(5)(C) Arbitrary or capricious; or~~

~~(f)(5)(D) Contrary to Articles 5 and 6 of Chapter 15, Rules Governing
Licensed Paralegal Practitioners.~~

~~(g) General procedures.~~

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

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

~~(g)(3) Continuance of disciplinary proceedings. A disciplinary proceeding may
be held in abeyance by the Committee chair 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.~~

Rule 15-511. Proceedings subsequent to finding of probable cause.

(a) Commencement of action. If the screening panel finds probable cause to believe that there are grounds for public discipline and that a formal complaint is merited, OPC counsel shall prepare and file with the district court a formal complaint setting forth in plain and concise language the facts upon which the charge of unprofessional conduct is based and the applicable provisions of the Licensed Paralegal Practitioner Rules of Professional Conduct. The 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.

(b) Venue. The action shall be brought and the trial shall be held in the county in which an alleged offense occurred or in the county where the respondent resides or practices law as a licensed paralegal practitioner or last practiced law as a licensed paralegal practitioner 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 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 be styled "In the Matter of the Discipline of (name of respondent and respondent's license number), Respondent."

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

(d)(1) Notice of change. The respondent or OPC counsel may, by filing a notice indicating the name of the assigned judge, the date on which the formal complaint was filed, and that a good faith effort has been made to serve all parties, change the judge assigned to the case. The notice shall not specify any reason for the change of judge. The party filing the notice shall 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

1 ~~district, which request shall be granted. Under no circumstances shall more than~~
2 ~~one change of judge be allowed to each party under this rule.~~

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

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

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

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

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

26 ~~(g) Review. Any discipline order by the district court may be reviewed by the Supreme~~
27 ~~Court through a petition for review pursuant to the Utah Rules of Appellate Procedure.~~

- 1 **Rule 15-512. Sanctions.**
- 2 ~~The imposition of sanctions against a respondent who has been found to have engaged~~
- 3 ~~in misconduct shall be governed by Chapter 6, Article 15, Standards for Imposing~~
- 4 ~~Licensed Paralegal Practitioner Sanctions.~~

1 **Rule 15-513. Immunity from civil suits.**

2 Participants in proceedings conducted under this article shall be entitled to the same
3 protections for statements made in the course of the proceedings as participants in
4 judicial proceedings. The district courts, Committee members, supervising attorneys
5 engaged in pro bono assistance, trustees appointed pursuant to Rule 15-527, and OPC
6 counsel and staff shall be immune from suit, except as provided in Utah Rules of Civil
7 Procedure 65A and 65B, for any conduct committed in the course of their official duties,
8 including the investigatory stage. There is no immunity from civil suit for intentional
9 misconduct.

1 **Rule 15-514. Service.**

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

Rule 15-515. Access to disciplinary information.

~~(a) Confidentiality. Prior to the filing of a formal complaint or the issuance of a public reprimand pursuant to Rule 15-510 in a discipline matter, the proceeding is confidential, except that 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 not be deemed 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 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 licensed paralegal practitioner sanctions hearing;~~
- ~~(a)(4) a referral is made to the Professionalism Counseling Board pursuant to Rule 15-510 (a)(4) or (b)(7)(C). In the event of such a referral, OPC counsel, members of the Committee and of any screening panel, and members of the Professionalism Counseling Board 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 a formal complaint in a discipline matter, the filing of a petition for reinstatement, or the filing of a motion or petition for interim suspension, the proceeding 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 protect the interest of a complainant, witness, third party, or respondent, the district court may, upon application of any person 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 confidential, other than as authorized for disclosure under paragraph (a), unless:~~

~~(e)(1) the request for information is made by the Board, any Bar committee, a committee or consultant appointed by the Supreme Court or the Board to review OPC operations, or the executive director, and is required in the furtherance of their duties; or~~

~~(e)(2) the request for information is approved by OPC counsel and there is compliance with the provisions of paragraphs (f) and (g) of this rule.~~

~~(f) Notice to the respondent. Except as provided in paragraph (g), if the Committee decides to provide nonpublic information requested pursuant to paragraph (e), and if the respondent has not signed an express written waiver permitting the party requesting the information to obtain the nonpublic information, the respondent shall be notified in writing at the respondent's last known designated mailing address as shown by Bar records of that information which has been requested and by whom, together with a copy of the information proposed to be released. The notice shall advise the respondent that the information shall be released at the end of 21 days following mailing of the notice unless the respondent objects to the disclosure. If the respondent timely objects to the disclosure, the information shall 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~~

1 ~~information, and requests that the information be released without giving notice to the~~
2 ~~respondent, the requesting party shall certify that:~~

3 ~~(g)(1) the request is made in furtherance of an ongoing investigation into~~
4 ~~misconduct by the respondent;~~

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

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

8 ~~(h) OPC counsel can disclose nonpublic information without notice to the respondent if:~~

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

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

13 ~~(i) Duty of participants. All participants in a proceeding under these rules shall conduct~~
14 ~~themselves so as to maintain confidentiality. Except as authorized by other statutes or~~
15 ~~rules, persons receiving private records under paragraph (e) will not provide access to~~
16 ~~the records to anyone else.~~

Rule 15-516. Dissemination of disciplinary information.

~~(a) Notice to disciplinary agencies. The OPC shall transmit 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 admitted or licensed.~~

~~(b) Notice to the public. The executive director shall cause notices of admonition, public reprimand, suspension, delicensure, resignation with discipline pending, transfer to disability status and petitions for reinstatement or relicensure to be published in the Utah Bar Journal. The executive director also shall cause notices of suspension, delicensure, resignation with discipline pending, transfer to disability status and petitions for reinstatement or relicensure 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 as a licensed paralegal practitioner.~~

~~(c) Notice to the courts. The executive director shall promptly cause transmittal of notices of suspension, delicensure, resignation with discipline pending, transfer to or from disability status, reinstatement or relicensure to all state courts in Utah.~~

1 **Rule 15-517. Additional rules of procedure.**

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

5 ~~(b) Standard of proof. Formal complaints of misconduct, petitions for reinstatement~~
6 ~~and relicensure, and petitions for transfer to and from disability status shall be~~
7 ~~established by a preponderance of the evidence. Motions for interim suspension~~
8 ~~pursuant to Rule 15-518 shall be established by clear and convincing evidence.~~

9 ~~(c) Burden of proof. The burden of proof in proceedings seeking discipline or transfer to~~
10 ~~disability status is on the OPC. The burden of proof in proceedings seeking a reversal of~~
11 ~~a screening panel recommendation of discipline, or seeking reinstatement, relicensure,~~
12 ~~or transfer from disability status is on the respondent.~~

13 ~~(d) Related pending litigation. Upon a showing of good cause, a formal action or a~~
14 ~~disability proceeding may be stayed because of substantial similarity to the material~~
15 ~~allegations of a pending criminal, civil, or disciplinary action.~~

16 ~~(e) The complainant's actions. Neither unwillingness of the complainant to prosecute an~~
17 ~~informal or formal complaint, nor settlement or compromise between the complainant~~
18 ~~and the respondent, nor restitution by the respondent shall, in and of itself, justify~~
19 ~~abatement of disciplinary proceedings.~~

Rule 15-518. Interim suspension for threat of harm.

(a) Transmittal of evidence. Upon receipt of sufficient evidence demonstrating that a licensed paralegal practitioner subject to the disciplinary jurisdiction of the Supreme Court poses a substantial threat of irreparable harm to the public and has either committed a violation of the Rules of Professional Conduct or is under a disability as herein defined, OPC counsel shall file a petition for interim suspension in the district court and give notice in accordance with Utah Rule of Civil Procedure 65A. An action is commenced under this rule when the petition for interim suspension is filed.

(b) Immediate interim suspension. After conducting a hearing on the petition, the district court may enter an order immediately suspending 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. If an order is entered:

(b)(1) the district court may appoint a trustee, pursuant to Rule 15-527, to protect the interests of the respondent's clients; and

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

(c) Notice to clients. A respondent suspended pursuant to paragraph (b) shall comply with the notice requirements in Rule 15-526 as ordered by the district court.

(d) Motion for dissolution of interim suspension. On two days' notice to OPC counsel, a respondent suspended pursuant to paragraph (b) may appear and move for dissolution or modification of the order of suspension, and in that event, the motion shall be heard and determined as expeditiously as the ends of justice require.

Rule 15-519. Licensed paralegal practitioners convicted of a crime.

(a) Transmittal of judgment of conviction. The court in which a licensed paralegal practitioner is convicted of any felony or any misdemeanor which reflects adversely on the licensed paralegal practitioner's honesty, trustworthiness or fitness as a licensed paralegal practitioner shall, within 30 days after the conviction, transmit a certified copy of the judgment of conviction to OPC counsel.

(b) Motion for interim suspension. Upon being advised that a licensed paralegal practitioner has been convicted of a crime which reflects adversely on the licensed paralegal practitioner's honesty, trustworthiness or fitness as a licensed paralegal practitioner, OPC counsel shall determine whether the crime warrants interim suspension. Upon a determination that the crime warrants interim suspension, OPC counsel shall file a formal complaint, accompanied by the certified copy of the judgment of conviction, and concurrently file a motion for immediate interim suspension. An action is commenced under this rule when both the petition for interim suspension and the formal complaint are filed. The respondent may assert any jurisdictional deficiency which establishes that the interim suspension may not properly be ordered, such as that the crime does not reflect adversely on the respondent's honesty, trustworthiness or fitness as a licensed paralegal practitioner, or that the respondent is not the individual convicted. The respondent is not entitled to an evidentiary hearing but may request an informal hearing. If an order for interim suspension is not obtained, the formal complaint shall be dismissed and OPC counsel shall process the matter as it does any other information coming to the attention of the OPC.

(c) Imposition. The district court shall place a respondent on interim suspension upon proof that the respondent has been convicted of a crime which reflects adversely on the respondent's honesty, trustworthiness or fitness as a licensed paralegal practitioner regardless of the pendency of any appeal.

(d) Dissolution of interim suspension. Interim suspension may be dissolved as provided in Rule 15-518(d).

~~(e) Conviction as conclusive evidence. Except as provided in paragraph (b), a certified copy of a judgment of conviction constitutes conclusive evidence that the respondent committed the crime.~~

~~(f) Automatic reinstatement from interim suspension upon reversal of conviction. If a respondent suspended solely under the provisions of paragraph (c) demonstrates that the underlying conviction has been reversed or vacated, the order for interim suspension shall be vacated and the respondent placed on active status. The vacating of the interim suspension shall not automatically terminate any disciplinary proceeding then pending against the respondent, the disposition of which shall be determined on the basis of the available evidence other than conviction.~~

~~(g) Notice to clients and other of interim suspension. An interim suspension under this rule shall constitute a suspension of the respondent for the purpose of Rule 15-526.~~

Rule 15-520. Discipline by consent.

(a) Discipline by consent prior to filing of formal complaint. A respondent against whom an informal complaint has been filed may, prior to the filing of a formal complaint, 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 include a waiver of right to a screening panel hearing. The proposal shall be submitted to OPC counsel who shall 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 proposal is approved by the Committee chair, the sanction shall be imposed as provided in this rule. If the proposal is rejected by the Committee chair, the proposal and admission shall be withdrawn and cannot be used against the respondent in subsequent proceedings.

(b) Discipline by consent after filing of formal complaint. A respondent against whom a formal complaint has been filed may tender a conditional admission to the formal complaint or to a particular count thereof in exchange for a stated form of discipline and final disposition of the formal complaint. The proposal shall be submitted to OPC counsel, who shall 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 either approve or reject the proposal. If the district court approves the proposal and the stated form of discipline includes public discipline, it shall enter the appropriate disciplinary order as provided in paragraph (d). If the district court rejects the proposal, the proposal and conditional admission shall 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 be predicated upon:

- (c)(1) the informal complaint and any NOIC if no formal complaint has been filed;

~~(c)(2) the formal complaint, 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 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 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 an informal or formal complaint were predicated upon the matters under investigation were filed, or the pending formal charges were prosecuted, the respondent could not successfully defend against the charges upon which the discipline is based.~~

Draft: July 28, 2020

1 **Rule 15-521. Reserved.**

Rule 15-522. Reciprocal discipline.

(a) Duty to notify OPC counsel of discipline. Upon being publicly disciplined by another court, another jurisdiction, or a regulatory body having disciplinary jurisdiction, a licensed paralegal practitioner licensed to practice in Utah shall within 30 days inform the OPC of the discipline. Upon notification from any source that a licensed paralegal practitioner within the jurisdiction of the Supreme Court has been publicly disciplined by another court, another jurisdiction, or a regulatory body having disciplinary jurisdiction, OPC counsel shall obtain a certified copy of the disciplinary order.

(b) Notice served upon licensed paralegal practitioner. Upon receipt of a certified copy of an order demonstrating that a licensed paralegal practitioner licensed to practice in Utah has been publicly disciplined by another court, another jurisdiction, or a regulatory body having disciplinary jurisdiction, OPC counsel shall issue a notice directed to the licensed paralegal practitioner containing:

(b)(1) a copy of the order from the other court, jurisdiction or regulatory body;
and

(b)(2) a notice giving the licensed paralegal practitioner the right to inform OPC counsel, within 30 days from service of the notice, of any claim by the licensed paralegal practitioner predicated upon the grounds set forth in paragraph (d), that the imposition of the equivalent discipline in Utah would be unwarranted, and stating the reasons for that claim.

(c) Effect of stay of discipline in other jurisdiction. If the discipline imposed in the other court, jurisdiction or regulatory body has been stayed, any reciprocal discipline imposed in Utah shall be deferred until the stay expires.

(d) Discipline to be imposed. Upon the expiration of 30 days from service of the notice pursuant to paragraph (b), the district court shall take such action as may be appropriate to cause the equivalent discipline to be imposed in this jurisdiction, unless

1 ~~it clearly appears upon the face of the record from which the discipline is predicated~~
2 ~~that:~~

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

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

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

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

11 ~~(e) Conclusiveness of adjudication in other jurisdictions. Except as provided in~~
12 ~~paragraphs (c) and (d) above, a final adjudication of the other court, jurisdiction or~~
13 ~~regulatory body that a respondent has been guilty of misconduct shall establish~~
14 ~~conclusively the misconduct for purposes of a disciplinary proceeding in Utah.~~

~~Rule 15-523. Proceedings in which licensed paralegal practitioner is declared to be incompetent or alleged to be incapacitated.~~

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

~~(b) Inability to properly defend. If a licensed paralegal practitioner 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 immediately transfer the licensed paralegal practitioner 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 be deferred and the licensed paralegal practitioner retained on disability status until the district court subsequently considers a petition for transfer of the licensed paralegal practitioner 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 resume.~~

~~(c) Proceedings to determine incapacity. Information relating to a licensed paralegal practitioner's physical or mental condition which adversely affects the licensed paralegal practitioner's ability to practice law as a licensed paralegal practitioner shall be investigated, and if warranted, shall be the subject of formal proceedings to determine whether the licensed paralegal practitioner shall be transferred to disability~~

status. Hearings shall be conducted in the same manner as disciplinary proceedings, except that all of the proceedings shall be confidential. The district court shall provide for such notice to the licensed paralegal practitioner of proceedings in the matter as it deems proper and advisable and may appoint counsel to represent the licensed paralegal practitioner if the licensed paralegal practitioner is without adequate representation. The district court may take or direct whatever action it deems necessary or proper to determine whether the licensed paralegal practitioner is so incapacitated, including the examination of the licensed paralegal practitioner by qualified experts designated by the district court. If, upon due consideration of the matter, the district court concludes that the licensed paralegal practitioner is incapacitated from continuing to practice law as a licensed paralegal practitioner, it shall enter an order transferring the licensed paralegal practitioner to disability status for an indefinite period and until the further order of the district court. Any pending disciplinary proceedings against the licensed paralegal practitioner shall be held in abeyance.

(d) Reinstatement from disability status.

(d)(1) Court order. No licensed paralegal practitioner transferred to disability status may resume active status except by order of the district court.

(d)(2) Petition. Any licensed paralegal practitioner transferred to disability status shall be 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 licensed paralegal practitioner to disability status or any modifications thereof.

(d)(3) Examination. Upon the filing of 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 a direction for an examination of the licensed paralegal practitioner by qualified experts designated by the district court. In its discretion, the district court may direct that the expense of the examination be paid by the licensed paralegal practitioner.

1 ~~(d)(4) Waiver of privilege. With the filing of a petition for reinstatement to active~~
2 ~~status, the licensed paralegal practitioner shall be required to disclose the name~~
3 ~~of each psychiatrist, psychologist, physician or other health care provider and~~
4 ~~hospital or other institution by whom or in which the licensed paralegal~~
5 ~~practitioner has been examined or treated related to the disability since the~~
6 ~~transfer to disability status. The licensed paralegal practitioner shall furnish~~
7 ~~written consent to each listed provider to divulge information and records~~
8 ~~relating to the disability if requested by the district court or district court's~~
9 ~~appointed experts.~~

10 ~~(d)(5) Learning in law; Licensed Paralegal Practitioner Examination. The district~~
11 ~~court may also direct that the licensed paralegal practitioner establish proof of~~
12 ~~competence and learning in law, which proof may include certification by the~~
13 ~~Bar of successful completion of an examination for licensure to practice as a~~
14 ~~licensed paralegal practitioner.~~

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

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

1 **Rule 15-524. Reinstatement following a suspension of six months or less.**
2 ~~A respondent who has been suspended for six months or less pursuant to disciplinary~~
3 ~~proceedings shall be reinstated at the end of the period of suspension upon filing with~~
4 ~~the district court and serving upon OPC counsel an affidavit stating that the respondent~~
5 ~~has fully complied with the requirements of the suspension order and that the~~
6 ~~respondent has fully reimbursed the Bar's Licensed Paralegal Practitioners' Fund for~~
7 ~~Client Protection for any amounts paid on account of the respondent's conduct. Within~~
8 ~~ten days, OPC counsel may file an objection and thereafter the district court shall~~
9 ~~conduct a hearing.~~

**Rule 15-525. Reinstatement following a suspension of more than six months;
relicensure.**

(a) Generally. A respondent suspended for more than six months or a delicensed respondent shall be reinstated or relicensed only upon 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 relicensure 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 relicensure at the expiration of five years from the effective date of the interim suspension.

(b) Petition. A petition for reinstatement or relicensure shall be verified, filed with the district court, and shall specify with particularity the manner in which the respondent meets each of the criteria specified in paragraph (c) or, if not, why there is otherwise good and sufficient reason for reinstatement or relicensure. With specific reference to paragraph (c)(4), prior to the filing of a petition for 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 Article 7, Admissions. Prior to or as part of the respondent's petition, the respondent may request modification or abatement of conditions of discipline, reinstatement or relicensure.

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

(d) Publication of notice of petition. At the time a respondent files a petition for reinstatement or relicensure, OPC counsel shall publish a notice of the petition in the Utah Bar Journal. The notice shall inform members of the Bar about the application for reinstatement or relicensure, and shall request that any individuals file notice of their opposition or concurrence with the district court within 30 days of the date of publication. In addition, OPC counsel shall notify each complainant in the disciplinary proceeding that led to the respondent's suspension or delicensure that the respondent is

1 applying for reinstatement or relicensure, and shall inform each complainant that the
2 complainant has 30 days from the date of mailing to raise objections to or to support the
3 respondent's petition. Notice shall be mailed to the last known address of each
4 complainant in OPC counsel's records.

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

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

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

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

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

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

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

26 ~~(e)(4) Notwithstanding the conduct for which the respondent was disciplined,~~
27 ~~the respondent has the requisite honesty and integrity to practice law as a~~

1 licensed paralegal practitioner. In relicensure cases, the respondent must appear
2 before the Bar's Character and Fitness Committee and cooperate in its
3 investigation of the respondent. A copy of the Character and Fitness Committee's
4 report and recommendation shall be provided to the OPC and forwarded to the
5 district court assigned to the petition after the respondent files a petition.

6 (e)(5) The respondent has kept informed about recent developments in the law
7 and is competent to practice as a licensed paralegal practitioner.

8 (e)(6) In cases of suspensions for one year or more, the respondent shall be
9 required to pass the Licensed Paralegal Practitioner Professional Responsibility
10 Exam.

11 (e)(7) In all cases of delicensure, the respondent shall be required to pass the
12 student applicant Licensed Paralegal Practitioner Licensing Exam.

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

16 (f) Review of petition. Within 60 days after receiving a respondent's petition for
17 reinstatement or relicensure, OPC counsel shall either:

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

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

21 (g) Hearing; report. If an objection is filed by OPC counsel, the district court, as soon as
22 reasonably practicable and within a target date of 90 days of the filing of the petition,
23 shall conduct a hearing at which the respondent shall have the burden of demonstrating
24 by a preponderance of the evidence that the respondent has met each of the criteria in
25 paragraph (e) or, if not, that there is good and sufficient reason why the respondent
26 should nevertheless be reinstated or relicensed. The district court shall enter its findings

1 and order. If no objection is filed by OPC counsel, the district court shall review the
2 petition without a hearing and enter its findings and order.

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

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

11 (j) Reciprocal reinstatement or relicensure. If a respondent has been suspended or
12 delicensed solely on the basis of discipline imposed by another court, another
13 jurisdiction, or a regulatory body having disciplinary jurisdiction, and if the respondent
14 is later reinstated or relicensed by that court, jurisdiction or regulatory body, the
15 respondent may petition for reciprocal reinstatement or relicensure in Utah. The
16 respondent shall file with the district court and serve upon OPC counsel a petition for
17 reciprocal reinstatement or relicensure, as the case may be. The petition shall include a
18 certified or otherwise authenticated copy of the order of reinstatement
19 or relicensure from the other court, jurisdiction or regulatory body. Within 20 days of
20 service of the petition, OPC counsel may file an objection thereto based solely upon
21 substantial procedural irregularities. If an objection is filed, the district court shall hold
22 a hearing and enter its finding and order. If no objection is filed, the district court shall
23 enter its order based upon the petition.

Rule 15-526. Notice of disability or suspension; return of clients' property; refund of unearned fees.

~~(a) Effective date of order; winding up affairs. Each order that imposes delicensure or suspension is effective 30 days after the 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 entry of any order of delicensure, suspension, or transfer to disability status, the respondent shall not accept any new retainer or employment as a licensed paralegal practitioner in any new case or legal matter; provided, however, that during any period between the date 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 of entry of the order.~~

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

~~(b)(1) notify each client (and any other licensed paralegal practitioner or lawyer assisting the client) 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 licensed paralegal practitioner or lawyer, calling attention to the urgency to seek new assistance, 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 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 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 delicensure or suspension and consequent disqualification to further participate as a licensed paralegal practitioner 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 days after the effective date of delicensure or suspension, file an affidavit with OPC counsel showing complete performance of the foregoing requirements of this rule. The respondent shall keep and maintain for inspection by OPC counsel all records of the steps taken to accomplish the requirements of this rule.~~

~~(c) 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 issuance of notice to others as it deems necessary to protect the interests of clients or the public.~~

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

Rule 15-527. Appointment of trustee to protect clients' interest when a licensed paralegal practitioner disappears, dies, is suspended or delicensed, or is transferred to disability status.

(a) Protective appointment of trustee. If a licensed paralegal practitioner has disappeared or died, or if a respondent has been suspended or delicensed or transferred to disability status, and if there is evidence that the licensed paralegal practitioner or respondent has not complied with the provisions of Rule 15-526 and no partner, executor, or other responsible party capable of conducting the licensed paralegal practitioner's or respondent's affairs is known to exist, a district judge of the judicial district in which the licensed paralegal practitioner or respondent maintained a principal office, upon the request of OPC counsel, may appoint a trustee to inventory the licensed paralegal practitioner's or respondent's files, notify the licensed paralegal practitioner's or respondent's clients, distribute the files to the clients, return unearned fees and other funds, and take any additional action authorized by the judge making the appointment.

(b) Confidentiality. No attorney-client relationship exists between the client and the trustee except to the extent necessary to maintain and preserve the confidentiality of the client. The trustee shall 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 order of the court making the appointment.

(c) Immunity. Any person appointed as a trustee shall have the immunity granted by Rule 15-513.

- 1 **Rule 15-528. Appeal by complainant.**
- 2 ~~The complainant shall not have a right of appeal, except as provided in Rule 15-~~
- 3 ~~510(a)(7) to appeal a dismissal of an informal complaint.~~

Draft: July 28, 2020

- 1 **Rule 15-529. Statute of limitations.**
- 2 ~~Proceedings under this article shall be commenced within four years of the discovery of~~
- 3 ~~the acts allegedly constituting a violation of the Licensed Paralegal Practitioner Rules of~~
- 4 ~~Professional Conduct.~~

1 **Rule 15-530. Costs.**

2 ~~(a) Assessment. The prevailing party in a proceeding on a formal complaint may be~~
3 ~~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. OPC counsel shall not be deemed to have prevailed~~
6 ~~on any count in the formal complaint unless the sanction imposed exceeds any sanction~~
7 ~~to which the respondent conditionally consented under Rule 15-520(b) prior to the~~
8 ~~hearing.~~

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

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

Rule 15-531. Noncompliance with child support order, child visitation order, subpoena or order relating to paternity or child support proceeding.

(a) Upon entry of an order holding a licensed paralegal practitioner in contempt for the licensed paralegal practitioner'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 licensed paralegal practitioner's license to engage in the practice of law consistent with applicable law and, if suspended, shall also impose conditions of reinstatement.

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

Rule 15-532. Failure to answer charges.

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

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

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

Rule 15-533. Diversion.

~~(a) Referral to diversion. In a matter involving less serious misconduct as outlined in subsection (c), upon receipt of an informal complaint and before filing a formal complaint, the respondent may have the option of electing to have the matter referred to diversion, the appropriateness of which 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. Diversion may require the participation of the respondent in one or more of the following:~~

~~(a)(1) fee arbitration;~~

~~(a)(2) mediation;~~

~~(a)(3) law office management assistance;~~

~~(a)(4) lawyer or licensed paralegal practitioner assistance programs;~~

~~(a)(3) law office management assistance;~~

~~(a)(4) licensed paralegal practitioner assistance programs;~~

~~(a)(5) psychological and behavioral counseling;~~

~~(a)(6) monitoring;~~

~~(a)(7) restitution;~~

~~(a)(8) continuing legal education programs including, but not limited to, ethics school; or~~

~~(a)(9) any other program or corrective course of action to address the respondent's conduct.~~

~~(b) Diversion Committee.~~

~~(b)(1) With regard to a licensed paralegal practitioner, the Diversion Committee in Lawyer Rule 15-533 shall operate under the provisions of this Rule.~~

~~(b)(2) Authority and responsibility. The Diversion Committee may negotiate and execute diversion contracts, assign monitoring to a lawyer or limited paralegal~~

practitioner assistance program, determine compliance with the terms of diversion contracts, and determine fulfillment or any material breach 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 shall have authority to establish subcommittees of volunteer attorneys and other professionals for the specific purpose of monitoring the compliance of any limited paralegal practitioner under diversion and reporting compliance to OPC and the Diversion Committee on a regular basis.

(c) Less serious misconduct. Conduct which would result in a suspension or delicensure is not considered to be less serious misconduct. Conduct is not ordinarily considered less serious misconduct if any of the following considerations apply:

- (c)(1) the misconduct involves the misappropriation of client funds;
- (c)(2) the misconduct results in or is likely to result in substantial prejudice to a client or other person, absent adequate provisions for restitution;
- (c)(3) the respondent has been sanctioned in the last three years;
- (c)(4) the misconduct is of the same nature as misconduct for which the respondent has been sanctioned in the last three years;
- (c)(5) the misconduct involves dishonesty, deceit, fraud, or misrepresentation;
- (c)(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 limited paralegal practitioner; or
- (c)(7) the misconduct is part of a pattern of similar misconduct.

(d) Factors for consideration. The Diversion Committee considers the following factors in negotiating and executing the diversion contract:

~~(d)(1) whether 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;~~

~~(d)(2) whether participation in diversion is likely to improve the respondent's future professional conduct and accomplish the goals of legal paralegal practitioner discipline;~~

~~(d)(3) whether aggravating or mitigating factors exist; and~~

~~(d)(4) whether diversion was already tried.~~

~~(e) 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.~~

~~(f) Diversion contract.~~

~~(f)(1) If the respondent agrees or elects to participate in diversion as provided by this rule, the terms of the diversion shall 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 15-510(b), the contract shall be between the respondent and OPC. If diversion is agreed to and entered after a screening panel of the Ethics and Discipline Committee has convened pursuant to Rule 15-510(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 15-512, the diversion contract shall be made as part of the ruling and order of the Court. Except as otherwise part of an order of a court, the Diversion Committee shall monitor and supervise the conditions of diversion and the terms of the diversion contract. The contract shall specify the program(s) to which the legal paralegal practitioner shall be diverted, the general purpose of the diversion, the manner in which~~

1 compliance is to be monitored, and any requirement for payment of restitution
2 or cost. The respondent licensed paralegal practitioner shall bear the burden of
3 drafting and submitting the proposed diversion contract. Respondent may utilize
4 counsel to assist in the negotiation phase of diversion. Respondent may also
5 utilize Bar benefits programs provided by the Bar, such as a lawyer or licensed
6 paralegal practitioner assistance program to assist in developing terms and
7 conditions for the diversion contract appropriate to that respondent's particular
8 situation. Use of a lawyer or licensed paralegal practitioner assistance program to
9 assess appropriate conditions for diversion shall not conflict that entity from
10 providing services under the contract. The terms of each contract shall be
11 specifically tailored to the respondent's individual circumstances. The contract is
12 confidential and its terms shall not be disclosed to other than the parties to the
13 contract.

14 ~~(f)(2) All diversion contracts must contain at least all the following:~~

15 ~~(f)(2)(A) the signatures of respondent, his or her counsel if any, and the~~
16 ~~chair of the Diversion Committee;~~

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

25 ~~(f)(2)(C) the necessary terms providing for oversight of fulfillment of the~~
26 ~~contract terms, including provisions for those involved to report any~~
27 ~~alleged breach of the contract to OPC;~~

~~(f)(2)(D) the necessary terms providing that respondent will pay all costs incurred in connection with the contract and those costs further specified pursuant to subsection (k) and any costs associated with the complaints to be deferred; and~~

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

~~(f)(3) The contract may be amended on subsequent agreement of respondent and OPC;~~

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

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

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

~~(i) Effect of non-participation 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 pursuant to the Rules of Limited Paralegal Practitioner Discipline and Disability.~~

~~(j) Termination of diversion.~~

~~(j)(1) Fulfillment of the contract. The contract terminates when the respondent has fulfilled the terms of the contract and gives the Diversion Committee and OPC an affidavit or declaration demonstrating fulfillment. Upon receipt of 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 or her designee dismiss any complaint(s) deferred pending successful completion of the contract or notify the respondent that fulfillment of the contract is disputed based on an OPC claim of material breach. The complainant cannot appeal the dismissal. Successful completion of the contract is a bar to any further disciplinary proceedings based on the same allegations and successful completion of diversion shall not constitute a form of discipline.~~

~~(j)(2) Material breach. A material breach of the contract is cause for termination of the contract. After a material breach, 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.~~

~~(k) Costs. Upon entering diversion, respondent shall pay an initial fee of \$250. During diversion, respondent shall pay a fee of \$50 per month. All such fees are payable to the Bar's general fund. These fees may be waived upon a hardship request, the validity or appropriateness of which shall be determined by the chair of the Diversion Committee or his or her designee.~~

Article 6. Standards for Imposing Licensed Paralegal Practitioner Sanctions

Rule 15-601. 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 licensed paralegal practitioner or seeking the transfer of a licensed paralegal practitioner to disability status;
- (c) “informal complaint” means any written, notarized allegation of misconduct by or incapacity of a licensed paralegal practitioner;
- (d) “injury” means harm to a client, the public, the legal system, or the profession which results from a licensed paralegal practitioner’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 licensed paralegal practitioner 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 licensed paralegal practitioner 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 licensed paralegal practitioner’s misconduct, and which, but for some intervening factor or event, would probably have resulted from the licensed paralegal practitioner’s misconduct;

- 1 ~~(i) “respondent” means a licensed paralegal practitioner subject to the disciplinary~~
- 2 ~~jurisdiction of the Supreme Court against whom an informal or formal complaint has~~
- 3 ~~been filed; and~~
- 4 ~~(j) “Rules of Professional Conduct” means the Utah Licensed Paralegal Practitioner~~
- 5 ~~Rules of Professional Conduct (including the accompanying comments).~~

Rule 15-602. Purpose and nature of sanctions.

~~(a) Purpose of licensed paralegal practitioner discipline proceedings. The purpose of imposing licensed paralegal practitioner sanctions is to ensure and maintain the high standard of professional conduct required of those who undertake the discharge of professional responsibilities as licensed paralegal practitioners, and to protect the public and the administration of justice from licensed paralegal practitioners 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 licensed paralegal practitioner discipline proceedings. Ultimate disposition of licensed paralegal practitioner discipline shall 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 licensed paralegal practitioner has violated a provision of the 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 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 licensed paralegal practitioner 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 licensed paralegal practitioner discipline; and~~

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

Rule 15-603. Sanctions.

(a) Scope. A disciplinary sanction is imposed on a licensed paralegal practitioner upon a finding or acknowledgement that the licensed paralegal practitioner has engaged in professional misconduct.

(b) Delicensure. Delicensure terminates the individual's status as a licensed paralegal practitioner. A licensed paralegal practitioner who has been delicensed may be relicensed as provided in Rule 15-525 of Article 5, Licensed Paralegal Practitioner Discipline and Disability.

(c) Suspension. Suspension is the removal of a licensed paralegal practitioner from the practice of law as a licensed paralegal practitioner for a specified minimum period of time. Generally, suspension should be imposed for a specific period of time equal to or greater than six months, but in no event should the time period prior to application for reinstatement be more than three years.

(c)(1) A licensed paralegal practitioner who has been suspended for six months or less may be reinstated as set forth in Rule 15-524 of Article 5, Licensed Paralegal Practitioner Discipline and Disability.

(c)(2) A licensed paralegal practitioner who has been suspended for more than six months may be reinstated as set forth in Rule 15-525 of Article 5, Licensed Paralegal Practitioner Discipline and Disability.

(d) Interim suspension. Interim suspension is the temporary suspension of a licensed paralegal practitioner from the practice of law as a licensed paralegal practitioner. Interim suspension may be imposed as set forth in Rules 15-518 and 15-519 of Article 5, Licensed Paralegal Practitioner Discipline and Disability.

(e) Reprimand. Reprimand is public discipline which declares the conduct of the licensed paralegal practitioner improper, but does not limit the paralegal practitioner's right to practice.

~~(f) Admonition. Admonition is nonpublic discipline which declares the conduct of the licensed paralegal practitioner improper, but does not limit the licensed paralegal practitioner's right to practice.~~

~~(g) Probation. Probation is a sanction that allows a licensed paralegal practitioner to practice law as a licensed paralegal practitioner under specified conditions. Probation can be public or nonpublic, can be imposed alone or in conjunction with other sanctions, and can be imposed as a condition of relicensure or reinstatement.~~

~~(h) Resignation with discipline pending. Resignation with discipline pending is a form of public discipline which allows a respondent to resign from the practice of law as a licensed paralegal practitioner while either an informal or formal complaint is pending against the respondent. Resignation with discipline pending may be imposed as set forth in Rule 15-521 of Article 5, Licensed Paralegal Practitioner Discipline and Disability.~~

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

~~(i)(1) restitution;~~

~~(i)(2) assessment of costs;~~

~~(i)(3) limitation upon practice;~~

~~(i)(4) appointment of a receiver;~~

~~(i)(5) a requirement that the licensed paralegal practitioner take the licensing examination or the licensed paralegal practitioner professional responsibility examination; and~~

~~(i)(6) a requirement that the licensed paralegal practitioner attend continuing education courses.~~

~~(j) Reciprocal discipline. Reciprocal discipline is the imposition of a disciplinary sanction on a licensed paralegal practitioner who has been disciplined in another court, another jurisdiction, or a regulatory body having disciplinary jurisdiction.~~

- 1 **Rule 15-604. Factors to be considered in imposing sanctions.**
- 2 The following factors should be considered in imposing a sanction after a finding of
- 3 licensed paralegal practitioner misconduct:
- 4 (a) the duty violated;
- 5 (b) the licensed paralegal practitioner's mental state;
- 6 (c) the potential or actual injury caused by the licensed paralegal practitioner's
- 7 misconduct; and
- 8 (d) the existence of aggravating or mitigating factors.

Rule 15-605. Imposition of sanctions.

~~Absent aggravating or mitigating circumstances, upon application of the factors set out in Rule 15-604 of this Article, the following sanctions are generally appropriate:~~

~~(a) Delicensure. Delicensure is generally appropriate when a licensed paralegal practitioner:~~

~~(a)(1) knowingly engages in professional misconduct as defined in Rule 8.4(a), (d), (e), or (f) of the Licensed Paralegal Practitioner Rules of Professional Conduct with the intent to benefit the licensed paralegal practitioner 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, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution, or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses; or~~

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

~~(b) Suspension. Suspension is generally appropriate when a licensed paralegal practitioner:~~

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

~~(b)(2) engages in criminal conduct that does not contain the elements listed in Rule 15-605(a)(2) but nevertheless seriously adversely reflects on the licensed paralegal practitioner's fitness to practice law as a licensed paralegal practitioner.~~

~~(c) Reprimand. Reprimand is generally appropriate when a licensed paralegal practitioner:~~

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

~~(c)(2) engages in any other misconduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the licensed paralegal practitioner's fitness to practice law as a licensed paralegal practitioner.~~

~~(d) Admonition. Admonition is generally appropriate when a licensed paralegal practitioner:~~

~~(d)(1) negligently engages in professional misconduct as defined in Rule 8.4(a), (d), (e), or (f) of the Licensed Paralegal Practitioner Rules of Professional Conduct and causes little or no injury to a party, the public, or the legal system or interference with a legal proceeding, but exposes a party, the public, or the legal system to potential injury or causes potential interference with a legal proceeding; or~~

~~(d)(2) engages in any professional misconduct not otherwise identified in this rule that adversely reflects on the licensed paralegal practitioner's fitness to practice law as a licensed paralegal practitioner.~~

Rule 15-606. Prior discipline orders.

~~Absent aggravating or mitigating circumstances, upon application of the factors set out in Rule 15-604 of this Article, the following principles generally apply in cases involving prior discipline.~~

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

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

Rule 15-607. Aggravation and mitigation.

~~After misconduct has been established, aggravating and mitigating circumstances may be considered and weighed in deciding what sanction to impose.~~

~~(a) 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.~~

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

~~(b)(1) absence of a prior record of discipline;~~

- ~~(b)(2) absence of a dishonest or selfish motive;~~
- ~~(b)(3) personal or emotional problems;~~
- ~~(b)(4) timely good faith effort to make restitution or to rectify the consequences of the misconduct involved;~~
- ~~(b)(5) full and free disclosure to the client or the disciplinary authority prior to the discovery of any misconduct or cooperative attitude toward proceedings;~~
- ~~(b)(6) inexperience in the practice of law;~~
- ~~(b)(7) good character or reputation;~~
- ~~(b)(8) physical disability;~~
- ~~(b)(9) mental disability or impairment, including substance abuse when:~~
 - ~~(b)(9)(A) the respondent is affected by a substance abuse or mental disability; and~~
 - ~~(b)(9)(B) the substance abuse or mental disability causally contributed to the misconduct; and~~
 - ~~(b)(9)(C) the respondent's recovery from the substance abuse or mental disability is demonstrated by a meaningful and sustained period of successful rehabilitation; and~~
 - ~~(b)(9)(D) the recovery arrested the misconduct and the recurrence of that misconduct is unlikely;~~
- ~~(b)(10) unreasonable delay in disciplinary proceedings, provided that the respondent did not substantially contribute to the delay and provided further that the respondent has demonstrated prejudice resulting from the delay;~~
- ~~(b)(11) interim reform in circumstances not involving mental disability or impairment;~~
- ~~(b)(12) imposition of other penalties or sanctions;~~
- ~~(b)(13) remorse; and~~

~~(b)(14) remoteness of prior offenses.~~

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

~~(c)(1) forced or compelled restitution;~~

~~(c)(2) withdrawal of complaint against the licensed practitioner;~~

~~(c)(3) resignation prior to completion of disciplinary proceedings;~~

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

~~(c)(5) failure of injured client to complain.~~

1 Chapter 14. Rules Governing the Utah State Bar.

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

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

4 (1) ~~Under the power vested to it by the Constitution of Utah, t~~The Supreme
5 Court ~~— by its constitutional power — hereby~~ authorizes and designates the Bar to
6 administer rules and regulations ~~which that~~ govern the practice of law in Utah,
7 including ~~regulating legal representation by L~~icensed ~~P~~aralegal ~~P~~ractitioners.
8 All persons authorized to practice law in Utah ~~shall~~ must be licensed by the Bar
9 in accordance with this chapter and Chapter 15 of the Supreme Court Rules of
10 Professional Practice.

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

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

- 20 (1) ~~to advance~~ advancing the administration of justice according to law;
- 21 (2) ~~to aid~~ aiding the courts in ~~carrying on~~ the administration of justice;
- 22 (3) ~~to regulate~~ regulating the admission of persons seeking to practice
- 23 law; ~~(4) to regulate the licensing of Licensed Paralegal Practitioners;~~ ~~(5) to provide~~
24 ~~for the regulation and discipline of persons practicing law;~~
- 25 (6) ~~to foster~~ ing and ~~to maintain~~ ing integrity, learning competence, public
26 service, and high standards of conduct among those practicing law;

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

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

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

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

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

(1210) ~~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 licensed for admission to practice law in Utah, the licensing qualifications for Licensed Paralegal Practitioners, the duties, 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 to disciplining a Bar member or licensed paralegal practitioner ~~admitted to the Bar or a Licensed Paralegal Practitioners, shall be as prescribed in this chapter.~~

(d) **Licensure required.** ~~No~~ Suspended or disbarred persons ~~shall~~ may not practice law in Utah or hold ~~himself or herself~~ themselves out as ~~one who may~~ able to practice law in Utah. A person may only practice law in Utah if that person is ~~unless:~~

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

(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

Commented [LL46]: Recommendation 1.2

1 meeting certification and performance standards, conditions, and rules
2 established by the Board;

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

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

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

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

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

6 (2) Term. ~~The initial term of office of one of the non-lawyer commissioners shall~~
7 ~~be for two years. Except as~~ Unless otherwise provided, the term of office of each
8 commissioner ~~shall be~~ three years and until a successor is elected and qualified.
9 The initial term of office of one of the nonlawyer commissioners is two years.

10 (3) Vacancies.

11 (A) If a lawyer vacancy on the Board occurs ~~prior to~~ before the expiration
12 of the completed term of office, the remaining commissioners ~~shall~~ will:

13 ~~(a)(1)(A)(i)~~ (i) conduct a special election;

14 ~~(a)(1)(B)(ii)~~ (ii) appoint an interim successor from among the active
15 ~~members of the Bar~~ members whose business mailing addresses on
16 the Bar's records ~~of the Bar~~ are in the division from which the
17 commissioner was elected, who ~~shall~~ will serve until the ~~following~~
18 next annual election; or

19 ~~(a)(1)(C)(iii)~~ (iii) fill the vacancy ~~through~~ during the next regular annual
20 election.

21 ~~(a)(2)(B)~~ (B) If a lawyer vacancy on the Board is filled by either a special or
22 regular election, the Board may establish the term of the successor to be
23 ~~either a one, two or full three-year term, provided that there would~~
24 be ~~not more than three but not fewer than two~~ only two or three
25 commissioners from the Third Division whose terms expire in any one
26 year and ~~not more than five but not fewer than four~~ only four or five Board
27 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:

(1) approve Bar admission and licensure fees for attorneys and ~~L~~Licensed ~~P~~Paralegal ~~P~~Practitioners;

(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

(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 [LL47]: 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.**

(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:

(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;

(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

(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.

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

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

(g) ~~President-elect's n~~ Nomination and election of president-elect. The Board
~~must~~ shall nominate ~~at least one~~ two active lawyers in good standing ~~on active status to~~
run for the office of president-elect, to be elected by ~~the vote of the active~~ members of
~~the~~ Bar members. The president and the president-elect ~~shall~~ 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 ~~shall~~ determines.

(h) ~~Board o~~ Officers and organization of Board. The Board ~~shall be~~ is organized and
authorized to conduct business ~~by the seating of~~ through its elected commissioners, and
~~the Bar's a~~ president and president-elect ~~of the Bar~~. The president-elect for the previous
year ~~shall~~ will automatically succeed to the office of president. A president and a
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~~ shall fail to
pass.

- 1 (i) **Annual and special meetings notice.** There ~~shall~~must be an annual meeting of the
2 Bar, presided over by the Bar president ~~of the Bar~~, open to all members in good
3 standing, and held at such time and place as the Board may designate, for ~~the~~
4 ~~discussion of the~~discussing Bar affairs ~~of the Bar~~ and the administration of justice.
5 Special Bar meetings ~~of the Bar~~ may be held at such times and places as the Board ~~may~~
6 designates. Notice of all meetings ~~shall~~must be published to the Bar's website~~given by~~
7 ~~mail to all members of the Bar~~ not fewer than 154 days ~~prior to~~before the date of such
8 meeting.
- 9 (j) **Bylaws.** The Board ~~shall have power to~~may adopt Bylaws, not ~~in~~conflicting with any
10 of these rules' terms ~~of these rules~~, concerning ~~the~~officer selection and tenure ~~of its~~
11 ~~officers, the~~ creation of sections and committees and their powers and duties, and
12 generally for the control and regulation of the business of the Board and of the Bar.

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

Commented [LL48]: Recommendation 1.2

4 (a) Proposing Rules. The Board ~~shall formulate~~ proposes rules governing the conduct
5 of all persons admitted or licensed to practice in Utah, including foreign legal
6 consultants and those licensed as Licensed Paralegal Practitioners, and Bar members
7 holding judicial office. ~~and shall investigate unethical, questionable or improper~~
8 ~~conduct of persons admitted to the practice of the law, including members of the Bar~~
9 ~~holding judicial office. The Board shall also formulate rules governing procedures in~~
10 ~~cases involving alleged misconduct of members of the Bar, including those holding~~
11 ~~judicial office.~~

Commented [LL49]: Recommendation 1.2

12 (b) **Court to approve rules and regulations.** All rules and regulations
13 ~~formulated~~ proposed by the Board ~~shall~~ must be submitted to and approved by the
14 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:

(1) full name;

(2) date of birth;

(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;

(4) current e-mail address;

(5) date of admission;

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

(7) all specialties in which certified;

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

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

(b) Assessments.

(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.

(2) **Failure to renew annual license.** Failure to pay the annual licensing fee or provide the required annual licensing information will result in administrative

Commented [LL50]: Moved over from 14-507. This is a Bar requirement, not an OPC requirement.

Commented [LL51]: Moved over from 14-508. This is a Bar requirement, not OPC.

1 suspension. Any lawyer, foreign legal consultant, or licensed paralegal
2 practitioner who practices law after failing to renew such license violates the
3 Rules of Professional Conduct or Licensed Paralegal Practitioner Rules of
4 Professional Conduct and may be disciplined. The executive director or designee
5 must give notice of such removal from the rolls to such noncomplying member
6 at the designated mailing address on the Bar's records and to the state and
7 federal courts in Utah.

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

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

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

16 (b) Nothing in this article ~~shall~~will prohibit a person who is unlicensed as an attorney,
17 ~~at law or a~~ foreign legal consultant, or ~~L~~icensed ~~P~~aralegal ~~P~~ractitioner from
18 personally representing that person's own interests in a cause to which the person is a
19 party in ~~his or her~~that person's own right and not as ~~n~~ assignee.

20

1 Rule 14-202. ~~Bar's Purposes of the Bar.~~

2 The purposes of the Bar ~~are to~~include:

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

Draft: July 28, 2020

1

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

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

4 ~~(b)~~ **Budget.** The Board ~~shall~~ must prepare an annual budget ~~which shall that be is~~
5 published for comment ~~prior to~~ before final adoption. The Board ~~shall~~ must adopt the
6 budget at its first regular meeting following the reorganization meeting. No obligations
7 ~~shall~~ may be incurred unless within the limits of the budget and within the scope of the
8 authorized objectives of the Board. The Bar's annual budget must include a budget for
9 the OPC, including the salaries of OPC counsel and staff, expenses, and administrative
10 costs. The Board must ratify the budget for the OPC approved by the Oversight
11 Committee unless the Board petitions the Supreme Court for modifications, in which
12 case the budget approved by the Supreme Court is final.

Commented [LL53]: Recommendation 2.6

13 ~~(c)~~ **Section dues.**

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

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

24 ~~(d)~~ **Disbursements.**

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

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

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

(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 an ~~ny one of the members of the~~ Executive Committee member or by the executive director. The Board designates t~~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~~.

(~~d~~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~~ proposes ~~promulgate~~ rules for applicant
3 Bar admission ~~of applicants to the Bar~~ pursuant to Article 1, Integration and
4 Management, and ~~shall~~ recommends to the Supreme Court for approval rules
5 governing qualifications and requirements for admission to the practice of law as a
6 lawyer and as a foreign legal consultant and for the examination of applicants:

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

Commented [LL54]: Recommendation 1.2

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

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

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

24 (1) Standing committees, which ~~shall continue in~~ existence until abolished by the
25 Board. Standing committee ~~M~~ members shall be appointed to standing
26 committees for serve in staggered, three-year terms ~~of three years;~~ and

27 (2) Ad hoc committees, ~~which, having been~~ created for a specific purpose, which
28 ~~shall will be terminated~~ terminate upon completion of that purpose. Ad hoc

committee ~~M~~membership ~~on ad hoc committees shall be for the time~~ lasts
through the committee's ~~is in~~ existence.

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

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

2 As used in this article:

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

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

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

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

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

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

18 (5) the names of all Bar members ~~of the Bar who are~~ employed by the
19 organization or who regularly perform legal work for the organization;
20 and

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

24 (c) “**a**Attorney applicant” means a lawyer applicant as defined by ~~the~~ Rule 14-
25 701.”

26 (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.
- (j) “OPC” means the Bar’s Office of Professional Conduct.
- (k) ~~except as used in Rule 14-807,~~ “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:
- (1) be employed by an approved legal services organization;
 - (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;
 - (3) assist the volunteer attorney ~~in his or her~~ legal service preparation to the extent that the supervisory attorney considers it necessary; and
 - (4) ensure along with the agency that the volunteer attorney has appropriate and adequate training, knowledge and competency to perform the legal service permitted.

Commented [LL55]: Recommendation 1.2

1 **Rule 14-904. Funding.**

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

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

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

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

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

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

Commented [LL56]: Recommendation 1.2

Draft: July 28, 2020

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

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

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

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

Commented [LL57]: Recommendation 1.2

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

17 (e) The Committee may request that testimony be presented. If desired, ~~T~~the lawyer or
18 lawyer's representative ~~shall~~must request ~~be given~~ an opportunity to be heard ~~if they~~
19 ~~so request~~ within 20 days of receiving a notice from the Committee that the Committee
20 will process the claim.

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

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

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

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

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

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

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

23

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

2 **Rule 15-402. Definitions.**

3 As used in this article:

4 (a) Reserved¹₂

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

7 (c) **“Active status”** or **“active status “licensed paralegal practitioner”** means a
8 licensed paralegal practitioner who has elected to be on active status as defined
9 under the Bar’s rules, regulations₂ and policies¹₂.

10 (d) ~~Reserved;~~

11 ~~(e)(1)~~ **“Approved law school”** means an ABA approved law school as defined
12 under Rule 14-701¹₂.

13 ~~(e)(2)~~ **“Approved paralegal education program”** means a program offered by an
14 accredited school as that term is defined in Rule 15-701¹₂.

15 (f) **“Bar”** means the Utah State Bar¹₂.

16 (g) Reserved¹₂

17 (h) **“Board”** means the Utah State Board of Mandatory Continuing Legal
18 Education as set forth in Rule 14-403¹₂.

19 (i) **“Board of Bar Commissioners”** means the governing board of the Bar¹₂.

20 (j) **“Certificate of Compliance”** means a written report evidencing a licensed
21 paralegal practitioner’s completion of accredited CLE as required and defined
22 under Rule 15-414¹₂.

23 (k) **“CLE”** means continuing legal education¹₂.

24 (l) **“Live CLE”** means a CLE program presented in a classroom setting where
25 the licensed paralegal practitioner is in the same room as the presenter¹₂.

(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.

(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 ~~Bar’s~~ Office of Professional Conduct.

(z) Reserved.

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

~~(bb) Reserved~~

Commented [LL58]: Recommendation 1.2

1 **Rule 15-701. Definitions.**

2 As used in this article:

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

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

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

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

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

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

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

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

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

(j) **“Complete Application”** means an application that includes all fees and necessary application forms, along with any required supporting documentation, character references, a criminal background check, a photo, an official certificate of graduation and if applicable, a test accommodation request with supporting medical documentation.

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

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

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

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

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

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

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

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

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

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

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

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

(w) “**NFPA**” means the National Federation of Paralegal Associations.

(x) “**National Certification**” means Certified Paralegal (CP or CLA) credential from the National Association of Legal Assistants (NALA); the Professional Paralegal (PP) credential from the National Association of Legal Professionals (NALS); or the Registered Paralegal (RP) credential from the National Federation of Paralegal Associations (NFPA).

(y) “**OPC**” means the ~~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 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-tenant and debt collection includes, but is not limited to, the provision of legal services as a Paralegal supervised by a licensed attorney, paralegal student or law student in the areas of bankruptcy, real estate, mortgage and/or banking law.

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

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

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

Tab 4

Proposed Amendments to the Supreme Court Rules of Professional Practice related to the Discipline, Disability, and Sanctions Rules

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Chapter 11, Article 5. Office of Professional Conduct.

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 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.

Rule 11-502. Definitions.

As used in this article:

(a) “**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 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 as 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.

(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;

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

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

6 (m) “**negligence**” means a Lawyer’s failure to heed a substantial risk that
7 circumstances exist or that a result will follow, which failure is a deviation from
8 the standard of care that a reasonable Lawyer would exercise in the situation.

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

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

14 (p) “**OPC Counsel**” means Chief Disciplinary Counsel, deputy chief disciplinary
15 counsel, and any assistant disciplinary counsel.

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

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

22 (s) “**Respondent**” means a Lawyer subject to the disciplinary jurisdiction of the
23 Supreme Court against whom a Complaint has been filed or an Action has been
24 initiated.

25 (t) “**Rules of Professional Conduct**” means the rules in Chapter 13 of the
26 Supreme Court Rules of Professional Practice and “**Licensed Paralegal**

1 **Practitioner Rules of Professional Conduct**” means the rules in Chapter 15,
2 article 12 of the Supreme Court Rules of Professional Practice.

3 (u) **“Supreme Court”** means the Utah Supreme Court.

4

5

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.

(1) Composition.

(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.

(B) The executive director of the Utah Bar will be an ex-officio, non-voting member of the Oversight Committee.

(2) Appointment and member roles. The Utah Supreme Court appoints Oversight Committee members who may serve up to two consecutive 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.

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

(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.

1 (5) **Absences.** If an Oversight Committee member fails to attend two consecutive
2 Committee meetings, the chair may notify the Supreme Court of those absences
3 and may request that the Supreme Court replace that Committee member.

4 (6) **Administrative support.** The Administrative Office of the Courts shall
5 coordinate administrative support to the Committee.

6 (b) **Oversight Committee purpose, responsibilities, and authority.**

7 (1) **Oversight Committee purpose.** The Oversight Committee's purpose is to
8 assist the OPC in implementing reforms to the attorney discipline process
9 adopted by the Utah Supreme Court and to provide oversight for the OPC.

10 (2) **Oversight Committee responsibilities.** The following comprise the Oversight
11 Committee's responsibilities:

12 (A) Develop and implement realistic performance metrics and conduct
13 annual evaluations of OPC and its Chief Disciplinary Counsel;

14 (B) Approve the budget for the OPC and annually submit the budget to
15 the Supreme Court and the Bar;

16 (C) Conduct a needs assessment for the OPC, setting forth a three- to five-
17 year funding plan for the disciplinary process, including technology and
18 staffing needs;

19 (D) Annually, in conjunction with Chief Disciplinary Counsel and the
20 Ethics and Discipline Committee chair, report to the Court regarding the
21 operations of the OPC and the general standing of disciplinary matters
22 and procedures;

23 (E) Develop and monitor formal policies for the OPC, including records
24 retention policies;

25 (F) Recommend rules of administration and procedure to the Supreme
26 Court;

(G) Recommend a Chief Disciplinary Counsel to be appointed by the Supreme Court; and

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

(3) **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.

(c) Complaints and appeals.

(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.

(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.

(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 who is the subject of the complaint.

(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.

(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.

1 **Rule 11-505. Statute of limitations.**

2 (a) **Individual Complaints.** A Complaint must be filed with the OPC within four years
3 of the time that the Complainant discovers or reasonably should have discovered the
4 alleged misconduct.

5 (b) **OPC Complaints.** A Complaint initiated by the OPC must be initiated within five
6 years of the alleged misconduct.

7 (c) **Fraud, conversion, conviction of a serious crime, and concealment.** There is no
8 statute of limitations for misconduct alleging fraud, conversion, or conviction of a
9 serious crime, or for alleged misconduct concealed by the lawyer.

10

11

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. 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:

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

(2) determining that screening panels have a uniform basis for the judgments rendered;

(3) providing the screening panels with information concerning ethics and judicial decisions necessary to their activities; and

(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, assign up to two Committee members who are licensed paralegal practitioners to 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. The chair, or vice chair if the chair is not present, may not vote unless necessary to break a tie. 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 Committee chair may convene the entire Committee at such other times as necessary to effectively and promptly carry out the Committee's duties.

1 (f) **Alternates.** Members of any screening panel may serve as alternate members on
2 different screening panels. The Committee chair and the Committee vice chairs may
3 serve as alternate members on all screening panels.

4 (g) **Responsibilities.**

5 (1) Complaints are randomly assigned to a screening panel. The screening panels
6 review and hear all Complaints charging that a Lawyer engaged in unethical or
7 unprofessional conduct, and may consider any other relevant information.

8 Screening panels determine the action to be taken on any Complaint that, in
9 applying these rules to the facts of the case, is most consistent with the public
10 interest and the Rules of Professional Conduct or Licensed Paralegal Practitioner
11 Rules of Professional Conduct.

12 (2) Unless otherwise provided in this article, whenever the OPC may be present
13 before 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 where good cause is shown, 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:

(1) handling the Committee's administrative affairs,

(2) accepting documents filed with the Committee,

(3) handling screening panel calendars,

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

(5) notifying the Complainant, the Respondent, and the OPC of the times and dates their matters will be heard,

(6) notifying the Complainant, the Respondent, and the OPC of the disposition of each matter, and

(7) otherwise performing or providing the secretarial and administrative functions of the Committee and screening panels.

Rule 11-514. 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.**

(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.

(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.

(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:

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

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

(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.

(c) **Recusal.**

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

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

4 (d) **Disqualification procedures.**

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

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

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

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

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

17 (e) **Disqualification after Committee service.** A former Committee member may not
18 personally represent a Respondent in any proceeding as provided in these rules within
19 one year after completing the former Committee member's service. In addition to the
20 one-year prohibition, a former Committee member may not personally represent a
21 Respondent in any proceedings as provided in these rules in which the former
22 Committee member previously participated during the Committee member's service on
23 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 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.** The Chief Disciplinary Counsel has the following responsibilities:

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

(2) Develop the budget for Oversight Committee approval.

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

(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.

(A) The report must include:

(i) the number of disciplinary cases investigated,

(ii) the number of disciplinary cases brought before the Committee,

(iii) Actions filed,

(iv) dispositions, including diversionary dispositions,

(v) cases dismissed,

(vi) informal ethics advisory opinions issued by the Bar, and

(vii) 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.

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

(c) OPC Counsel.

(1) Qualification and responsibilities. OPC Counsel must be licensed to practice law in Utah.

(2) OPC Counsel will be selected by the Chief Disciplinary Counsel. An OPC Counsel is an at-will employee subject to dismissal by the Chief Disciplinary Counsel with or without cause.

(d) Disqualification and conflicts of interest. In addition to complying with the Rules of Professional Conduct regarding successive government and private employment (Rule 1.11 of the Rules of Professional Conduct), former OPC Counsel may not personally represent a Respondent as to any Complaint or Action within one year after completing the former OPC Counsel's service. In addition to the one-year prohibition, former OPC Counsel may not personally represent a Respondent in any Complaint or Action that the OPC investigated or 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:

(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.

(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.

(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.

(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.

(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.

(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.

(7) Notify each jurisdiction in which a Respondent is licensed of a transfer to disability status or any public discipline imposed in Utah.

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

4 (9) Forward a certified copy of the judgment of conviction to the disciplinary
5 agency in each jurisdiction in which a Lawyer is licensed when the Lawyer is
6 convicted of a crime in Utah which reflects adversely on the Lawyer's honesty,
7 trustworthiness, or fitness as a Lawyer.

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

14 (11) Provide informal guidance concerning professional conduct to Lawyers
15 through seminars that will promote ethical conduct, formulate diversionary
16 programs, monitor probations, and disseminate disciplinary results to the Bar
17 and the public through the Utah Bar Journal and otherwise as appropriate while
18 maintaining the confidentiality of Respondents subject to private discipline.

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.

(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.

(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.

(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:

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

(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.** After three years, the OPC must destroy all records or other evidence of the existence of Complaints that the OPC dismisses or declines to prosecute.

(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.

(2) **Effect of no imposed discipline.** After a file or electronic record related to a Complaint that the OPC dismisses or declines to prosecute has been destroyed, 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 such matter by stating that no Complaint was made.

(b) **Discipline and disability.** The OPC must retain for 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 retain for three years all records of disciplinary history letters, running from the date of the letter.

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.

(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.

(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 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.** Upon receiving a Complaint, the OPC will conduct a preliminary investigation to ascertain whether the Complaint's allegations are sufficiently clear. If the allegations are not sufficiently clear, 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, the OPC must advise the Complainant concerning the initial investigation of the Complaint.

1 (d) **Referral to Professionalism and Civility Counseling Board.** The OPC may – in
2 connection with any conduct that comes to its attention – refer any matter to the
3 Professionalism and Civility Counseling Board established under Rule [14-303](#). Such
4 referral may be in addition to or in lieu of any further proceedings related to the subject
5 matter of the referral. Such referral should be in writing and – at the discretion of the
6 OPC – may include any or all information included in the Complaint or additional facts
7 submitted by the Complainant.

8 (e) **Notice to Respondent.** Upon completing the preliminary investigation, the OPC will
9 determine whether the Complaint can be resolved in the public interest, the
10 Respondent’s interest, and the Complainant’s interest. If the Complaint cannot be
11 resolved or if it alleges facts that, by their very nature, should be brought before the
12 screening panel, or if good cause otherwise exists to bring the matter before the
13 screening panel, the OPC must:

14 (1) serve the Respondent with a Notice identifying with particularity the possible
15 violation(s) of the Rules of Professional Conduct or Licensed Paralegal
16 Practitioner Rules of Professional Conduct raised by the Complaint as the OPC
17 has preliminarily determined;

18 (2) attach a copy of the signed Complaint; and

19 (3) mail the documents to the Respondent’s address as reflected in the Bar’s
20 records.

21 (f) **Answer to Complaint.** Within 21 days after the Respondent is served with the
22 Complaint and Notice, the Respondent must file with the OPC a signed, written answer
23 explaining the facts surrounding the Complaint, together with all defenses and
24 responses to the claims of possible misconduct. For good cause, the OPC may extend
25 the time for filing an answer not to exceed an additional 28 days. When the answer is
26 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.

(1) Reasons for dismissal. The OPC may dismiss a Complaint without referral to a screening panel hearing if the OPC determines the Complaint is:

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

(B) barred by the statute of limitations;

(C) more adequately addressed in another forum; or

(D) one in which the OPC declines to prosecute.

(2) Notification and appeal.

(A) When the OPC dismisses a Complaint, it must:

(i) notify the Complainant and the Respondent that the OPC has dismissed the Complaint;

(ii) state the reasons for dismissal; and

(iii) include a notice of the Complainant's right to appeal an OPC decision to the Committee chair.

(B) The Complainant may appeal the dismissal by filing written notice with the Committee clerk within 21 days after the dismissal notification is mailed and serving the notice on the OPC. The Complainant has no other right of appeal in this article.

(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 (if necessary), and set the matter for hearing by a screening panel.

1 If the chair recuses, the chair will appoint the vice chair or one of the
2 screening panel chairs to review and determine the appeal.

3

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 the Notice, 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 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 of an Action. 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 and serve a copy on the OPC 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.

1 (e) **Complainant's appearance.** A Complainant has the right to appear before the
2 screening panel personally and may testify, together with any witnesses the
3 Complainant calls.

4 (f) **Right to hear evidence; cross-examination.** The Complainant and Respondent have
5 the right to be present during presentation of evidence unless excluded by the screening
6 panel chair for good cause. Respondent may be represented by counsel, and
7 Complainant may be represented by counsel or another representative. Either
8 Complainant or Respondent may request that the panel chair seek responses or pose
9 questions to the other party at the hearing. Direct cross-examination will ordinarily not
10 be permitted unless, upon request, the panel chair deems that it would materially assist
11 the panel in its deliberations.

12 (g) **Rule violations not charged by the OPC.** During the screening panel hearing, but
13 not after, the panel may find that rule violations have occurred not previously charged
14 by the OPC. If so, the screening panel will give Respondent a reasonable opportunity to
15 respond during the hearing. The Respondent may address the additional charges at the
16 hearing and may file with the Committee clerk and serve on the OPC within two
17 business days of the hearing a written response to the new charges along with
18 supplemental materials related to the new charges. Before making a determination or
19 recommendation, the response and any supplemental materials must be reviewed and
20 considered by the panel members present at the original hearing.

21 (h) **Hearing record.** The proceedings of any screening panel hearing under this rule will
22 be recorded at an audio quality level that permits an accurate transcription of the
23 proceedings. The clerk will assemble and deliver to the Committee chair a complete
24 record of the proceedings upon the panel's determination or recommendation to the
25 Committee chair. The record of the proceedings before the panel must be preserved for
26 at least one year after delivery of the panel's determination or recommendation to the
27 Committee chair and for such additional time as any further proceedings on the matter
28 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:

(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;

(2) The Complaint must be referred to the Professionalism and Civility Counseling Board established under Rule [14-303](#);

(3) The Complaint must be referred to the Committee chair with an accompanying screening panel recommendation that the Respondent be admonished;

(4) The Complaint must be referred to the Committee chair with an accompanying screening panel recommendation that the Respondent receive a public reprimand;

(5) The OPC must file an Action against the Respondent if the panel finds probable cause to believe there are grounds for public discipline that merit an Action; or

(6) The OPC must file an Action 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

1 panel hearing, but this evidence will not be considered unless the panel has determined
2 the Respondent engaged in misconduct.

3 **(k) Multiple cases involving the same Respondent.** More than one case involving the
4 same Respondent may be scheduled before the same panel, but in determining whether
5 a rule has been violated in one case, only the factual allegations in that case may be
6 considered.

7 **(l) Recommendation of admonition or public reprimand.** A screening panel
8 recommendation that the Respondent be disciplined under paragraph (i)(3) or (i)(4)
9 must be in writing and state the substance and nature of the Complaint and defenses
10 and the basis upon which the screening panel has concluded, by a preponderance of the
11 evidence, that the Respondent be admonished or publicly reprimanded. The screening
12 panel must deliver copies of the recommendation to the Committee chair, Respondent,
13 and the OPC.

14

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:

(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

(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.**

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

(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.

(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

1 the audio or video recording is requested within 28 days. The requesting party
2 will bear the costs of such transcript and must file the transcript with the
3 Committee clerk at the time of or before filing an exception or response, together
4 with a declaration under penalty of perjury establishing the transcript's chain of
5 custody.

6 (4) **Burden of proof.** The party who files an exception has the burden of showing
7 that the determination or recommendation of the screening panel is unsupported
8 by substantial evidence or is arbitrary, capricious, legally insufficient, or
9 otherwise clearly erroneous.

10 (5) **Record on exceptions.** The proceedings of any hearing on an exception must
11 be recorded at a level of audio quality that permits an accurate transcription of
12 the proceedings.

13

Rule 11-533. General procedures.

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

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

(c) **Abeyance of disciplinary proceedings.** A disciplinary proceeding may be held in abeyance by the Committee chair at any time before a screening panel hearing, when the allegations or the 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.

1 **Rule 11-534. Final Committee disposition.**

2 (a) **Final, written determination.** Either upon completing the exception procedure
3 under Rule 11-532 or if no exception has been filed, the Committee chair will review the
4 screening panel's findings and recommendations and will prepare the order to execute
5 those findings and recommendations. The Committee chair may not make changes to
6 screening panel findings and recommendations, other than changes needed for clarity.
7 If no exception is filed, the Committee chair need not issue a final, written
8 determination for a dismissal or a dismissal with a letter of caution.

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

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

(2) an abuse of discretion;

(3) arbitrary or capricious; or

(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, the 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:

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

(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 (Respondent’s name and Bar number), Respondent.”

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

(e) **Sanctions hearing.** If the district court finds misconduct, it will hold a hearing to receive relevant evidence in aggravation and mitigation, and will 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.

(f) **Review.** Either the OPC or the Respondent may appeal the discipline order to the Supreme Court.

Rule 11-537. Failure to answer charges.

(a) **Failure to answer.** If having received actual notice of the charges filed, the Respondent fails to answer the charges within 21 days, the Respondent will be deemed to have admitted the factual allegations.

(b) **Failure to appear.** If the Committee orders the Respondent to appear and the Respondent, having received actual notice of that order, fails to appear, the Respondent will be deemed to have admitted the factual allegations which were the subject of such appearance. The Committee may not, absent good cause, continue or delay proceedings because of the Respondent's failure to appear.

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

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.

1 **Rule 11-539. Costs.**

2 (a) **Assessment.** The prevailing party in an Action may be awarded judgment for costs
3 in accordance with Rule 54(d) of the Utah Rules of Civil Procedure.

4 (b) **Offer of discipline by consent.** The OPC will not be deemed to have prevailed in
5 the Action on any count of the complaint unless the sanction imposed exceeds any
6 sanction to which the Respondent conditionally consented under Rule 11-565 before the
7 hearing.

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

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

13

1 **Rule 11-540. Immunity from civil suits.**

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

10

1 **Rule 11-541. Service.**

2 Serving documents on Respondent in connection with an Action must be made in
3 accordance with 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 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.

(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 because of substantial similarity to the material allegations of a pending criminal, civil, or disciplinary Action.

(e) **The Complainant's actions.** An Action will not be abated due to:

(1) the Complainant's unwillingness to prosecute a Complaint;

(2) settlement or compromise between the Complainant and the Respondent; or

(3) restitution by the Respondent.

(f) **Complaints against OPC Counsel, Committee members, the Bar Commission, or Lawyers employed by the Bar.** The Committee chair will assign a screening panel any Complaint 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.

1 (1) A Complaint will be dismissed without hearing by a screening panel if, after
2 considering all factors, the chair determines the Complaint is:

3 (A) frivolous or unintelligible;

4 (B) barred by the statute of limitations;

5 (C) being or should have been addressed in another more appropriate
6 forum; or

7 (D) unsupported by fact or does not raise probable cause of any
8 unprofessional conduct.

9 (2) The screening panel chair must notify the Complainant of the dismissal and
10 the reasons for dismissal.

11 (3) The Complainant may appeal the screening panel chair's dismissal to the
12 Committee chair within 14 days after notification of the dismissal is mailed.

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

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

Diversion.

Rule 11-550. Diversion referrals, authority, and responsibilities.

(a) **Referral to diversion.** In a matter involving less serious misconduct under Rule 11-551, 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.

(b) **Authority and responsibility.** The OPC may negotiate and execute diversion contracts, assign monitoring to a Lawyer or 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 committees of volunteer attorneys and other professionals for the specific purpose of monitoring the compliance of any attorney under diversion and reporting compliance to the OPC.

(c) **Notice to Complainant.** The OPC will notify the Complainant, if any, of the proposed decision to refer the Respondent to diversion, and the Complainant may submit written comments. The Complainant will be notified when the Complaint is diverted and when the Complaint is dismissed. All notices will be sent to the Complainant's address according to the OPC's records. 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:

- (1) the misconduct involves the misappropriation of client funds;
- (2) the misconduct results in or is likely to result in substantial prejudice to a client or other person, absent adequate provisions for restitution;
- (3) the Respondent has been sanctioned in the last three years;
- (4) the misconduct is of the same nature as misconduct for which the Respondent has been sanctioned in the last three years;
- (5) the misconduct involves dishonesty, deceit, fraud, or misrepresentation;
- (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
- (7) the misconduct is part of a pattern of similar misconduct.

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

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

Rule 11-552. Diversion contract.

(a) Contract requirements.

(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.

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

(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.

(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.

(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.

(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:

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

1 (2) the terms and conditions of the plan for Respondent and, the identity, if
2 appropriate, of any service provider, mentor, monitor and/or supervisor and
3 that individual's specific responsibilities. If Respondent uses a professional or
4 service, and it is necessary to disclose confidential information, Respondent must
5 sign a limited conditional waiver of confidentiality permitting the professional or
6 service to make the necessary disclosures for the Respondent to fulfill the
7 Respondent's duties under the contract;

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

11 (4) the necessary terms providing that Respondent will pay all costs incurred in
12 connection with the contract and those costs further specified under Rule 11-555
13 and any costs associated with the Complaints to be deferred; and

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

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

17 (d) **Status of complaint.** After a diversion contract is executed by the Respondent, the
18 Complaint is deferred pending successful completion of the contract.

Rule 11-553. Respondent's participation in diversion.

(a) Diversion may require the Respondent's participation in one or more of the following:

(1) fee arbitration;

(2) mediation;

(3) law office management assistance;

(4) lawyer or licensed paralegal practitioner assistance programs;

(5) psychological and behavioral counseling;

(6) monitoring;

(7) restitution;

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

(9) any other program or corrective course of action to address the Respondent's conduct.

Rule 11-554. Terminating diversion.

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

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

1 **Rule 11-555. Diversion Costs.**

2 Respondent must pay an initial fee of \$250 upon entering diversion, and a monthly fee
3 of \$50 during diversion, unless the contract specifies otherwise. All such fees are
4 payable to the Bar's general fund.

5

Discipline.

Rule 11-560. Grounds for discipline.

It constitutes a ground for discipline for a Lawyer to:

- (a) violate these rules, the Rules of Professional Conduct, or the 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, 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:

- (1) the Respondent has given an express written waiver of confidentiality;
- (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;
- (3) the information is required in a subsequent Lawyer sanctions hearing; or
- (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 filing 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.

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

7 (e) **Request for nonpublic information.** Nonpublic information is confidential, other
8 than as authorized for disclosure under paragraph (a), unless the request for
9 information is approved by the OPC and the requestor complies with paragraphs (f)
10 and (g).

11 (f) **Notice to the Respondent.** Except as provided in paragraph (g), if the Committee
12 decides to provide nonpublic information requested pursuant to paragraph (e), and if
13 the Respondent has not signed an express written waiver permitting the party
14 requesting the information to obtain the nonpublic information, the Respondent must
15 be notified in writing at the Respondent's mailing address as shown by Bar records of
16 the information that has been requested and by whom, together with a copy of the
17 information proposed to be released. The notice must advise the Respondent that the
18 information will be released 21 days after the notice's mailing unless the Respondent
19 objects to the disclosure. If the Respondent timely objects to the disclosure, the
20 information must remain confidential unless the requesting party obtains a court order
21 authorizing its release.

22 (g) **Release without notice.** If a requesting party as outlined in paragraph (e) has not
23 obtained an express written waiver from the Respondent to obtain nonpublic
24 information, and requests that the information be released without giving notice to the
25 Respondent, the requesting party must certify that:

- 26 (1) the request will further an ongoing investigation into the Respondent's
27 misconduct;

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

2 (3) disclosing the existence of the investigation to the Respondent would
3 seriously prejudice that investigation.

4 (h) **Disclosure without notice.** The OPC may disclose nonpublic information without
5 notice to the Respondent if:

6 (1) disclosure furthers an ongoing OPC investigation into the Respondent's
7 misconduct; and

8 (2) disclosure is essential to that investigation.

9 (i) **Participants' duty.** OPC Counsel, OPC staff, the Committee, Committee volunteers,
10 Committee staff, Committee employees, special counsel appointed pursuant to Rule 11-
11 542, and special counsel employees or assistants in a proceeding under these rules must
12 maintain confidentiality. Unless otherwise authorized, persons receiving private
13 records under paragraph (e) will not provide access to the records to anyone else.

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, relicensure, 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 the OPC's website and 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 to both Utah state and federal courts for lawyers.

Rule 11-563. Interim discipline for threat of harm.

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

(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.

(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.

(1) If an order is entered:

(A) the district court may appoint a trustee under Rule 11-538, to protect the interests of the Respondent's clients; and

(B) the OPC may file an Action without presenting the matter to a screening panel.

(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 subject to interim discipline pursuant to paragraph
2 (b) must comply with the notice requirements in Rule 11-570 as ordered by the district
3 court.

4 (d) **Motion to dissolve or modify interim discipline.** On 48 hours' notice to the OPC, a
5 Respondent suspended pursuant to paragraph (b) may appear and move to dissolve or
6 modify the order of discipline, and such motion will be heard and determined as
7 expeditiously as justice requires.

8

Rule 11-564. Finding of guilt or entry of a plea to a crime.

(a) **Duty to report any finding of guilt or plea to a crime.** After a finding of guilt or entry of a plea of guilty or no contest – including the entry of a plea in abeyance – for any crime, except for misdemeanor traffic offenses or traffic ordinance violations not involving the use of alcohol or drugs:

(1) The Lawyer must notify the OPC in writing of such a finding or plea within 14 days after it is entered and include the following information:

(a) name, bar number, and current address;

(b) the court in which the finding or plea was entered; and

(c) the case number in which the finding or plea was entered.

(2) The court must forward documentation that the Lawyer has been found guilty of or has entered a plea to a crime to the OPC within 28 days after the finding or plea is entered. (b) **Motion for interim suspension.** On being advised that a Lawyer has been found guilty of or has entered a plea of guilty or no contest for a felony or misdemeanor that reflects adversely on the Lawyer's honesty, trustworthiness, or fitness to practice law, the OPC must determine whether the crime warrants interim suspension. After determining that the crime warrants interim suspension, the OPC must file an Action, and concurrently file a motion for immediate interim suspension. 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 to practice law, or that the Respondent is not the individual who was found guilty of or had entered a plea of guilty or no contest. The Respondent is not entitled to an evidentiary hearing but may request an informal hearing, solely to determine whether the finding of guilt or plea 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 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 or has entered a plea to a felony or misdemeanor that reflects adversely on the Respondent's honesty, trustworthiness, or fitness to practice law regardless of any pending appeal.

(d) **Dissolving interim suspension.** Interim suspension may be dissolved as provided in Rule 11-563.

(e) **Documentation as conclusive evidence.** Except as provided in paragraph (b), documentation that the Respondent has been found guilty of or has entered a plea to a crime constitutes conclusive evidence that the Respondent committed the crime. (f)

Automatic reinstatement from interim suspension. If a Respondent suspended solely under paragraph (c) demonstrates that the underlying finding of guilt or plea has been reversed or vacated, the order for interim suspension will be vacated and the Respondent placed on active status. Vacating the interim suspension will not automatically terminate any disciplinary proceeding then pending against the Respondent, the disposition of which will be determined based on the available evidence other than the reversed or vacated finding of guilt or plea.

(g) **Notice to clients and other of interim suspension.** An interim suspension under this rule constitutes a suspension of the Respondent for the purpose of Rule 11-570.

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 an 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:

(1) the Complaint and Notice if no Action has been filed;

(2) the Action, if filed;

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

2 (4) an affidavit of consent by the Respondent to be disciplined.

3 (d) **Affidavit of consent.** A Respondent whose proposal for discipline by consent has
4 been approved, must submit an affidavit to the Committee chair or the district court as
5 appropriate, consenting to the approved disciplinary sanction and affirming that:

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

7 (2) the Respondent is not acting under coercion or duress;

8 (3) the Respondent is fully aware of the implications of submitting the consent;

9 (4) the Respondent is aware that there is presently pending an investigation into,
10 or proceeding involving, allegations that there exist grounds for discipline, the
11 nature of which must be specifically set forth;

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

14 (6) the Respondent submits consent because the Respondent knows that if the
15 Complaint or Action were predicated on the allegations under investigation were
16 filed, or the pending Action were prosecuted, the Respondent could not
17 successfully defend against the charges upon which the discipline is based.

Rule 11-566. Resignation with discipline pending.

(a) A Respondent may resign by voluntarily relinquishing the Respondent's 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:

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

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

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

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

(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;

(6) agreeing to comply with these rules, including Rule 11-570 regarding notice to clients and return of clients' property; and

(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.

1 (d) If the Supreme Court accepts the resignation, it will enter an order specifying the
2 effective date of the resignation. The order may include additional or alternative terms
3 and conditions deemed appropriate, including conditions precedent to relicensure.

4 (e) A Respondent whose resignation is accepted must comply with Rule 11-591 and
5 may not apply for relicensure until five years after the effective date of the resignation
6 unless the Supreme Court orders otherwise in its order accepting the resignation.

7

Rule 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, 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:

- (1) a copy of the order from the other court, jurisdiction, or regulatory body; and
- (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 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.**

- (1) After 28 days from service of the notice under paragraph (b), the district court will take such action as may be appropriate to cause the 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:

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

3 (B) imposing discipline would result in grave injustice;

4 (C) the misconduct warrants substantially different discipline in Utah or is
5 not misconduct in this jurisdiction; or

6 (D) the reason for the original transfer to disability inactive status no
7 longer exists.

8 (2) If the district court determines that any of these elements exist, it will enter
9 such other order as it deems appropriate. The burden is on the Lawyer seeking
10 different discipline or transfer to demonstrate that imposing discipline or
11 transfer is not appropriate.

12 (e) **Other jurisdictions' final adjudications.** Except as provided in paragraphs (c) and
13 (d) above, a Respondent who has been found guilty of misconduct or is transferred to
14 disability inactive status in a final adjudication of another court, jurisdiction, or
15 regulatory body will establish conclusively the misconduct or the disability for
16 purposes of a disciplinary or disability proceeding in Utah.

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.

(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.

(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.

(1) **Court order.** No Lawyer transferred to disability status may resume active status except by district court order.

(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.

(3) **Examination.** Upon 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.

(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

1 records relating to the disability if requested by the district court or the district
2 court's appointed experts.

3 **(5) Learning in law; Bar examination.** The district court may also direct that the
4 Lawyer establish proof of competence and learning in law, which proof may
5 include the Bar's certification that the Lawyer has successfully completed an
6 examination for relicensure.

7 **(6) Granting petition for transfer to active status.** The district court will grant
8 the petition for transfer to active status on a showing by clear and convincing
9 evidence that the disability has been removed.

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

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:

(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;

(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;

(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;

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

(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;

(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

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

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

(d) **Other notice.** If a Respondent is suspended for six months or less, the district court may impose conditions similar to those set out in paragraph (b). In any public disciplinary matter, the district court may also require the Respondent to issue 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) will be a precondition for reinstatement or relicensure. Willful failure to comply with paragraphs (a), (b) and (d) constitute contempt of court and may be punished as such or by further disciplinary action.

Sanctions.

Rule 11-580. Purpose and nature of sanctions.

(a) **Purpose of sanctions.** 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 sanctions.** 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 the sanctions 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. The rules 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 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.** 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.

(1) **Requirements.** To be placed on probation, a Respondent must demonstrate that the Respondent:

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

(B) is unlikely to harm the public during the period of rehabilitation and the necessary conditions of probation can be adequately supervised;

(C) has a disability which is temporary or minor and does not require treatment and transfer to disability status;

(D) has not committed acts involving dishonesty, fraud, deceit, or misrepresentation; and

(E) has not committed acts warranting delicensure.

(2) **Conditions.** Probation may include the following conditions:

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

(B) restitution;

(C) assessment of costs;

(D) limitation on practice;

(E) requirement that the Lawyer pass the Multistate Professional Responsibility Exam;

(F) requirement that the Lawyer take continuing legal education courses;

(G) mental health counseling and treatment;

(H) abstinence from drugs and alcohol;

(I) medical evaluation and treatment;

(J) periodic reports to the court and the OPC; and

(K) monitoring of all or part of Respondent's work by a supervising attorney.

(3) **Costs.** 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.

(4) **Terminating probation.** A Respondent may terminate 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.

1 (5) **Violations.** If during the period of probation, the OPC receives information
2 that any probation term has been violated, the OPC may file a motion specifying
3 the alleged violation and seeking to have the probation terminated. Upon filing
4 such motion, the Respondent must have the opportunity to respond and a
5 hearing will be held, at which time the court will determine whether to revoke
6 probation.

7 (h) **Diversion.** Diversion is an alternative to a sanction if completed. Diversion allows a
8 Lawyer to practice law under specified conditions. Diversion may be public or non-
9 public.

10 (1) Rule 11-550 governs diversion matters before the matter is submitted to a
11 screening panel.

12 (2) For an Action, the following criteria will determine the appropriateness of a
13 diversion:

14 (A) The misconduct does not involve the misappropriation of funds or
15 property; fraud, dishonesty, deceit or misrepresentation; or the
16 commission of a misdemeanor adversely reflecting on the Lawyer's fitness
17 to practice law or any felony;

18 (B) The misconduct appears to be the result of inadequate law office
19 management, chemical dependency, a physical or mental health
20 condition, negligence or lack of training, education or other similar
21 circumstance; and

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

25 (3) In addition to the above-required criteria of (A), (B) and (C), other
26 considerations may include whether the misconduct is a one-time act or based on

1 a physical or mental condition beyond the Respondent's control and whether
2 there is sufficient evidence connecting the condition to the misconduct.

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

5 (5) If the Lawyer completes the diversion conditions, the Action will be
6 dismissed with prejudice.

7 (6) If the Lawyer does not complete the diversion conditions within the required
8 time, the Lawyer will be subject to a suspension of six months and a day.

9 (i) **Resignation with discipline pending.** Resignation with discipline pending is a form
10 of public discipline that allows a Respondent to resign from the practice of law while
11 either a Complaint or Action is pending against the Respondent. Resignation with
12 discipline pending may be imposed as set forth in Rule 11-566.

13 (j) **Other sanctions and remedies.** Other sanctions and remedies that a court may
14 impose include:

15 (1) restitution;

16 (2) assessment of costs;

17 (3) limitation upon practice;

18 (4) appointment of a receiver;

19 (5) a requirement that the Lawyer take the Bar Examination or professional
20 responsibility examination; and

21 (6) a requirement that the Lawyer attend continuing education courses.

22 (k) **Reciprocal discipline.** Reciprocal discipline is imposing a disciplinary sanction on a
23 Lawyer who has been disciplined in another court, another jurisdiction, or a regulatory
24 body having disciplinary jurisdiction.

25

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:

(1) the presumptive sanction based on:

(A) the duty violated,

(B) the Lawyer's mental state,

(C) the potential or actual injury caused by the Lawyer's misconduct; and

(2) the existence of aggravating or mitigating factors.

(b) Multiple charges of misconduct.

(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.

(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.

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

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

(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.

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

(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:

(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.

(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.

(3) Reprimand is generally appropriate when a Lawyer negligently reveals information relating to representation of a client not otherwise lawfully

1 permitted to be disclosed and this disclosure causes injury or potential injury to a
2 client.

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

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

9 (1) Delicensure is generally appropriate when a Lawyer, without the informed
10 consent of client(s):

11 (A) engages in representation of a client knowing that the Lawyer's
12 interests are adverse to the client's with the intent to benefit the Lawyer or
13 another, and causes serious or potentially serious injury to the client;

14 (B) simultaneously represents clients that the Lawyer knows have adverse
15 interests with the intent to benefit the Lawyer or another, and causes
16 serious or potentially serious injury to a client; or

17 (C) represents a client in a matter substantially related to a matter in
18 which the interests of a present or former client are materially adverse,
19 and knowingly uses information relating to the representation of a client
20 with the intent to benefit the Lawyer or another, and causes serious or
21 potentially serious injury to a client.

22 (2) Suspension is generally appropriate when a Lawyer knows of a conflict of
23 interest and does not fully disclose to a client the possible effect of that conflict,
24 and causes injury or potential injury to a client.

25 (3) Reprimand is generally appropriate when a Lawyer is negligent in
26 determining whether the representation of a client may be materially affected by

1 the Lawyer's own interests, or whether the representation will adversely affect
2 another client, and causes injury or potential injury to a client.

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

8 (d) **Lack of diligence.** The following sanctions are generally appropriate when a
9 Lawyer fails to act with reasonable diligence and promptness in representing a client:

10 (1) Delicensure is generally appropriate when:

11 (A) a Lawyer abandons the practice and causes serious or potentially
12 serious injury to a client;

13 (B) a Lawyer knowingly fails to perform services for a client and causes
14 serious or potentially serious injury to a client; or

15 (C) a Lawyer engages in a pattern of neglect with respect to client matters
16 and causes serious or potentially serious injury to a client.

17 (2) Suspension is generally appropriate when:

18 (A) a Lawyer knowingly fails to perform services for a client and causes
19 injury or potential injury to a client, or

20 (B) a Lawyer engages in a pattern of neglect and causes injury or potential
21 injury to a client.

22 (3) Reprimand is generally appropriate when a Lawyer is negligent and does not
23 act with reasonable diligence in representing a client, and causes injury or
24 potential injury to a client.

(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:

(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.

(2) Suspension is generally appropriate when a Lawyer engages in an area of practice in which the Lawyer knows the Lawyer is not competent, and causes injury or potential injury to a client.

(3) Reprimand is generally appropriate when a Lawyer:

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

(B) is negligent in determining whether the Lawyer is competent to handle a legal matter and causes injury or potential injury to a client.

(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:

(1) Delicensure is generally appropriate when a Lawyer knowingly deceives a client with the intent to benefit the Lawyer or another, and causes serious or potentially serious injury to a client.

1 (2) Suspension is generally appropriate when a Lawyer knowingly deceives a
2 client, and causes injury or potential injury to the client.

3 (3) Reprimand is generally appropriate when a Lawyer negligently fails to
4 provide a client with accurate or complete information, and causes injury or
5 potential injury to the client.

6 (4) Admonition is generally appropriate when a Lawyer engages in an isolated
7 instance of negligence in failing to provide a client with accurate or complete
8 information, and causes little or no actual or potential injury to the client.

9
10

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.

(1) Delicensure is generally appropriate when:

(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

(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.

(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.

(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.

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

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

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

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

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

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

16

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:

(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.

(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.

(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.

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

(b) **Abuse of the legal process.** The following sanctions are generally appropriate when a Lawyer fails to expedite litigation or bring a meritorious claim, or fails to obey any

obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists:

(1) 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 or potentially serious injury to a party or causes serious or potentially serious interference with a legal proceeding.

(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.

(3) Reprimand is generally appropriate when a Lawyer negligently fails 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.

(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:

(1) Delicensure is generally appropriate when a Lawyer:

(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;

(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

1 serious injury to a party, or causes significant or potentially significant
2 interference with the outcome of the legal proceeding; or

3 (C) improperly communicates with someone in the legal system other
4 than a witness, judge, or juror with the intent to influence or affect the
5 outcome of the proceeding, and causes significant or potentially
6 significant interference with the outcome of the legal proceeding.

7 (2) Suspension is generally appropriate when a Lawyer engages in
8 communication with an individual in the legal system when the Lawyer knows
9 that such communication is improper, and causes injury or potential injury to a
10 party or causes interference or potential interference with the outcome of the
11 legal proceeding.

12 (3) Reprimand is generally appropriate when a Lawyer is negligent in
13 determining whether it is proper to engage in communication with an individual
14 in the legal system, and causes injury or potential injury to a party or interference
15 or potential interference with the outcome of the legal proceeding.

16 (4) Admonition is generally appropriate when a Lawyer engages in an isolated
17 instance of negligence in improperly communicating with an individual in the
18 legal system, and causes little or no: (A) actual or potential injury to a party, or
19 (B) actual or potential interference with the outcome of the legal proceeding.

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.

Rule 11-587. Prior discipline orders.

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

(a) Delicensure is generally appropriate when a Lawyer:

(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

(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:

(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

(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:

(1) prior record of discipline;

(2) dishonest or selfish motive;

(3) a pattern of misconduct;

(4) multiple offenses;

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

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

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

(8) vulnerability of victim;

(9) substantial experience in the practice of law;

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

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

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

- 1 (1) absence of a prior record of discipline;
- 2 (2) absence of a dishonest or selfish motive;
- 3 (3) personal or emotional problems;
- 4 (4) timely good faith effort to make restitution or to rectify the consequences of
- 5 the misconduct involved;
- 6 (5) full and free disclosure to the client or the disciplinary authority prior to the
- 7 discovery of any misconduct or cooperative attitude toward proceedings;
- 8 (6) inexperience in the practice of law;
- 9 (7) good character or reputation;
- 10 (8) physical disability;
- 11 (9) mental disability or impairment, including substance abuse when:
 - 12 (A) the Respondent is affected by a substance abuse or mental disability;
 - 13 and
 - 14 (B) the substance abuse or mental disability causally contributed to the
 - 15 misconduct; and
 - 16 (C) the Respondent's recovery from the substance abuse or mental
 - 17 disability is demonstrated by a meaningful and sustained period of
 - 18 successful rehabilitation; and
 - 19 (D) the recovery arrested the misconduct and the recurrence of that
 - 20 misconduct is unlikely;
- 21 (10) unreasonable delay in disciplinary proceedings, provided that the
- 22 Respondent did not substantially contribute to the delay and provided further
- 23 that the Respondent has demonstrated prejudice resulting from the delay;
- 24 (11) interim reform in circumstances not involving mental disability or
- 25 impairment;

1 (12) imposition of other penalties or sanctions;

2 (13) remorse; and

3 (14) remoteness of prior offenses.

4 (d) **Other circumstances.** The following circumstances may not be considered as either
5 aggravating or mitigating:

6 (1) forced or compelled restitution,

7 (2) withdrawal of Complaint against the Lawyer,

8 (3) resignation prior to completion of disciplinary proceedings,

9 (4) Complainant's recommendation as to sanction, and

10 (5) failure of injured client to complain.

11

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) **Publishing notice of petition.** When a Respondent files a petition for reinstatement or relicensure, the OPC must:

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

(A) informs Bar members of the application for reinstatement or relicensure, and

(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

(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:

(A) the Respondent is applying for reinstatement or relicensure, and

(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.

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

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

(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:

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

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

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

(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.

(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:

(i) lack of candor;

(ii) unlawful conduct;

(iii) false or misleading statements or omissions;

(iv) acts involving dishonesty, fraud, deceit, or misrepresentation;

(v) abuse of the legal process;

(vi) neglecting financial responsibilities;

(vii) violating court order;

(viii) evidence of mental or emotional instability; and

(ix) evidence of drug or alcohol dependency;

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

- 4 (i) how recent the conduct occurred,
- 5 (ii) seriousness of the conduct,
- 6 (iii) cumulative effect of the conduct,
- 7 (iv) evidence of rehabilitation, and
- 8 (v) positive social contributions while suspended.

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

11 (6) In cases of suspensions for one year or more, a Respondent lawyer will be
12 required to retake and pass the Multistate Professional Responsibility
13 Examination, and Respondent licensed paralegal practitioners must pass the
14 Licensed Paralegal Practitioner Professional Responsibility Exam.

15 (7) In all cases of delicensure, a Respondent lawyer will be required to pass the
16 student applicant Bar Examination and the Multistate Professional Responsibility
17 Examination, and Respondent licensed paralegal practitioners must pass the
18 student applicant Licensed Paralegal Practitioner Licensing Exam.

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

22 (f) **Review of petition.** Within 60 days of receiving a Respondent's petition for
23 reinstatement or relicensure, the OPC must either:

- 24 (1) advise the Respondent and district court that the OPC will not object to the
25 Respondent's reinstatement or relicensure; or
- 26 (2) object in writing to the petition.

1 (g) **Hearing; report.** If the OPC objects, the district court, as soon as reasonably
2 practicable and within a target date of 90 days of the filing of the petition, will conduct a
3 hearing at which the Respondent will have the burden of demonstrating by a
4 preponderance of the evidence that the Respondent has met each of the criteria in
5 paragraph (e) or, if not, that there is good and sufficient reason why the Respondent
6 should nevertheless be reinstated or relicensed. The district court will enter its findings
7 and order. If the OPC does not object, the district court will review the petition without
8 a hearing and enter its findings and order.

9 (h) **Successive petitions.** Unless the district court orders otherwise, no Respondent may
10 apply for reinstatement or relicensure within one year following an adverse judgment
11 upon a petition for reinstatement or relicensure.

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

17 (j) **Reciprocal reinstatement or relicensure.** If a Respondent has been suspended or
18 delicensed solely because of discipline imposed by another court, another jurisdiction,
19 or a regulatory body having disciplinary jurisdiction, and if the Respondent is later
20 reinstated or relicensed by that court, jurisdiction or regulatory body, the Respondent
21 may petition for reciprocal reinstatement or relicensure in Utah. The Respondent must
22 file with the district court and serve the OPC with a petition for reciprocal reinstatement
23 or relicensure. The petition must include a certified or otherwise authenticated copy of
24 the order of reinstatement or relicensure from the other court, jurisdiction, or regulatory
25 body. Within 21 days of receiving the petition, the OPC may object based solely on
26 substantial procedural irregularities. If the OPC objects, the district court will hold a
27 hearing and enter its findings and order. If no objection is filed, the district court will
28 enter its order based on the petition.

Chapter 14. Rules Governing the Utah State Bar.

Rule 14-102. Regulating the practice of law.

(a) Vested authority.

(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.

(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:

- (1) advancing the administration of justice according to law;
- (2) aiding the courts in the administration of justice;
- (3) regulating the admission of persons seeking to practice law;
- (4) fostering and maintaining integrity, learning competence, public service, and high standards of conduct among those practicing law;
- (5) representing the Bar before legislative, administrative, and judicial bodies;
- (6) preventing the unauthorized practice of law;
- (7) promoting professionalism, competence, and excellence through continuing legal education and other means;
- (8) providing a service to the public, the judicial system, and Bar members;

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

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

(c) **Qualifications.** This chapter prescribes the qualifications, duties, and obligations of
lawyers, foreign legal consultants, and licensed paralegal practitioners licensed to
practice law in Utah. The Supreme Court is responsible for disciplining a Bar member
or licensed paralegal practitioner.

(d) **Licensure required.** Suspended or disbarred persons may not practice law in Utah
or hold themselves out as able to practice law in Utah. A person may only practice law
in Utah if that person is:

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

(2) 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;

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

(4) a licensed paralegal practitioner and an active licensee of the Bar in good
standing.

Rule 14-103. Bar organization and management.

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

(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.

(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.

(3) Vacancies.

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

(i) conduct a special election;

(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

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

(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.

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

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

4 (1) approve Bar admission and licensure fees for attorneys and licensed paralegal
5 practitioners;

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

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

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

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

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

1 **(f) Commissioner Elections.**

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

4 (A) beginning in 1983 and every third year thereafter, one member from
5 the Second Division and two members from the Third Division, but in
6 1983 only, there will be four members elected from the Third Division;

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

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

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

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

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

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

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

Rule 14-105. Proposing rules to regulate licensed lawyers, licensed paralegal practitioners, and judicial officers.

(a) **Proposing rules.** The Board proposes 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.

(b) **Court to approve rules and regulations.** All rules and regulations proposed 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:

(1) full name;

(2) date of birth;

(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;

(4) current e-mail address;

(5) date of admission;

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

(7) all specialties in which certified;

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

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

(b) **Assessments.**

(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.

(2) **Failure to renew annual license.** Failure to pay the annual licensing fee or provide the required annual licensing information will result in administrative

1 suspension. Any lawyer, foreign legal consultant, or licensed paralegal
2 practitioner who practices law after failing to renew such license violates the
3 Rules of Professional Conduct or Licensed Paralegal Practitioner Rules of
4 Professional Conduct and may be disciplined. The executive director or designee
5 must give notice of such removal from the rolls to such noncomplying member
6 at the designated mailing address on the Bar's records and to the state and
7 federal courts in Utah.

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

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

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 that person's own right and not an assignee.

Rule 14-202. Bar's purposes.

The purposes of the Bar include:

- (a) advancing the administration of justice according to law;
- (b) aiding the courts in carrying on the administration of justice;
- (c) regulating the admission of persons seeking to practice law;
- (d) fostering and maintaining integrity, learning, competence, public service, and high standards of conduct among those practicing law;
- (e) representing the Bar before the legislative, administrative, and judicial bodies;
- (f) preventing the unauthorized practice of law;
- (g) promoting professionalism, competence, and excellence in those practicing law through continuing legal education and other means;
- (h) providing services to the public, the judicial system, and Bar members;
- (i) educating the public about the rule of law and responsibilities under the law;
- (j) assisting Bar members in improving the quality and efficiency of their practice;
- (k) engaging 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) carrying on any other business connected with or incidental to the foregoing objectives and purposes, and having and exercising all the powers conferred on 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. The Bar's annual budget must include a budget for the OPC, including the salaries of OPC counsel and staff, expenses, and administrative costs. 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.

(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.

(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.

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

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

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

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

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

Rule 14-208. Special rules and regulations.

(a) **Bar Admission.** The Board proposes rules for applicant Bar admission pursuant to Article 1, Integration and Management, and recommends 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 recommend to the Supreme Court for approval rules governing student practice or student court assistance programs.

(c) **Sections, standing committees, special committees.** To advance 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:

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

(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.

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:

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

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

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

(4) the types of legal and nonlegal service the organization performs;

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

(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.

1 (g) “**MCLE**” means Mandatory Continuing Legal Education as set forth in Rule
2 14-401 et seq.

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

5 (i) “**NLTP**” means the Bar’s New Lawyer Training Program as set forth in Rule
6 14-808.

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

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

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

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

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

20 (4) ensure along with the agency that the volunteer attorney has
21 appropriate and adequate training, knowledge and competency to
22 perform the legal service permitted.
23

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.

(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. If desired, the lawyer or lawyer's representative must request an opportunity to be heard within 21 days of receiving a notice from the Committee that the Committee will process the claim.

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

(g) The claim will be determined on the basis of all available evidence, and notice must be given to the claimant and the lawyer of the final decision by the Board after a recommendation has been made by the Committee. The recommendation for approving or denying a claim requires the affirmative votes of a majority of the Committee members and a quorum of the voting Board members.

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

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

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

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

17

Chapter 15. Rules Governing Licensed Paralegal Practitioners.

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.

(l) “**Live CLE**” means a CLE program presented in a classroom setting where the licensed paralegal practitioner is in the same room as the presenter.

(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.

(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.

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

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

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

9 (z) Reserved.

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

11

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.

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

2 (j) “**Complete Application**” means an application that includes all fees and
3 necessary application forms, along with any required supporting documentation,
4 character references, a criminal background check, a photo, an official certificate
5 of graduation and if applicable, a test accommodation request with supporting
6 medical documentation.

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

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

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

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

17 (o) “**Full-time**” means providing legal services as a paralegal for no fewer than
18 80 hours per month.

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

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

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

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

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

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

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

11 (w) “**NFPA**” means the National Federation of Paralegal Associations.

12 (x) “**National Certification**” means Certified Paralegal (CP or CLA) credential
13 from the National Association of Legal Assistants (NALA); the Professional
14 Paralegal (PP) credential from the National Association of Legal Professionals
15 (NALS); or the Registered Paralegal (RP) credential from the National Federation
16 of Paralegal Associations (NFPA).

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

18 (z) “**Paralegal**” means a person qualified through education, training, or work
19 experience, who is employed or retained by a lawyer, law office, governmental
20 agency, or the entity in the capacity or function which involves the performance,
21 under the ultimate direction and supervision of an attorney, of specifically
22 delegated substantive legal work, which work, for the most part, requires a
23 sufficient knowledge of legal concepts that absent such assistance, the attorney
24 would perform.

25 (aa) “**Paralegal Certificate**” means verification that an individual has
26 successfully completed a paralegal studies program from an Accredited Program

1 that includes at least 15 credit hours of paralegal studies. The certificate must be
2 offered, taught, and granted by an Accredited Program.

3 (bb) “**Paralegal Studies**” and “**Paralegal Studies Degree**” mean course work that
4 prepares a holder to work as a paralegal.

5 (cc) “**Privileged Information**” in this article includes: information subject to the
6 attorney-client privilege, attorney work product, test materials and applications
7 of examinees; correspondence and written decisions of the Board and LPP
8 Admissions Committee, and the identity of individuals participating in the
9 drafting, reviewing, grading and scoring of the LPP Licensure Examination.

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

14 (ee) “**Substantive Law-Related Experience**” means the provision of legal
15 services as a Paralegal, paralegal student or law student including, but not
16 limited to, drafting pleadings, legal documents or correspondence, completing
17 forms, preparing reports or charts, legal research, and interviewing clients or
18 witnesses. Substantive Law-Related Experience does not include routine clerical
19 or administrative duties. Substantive Law-Related Experience for licensure in
20 landlord-tenant and debt collection includes, but is not limited to, the provision
21 of legal services as a Paralegal supervised by a licensed attorney, paralegal
22 student or law student in the areas of bankruptcy, real estate, mortgage and/or
23 banking law.

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

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

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