



Agenda

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

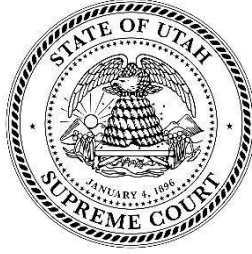
Arthur B. Berger, Chair

Location:	Meeting held through Webex and in person at: Matheson Courthouse, Judicial Council Room – Room N. 301 450 S. State St. Salt Lake City, Utah 84111 https://utcourts.webex.com/utcourts/j.php?MTID=m1aca9c00cab89c60f878e2ce88143b70
Date:	April 27, 2026
Time:	4:30 to 6:00 p.m.

Action: Welcome and approval of March 25, 2026 Minutes	Tab 1	Art Berger, Chair
Action: OPC Budgets	Tab 2	Christine Greenwood, Nathan Severin
Action: Global Rule Amendments	Tab 3	Christine Greenwood and Beth Kennedy
Discussion: Old/new business		Art Berger

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

Tab 1



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

Draft Meeting Minutes

March 25, 2026

Meeting held through Webex and in person

Matheson Courthouse

Judicial Council Room

450 S. State St.

Salt Lake City, UT 84111

4:30–5:30 p.m.

Arthur B. Berger, presiding

Attendees:

Arthur Berger, Chair

Mark Hindley

Eric Jenkins

Judge Laura Scott

Roger Smith

Lara Swensen

Elizabeth Wright, Ex-officio member

Guests:

Christine Greenwood, Office of Professional Conduct

Beth Kennedy, Ethics and Discipline Committee

Staff:

Nick Stiles, Appellate Court Administrator

Amber Griffith, Recording Secretary

Excused:

Aeryn Murphy

Margaret Plane

1. Welcome, Annual Disclosure, and Approval of December 9, 2025 minutes: (Arthur Berger)

Arthur Berger welcomed everyone to the meeting. Mr. Berger informed the Committee that the Supreme Court has moved the rules that govern this committee and those of the OPC from the Utah Code of Judicial Conduct (UCJA) to the newly named Supreme Court Rules of Practice (SCRП). Then in accordance with SCRП 1-503(a)(2) the committee members introduced themselves and disclosed their general practice area.

Following those quick items of business Mr. Berger asked for approval of the minutes from the December 9, 2025 meeting.

Mark Hindley moved to approve the minutes. Eric Jenkins and Judge Scott seconded that motion, and the minutes were unanimously approved.

2. Discussion—OPC Annual Report (Christine Greenwood)

Christine Greenwood provided an overview of the OPC's annual report for 2025 noting that the number of complaints increased by over 500, therefore increasing the number of pending cases. Ms. Greenwood reported that the OPC currently has 6 lawyers handling over 1,000 cases and although, as the report shows, many cases are dismissed it still takes a lot of time to go through each complaint.

The annual report also includes the performance metrics for the OPC. Ms. Greenwood noted that the time between when OPC receives a complaint to notice is over a year on average and stated that the OPC is continuing to work on shortening how long it takes. Lara Swensen questioned if there was a breakdown during of this timeframe to see where the holdup is occurring and wondered if adding paralegals or staff could help the issue. Ms. Greenwood replied that currently the OPC needs lawyers to help with the caseload, their paralegals are all caught up and have drafts ready for the attorneys to review.

Mr. Jenkins commented that the report shows this is an immense amount of work for a short-staffed office and questioned what has caused the increase in cases. Ms. Greenwood noted that one explanation is the increases in licensed attorneys each year. With more attorneys there are more to file complaints on.

Mr. Hindley asked if the number of meritorious claims is also increasing at the same rate. Ms. Greenwood is unsure how they would measure that, but it would be good to see if there was a way to do so. The report does show that the number of dismissed complaints was similar to previous years, but they do have less cases currently in the court system. Ms. Greenwood believes this is due to a lack of staffing, not a lack of cases.

There was then a discussion on attorneys who are no longer able to handle their cases, such as if they passed away. Ms. Greenwood informed the committee that the OPC is currently in charge of handling these situations. Elizabeth Wright added that over the next year the bar intends to begin working with lawyers on succession planning. They will work with the Supreme Court to see if there should be a rule requiring attorneys to designate someone.

Roger Smith asked if there was any tracking on which type of law practices receive the most complaints. Ms. Greenwood stated that family lawyers are close to the top because of the heightened emotional situation the clients are in, next is criminal, and lastly sole practitioners.

Mr. Hindley wondered if there was a way to decrease the number of dismissals by preventing the complaints from occurring in the first place. Ms. Greenwood stated that it may be helpful to have the paralegals dismiss some cases on their own but doesn't feel comfortable with that. Additionally, when taking over as Chief Disciplinary Counsel Ms. Greenwood instituted making the dismissals tailored to each case but also noted that the process could be more streamlined. Another process change that occurred was having all attorneys partaking in the review of all incoming cases, previously three attorneys

handled the incoming cases and then assigned them as needed. It may be beneficial to return to the previous practice.

Ms. Greenwood also noted that once a case is referred to the court there is a delay occurring there, but the source of that delay has not been identified.

Mr. Hindley recalled that the OPC previously had enacted a diversion program and asked if it was still available. Ms. Greenwood acknowledged that it was, but it is only applicable for a small portion of attorneys and doesn't believe it is the best use of OPC's resources. Ms. Swensen agreed that it isn't as robust as it should be and asked if the diversions take more time due to supervising those on it. Ms. Greenwood stated that it does as there is more paperwork involved.

3. Action—SCR 1-530: (Christine Greenwood and Beth Kennedy)

The Committee reviewed the additional changes made to Rule 1-530 since the previous meeting. Elizabeth Wright noted that the UCJA rule numbers needed to be changed to the SCR 1-530 numbers.

Following this review Mr. Jenkins moved to approve the proposed amendments. Mr. Hindley seconded that motion, and it unanimously passed. The rule will be submitted to the Supreme Court on recommendation that it be published for public comment.

4. New/old business: (all)

Ms. Greenwood reported on an increase in complainants becoming vexatious and would like to discuss the issue at a future meeting.

Mr. Berger also informed the Committee that we have received some public input from an individual who lives and travels internationally. The individual has reported trouble accessing the Bar's website while out of the country and that has made it harder for them to file complaints. Mr. Berger suggested that we could have an individual from the Bar's IT department attend our next meeting to explain the geofencing issue.

Tab 2

Utah State Bar
FY27 Draft Budget
Based on Actual Results through 03/31/2026
06 - Office of Prof Conduct

	Actual FY 2024 7/1/2023 6/30/2024	Actual FY 2025 7/1/2024 6/30/2025	Projected FY 2026 7/1/2025 6/30/2026	Budget FY 2027 7/1/2026 6/30/2027	\$ Change 2026 Proj. vs 2027 Budg.	% Change 2026 Proj. vs 2027 Budg.
Revenue						
4005 · Miscellaneous Income	3,269	2,750	1,262	1,288	25	2.00%
4200 · Seminar Profit/Loss	27,346	62,399	44,977	45,877	900	2.00%
Total Revenue	30,615	65,149	46,239	47,164	925	2.00%
Expenses						
Program Services						
5002 · Meeting facility-internal only	685	250	647	666	19	3.00%
5015 · Investigations	78	308	680	600	(80)	-11.77%
5016 · Credit Checks	-	150	-	-	-	
5017 · Medical Exam	-	19	-	-	-	
5040 · Witness & Hearing Expense	926	422	279	15,000	14,721	5268.45%
5041 · Process Serving	894	777	513	528	15	3.00%
5046 · Court Reporting	-	93	1,325	500	(825)	-62.25%
5075 · Food & Bev-external costs only	146	320	502	517	15	3.00%
5076 · Food & beverage - internal only	923	174	528	544	16	3.00%
5079 · Soft Drinks	617	696	651	670	20	3.00%
5085 · Misc. Program Expense	190	-	-	-	-	
5702 · Travel - Lodging	2,244	5,666	5,364	6,500	1,136	21.18%
5703 · Travel - Transportation/Parking	1,769	3,497	3,517	5,000	1,483	42.17%
5704 · Travel - Mileage Reimbursement	542	248	-	500	500	
5705 · Travel - Per Diems	454	1,460	1,224	2,100	876	71.50%
5810 · ABA Mid Year Meeting	-	2,383	-	-	-	
Total Program Services Expenses	9,466	16,462	15,230	33,126	17,896	117.50%
Salaries & Benefits						
5510 · Salaries/Wages	1,073,933	1,173,663	1,268,687	1,384,270	115,583	9.11%
5605 · Payroll Taxes	86,934	93,267	97,822	102,436	4,614	4.72%
5610 · Health Insurance	91,738	92,874	112,145	136,805	24,659	21.99%
5620 · Health Ins/Medical Reimb	4,372	5,748	7,047	6,900	(147)	-2.08%
5630 · Dental Insurance	5,290	5,372	5,524	6,841	1,317	23.84%
5640 · Life & LTD Insurance	6,148	6,630	7,679	9,680	2,000	26.05%
5650 · Retirement Plan Contributions	98,348	88,291	110,184	109,249	(935)	-0.85%
5655 · Retirement Plan Fees & Costs	5,579	4,803	5,462	5,462	-	0.00%
5660 · Training/Development	1,640	3,055	3,497	5,000	1,503	42.99%
Total Salaries/Benefit Expenses	1,373,982	1,473,705	1,618,047	1,766,643	148,596	9.18%
General & Administrative						
7025 · Office Supplies	4,719	4,401	4,428	4,472	44	1.00%
7035 · Postage/Mailing, net	5,629	1,437	1,362	1,376	14	1.00%
7040 · Copy/Printing Expense	12,536	3,385	3,402	4,000	598	17.58%
7045 · Internet Service	-	-	289	-	(289)	-100.00%
7050 · Computer Maintenance	45,262	46,804	42,641	48,533	5,892	13.82%
7055 · Computer Supplies & Small Equip	937	527	107	1,000	893	832.14%
7089 · Membership Database Fees	24,051	22,175	29,712	31,198	1,486	5.00%
7100 · Telephone	13,813	8,460	7,443	7,517	74	1.00%
7105 · Advertising	391	392	1,104	1,115	11	1.00%
7110 · Publications/Subscriptions	9,562	9,585	10,258	10,000	(258)	-2.52%
7120 · Membership/Dues	5,274	6,845	5,127	7,000	1,873	36.54%
7135 · Bank Service Charges	-	146	-	-	-	
7140 · Credit Card Merchant Fees	96	76	31	44	13	42.96%
7150 · E&O/Off & Dir Insurance	19,903	26,289	26,623	26,890	266	1.00%
7175 · O/S Consultants	1,789	11,874	-	-	-	

Utah State Bar
FY27 Draft Budget
Based on Actual Results through 03/31/2026
06 - Office of Prof Conduct

	Actual FY 2024	Actual FY 2025	Projected FY 2026	Budget FY 2027	\$ Change 2026 Proj. vs 2027 Budg.	% Change 2026 Proj. vs 2027 Budg.
	7/1/2023 6/30/2024	7/1/2024 6/30/2025	7/1/2025 6/30/2026	7/1/2026 6/30/2027		
7176 · Bar Litigation	1,613	-	-	-	-	
7180 · Administrative Fee Expense	76	418	419	423	4	1.00%
7195 · Other Gen & Adm Expense	918	145	844	1,200	356	42.13%
Total General & Administrative Expenses	146,568	142,961	133,790	144,767	10,977	8.20%
Building Overhead						
6015 · Janitorial Expense	6,725	6,907	6,684	8,874	2,189	32.75%
6020 · Heat	7,476	4,040	4,151	4,262	111	2.68%
6025 · Electricity	11,139	11,376	12,071	12,384	313	2.59%
6030 · Water/Sewer	2,904	2,986	4,322	4,440	118	2.74%
6035 · Outside Maintenance	7,089	2,909	3,123	3,382	259	8.31%
6040 · Building Repairs	3,833	2,278	2,239	2,296	57	2.56%
6045 · Bldg Mtnce Contracts	5,669	7,219	7,374	7,571	197	2.67%
6065 · Bldg Insurance/Fees	5,217	4,349	4,693	4,815	122	2.61%
6070 · Building & Improvements Depre	22,178	21,469	22,424	23,011	587	2.62%
6075 · Furniture & Fixtures Depre	4,267	4,212	4,314	4,422	109	2.52%
7065 · Computers, Equip & Sftwre Depr	8,958	8,506	8,489	8,711	222	2.62%
Total Building Overhead Expenses	85,456	76,251	79,883	84,169	4,286	5.37%
Total Expenses	1,615,471	1,709,379	1,846,950	2,028,704	181,754	9.84%
Net Profit (Loss)	(1,584,856)	(1,644,229)	(1,800,711)	(1,981,540)	\$ (180,830)	10.04%

Tab 3

MEMORANDUM

From: Beth Kennedy & Christine Greenwood
To: OPC Oversight Committee
Re: Proposed rule changes concerning (a) sending documents, (b) references to Licensed Paralegal Practitioners, (c) the definition of “Complainant,” and (d) the hyphenation of “vice-chair”
Date: April 20, 2026

This memo proposes five sets of rule changes. All but the first set of proposals (“sending documents”) are housekeeping changes intended to create clarity and consistency. The proposed changes are numbered continuously throughout the document (there are a total of 35 proposed changes).

a. Sending documents

First, we propose removing several requirements that particular documents be mailed to Complainants or Respondents. As you likely recall, we suggested removing the mailing requirements at the Oversight Committee’s December meeting. The Committee was amenable to our suggestion and invited proposed language.

Our subsequent review of Chapter 11 revealed inconsistent language describing notification requirements. The rules use variations of the following words, often without meaningful distinction: mail, issue, notify, send, serve, and deliver.

Our proposals here seek to eliminate contradictions, require formal service when appropriate, and allow email service when sufficient. A redline of all the affected rules is attached at **Tab B**.

At the December meeting, the Oversight Committee discussed whether the mailing requirements could be eliminated by replacing them with a “service” requirement and then defining “service” to include mail or email. Unfortunately, this solution has proved unworkable. This is true because the rules repeatedly require “service” of particular documents in compliance with the Utah Rules of Civil Procedure, and we believe those requirements should remain in place.

In fact, [Rule 1-533](#) provides that “[t]o the extent applicable, the Utah Rules of Civil Procedure govern the service . . . of documents.” A list of the current “service” requirements is at **Tab A**.

“Send” – To solve the problem, we propose using the word “send.” This word is already used a few times within the rules:

- The OPC must “send” notice of discipline to other jurisdictions where a Respondent is licensed. ([Rule 1-562\(a\).](#))
- The deadline for objecting to a subpoena request is calculated from the date the subpoena request is “sent.” ([Rule 1-523\(b\).](#))
- The OPC must “sen[d]” notice of a proposed diversion to the Complainant. ([Rule 1-550\(c\).](#))
- A “Notice” is defined as what the OPC “sends to the Respondent after a preliminary investigation. ([Rule 1-502\(n\).](#))
- When a Respondent files a petition for reinstatement or relicensure, the OPC must “send” a notice to the Complainant. ([Rule 1-591\(d\)\(2\).](#))

We therefore propose adding a definition of “send” in [Rule 1-502](#) to mean that a document was mailed, emailed, or hand-delivered:

1. “sent” means that a document was mailed, emailed, or hand-delivered.¹

We believe this definition captures the spirit of each of the existing references to documents that may be “sent” (above).

The following three references to “mail” could then be changed to require only that a document be “sent”:

2. The OPC must mail a dismissal to the Complainant. ([Rule 1-530\(g\)\(2\)\(B\).](#))²

¹ Line 50 of Rule 1-502.

² Line 124 of Rule 1-530. Please note that revisions to Rule 1-530 are currently being published for public comment. The redline at Tab B reflects the proposed published changes in redline in addition to our newly-proposed changes. To distinguish between the two sets of changes, we have highlighted our changes in the redline.

3. Before providing nonpublic information to someone who requests it, the Committee must mail notice to the Respondent. ([Rule 1-561\(f\)](#).)³
4. When the Committee dismisses a Complaint, the dismissal must be mailed to the Complainant. ([Rule 1-542\(f\)\(3\)](#).)⁴

The rules also frequently refer to a document that must be “issued.” But “issuance” is not defined. We believe “issued” should be used only when a document is made effective by a court or other entity with authority to do so. Thus, we believe the following uses of “issue” within the rules are appropriate and should not change:

- The Committee chair “need not issue” a final determination if no exception to a dismissal was filed. ([Rule 1-534\(a\)](#).)
- The Committee chair or court will consider challenges to an “issued subpoena.” ([Rule 1-512\(d\)](#).)
- The district court may “issue” a protective order. ([Rule 1-561\(d\)](#).)
- A screening panel may “issue[]” a letter of caution to a Respondent. ([Rule 1-531\(i\)\(1\)](#).)

The remaining uses of “issue,” however, fit within the proposed definition of “send.” We therefore believe the following uses of “issue” should be changed to “send”:

5. The OPC must “issue” a reciprocal discipline notice to a lawyer. ([Rule 1-567\(b\)](#).)⁵
6. A court may require a Respondent to “issue” notice of a suspension to particular people. ([Rule 1-570\(d\)](#).)⁶

In addition, there are several references to “service” in the rules that we believe should also be changed to “sent.” In each of the following instances, we believe providing the document by mail or email would satisfy the intent of the rule and reflect current practices and expectations in the legal profession. We therefore recommend that the following documents be “sent” instead of served:

³ Lines 38-40 and 41 of Rule 1-561.

⁴ Line 37 of Rule 1-542.

⁵ Line 12 of Rule 1-567.

⁶ Line 42 of Rule 1-570.

7. The OPC must serve its summary of its investigation on the Respondent. ([Rule 1-531\(b\)](#).)⁷
8. A Respondent must serve its brief on the OPC. ([Rule 1-531\(d\)](#).)⁸
9. The Committee chair must serve the OPC and the Respondent with the screening panel's decision. ([Rule 1-532\(a\)](#).)⁹
10. The Committee chair must serve a ruling on an exception. ([Rule 1-535\(a\)](#).)¹⁰

A complete list of the current "service" requirements is at [Tab A](#).

Finally, the rules occasionally refer to documents that must be "delivered." We believe the following references should be changed to "sent" to create consistency:

11. A Complainant must "deliver[]" the Complaint to the OPC "in hard copy or electronic form, or through the OPC's website." ([Rule 1-530\(a\)\(1\)](#).)¹¹
12. When the OPC is the Complainant, the OPC must "deliver[]" the Complaint to the Lawyer. ([Rule 1-530\(a\)\(2\)](#).)¹²
13. After a hearing, the Clerk must "deliver to the Committee chair a complete record of the proceedings." ([Rule 1-531\(h\)](#).)¹³

Clarifications - Our review also revealed several instances where the rule language should be clarified for consistency:

14. The OPC must "mail or email" a subpoena request to a Respondent. ([Rule 1-523\(b\)](#).) This should be changed to "send."¹⁴

⁷ Line 6 of Rule 1-531.

⁸ Line 24 of Rule 1-531.

⁹ Lines 2 and 3 of Rule 1-532.

¹⁰ Line 2 of Rule 1-535.

¹¹ Line 10 of Rule 1-530.

¹² Line 12 of Rule 1-530.

¹³ Line 52 of Rule 1-531.

¹⁴ Line 6 of Rule 1-523.

15. The OPC is required to “mail” documents to a Respondent while “serving” the Respondent. ([Rule 1-530\(e\)\(3\)](#).) This duplicative language should be stricken. This would eliminate the need for the three subsections currently in the rule.¹⁵
16. The record of the hearing must be preserved for “one year after delivery of the panel’s determination or recommendation to the Committee chair.” Because “delivery” may now be confusing, this phrase should be simplified to “one year after the panel’s determination or recommendation.” ([Rule 1-531\(h\)](#).)¹⁶
17. The rules refer to the “mailing date” of a petition for reinstatement following a suspension. ([Rule 1-591\(d\)\(2\)\(B\)](#).) But because the rule requires service of any such petition, we propose that “mailing date” be changed to “service date.”¹⁷

b. Licensed Paralegal Practitioners

Second, we propose removing (almost) all references to “licensed paralegal practitioners” (LPPs). These changes became necessary after three events:

- The definition of “Lawyer” in [Rule 1-502](#) was amended to include licensed paralegal practitioners;
- The [rules](#) governing the Fund for Client Protection were amended to include licensed paralegal practitioners (so there is no Licensed Paralegal Practitioner Fund for Client Protection); and
- LPPs became required to comply with the Rules of Professional Conduct, not the Licensed Paralegal Practitioner Rules of Professional Conduct (which do not exist).

Thus, nearly all of the references to LPPs are now duplicative or incorrect. Our proposed redlines therefore seek to eliminate the references to LPPs in 15 rules:

¹⁵ Lines 124 of Rule 1-530.

¹⁶ Lines 54 and 55 of Rule 1-531.

¹⁷ Line 33 of Rule 591.

18. [Rule 1-501](#) (line 19)
19. [Rule 1-502](#) (line 33)
20. [Rule 1-511](#) (line 34)
21. [Rule 1-522](#) (line 5)
22. [Rule 1-530](#) (line 41)
23. [Rule 1-531](#) (line 8)
24. [Rule 1-552](#) (lines 15 and 18)
25. [Rule 1-553](#) (line 6)
26. [Rule 1-560](#) (line 3)
27. [Rule 1-561](#) (line 12)
28. [Rule 1-563](#) (line 4)
29. [Rule 1-580](#) (lines 13 and 15)
30. [Rule 1-581](#) (line 27)
31. [Rule 1-590](#) (line 8)

In the following four rules, however, we believe it remains appropriate to reference LPPs and therefore we have not stricken them in our redlines:

- [Rule 1-502\(k\)](#) defines “Lawyer” to include LPPs.
- [Rule 1-511](#) provides that, when a Complaint involves an LPP, the panel may include up to two paralegal practitioners.
- [Rule 1-562](#) requires the OPC to notify state courts when an LPP is disciplined; the OPC must notify state and federal courts when a lawyer is disciplined.
- [Rule 1-591](#) requires that, to become relicensed, “licensed paralegal practitioners must pass the student applicant Licensed Paralegal Practitioner Licensing Exam.”

c. Definition of “Complainant”

Third, we recommend changing the definition of “Complainant” to no longer include the OPC. “Complainant” is currently defined in [Rule 1-502\(f\)](#) as:

either (1) the person who files a Complaint, or (2) the OPC after opening an investigation.

But we reviewed each time “Complainant” is used throughout the rules, and we did not find a single instance where it makes sense to include the OPC. In fact, in several instances, the opposite is true – “Complainant” *cannot* include the OPC. For example:

- A hearing notice must be sent to “the Complainant, . . . and the OPC.” ([Rule 1-513\(b\)\(5\), \(6\).](#))
- After an initial investigation, “the OPC will seek additional facts from the Complainant.” ([Rule 1-530\(c\).](#))
- “The OPC will forward a copy of the [Respondent’s] brief to the Complainant.” ([Rule 1-531\(d\).](#))
- “The Complainant need not appear personally” at an exception hearing. ([Rule 1-532\(e\)\(2\).](#))
- “The OPC will notify the Complainant” of a diversion decision. ([Rule 1-550\(c\).](#))

We therefore believe the definition should be amended to mean *only* the person who files a Complaint:

32. “Complainant” means the person who files a Complaint.¹⁸

d. Vice Chairs

Fifth, we recommend changing a few references to “vice-chairs” to remove the hyphen. The phrase appears in six rules but is hyphenated only in two. We therefore recommend changing “vice-chair” to “vice chair” in the following instances:

33. [Rule 1-503](#) (lines 6-8 and 22)
34. [Rule 1-510](#) (line 7)

¹⁸ Line 11 of Rule 1-502.

e. Finality of appeal

And sixth, we propose adding a sentence in Rule 1-530 to clarify that decisions on appeal are final and not subject to further review. This is already true, but there are frequently circumstances when it would be helpful to be able to point to language in the rule. We recommend:

35. Adding “(D) The Committee chair’s or vice chair’s decision on appeal is final and not subject to further review.” (end of [Rule 1-530](#).)¹⁹

We thank you for your time and look forward to discussing these proposals with you.

¹⁹ Lines 153-154 of Rule 1-530.

Tab A

The following rules require service in compliance with Rule 4 of the Utah Rules of Civil Procedure. In the **bolded** rules, we propose changing “service” to “sent”:

- The Committee chair may authorize service of a subpoena on a third party. ([Rule 1-512\(a\), \(b\).](#))
- The OPC may serve a subpoena on a third party. ([Rule 1-523\(c\).](#))
- **The OPC must serve a Notice on the Respondent.** ([Rule 1-530\(e\)\(1\).](#))
- **The OPC must serve its summary of its investigation on the Respondent.** ([Rule 1-531\(b\).](#))
- **A Respondent must serve its brief on the OPC.** ([Rule 1-531\(d\).](#))
- **The Committee chair must serve the OPC and the Respondent with the screening panel’s decision.** ([Rule 1-532\(a\).](#))
- “To the extent applicable, the Utah Rules of Civil Procedure govern the service or filing of documents.” ([Rule 1-533\(b\).](#))
- A Respondent must serve the OPC after filing with the court a petition for reinstatement following a suspension. ([Rule 1-591\(c\).](#))
- **The Committee chair must serve a ruling on an exception.** ([Rule 1-535\(a\).](#))
- “Documents filed in an Action must be served on Respondent in accordance with the Utah Rules of Civil Procedure.” ([Rule 1-541.](#))
- The OPC must serve a Respondent when filing a petition for interim discipline. ([Rule 1-563.](#))
- Before transferring a lawyer involuntarily to disability status, the OPC must serve a Respondent with a copy of a court order declaring a lawyer to be incompetent. ([Rule 1-568\(a\).](#))

Tab B

Index of Redlined Rules

Rule 1-501. Lawyer disciplinary and disability proceedings: purpose, authority, scope, and structure

Rule 1-502. Definitions

Rule 1-503. Oversight Committee for the Office of Professional Conduct

Rule 1-510. Ethics and Discipline Committee Composition

Rule 1-511. Screening panel composition; responsibilities

Rule 1-522. Ethics advisory opinions

Rule 1-523. OPC investigative subpoenas

Rule 1-530. Unprofessional conduct Complaints

Rule 1-531. Proceedings before Committee and screening panels

Rule 1-532. Exceptions to screening panel determinations and recommendations

Rule 1-535. Appealing a final Committee determination to the Supreme Court

Rule 1-542. Additional rules of procedure

Rule 1-552. Diversion contract

Rule 1-553. Respondent's participation in diversion

Rule 1-560. Grounds for discipline

Rule 1-561. Accessing disciplinary information

Rule 1-563. Interim discipline for threat of harm

Rule 1-567. Reciprocal discipline

Rule 1-570. Notice of disability or suspension; return of clients' property; refund of unearned fees

Rule 1-580. Purpose and nature of sanctions

Rule 1-581. Sanctions

Rule 1-590. Reinstatement following a suspension of no more than six months or probation

Rule 1-591. Reinstatement following a suspension of more than six months; relicensure

1 **Rule 1-501. Lawyer disciplinary and disability proceedings: purpose, authority, scope,**
2 **and structure.**

3 (a) The purpose of Lawyer disciplinary and disability proceedings is to ensure and
4 maintain the high standard of professional conduct required of those who undertake the
5 discharge of professional responsibilities as Lawyers and to protect the public and the
6 administration of justice from those who have demonstrated by their conduct that they
7 are unable or unlikely to properly discharge their professional responsibilities.

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

12 (c) All disciplinary proceedings must be conducted in accordance with these rules.
13 Formal disciplinary and disability proceedings are civil in nature. These rules will be
14 construed to achieve substantial justice and fairness in disciplinary matters with dispatch
15 and at the least expense to all concerned parties.

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

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

1 **Rule 1-502. 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.

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

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

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

10 (e) "Committee" means the Ethics and Discipline Committee of the Supreme Court.

11 (f) "Complainant" means ~~either (1) the person who files a Complaint, or (2) the OPC after~~
12 ~~opening an investigation.~~

13 (g) "Complaint" means any written allegation of Lawyer misconduct or incapacity
14 containing an unsworn declaration as to the accuracy of the information provided.

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

19 (i) "intent" means the conscious objective or purpose to accomplish a particular result.

20 (j) "knowledge" means the conscious awareness of the nature or attendant circumstances
21 of the conduct but without the conscious objective or purpose to accomplish a particular
22 result.

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

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

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

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

35 (o) “OPC” means the Office of Professional Conduct.

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

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

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

44 (s) “Respondent” means a Lawyer subject to the disciplinary jurisdiction of the Supreme
45 Court against whom a Complaint has been filed or an Action has been initiated.

46 (t) “Rules of Professional Conduct” means the rules in Chapter 13 of the Supreme Court
47 Rules of Professional Practice and “Licensed Paralegal Practitioner Rules of Professional
48 Conduct” means the rules in Chapter 15, article 12 of the Supreme Court Rules of
49 Professional Practice.

50 (u) “sent” means that a document was mailed, emailed, or hand-delivered.

51 ~~(v)~~ “Supreme Court” means the Utah Supreme Court.

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

2 (a) Establishment. The Oversight Committee for the Office of Professional Conduct
3 (“Oversight Committee”) is established as a Supreme Court committee.

4 (1) Composition.

5 (A) The Oversight Committee consists of eight voting members. Among the
6 members, at least one must be a judge; one a member of the public; and one a past
7 chair or past vice-chair of the Ethics and Discipline Committee. At least one of the
8 members must have an accounting or finance background.

9 (B) The executive director of the Utah Bar will be an ex-officio, non-voting member
10 of the Oversight Committee.

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

19 (3) Meeting schedule. The Oversight Committee will meet a minimum of three times
20 per year.

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

23 (5) Absences. If an Oversight Committee member fails to attend two consecutive
24 Committee meetings, the chair may notify the Supreme Court of those absences and
25 may request that the Supreme Court replace that Committee member.

26 (6) Administrative support. The Administrative Office of the Courts must coordinate
27 administrative support to the Committee.

28 (b) Oversight Committee purpose, responsibilities, and authority.

29 (1) Oversight Committee purpose. The Oversight Committee's purposes are to assist
30 the OPC in implementing reforms to the attorney discipline process adopted by the
31 Utah Supreme Court, to provide oversight for the OPC, and to consider and
32 recommend to the Utah Supreme Court amendments to the rules of administration
33 and procedure applicable to the attorney discipline process.

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

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

38 (B) Approve the budget for the OPC and annually submit the budget to the
39 Supreme Court and the Bar;

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

42 (D) Annually, in conjunction with Chief Disciplinary Counsel and the Ethics and
43 Discipline Committee chair, report to the Court regarding the operations of the
44 OPC and the general standing of disciplinary matters and procedures, including
45 time to disposition reports for the OPC's cases;

46 (E) Review and approve the OPC's formal policies, including records retention
47 policies;

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

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

51 (H) Monitor the OPC's workload and recommend to the Supreme Court and the
52 Bar resources to ensure the OPC has adequate OPC staffing;

53 (I) Review and consider any public input;

- 54 (J) Monitor time to disposition reports for the OPC's cases; and
- 55 (K) Recommend to the Utah State Bar any needed employee resources to ensure
56 the OPC has necessary administrative support to carry out its prosecutorial duties.
- 57 (3) Authority. The Oversight Committee does not have authority to interfere with the
58 prosecutorial independence of the OPC, but is granted access to confidential
59 information as necessary to carry out its duties.
- 60 (c) Complaints and appeals.
- 61 (1) Any person may file with the Oversight Committee chair a complaint alleging
62 prosecutorial malfeasance regarding the Chief Disciplinary Counsel. If necessary, the
63 Oversight Committee may enter a recommendation to the Supreme Court, which may
64 take appropriate action.
- 65 (2) If a complaint regarding the Chief Disciplinary Counsel is received in the OPC's
66 office, the Chief Disciplinary Counsel must forward the complaint to the Oversight
67 Committee chair within a reasonable time, but not more than 14 days after receipt.
- 68 (3) Any person may file with the Chief Disciplinary Counsel a complaint alleging
69 prosecutorial malfeasance regarding OPC Counsel or staff. The Chief Disciplinary
70 Counsel's decision regarding the complaint is final and not subject to appeal. The
71 Chief Disciplinary Counsel's decision may include an appropriate action taken
72 against the person who is the subject of the complaint.
- 73 (4) A complaint must be in writing, stating the name and contact information of the
74 complainant, the nature of the complaint, and the facts on which the complaint is
75 based.
- 76 (5) Unless the appropriate action taken on a complaint is part of a formal proceeding,
77 any action taken is confidential.

1 **Rule 1-510. Ethics and Discipline Committee composition.**

2 (a) Composition. The Supreme Court appoints the Committee members. The Committee
3 consists of a minimum of four to a maximum of eight public members and a minimum
4 of 21 to a maximum of 25 Lawyers who have demonstrated a high standard of
5 professional conduct. All appointments are for a term of three years with no Committee
6 member serving more than two consecutive terms unless appointed as a chair or vice_-
7 chair of the Committee. The Supreme Court designates three to four Lawyer members as
8 Committee vice_-chairs.

9 (b) Committee chair. The Supreme Court will appoint a lawyer licensed to practice in
10 Utah to serve as the chair. The chair may not engage in the private practice of law for
11 payment. The chair is an employee of the Bar and subject to its personnel policies. The
12 chair serves at the pleasure of the Supreme Court and has the following responsibilities:

- 13 (1) supervise the Committee;
- 14 (2) maintain adequate checks on the screening panels' work to ensure that matters
15 move forward expeditiously;
- 16 (3) ensure that screening panels have a uniform basis for the judgments rendered;
- 17 (4) provide the screening panels with information concerning ethics and judicial
18 decisions necessary to their activities; and
- 19 (5) make recommendations to the Supreme Court concerning appointments to and
20 removals from the screening panels and reports concerning screening panel activities
21 and the overall work of the Committee.

22 (c) Vice_-chairs. The Committee vice_-chairs will act as chair temporarily if the chair is
23 absent or resigns. The chair may call upon any vice chair to assist in any of the Committee
24 chair's duties.

25 (d) Removal. The Committee chair may recommend removal of a Committee member by
26 notifying the Supreme Court of the recommendation of removal and reasons for the

27 recommendation. The removal is effective when the Supreme Court accepts the
28 recommendation.

1 **Rule 1-511. Screening panel composition; responsibilities.**

2 (a) **Screening panel composition.** The Committee members, except for the Committee
3 chair and vice chairs, are divided into four screening panels. Each screening panel shall
4 be comprised of a minimum of five members, including four Lawyers and one public
5 member. Screening panels may have more than five members, including up to two public
6 members and up to five lawyer members, but no more than four lawyer members and
7 one public member will participate in any screening panel hearing. Whenever a screening
8 panel is assigned a Complaint involving a licensed paralegal practitioner, the Committee
9 chair may, as practical, assign up to two Committee members who are licensed paralegal
10 practitioners to the screening panel.

11 (b) **Screening panel number.** All screening panel hearings must have five panel members
12 present, including a panel chair or vice chair and a public member.

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

20 (d) **Voting.** A majority vote of those members present and voting at any screening panel
21 hearing is required for a determination.

22 (e) **Meetings.** Each screening panel meets as necessary to effectively and promptly carry
23 out its duties. The Committee chair may convene the entire Committee at such other
24 times as necessary to effectively and promptly carry out the Committee's duties.

25 (f) **Alternates.** Members of any screening panel may serve as alternate members on
26 different screening panels. The Committee chair and the Committee vice chairs may serve
27 as alternate members on all screening panels.

28 (g) **Responsibilities.**

29 (1) Complaints are randomly assigned to a screening panel. The screening panels
30 review and hear all Complaints charging that a Lawyer engaged in unethical or
31 unprofessional conduct, and may consider any other relevant information. Screening
32 panels determine the action to be taken on any Complaint that, in applying these rules
33 to the facts of the case, is most consistent with the public interest and the Rules of
34 Professional Conduct ~~or Licensed Paralegal Practitioner Rules of Professional~~
35 ~~Conduct.~~

36 (2) Unless otherwise provided in this article, whenever the OPC may be present before
37 a screening panel during a hearing, the Respondent may also be present.

1 **Rule 1-522. Ethics advisory opinions.**

2 (a) **Effect of ethics advisory opinions.** The OPC may not prosecute a Utah Lawyer for
3 conduct that complies with an ethics advisory opinion that has not been withdrawn at
4 the time of the conduct in question. No court is bound by an ethics opinion's
5 interpretation of the Rules of Professional Conduct ~~or Licensed Paralegal Practitioner~~
6 ~~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 Committee
9 to review, modify, or withdraw an ethics advisory opinion and any OPC investigation
10 or prosecution is suspended pending the final outcome of the request. The Ethics
11 Advisory Opinion Committee may issue a modified opinion, withdraw the opinion,
12 or decline to take any action but will report its action or recommendation to the Bar
13 Commission and the Commission will take such final action as it deems appropriate.

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

1 **Rule 1-523. OPC investigative subpoenas.**

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

5 (b) **Requesting a subpoena.** The OPC must file a written request with the Committee
6 chair for a subpoena and attach a copy of the proposed subpoena. The OPC must ~~mail or~~
7 ~~email~~send a copy of the request and proposed subpoena to the Respondent's address
8 according to the Bar's records. The request must describe the purpose for seeking the
9 subpoena. Any objections to the request must be filed with the chair within seven days
10 after the subpoena request is sent. Within seven business days after the time for filing an
11 objection expires, the Committee chair will grant or deny the subpoena request, without
12 a hearing, based on weighing:

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

15 (2) the burden to the custodian of producing the documents, electronically stored
16 information, or tangible things.

17 (c) **Serving the subpoena.** If the Committee chair grants the request, the OPC may sign
18 and serve the subpoena in accordance with Rule 45 of the Utah Rules of Civil Procedure.

19 (d) **Costs.** Costs are reimbursed by the OPC as provided under Rule 45 of the Utah Rules
20 of Civil Procedure.

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

Rule 1-530. Unprofessional conduct Complaints

Please note that revisions to Rule 1-530 are currently being published for public comment. The following redline reflects the proposed published changes in addition to our newly-proposed changes.

To distinguish between the two sets of changes, we have highlighted our changes in the redline.

1 **Rule 1-530. ~~P~~Unprofessional ~~misconduct~~ ~~Complaints~~proceedings.**

2 (a) Scope. The OPC or any person may bring a disciplinary Complaint against a Lawyer
 3 for professional misconduct. Damages are not available in disciplinary proceedings.
 4 Restitution is available only when awarded by a district court in an Action filed by the
 5 OPC.

6 (b) Filing. The OPC or any person may initiate a disciplinary proceeding ~~against any~~
 7 ~~Lawyer~~ by filing a written Complaint in concise language setting forth the acts or
 8 omissions claimed to constitute ~~un~~professional misconduct.

9 (1) If an ~~an individual person~~ initiates the Complaint, filing is complete when the
 10 Complaint is delivered sent to the OPC office in hard copy or electronic form, or is
 11 electronically filed through the OPC’s website at opcutah.org.

12 (2) If the OPC initiates the Complaint, filing is complete when the OPC delivers sends
 13 the Complaint to the Lawyer in hard copy or electronic form.

14 (3) If a person who files a Complaint later elects to withdraw the complaint, the OPC
 15 may, in its discretion, proceed with the matter without filing a separate complaint.

16 (c) **Complaint form.**

17 (1) The Complaint ~~need does~~ not need to be in any particular form ~~or class~~ and may
 18 be by letter or other informal writing, although the OPC may provide a form to
 19 standardize the format. The Complaint does not need ~~not to~~ recite disciplinary rules
 20 ~~or~~ ethical canons, or a prayer request~~ing~~ specific disciplinary action. A Complaint’s
 21 substance prevails over the form.

22 (2) The Complainant must sign the Complaint and include the Complainant’s address
 23 and may list the names and addresses of other witnesses.

24 (3) The Complaint must contain an unsworn declaration ~~as to the accuracy of that~~
 25 complies with Utah Code section 78B-18a-106 declaring that the information in the
 26 Complaint is true and correct. Complaints filed by the OPC ~~are not required to~~

27 ~~contain~~ do not need such a declaration. ~~A Complainant's substance prevails over the~~
 28 ~~form.~~

29 ~~(de)~~ **Initial investigation** Summary Review. Upon receiving a Complaint, the OPC will
 30 conduct a preliminary ~~investigation review~~ to ~~ascertain~~ determine whether the
 31 ~~Complainant's Complaint includes~~ allegations that, if proved, would constitute grounds for
 32 discipline and, if so, whether the Complaint should be investigated further. If the
 33 Complaint does not include allegations that, if proved, would constitute grounds for
 34 discipline, the OPC will dismiss the Complaint. The OPC may also decline to prosecute
 35 the Complaint under paragraph (g)(2). ~~are~~ If a Complainant's allegations are not sufficiently
 36 clear. ~~If the allegations are not sufficiently clear,~~ the OPC ~~may~~ will seek additional facts
 37 information from the Complainant, ~~who must, upon the OPC's request, submit~~
 38 ~~documents or writings containing any additional facts. If the Complainant does not~~
 39 ~~respond to the OPC's request or does not have additional evidence, the OPC may dismiss~~
 40 ~~the Complaint. Absent extraordinary circumstances,~~ W within three months after filing a
 41 Complaint is filed, the OPC ~~must~~ will advise the Complainant ~~concerning the initial~~
 42 ~~investigation of~~ about the status of the Complaint.

43 (e) OPC investigation. If the OPC determines that a Complaint warrants further
 44 investigation, the OPC may seek additional information from the Complainant, the
 45 Respondent, or a third-party witness. The OPC may also request permission to issue an
 46 investigative subpoena under Rule 1-523.

47 ~~(d) Referral to Professionalism and Civility Counseling Board.~~ The OPC ~~may~~ in
 48 ~~connection with any conduct that comes to its attention refer any matter to the~~
 49 ~~Professionalism and Civility Counseling Board established under Rule 14-303. Such~~
 50 ~~referral may be in addition to or in lieu of any further proceedings related to the subject~~
 51 ~~matter of the referral. Such referral should be in writing and at the discretion of the~~
 52 ~~OPC may include any or all information included in the Complaint or additional facts~~
 53 ~~submitted by the Complainant.~~

54 (fe) Notice to Respondent. Upon completing the preliminary investigation, the OPC will
 55 determine whether, in the interest of the Complainant, the Respondent, and the public,

56 the Complaint can be resolved ~~in the public interest, the Respondent’s interest, and the~~
 57 ~~Complainant’s interest~~without the involvement of a screening panel. If the Complaint
 58 cannot be resolved or if it alleges facts that, by their very nature, should be brought before
 59 the screening panel, or if good cause otherwise exists to bring the matter before the
 60 screening panel, the OPC must:

61 (1) ~~serve the Respondent with~~prepare a Notice identifying with particularity the
 62 possible violation(s) of the Rules of Professional Conduct ~~or Licensed Paralegal~~
 63 ~~Practitioner Rules of Professional Conduct~~ raised by the Complaint as the OPC has
 64 preliminarily determined;

65 (2) attach a copy of the file assembled by the OPC~~signed Complaint~~; and

66 (3) ~~mail serve~~ the documents ~~to the Respondent’s address as reflected in the Bar’s~~
 67 ~~record~~on the Respondent, with a copy to the Complainant.

68 (g~~f~~) **Answer to Notice Complaint**. Within 21 days after the Respondent is served with the
 69 ~~Complaint and~~ Notice, the Respondent must file with the OPC a signed, written answer
 70 responding to the claims of possible misconduct and including any relevant facts or
 71 defenses. explaining the facts surrounding the Complaint, together with all defenses and
 72 responses to the claims of possible misconduct. If a request is made before the time to file
 73 an answer has expired, For good cause, the OPC may, for good cause, extend the time for
 74 filing an answer not to exceed by an additional 28 days. ~~After~~When the answer is filed or
 75 after the time for filing an answer has expired if the Respondent fails to respond, the OPC
 76 will either dismiss the Complaint or refer the case to a screening panel ~~to make a~~
 77 ~~determination or recommendation~~for a hearing. The OPC must forward a copy of the
 78 answer to the Complainant.

79 (h~~d~~) Referral to Professionalism and Civility Counseling Board. The OPC may —in
 80 connection with any conduct that comes to its attention—refer any matter that comes to
 81 its attention to the Professionalism and Civility Counseling Board established under Rule
 82 14-303. Such~~That~~ referral may be in addition to or ~~in lieu~~instead of any ~~other~~further
 83 proceedings related to the subject matter of the referral. Such~~The referral should~~must be

84 in writing and—at the discretion of the OPC’s discretion—may include any or all
 85 information included in the Complaint or additional facts submitted by the Complainant.

86 ~~(g)~~ **Dismissal; declination to prosecute; notification; new evidenceing the Complaint.**

87 (1) ~~Reasons for d~~**Dismissal.** The OPC may dismiss a Complaint without referral to a
 88 screening panel hearing if the OPC determines the Complaint is:

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

91 (B) barred by the statute of limitations;

92 ~~(C) more adequately addressed in another forum; or~~

93 ~~(D) one in which the OPC declines to prosecute.~~

94 (2) **Declination to prosecute.** In its discretion, the OPC may decline to prosecute a
 95 Complaint without referral to a screening panel hearing, including when:

96 (A) the Complaint’s allegations would be more adequately addressed in another
 97 forum;

98 (B) a previous sanction for similar misconduct within the past two years obviates
 99 the need for an additional sanction;

100 (C) the Respondent has remedied the alleged misconduct and little or no harm
 101 resulted from the alleged misconduct;

102 (D) the alleged violation is merely technical or the result of a simple mistake and
 103 little or no harm resulted from the alleged misconduct;

104 (E) the OPC lacks adequate resources to thoroughly investigate the Complaint’s
 105 allegations; or

106 (F) the Complainant appears to be primarily motivated by a desire to harm an
 107 opposing party or obtain a strategic advantage in litigation.

108 (3) **Letter of Caution.** When the OPC dismisses or declines to prosecute a Complaint,
 109 it may issue a letter of caution to the Respondent.

110 (4) Notification and appeal. ~~(A)~~ When the OPC dismisses or declines to prosecute a
 111 Complaint, it must:

112 (A*i*) notify the Complainant and the Respondent that the OPC has dismissed or
 113 decline to prosecute the Complaint;

114 (B*ii*) state the reasons for dismissal or declination to prosecute; and

115 (C*iii*) include a notice of the Complainant’s right to appeal an OPC ~~decision~~
 116 dismissal or declination to the Committee chair.

117 (5) New evidence. If the Complainant acquires new evidence material to a potential
 118 violation of the Rules of Professional Conduct following the OPC’s dismissal or
 119 declination to prosecute, the Complainant may file a new complaint with the OPC.

120 (j) Appeal of dismissal or declination to prosecute.

121 ~~(1B)~~ The Complainant may appeal ~~at the~~ dismissal or declination to prosecute by ~~filing~~
 122 submitting an appeal of no more than five pages to ~~with~~ the Committee clerk, with
 123 and serving a copy ~~of the appeal on~~ to the OPC, within 21 days after the dismissal or
 124 declination notification is mailed sent.

125 ~~(2E)~~ The Complainant carries the burden of persuasion on appeal. The appeal must
 126 identify any aspect(s) of the dismissal that the Complainant believes is erroneous. If
 127 the OPC determined that the Complaint was unsupported by fact, the appeal must
 128 identify evidence in the file that supports the allegations in the Complaint.

129 (3) The Complainant may, for good cause shown, seek from the Committee chair
 130 additional time to file an appeal or leave to include additional pages in the appeal.

131 (4) The Committee chair’s review of the file o ~~On~~ appeal will be limited to the file
 132 assembled by the OPC and any publicly-available court dockets or filings.

133 (5) The Committee chair will reverse the OPC’s declination to prosecute a Complaint
 134 only upon finding an abuse of discretion.

135 (6) The Committee chair will reverse the OPC’s dismissal of a Complaint when:

136 (A) the facts material to a potential violation of the Rules of Professional Conduct
 137 are in genuine dispute;

138 (B) the OPC failed to address allegations that, if proven, would be sufficient to
 139 establish probable cause of a violation of the Rules of Professional Conduct; or

140 (C) the Complainant demonstrates that the OPC erred in some other material
 141 respect.

142 (7) After review, the Committee chair may:

143 (A) affirm the dismissal or declination;

144 (B) affirm the dismissal or declination with a letter of caution to the Respondent;

145 (C) reverse the dismissal or declination and require the OPC to conduct additional
 146 investigation; or

147 (D) reverse the dismissal or declination and require the OPC to serve ~~the~~
 148 Committee chair or a vice chair will conduct a de novo review of the file, either
 149 affirm the dismissal or require the OPC to prepare a Notice (if no Notice has been
 150 served~~necessary~~), and set the matter for hearing by a screening panel. ~~If the chair~~
 151 recuses, the chair will appoint the vice chair or one of the screening panel chairs to
 152 review and determine the appeal.

153 (D) The Committee chair's or vice chair's decision on appeal is final and not subject
 154 to further review.

155 (8) If the Committee chair reverses and requires the OPC to conduct additional
 156 investigation, the OPC may, after conducting the additional investigation, dismiss the
 157 Complaint, decline to prosecute, or prepare a Notice and set the matter for hearing by
 158 a screening panel. If the OPC dismisses or declines to prosecute, the Complainant may
 159 appeal under paragraph (j)(1).

160 (9) In addition to or instead of affirming or reversing the dismissal or declination, the
 161 Committee chair may refer a matter to the Professionalism and Civility Counseling
 162 Board.

163

(10) If the Committee chair recuses, the Committee chair will appoint thea Committee

164

vice chair or one of the a screening panel chairs to review and determine the appeal.

1 **Rule 1-531. Proceedings before Committee and screening panels.**

2 (a) **Review.** Screening panels will review all Complaints the OPC refers to them,
3 including all facts developed in the Complaint, the answer, the contents of the file, and
4 the hearing, and including the OPC's recommendations.

5 (b) **OPC's summary and Notice of additional alleged violations.** Before any screening
6 panel hearing, the OPC may file with the clerk and ~~serve on~~send to the Respondent a
7 summary of its investigation. If the OPC has determined, after serving Respondent with
8 the Notice, that the Respondent may have violated any additional Rules of Professional
9 Conduct ~~or Licensed Paralegal Practitioner Rules of Professional Conduct~~, then the
10 summary must identify with particularity all such additional alleged violations. The
11 summary will serve as Notice of any additional violations the OPC did not previously
12 charge. If the OPC provides a summary to the screening panel, the OPC must also provide
13 the summary to the Respondent. If the OPC alleges additional rule violations in the
14 summary, the summary must be served on the Respondent at least 14 days before the
15 hearing. In cases where a judicial officer has not addressed or reported a Respondent's
16 alleged misconduct, the screening panel may not consider this inaction to be evidence
17 either that misconduct has occurred or has not occurred.

18 (c) **Respondent's appearance.** The screening panel must, with at least 28 days' notice,
19 afford the Respondent an opportunity to appear before the screening panel before taking
20 any action that may result in recommending an admonition or public reprimand, or the
21 OPC's filing of an Action. Respondent and any witnesses the Respondent calls may
22 testify, and Respondent may present oral argument with respect to the Complaint.

23 (d) **Respondent's brief.** Respondent may submit a written brief to the screening panel
24 and ~~serve on~~send a copy ~~on~~to the OPC at least 7 days before the hearing, which may not
25 exceed 10 pages unless the panel chair or vice chair allows an extension for good cause.
26 The OPC will forward a copy of the brief to the Complainant.

27 (e) **Complainant's appearance.** A Complainant has the right to appear before the
28 screening panel personally and may testify, together with any witnesses the Complainant
29 calls.

30 (f) **Right to hear evidence; cross-examination.** The Complainant and Respondent have
31 the right to be present during presentation of evidence unless excluded by the screening
32 panel chair for good cause. Respondent may be represented by counsel, and Complainant
33 may be represented by counsel or another representative. Either Complainant or
34 Respondent may request that the panel chair seek responses or pose questions to the
35 other party at the hearing. Direct cross-examination will ordinarily not be permitted
36 unless, upon request, the panel chair deems that it would materially assist the panel in
37 its deliberations.

38 (g) **Rule violations not charged by the OPC.** During the screening panel hearing, but not
39 after, the panel may find that rule violations have occurred not previously charged by the
40 OPC. If so, the screening panel will give Respondent a reasonable opportunity to respond
41 during the hearing. The Respondent may address the additional charges at the hearing
42 and may file with the Committee clerk and serve on the OPC within two business days
43 of the hearing a written response to the new charges along with supplemental materials
44 related to the new charges. Before making a determination or recommendation, the
45 response and any supplemental materials must be reviewed and considered by the panel
46 members present at the original hearing.

47 (h) **Hearing record.** The proceedings of any screening panel hearing under this rule will
48 be recorded at an audio quality level that permits an accurate transcription of the
49 proceedings. The clerk will assemble and ~~deliver~~ send to the Committee chair a complete
50 record of the proceedings upon the panel's determination or recommendation to the
51 Committee chair. The record of the proceedings before the panel must be preserved for
52 at least one year after ~~delivery of~~ the panel's determination or recommendation ~~to the~~
53 ~~Committee chair~~ and for such additional time as any further proceedings on the matter
54 are pending or might be instituted under this rule.

55 (i) **Screening panel determination or recommendation.** After reviewing all the facts
56 developed by the Complaint, answer, investigation, and hearing, the screening panel will
57 make one of the following determinations or recommendations:

58 (1) The preponderance of evidence does not establish that the Respondent engaged in
59 misconduct, in which case the screening panel will dismiss the Complaint. A letter of
60 caution may also be issued with the dismissal. The letter must be signed by the
61 screening panel chair or vice chair and will serve as a guide for the future conduct of
62 the Respondent. The Complainant will be confidentially notified of the caution;

63 (2) The Complaint must be referred to the Professionalism and Civility Counseling
64 Board established under Rule 14-303;

65 (3) The Complaint must be referred to the Committee chair with an accompanying
66 screening panel recommendation that the Respondent be admonished;

67 (4) The Complaint must be referred to the Committee chair with an accompanying
68 screening panel recommendation that the Respondent receive a public reprimand;

69 (5) The OPC must file an Action against the Respondent if the panel finds probable
70 cause to believe there are grounds for public discipline that merit an Action; or

71 (6) The OPC must file an Action if the panel finds misconduct and the misconduct is
72 similar to the misconduct alleged in an Action against the Respondent that has been
73 recommended by a screening panel or is pending in district court at the time of the
74 hearing.

75 (j) **Aggravation and mitigation.** The Respondent and the OPC may present evidence and
76 argument as to mitigating and aggravating circumstances during the screening panel
77 hearing, but this evidence will not be considered unless the panel has determined the
78 Respondent engaged in misconduct.

79 (k) **Multiple cases involving the same Respondent.** More than one case involving the
80 same Respondent may be scheduled before the same panel, but in determining whether

81 a rule has been violated in one case, only the factual allegations in that case may be
82 considered.

83 (l) **Recommendation of admonition or public reprimand.** A screening panel
84 recommendation that the Respondent be disciplined under paragraph (i)(3) or (i)(4) must
85 be in writing and state the substance and nature of the Complaint and defenses and the
86 basis upon which the screening panel has concluded, by a preponderance of the evidence,
87 that the Respondent be admonished or publicly reprimanded. The screening panel must
88 deliver copies of the recommendation to the Committee chair, Respondent, and the OPC.

1 **Rule 1-532. Exceptions to screening panel determinations and recommendations.**

2 (a) **Time to file.** Within 28 days of the date ~~of service of~~ the screening panel's
3 determination or recommendation is sent:

4 (1) the OPC may file an exception to the determination or recommendation and may
5 request a hearing, and Respondent will have 28 days to respond, and

6 (2) the Respondent may file an exception to the determination or recommendation
7 and may request a hearing, and the OPC will have 28 days to respond.

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

9 (c) **Actions.** No exception may be filed to a screening panel determination that an Action
10 will be filed against a Respondent.

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

14 (e) **Procedure on exceptions.**

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

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

22 (3) **Transcript Request.** Upon request, the Committee chair must extend the deadlines
23 for filing exceptions or responses no more than 60 days to allow a party time to obtain
24 a transcript of the screening panel proceedings, so long as the audio or video
25 recording is requested within 28 days. The requesting party will bear the costs of such
26 transcript and must file the transcript with the Committee clerk at the time of or before

27 filing an exception or response, together with an unsworn declaration establishing the
28 transcript's chain of custody.

29 (4) **Burden of proof.** The party who files an exception has the burden of showing that
30 the determination or recommendation of the screening panel is unsupported by
31 substantial evidence or is arbitrary, capricious, legally insufficient, or otherwise
32 clearly erroneous.

33 (5) **Record on exceptions.** The proceedings of any hearing on an exception must be
34 recorded at a level of audio quality that permits an accurate transcription of the
35 proceedings.

1 **Rule 1-535. Appealing a final Committee determination to the Supreme Court.**

2 (a) Within 28 days after the Committee chair ~~serves~~sends a final, written disposition, the
3 Respondent or the OPC may appeal the disposition to the Supreme Court and ask the
4 Court to reverse or modify the final Committee disposition. An appeal under this rule is
5 only available in cases where exceptions have been filed. Until the time for filing an
6 appeal expires, dissemination of disciplinary information will be automatically stayed. If
7 a timely appeal is filed, the stay will remain in place pending the Supreme Court's
8 resolution unless the Court orders otherwise.

9 (b) An appeal under this rule will be subject to the procedures set forth in Title III of the
10 Utah Rules of Appellate Procedure. Documents submitted under this rule must conform
11 to the requirements of Rules 27(a) and 27(b) of the Utah Rules of Appellate Procedure.

12 (c) A party requesting a transcript of the record below will bear the costs. The party
13 obtaining the transcript must file it with the appellate clerk, together with an unsworn
14 declaration establishing the transcript's chain of custody.

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

16 (e) The party requesting review has the burden of demonstrating that the Committee
17 action was:

18 (1) based on a determination of fact not supported by substantial evidence when
19 viewed in light of the whole record before the Court;

20 (2) an abuse of discretion;

21 (3) arbitrary or capricious; or

22 (4) contrary to Chapter 11, Article 5 of the Supreme Court Rules of Professional
23 Practice.

1 **Rule 1-542. Additional rules of procedure.**

2 (a) Governing rules. Unless otherwise provided in this article, the Utah Rules of Civil
3 Procedure, Utah Rules of Appellate Procedure, and Utah Rules of Evidence apply in
4 Actions.

5 (b) Standard of proof. A misconduct Action, petition for reinstatement and relicensure,
6 and petition for transfer to and from disability status will be established by a
7 preponderance of the evidence. A motion for interim discipline under Rule 11-563 will
8 also be established by a preponderance of the evidence.

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

13 (d) Related pending litigation. Either party may request a stay of an Action because of
14 substantial similarity to the material allegations of a pending criminal, civil, or
15 disciplinary Action.

16 (e) The Complainant's actions. An Action will not be abated due to:

17 (1) the Complainant's unwillingness to prosecute a Complaint;

18 (2) settlement or compromise between the Complainant and the Respondent; or

19 (3) restitution by the Respondent.

20 (f) Complaints against OPC Counsel, Committee members, the Bar Commission, or
21 Lawyers employed by the Bar. The Committee chair will assign a screening panel any
22 Complaint filed against OPC Counsel, a Committee member, a Bar Commission member,
23 or a Lawyer employed by the Utah State Bar. The assigned panel chair will review the
24 Complaint and any additional material that the screening panel chair asks the
25 Respondent to provide.

26 (1) A Complaint will be dismissed without hearing by a screening panel if, after
27 considering all factors, the chair determines the Complaint is:

28 (A) frivolous or unintelligible;

29 (B) barred by the statute of limitations;

30 (C) being or should have been addressed in another more appropriate forum; or

31 (D) unsupported by fact or does not raise probable cause of any unprofessional
32 conduct.

33 (2) The screening panel chair must notify the Complainant of the dismissal and the
34 reasons for dismissal.

35 (3) The Complainant may appeal the screening panel chair's dismissal to the
36 Committee chair within 21 days after notification of the dismissal is ~~mailed~~sent.

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

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

1 **Rule 1-552. Diversion contract.**

2 (a) **Contract requirements.**

3 (1) If the Respondent agrees or elects to participate in diversion, the terms of the
4 diversion must be set forth in a written contract. The contract will be between the
5 Respondent and the OPC.

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

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

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

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

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

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

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

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

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

36 (4) the necessary terms providing that Respondent will pay all costs incurred in
37 connection with the contract and those costs further specified under Rule 11-555 and
38 any costs associated with the Complaints to be deferred; and

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

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

42 (d) **Status of complaint.** After a diversion contract is executed by the Respondent, the
43 Complaint is deferred pending successful completion of the contract.

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

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

3 (1) fee arbitration;

4 (2) mediation;

5 (3) law office management assistance;

6 (4) lawyer ~~or licensed paralegal practitioner~~ assistance programs;

7 (5) psychological and behavioral counseling;

8 (6) monitoring;

9 (7) restitution;

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

11 or

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

1 **Rule 1-560. Grounds for discipline.**

2 It constitutes a ground for discipline for a Lawyer to:

3 (a) violate these rules or, the Rules of Professional Conduct, ~~or the Licensed Paralegal~~

4 ~~Practitioner Rules of Professional Conduct;~~

5 (b) violate a valid court or Committee order imposing discipline;

6 (c) be publicly disciplined in another jurisdiction;

7 (d) fail to comply with the requirements of Rule 11-570; or

8 (e) fail to notify the OPC of public discipline in another jurisdiction in accordance with

9 Rule 11-567(a).

1 **Rule 1-561. Accessing disciplinary information.**

2 (a) **Confidentiality.** Before the OPC initiates an Action or publishes notice of a public
3 reprimand, OPC Counsel, OPC staff, the Committee, Committee volunteers, Committee
4 staff, Committee employees, special counsel appointed pursuant to Rule 11-542, and
5 special counsel employees or assistants, must keep the proceeding confidential, but the
6 OPC may disclose the pendency, subject matter, and status of an investigation if the
7 proceeding is based on allegations disseminated through the mass media, or include
8 either the conviction of a crime or reciprocal public discipline. The proceeding is not
9 confidential to the extent:

10 (1) the Respondent has given an express written waiver of confidentiality;

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

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

16 (4) a referral is made to the Professionalism and Civility Counseling Board, in which
17 event OPC Counsel, Committee members, screening panel members, and
18 Professionalism and Civility Counseling Board members may share all information
19 between and among them with the expectation that such information will in all other
20 respects be subject to applicable confidentiality rules or exceptions.

21 (b) **Public proceedings.** Upon filing an Action or a petition for reinstatement or
22 relicensure, the proceedings are public, except as provided in paragraph (d) below.

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

26 (d) **Protective order.** To protect the interest of a Complainant, witness, third party, or
27 Respondent, the district court may, on any person’s request and for good cause, issue a

28 protective order prohibiting the disclosure of specific information and direct that the
29 proceedings be conducted so as to implement the order, including requiring that the
30 hearing be conducted in such a way as to preserve the confidentiality of the information
31 that is the subject of the application.

32 (e) **Request for nonpublic information.** Nonpublic information is confidential, other
33 than as authorized for disclosure under paragraph (a), unless the request for information
34 is approved by the OPC and the requestor complies with paragraphs (f) and (g).

35 (f) **Notice to the Respondent.** Except as provided in paragraph (g), if the Committee
36 decides to provide nonpublic information requested pursuant to paragraph (e), and if the
37 Respondent has not signed an express written waiver permitting the party requesting the
38 information to obtain the nonpublic information, the Respondent must be ~~notified in~~
39 ~~writing at the Respondent's mailing address as shown by Bar records of sent notice that~~
40 the information ~~that~~ has been requested and by whom, together with a copy of the
41 information proposed to be released. The notice must advise the Respondent that the
42 information will be released 21 days after the notice ~~was sent~~ ~~'s mailing~~ unless the
43 Respondent objects to the disclosure. If the Respondent timely objects to the disclosure,
44 the information must remain confidential unless the requesting party obtains a court
45 order authorizing its release.

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

50 (1) the request will further an ongoing investigation into the Respondent's
51 misconduct;

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

53 (3) disclosing the existence of the investigation to the Respondent would seriously
54 prejudice that investigation.

55 (h) **Disclosure without notice.** The OPC may disclose nonpublic information without
56 notice to the Respondent if:

57 (1) disclosure furthers an ongoing OPC investigation into the Respondent's
58 misconduct; and

59 (2) disclosure is essential to that investigation.

60 (i) **Participants' duty.** OPC Counsel, OPC staff, the Committee, Committee volunteers,
61 Committee staff, Committee employees, special counsel appointed pursuant to Rule 11-
62 542, and special counsel employees or assistants in a proceeding under these rules must
63 maintain confidentiality. Unless otherwise authorized, persons receiving private records
64 under paragraph (e) will not provide access to the records to anyone else.

1 **Rule 1-563. Interim discipline for threat of harm.**

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

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

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

13 (b) **Immediate interim discipline.** After conducting a hearing on the petition, the district
14 court may enter an order immediately suspending the respondent, limiting the
15 Respondent's practice area, or requiring supervision of the Respondent pending final
16 disposition of a disciplinary proceeding, or may order such other action as deemed
17 appropriate.

18 (1) If an order is entered:

19 (A) the district court may appoint a trustee under Rule 11-538, to protect the
20 interests of the Respondent's clients; and

21 (B) the OPC may file an Action without presenting the matter to a screening panel.

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

25 (c) **Notice to clients.** A Respondent subject to interim discipline pursuant to paragraph

26 (b) must comply with the notice requirements in Rule 11-570 as ordered by the district
27 court.

28 (d) **Motion to dissolve or modify interim discipline.** On 48 hours' notice to the OPC, a
29 Respondent suspended pursuant to paragraph (b) may appear and move to dissolve or
30 modify the order of discipline, and such motion will be heard and determined as
31 expeditiously as justice requires.

1 **Rule 1-567. 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 Utah,
5 such Lawyer must inform the OPC of the discipline or transfer within 28 days. If the OPC
6 receives notification from any source that a Lawyer within the Supreme Court's
7 jurisdiction has been publicly disciplined or transferred to disability inactive status by
8 any other jurisdiction, the OPC must obtain a certified copy of the disciplinary order.

9 (b) **Serving notice on Lawyer.** On receiving a certified copy of an order demonstrating
10 that a Lawyer licensed to practice in Utah has been publicly disciplined or transferred to
11 disability inactive status by another court, jurisdiction, or regulatory body having
12 disciplinary jurisdiction, the OPC will ~~issue~~send a notice directed to the Lawyer
13 containing:

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

15 (2) a notice giving the Lawyer the right to inform the OPC, within 28 days from service
16 of the notice, of any claim by the Lawyer predicated on the grounds set forth in
17 paragraph (d), that imposing discipline or transfer in Utah would be unwarranted
18 and stating the reasons for that claim.

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

22 (d) **Discipline to be imposed.**

23 (1) After 28 days from service of the notice under paragraph (b), the district court will
24 take such action as may be appropriate to cause the discipline or transfer to be
25 imposed in this jurisdiction, unless it clearly appears on the face of the record from
26 which the discipline or transfer is predicated that:

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

29 (B) imposing discipline would result in grave injustice;

30 (C) the misconduct warrants substantially different discipline in Utah or is not
31 misconduct in this jurisdiction; or

32 (D) the reason for the original transfer to disability inactive status no longer exists.

33 (2) If the district court determines that any of these elements exist, it will enter such
34 other order as it deems appropriate. The burden is on the Lawyer seeking different
35 discipline or transfer to demonstrate that imposing discipline or transfer is not
36 appropriate.

37 (e) **Other jurisdictions' final adjudications.** Except as provided in paragraphs (c) and (d)
38 above, a Respondent who has been found guilty of misconduct or is transferred to
39 disability inactive status in a final adjudication of another court, jurisdiction, or
40 regulatory body will establish conclusively the misconduct or the disability for purposes
41 of a disciplinary or disability proceeding in Utah.

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

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

12 (b) **Notice to clients and others.** In every case in which a Respondent is delicensed or
13 suspended for more than six months, the Respondent must, within 21 days after the order
14 is entered, accomplish the following acts:

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

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

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

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

27 (5) in each matter pending before a court, agency, or tribunal, notify opposing counsel
28 or, in the absence of counsel, the adverse party, of the Respondent's delicensure or
29 suspension and consequent disqualification to further participate as a Lawyer in the
30 matter;

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

33 (7) within 14 days after the effective date of delicensure or suspension, file an unsworn
34 declaration with the OPC showing complete performance of the foregoing
35 requirements. The Respondent must keep and maintain for the OPC's inspection all
36 records of the steps taken to accomplish the requirements of this rule.

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

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

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

1 **Rule 1-580. Purpose and nature of sanctions.**

2 (a) **Purpose of sanctions.** The purpose of imposing Lawyer sanctions is to ensure and
3 maintain the high standard of professional conduct required of those who undertake the
4 discharge of professional responsibilities as Lawyers, and to protect the public and the
5 administration of justice from Lawyers who have demonstrated by their conduct that
6 they are unable or likely to be unable to discharge properly their professional
7 responsibilities.

8 (b) **Public nature of sanctions.** The ultimate disposition of Lawyer discipline will be
9 public in cases of delicensure, suspension, and reprimand; and nonpublic in cases of
10 admonition.

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

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

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

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

1 **Rule 1-581. Sanctions.**

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

4 (b) **Delicensure.** Delicensure terminates the individual's status as a Lawyer. A Lawyer
5 who has been delicensed may be relicensed.

6 (c) **Suspension.** Suspension removes a Lawyer from the practice of law for a specified
7 minimum time, generally six months or more. In no event should the time before
8 application for reinstatement be more than three years.

9 (d) **Interim suspension or interim discipline.** Interim suspension temporarily suspends
10 a Lawyer from the practice of law. Interim suspension or interim discipline may be
11 imposed as set forth in Rules 11-563 and 11-564.

12 (e) **Reprimand.** Reprimand is public discipline that declares the Lawyer's conduct
13 improper, but does not limit the Lawyer's right to practice law.

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

16 (g) **Probation.** Probation allows a Lawyer to practice law under specified conditions. The
17 Lawyer's probationary status is public, but the terms of probation may be public or
18 nonpublic. Probation may be imposed alone or in conjunction with other sanctions, and
19 imposed as a condition of reinstatement or relicensure.

20 (1) **Requirements.** To be eligible for probation, a Respondent must demonstrate that:

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

23 (B) the Respondent is unlikely to harm the public during probation;

24 (C) the necessary conditions of probation can be adequately supervised; and

25 (D) the Respondent has not committed acts warranting delicensure.

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

27 (A) no further violations of the Rules of Professional Conduct ~~or Licensed~~
28 ~~Paralegal Practitioner Rules of Professional Conduct;~~

29 (B) restitution;

30 (C) assessment of costs;

31 (D) limitation on practice;

32 (E) requirement that the Lawyer pass the Multistate Professional Responsibility
33 Exam;

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

35 (G) mental health counseling and treatment;

36 (H) abstinence from drugs and alcohol;

37 (I) medical evaluation and treatment;

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

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

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

43 (4) **Terminating probation.** A Respondent may terminate probation by filing with the
44 district court and serving on the OPC an unsworn declaration stating that the
45 Respondent has fully complied with the requirements of the probation order. The
46 OPC may file an objection and thereafter the court will conduct a hearing.

47 (5) **Violations.** If during the period of probation, the OPC receives information that
48 any probation term has been violated, the OPC may file a motion specifying the
49 alleged violation and seeking to have the probation terminated. Upon filing such

50 motion, the Respondent must have the opportunity to respond and a hearing will be
51 held, at which time the court will determine whether to revoke probation.

52 (h) **Diversion.** Diversion is an alternative to a sanction if completed. Diversion allows a
53 Lawyer to practice law under specified conditions. Diversion may be public or non-
54 public.

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

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

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

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

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

69 (3) In addition to the above-required criteria of (A), (B) and (C), other considerations
70 may include whether the misconduct is a one-time act or based on a physical or
71 mental condition beyond the Respondent's control and whether there is sufficient
72 evidence connecting the condition to the misconduct.

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

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

77 (6) If the Lawyer does not complete the diversion conditions within the required time,
78 the Lawyer will be subject to a suspension of six months and a day.

79 (i) **Resignation with discipline pending.** Resignation with discipline pending is a form
80 of public discipline that allows a Respondent to resign from the practice of law while
81 either a Complaint or Action is pending against the Respondent. Resignation with
82 discipline pending may be imposed as set forth in Rule 11-566.

83 (j) **Other sanctions and remedies.** Other sanctions and remedies that a court may impose
84 include:

85 (1) restitution;

86 (2) assessment of costs;

87 (3) limitation upon practice;

88 (4) appointment of a receiver;

89 (5) a requirement that the Lawyer take the Bar Examination or professional
90 responsibility examination; and

91 (6) a requirement that the Lawyer attend continuing education courses.

92 (k) **Reciprocal discipline.** Reciprocal discipline is imposing a disciplinary sanction on a
93 Lawyer who has been disciplined in another court, another jurisdiction, or a regulatory
94 body having disciplinary jurisdiction.

1 **Rule 1-590. Reinstatement following a suspension of no more than six months or**
2 **probation.**

3 A Respondent who has been suspended for no more than six months or placed on
4 probation pursuant to disciplinary proceedings will be reinstated at the end of the
5 suspension or probation upon filing with the district court and serving on the OPC an
6 unsworn declaration stating that the Respondent has fully complied with the
7 requirements of the suspension or probation order and that the Respondent has fully
8 reimbursed the Bar's Lawyers' Fund for Client Protection ~~or Licensed Paralegal~~
9 ~~Practitioners' Fund for Client Protection~~ for any amounts paid on account of the
10 Respondent's conduct. Within 14 days, the OPC may file an objection and the district
11 court will hold a hearing.

1 **Rule 1-591. Reinstatement following a suspension of more than six months;**
2 **relicensure.**

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

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

21 (c) **Serving the petition.** The Respondent must serve the OPC with a copy of the petition.

22 (d) **Publishing notice of petition.** When a Respondent files a petition for reinstatement
23 or relicensure, the OPC must:

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

25 (A) informs Bar members of the application for reinstatement or relicensure, and
26 (B) requests that any individuals file notice of their opposition or concurrence with
27 the district court within 28 days of the date of publication; and

28

29 (2) send a notice to the Complainant's last known address according to OPC records,
30 to each Complainant in the disciplinary proceeding that led to the Respondent's
31 suspension or delicensure informing such Complainant that:

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

33 (B) the Complainant has 28 days from the ~~mailing~~service date to object to or
34 support the Respondent's petition.

35 (e) **Criteria for reinstatement and relicensure.** A Respondent may be reinstated or
36 relicensed only if the Respondent meets each of the following criteria, or, if not, presents
37 good and sufficient reason why the Respondent should nevertheless be reinstated or
38 relicensed.

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

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

43 (3) If the Respondent was suffering from a physical or mental disability or impairment
44 which was a causative factor of the Respondent's misconduct, including substance
45 abuse, the disability or impairment has been removed. Where substance abuse was a
46 causative factor in the Respondent's misconduct, the Respondent may not be
47 reinstated or relicensed unless the Respondent:

48 (A) has recovered from the substance abuse as demonstrated by a meaningful and
49 sustained period of successful rehabilitation;

50 (B) has abstained from the use of the abused substance and the unlawful use of
51 controlled substances for the preceding six months; and

52 (C) is likely to continue to abstain from the substance abused and the unlawful use
53 of controlled substances.

54 (4) Notwithstanding the conduct for which the Respondent was disciplined, the
55 Respondent has the requisite honesty, integrity, and fitness to practice law. In
56 relicensure cases, the Respondent must appear before the Bar's Character and Fitness
57 Committee and cooperate in its investigation of the Respondent. A copy of the
58 Character and Fitness Committee's report and recommendation will be provided to
59 the OPC and forwarded to the district court assigned to the petition after the
60 Respondent files a petition.

61 (A) Factors considered in determining honesty, integrity, and fitness for
62 reinstatement or relicensure. The court must determine whether the Lawyer
63 seeking reinstatement or relicensure has demonstrated the requisite honesty,
64 integrity, and fitness to practice law. The court may consider the Respondent's
65 actions taken during the suspension or delicensure including:

66 (i) lack of candor;

67 (ii) unlawful conduct;

68 (iii) false or misleading statements or omissions;

69 (iv) acts involving dishonesty, fraud, deceit, or misrepresentation;

70 (v) abuse of the legal process;

71 (vi) neglecting financial responsibilities;

72 (vii) violating court order;

73 (viii) evidence of mental or emotional instability; and

74 (ix) evidence of drug or alcohol dependency;

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

78 (i) how recent the conduct occurred;

79 (ii) seriousness of the conduct;

80 (iii) cumulative effect of the conduct;

81 (iv) evidence of rehabilitation; and

82 (v) positive social contributions while suspended.

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

85 (6) In cases of suspensions for one year or more, a Respondent lawyer will be required
86 to retake and pass the Multistate Professional Responsibility Examination, and
87 Respondent licensed paralegal practitioners must pass the Licensed Paralegal
88 Practitioner Professional Responsibility Exam.

89 (7) In all cases of delicensure, a Respondent lawyer will be required to pass the student
90 applicant Bar Examination and the Multistate Professional Responsibility
91 Examination, and Respondent licensed paralegal practitioners must pass the student
92 applicant Licensed Paralegal Practitioner Licensing Exam.

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

96 (f) **Review of petition.** Within 60 days of receiving a Respondent's petition for
97 reinstatement or relicensure, the OPC must either:

98 (1) advise the Respondent and district court that the OPC will not object to the
99 Respondent's reinstatement or relicensure; or

100 (2) object in writing to the petition.

101 (g) **Hearing; report.** If the OPC objects, the district court, as soon as reasonably practicable
102 and within a target date of 90 days of the filing of the petition, will conduct a hearing at
103 which the Respondent will have the burden of demonstrating by a preponderance of the
104 evidence that the Respondent has met each of the criteria in paragraph (e) or, if not, that

105 there is good and sufficient reason why the Respondent should nevertheless be reinstated
106 or relicensed. The district court will enter its findings and order. If the OPC does not
107 object, the district court will review the petition without a hearing and enter its findings
108 and order.

109 (h) **Successive petitions.** Unless the district court orders otherwise, no Respondent may
110 apply for reinstatement or relicensure within one year following an adverse judgment
111 upon a petition for reinstatement or relicensure.

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

117 (j) **Reciprocal reinstatement or relicensure.** If a Respondent has been suspended or
118 delicensed solely because of discipline imposed by another court, another jurisdiction, or
119 a regulatory body having disciplinary jurisdiction, and if the Respondent is later
120 reinstated or relicensed by that court, jurisdiction or regulatory body, the Respondent
121 may petition for reciprocal reinstatement or relicensure in Utah. The Respondent must
122 file with the district court and serve the OPC with a petition for reciprocal reinstatement
123 or relicensure. The petition must include a certified or otherwise authenticated copy of
124 the order of reinstatement or relicensure from the other court, jurisdiction, or regulatory
125 body. Within 21 days of receiving the petition, the OPC may object based solely on
126 substantial procedural irregularities. If the OPC objects, the district court will hold a
127 hearing and enter its findings and order. If no objection is filed, the district court will
128 enter its order based on the petition.