



Agenda

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

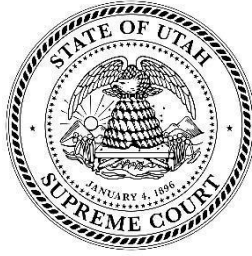
Margaret Plane, Chair

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=m9c46b7a1448b565ffefeeb858b4628c7
Date:	September 30, 2026
Time:	4:00 to 5:00 p.m.

Action: Welcome and Approval of Minutes from April 27, 2026 and July 8, 2026	Tab 1	Margaret Plane, Chair
Action: Final Approval "Global Rule Amendments"	Tab 2	Margaret Plane
Action: Proposed Amendments to Rules 1-533 and 1-542	Tab 3	Christine Greenwood, Beth Kennedy
Discussion: Old/new business		Margaret Plane

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

April 27, 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

Aeryn Murphy

Margaret Plane

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

Nathan Severin, Utah State Bar Finance Director

Staff:

Nick Stiles, Appellate Court Administrator

Amber Griffith, Recording Secretary

1. Welcome and Approval of March 25, 2026 Minutes: (Arthur Berger)

Arthur Berger welcomed everyone to the meeting and provided an update that SCRP Rule 1-530 was submitted to the Supreme Court. There were a few additional edits made by Justice Pohlman but nothing substantial. The Court approved the rule for public comments which will end on June 7, 2026.

Following that update Mr. Berger asked for approval of the minutes from the March 25, 2026 meeting.

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

2. Action—OPC Proposed Budget (Christine Greenwood, Nathan Severin)

Nathan Severin provided the Committee with a brief overview of where the Bar is financially as the OPC operates under that budget. The Bar has been working in a deficit since fiscal year (FY) 2023. This is due to raising program costs, court directive initiatives and external cost pressures. To cover these deficits the Bar has been using their reserves but are financially stable.

Mr. Severin then provided a brief overview of the OPC's budget.

As the Committee noted at the budget meeting last year, the OPC needs an additional attorney. This was not included in the budget last year, but it is being funded in the FY 2027 budget. This need is driven by the increase in the volume of complaints that the OPC has seen for numerous years.

The projected revenue for FY 2027 is budgeted at \$47,164. This is mainly received from the OPC's Ethic School.

The total projected expenses for FY 2027 are \$2,028,704 with a net operating loss of \$1,981,540. Mr. Severin explained that the OPC's net loss has been increasing by around 10% for the past few years. This is driven mainly by the increase in full-time employees. However, these positions are needed due to the increase in caseload.

Roger Smith noted that the witness and hearing expenses increased by approximately \$15,000. Mr. Severin explained that the increase is for disposition fees. Ms. Greenwood advised that there will be a few trials in the coming year that may require witnesses and potentially an expert witness. Ms. Swensen asked if the projected increase would be an ongoing expense for future budgets. Ms. Greenwood replied that she would like to see that budgeted expense increase in the future, so the OPC has more freedom to complete dispositions or hire an expert witness if needed.

Mr. Smith questioned the projected change in the column of the budget for the salaries line which shows a projected change of \$115, 583, and asked if that is the salary being offered to the new attorney. Mr. Severin stated that the number is a little misleading as to what the actual offered amount will be. Ms. Greenwood added that the amount they are preparing to offer is not extremely high but are unable to increase that amount without increasing the salaries for all staff attorneys. Elizabeth Wright added that they need to ensure they are competitive with other government salaries moving forward and that currently they are a little behind. Mr. Berger asked if there was a plan in place to gradually increase the salaries. Ms. Wright responded that they do cost of living adjustments each year and include a small budget for merit raises. However, the bar has been asking the Court for a fee increase and if that is put in place they might be able to increase the salaries further.

Following this discussion Mr. Smith moved to approve the FY 2027 budget. Margaret Plane seconded that motion, and it was unanimously passed.

3. Action—Global Rule Amendments: (Christine Greenwood and Beth Kennedy)

Beth Kennedy presented the global rule amendments to the oversight committee. These amendments were discussed at the December meeting when the Committee was reviewing the rule amendments to Rule 1-530.

The proposed amendments include: 1) adding a definition for “send” and changing variations of that word throughout the rules to be consistent; 2) removing occurrences of LPP from the rules as LPP is now included within the definition of lawyer; 3) removing OPC from the definition of complainant; 4) removing the hyphen from vice chairs for consistency; and 5) adding a paragraph to Rule 1-530 that clarifies when an appeal decision is final.

Ms. Swensen noted that Rule 1-535 mentions appealing to the Supreme Court and questioned if that would need to be cleaned up. Ms. Kennedy explained that Rule 1-535 deals with exceptions and those are different from appeals. Exceptions only come out of panel rulings and those are always appealable to the Supreme Court. Ms. Swensen suggested adding language to Rule 1-530 to clarify that the appeal is different than what can be filed under Rule 1-535. Ms. Kennedy will add the language “an appeal under this rule” to the new paragraph in Rule 1-530 for clarification.

Mark Hindley questioned if “is sent” in Rule 1-532(a) should be changed to “is issued”? Ms. Kennedy and Ms. Greenwood agreed to that change.

Judge Scott noted that a definition of “sent” was added but “send” is more often used. The Committee agreed and changed the definition to – To “send” a document means to mail, email, or hand-deliver it.

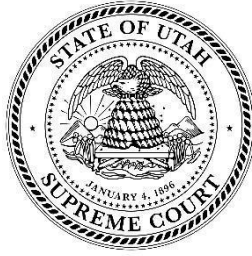
Ms. Swensen questioned using “bring” to explain who can file a complaint in Rule 1-530(a) and suggested changing it to “initiate” or “file”. Ms. Kennedy explained that is a section of the rule that is already out for public comment, and that perhaps the Committee could reconsider the language once that period has ended.

Following these suggested changes Ms. Plane moved to approve the proposed amendments to the rules. Mr. Hindley seconded the motion, and it unanimously passed. The rules will be submitted to the Supreme Court on recommendation that they be published for public comment.

4. New/old business: (all)

Judge Scott suggested that the Committee review the confidentiality rules just to ensure no changes are needed.

The meeting was then adjourned.



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

Draft Meeting Minutes

July 8, 2026

Meeting held through Webex

5:00–5:30 p.m.

Margaret Plane, presiding

Attendees:

Margaret Plane, Chair
Mark Hindley
Eric Jenkins
Kimberly Neville
Judge Laura Scott
Roger Smith
Lara Swensen

Guests:

Christine Greenwood, Office of Professional Conduct
Beth Kennedy, Ethics and Discipline Committee

Staff:

Nick Stiles, Appellate Court Administrator
Amber Griffith, Recording Secretary

Excused:

Elizabeth Wright, Ex-officio member

1. Welcome: (Margaret Plane)

Margaret Plane welcomed everyone to the meeting and welcomed Kimberly Neville to the committee as a new member. In accordance with Rule 1-503(a)(2) each committee member introduced themselves and provided their general area of practice.

2. Action—Final Approval of SCRP 1-530: (Christine Greenwood and Beth Kennedy)

Ms. Plane advised the Committee that Rule 1-530 received one public comment that needs to be reviewed before the Committee can vote on whether to approve the amendments as final. Christine Greenwood added that the amendments to the rule are intended to match the current processes. Additional changes included clarifying the circumstances when the OPC can dismiss complaints or decline to prosecute and clarify the standards of review by the Ethics and Discipline Committee.

Ms. Greenwood advised the Committee that the public comment suggested changing “a third-party witness” to be “third-party witnesses.” The language was originally written to be plural but was changed by Justice Pohlman. Ms. Greenwood also suggested changing “subpoena” in the following sentence to be plural as well. The Committee agreed and those changes were made.

Mark Hindley noted that paragraph (d) was amended to “Summary review” and questioned if the language of “preliminary review” in that paragraph should be changed to “summary review” to match the heading. Mr. Hindley also asked if the second word in the heading of paragraph (e) should be capitalized. Ms. Greenwood noted that the second word in paragraph (d) should actually be lowercase to be consistent. Lastly, Mr. Hindley noted that paragraph (f) uses the language of “preliminary investigation” and questioned if that should also be changed to “summary review.” The Committee agreed and changed both “preliminary review” and “preliminary investigation” to “summary review” and changed the second word of the heading in paragraph (d) to lowercase.

Following those edits to the rule Mr. Hindly moved to approve the rule as final, and it unanimously passed. The rule will be submitted to the Supreme Court on recommendation that it be approved as final.

3. New/old business: (all)

Ms. Plane advised the Committee that we are currently down one member as Aeryn Murphy had to resign. A request will be submitted to the Supreme Court to appoint a new member.

The meeting then adjourned.

Tab 2

3 thoughts on “Supreme Court Rules of Professional Practice – Comment Period Closed September 18, 2026”

Russell Mitchell

August 4, 2026 at 10:09 am

SCRPO1-531 – line 26 – typo on word “panel” – shows currently as “pabel”

Jared Allebest

August 4, 2026 at 10:28 am

I represented several clients who filed an ethics complaint against an attorney.

After OPC accepted the complaints and conducted their investigations and interviews, we were surprised to learn that OPC accepted the voluntary resignation of this attorney’s license.

How did we know this happened?

This former attorney had bragged on Facebook about his “settlement” with OPC.

OPC never informed the victims (the clients of the former attorney) that this individual had negotiated a resolution with OPC. OPC refused to share anything about the discussions surrounding the voluntary surrender of his law license even after multiple clients complained of this matter. Were it not for this former attorney’s Facebook post, none of the victims would have known about this.

Not only did they keep this matter in the dark from all of the victims, but they would not respond to any inquiries after I informed OPC about this individual’s post on Facebook.

It seems unfair to me that OPC will not communicate with the individuals who filed a complaint about the discipline process and keep them in the dark about any settlement discussions or if the attorney decides to get his license reinstated.

This experience left the clients feeling like OPC is not advocating or helping the victims of lawyers who violate the ethical rules for attorneys. They were upset that OPC intentionally withheld information from them and that their right to be informed of what is going on was not a priority. Furthermore, we all got the impression from communications from OPC that OPC owes no duties towards the victims.

We would like a new rule for OPC to keep the complainant/victims informed at all stages of the OPC investigation and disciplinary process and that they be informed regarding any settlement discussions and that they be given input on those discussions.

Clancey Henderson

August 6, 2026 at 2:51 pm

If "licensed paralegal practitioners" is being removed because the definition of "Lawyer" was previously amended to include that term, then the term "Lawyer" should be replaced by "Legal Practitioner" or similar term to be more accurate and to avoid confusion.

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

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

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

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

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

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

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~~ a person, other than the OPC, who files a
12 Complaint, ~~or (2) the OPC after 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.

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

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

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

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

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

(q) “Oversight Committee” means the committee established in [Rule ~~1~~1-503](#) to oversee the OPC.

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

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

(t) “Rules of Professional Conduct” means the rules in Chapter ~~1~~3 of the Supreme Court Rules of Professional Practice and “Licensed Paralegal Practitioner Rules of Professional Conduct” means the rules in Chapter ~~1~~5, article 12 of the Supreme Court Rules of Professional Practice.

[\(u\) To “send” a document means to mail, email, or hand-deliver it.](#)

[\(v~~u~~\)](#) “Supreme Court” means the Utah Supreme Court.

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

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

(1) Composition.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(I) Review and consider any public input;

(J) Monitor time to disposition reports for the OPC's cases; and

(K) Recommend to the ~~Utah State~~ Bar any needed employee resources to ensure the OPC has necessary administrative support to carry out its prosecutorial duties.

(3) Authority. The Oversight Committee does not have authority to interfere with the prosecutorial independence of the OPC, but is granted access to confidential information as necessary to carry out its duties.

(c) Prosecutorial malfeasance ~~c~~ **Complaints and appeals.**

(1) Any person may file with the Oversight Committee chair a complaint alleging prosecutorial malfeasance regarding the Chief Disciplinary Counsel. If necessary, the Oversight Committee may enter a recommendation to the Supreme Court, which may take appropriate action.

(2) If a complaint alleging prosecutorial malfeasance regarding the Chief Disciplinary Counsel is received in the OPC's office, the Chief Disciplinary Counsel must forward the complaint to the Oversight Committee chair within a reasonable time, but not more than 14 days after receipt.

(3) Any person may file with the Chief Disciplinary Counsel a complaint alleging prosecutorial malfeasance regarding ~~OPC Counsel~~ deputy chief disciplinary counsel, assistant disciplinary counsel, or staff. The Chief Disciplinary Counsel's decision regarding the complaint is final and not subject to appeal. The Chief Disciplinary Counsel's decision may include an appropriate action taken against the person who is the subject of the complaint.

(4) A complaint alleging prosecutorial malfeasance must be in writing, stating the name and contact information of the ~~complainant~~person filing the complaint, the nature of the complaint, and the facts on which the complaint is based.

(5) Unless the ~~appropriate~~ action taken on a complaint alleging prosecutorial malfeasance is part of a formal proceeding, 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.

Rule 1-511. Screening panel composition; responsibilities.

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

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

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

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

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

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

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.

Rule 1-523. OPC investigative subpoenas.

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

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

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

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

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

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

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

Rule 1-530. Professional misconduct proceedings.

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

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

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

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

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

(c) Complaint form.

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

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

(3) The Complaint must contain an unsworn declaration that complies with Utah Code section 78B-18a-106 declaring that the information in the Complaint is true and correct. Complaints filed by the OPC do not need such a declaration.

(d) **Summary review.** Upon receiving a Complaint, the OPC will conduct a summary review to determine whether the Complaint includes allegations that, if proved, would constitute grounds for discipline and, if so, whether the Complaint should be investigated further. If the Complaint does not include allegations that, if proved, would constitute grounds for discipline, the OPC will dismiss the Complaint. The OPC also may ~~also~~ decline to prosecute the Complaint under paragraph (g)(2). If a Complaint's allegations are not sufficiently clear, the OPC may seek additional information from the Complainant. If the Complainant does not respond to the OPC's request or does not have additional evidence, the OPC may dismiss the Complaint. Absent extraordinary circumstances, within three months after a Complaint is filed, the OPC will advise the Complainant about the status of the Complaint.

(e) **OPC investigation.** If the OPC determines that a Complaint warrants further investigation, the OPC may seek additional information from the Complainant, the Respondent, or third-party witnesses. The OPC also may ~~also~~ request permission to issue investigative subpoenas under [Rule 1-523](#).

(f) **Notice to Respondent.** Upon completing the summary review, the OPC will determine whether, in the interest of the Complainant, the Respondent, and the public, the Complaint can be resolved without the involvement of a screening panel. If the Complaint cannot be resolved or if it alleges facts that, by their very nature, should be brought before the screening panel, or if good cause otherwise exists to bring the matter before the screening panel, the OPC must:

(1) prepare a Notice identifying with particularity the possible violation(s) of the Rules of Professional Conduct raised by the Complaint as the OPC has preliminarily determined;

(2) attach a copy of the file assembled by the OPC; and

(3) ~~serve~~send the documents on the Respondent, with a copy to the Complainant.

(g) **Answer to Notice.** Within 21 days after the Respondent is served with the Notice, the Respondent must file with the OPC a signed, written answer responding to the claims of possible misconduct and including any relevant facts or defenses. If a request is made before the time to file an answer has expired, the OPC may, for good cause, extend the time for filing an answer by an additional 28 days. After the answer is filed or after the time for filing an answer has expired, the OPC will either dismiss the Complaint or refer the case to a screening panel for a hearing. The OPC must forward a copy of the answer to the Complainant.

(h) **Referral to Professionalism and Civility Counseling Board.** The OPC may refer any matter that comes to its attention to the Professionalism and Civility Counseling Board established under [Rule 4-303](#). That referral may be in addition to or instead of any other proceedings related to the subject matter of the referral. The referral must be in writing and—at the OPC’s discretion—may include any information submitted by the Complainant.

(i) **Dismissal; declination to prosecute; notification; new evidence.**

(1) **Dismissal.** The OPC may dismiss a Complaint without referral to a screening panel hearing if the OPC determines the Complaint is:

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

(B) barred by the statute of limitations.

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

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

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

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

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

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

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

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

(4) **Notification.** When the OPC dismisses or declines to prosecute a Complaint, it must:

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

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

(C) include a notice of the Complainant's right to appeal an OPC dismissal or declination to the Committee chair.

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

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

(1) The Complainant may appeal a dismissal or declination to prosecute by submitting an appeal of no more than five pages to the Committee clerk, with a copy to the OPC, within 21 days after the dismissal or declination is ~~served~~sent.

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

(3) The Committee chair may delegate any appeal to a Committee vice chair or screening panel chair. In the event of a recusal, the appeal will be handled by a Committee vice chair or screening panel chair selected at random by the Committee clerk.

~~(34)~~ The Complainant may, for good cause shown, seek from the ~~Committee~~ chair additional time to file an appeal or leave to include additional pages in the appeal.

~~(45)~~ The ~~Committee~~ chair's review ~~of the file on appeal~~ will be limited to the Complainant's appeal, the file assembled by the OPC, and any publicly-available court dockets or filings.

~~(56)~~ The ~~Committee~~ chair will reverse the OPC's declination to prosecute a Complaint only upon finding an abuse of discretion.

~~(67)~~ The ~~Committee~~ chair will reverse the OPC's dismissal of a Complaint when:

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

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

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

~~(78)~~ After review, the ~~Committee~~ chair may:

(A) affirm the dismissal or declination;

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

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

(D) reverse the dismissal or declination and require the OPC to serve a Notice (if no Notice has been served) and set the matter for hearing by a screening panel.

~~(E) The chair's decision on appeal under this rule is final and is not subject to further review.~~

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

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

~~(10) If the Committee chair recuses, the Committee chair will appoint a Committee vice chair or a screening panel chair to review and determine the appeal.~~

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

(a) **Review.** Screening panels will review all matters ~~Complaints~~ the OPC refers to them, ~~including all facts developed in.~~ As part of its review, the screening panel will consider the Complaint, the answer, the ~~contents of~~ Notice, the file assembled by the OPC, and the evidence presented at the hearing, ~~and including.~~ The screening panel also will review the OPC's ~~recommendations~~ recommendation. If a judicial officer has not addressed or reported a Respondent's alleged misconduct, the screening panel may not consider this inaction to be evidence either that misconduct has occurred or has not occurred.

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

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

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

(e)- **Complainant's appearance.** A Complainant has the right to appear personally and may testify before the screening panel. ~~personally and may testify, together with any witnesses the~~The Complainant ~~calls~~also may have witnesses testify.

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

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

(h)- **Hearing record.** The ~~proceedings of any~~ screening panel hearing ~~under this rule~~ will be recorded at an audio quality level that permits an accurate transcription of the proceedings. The Committee clerk will assemble and ~~deliver~~send to the Committee chair

a complete record of the proceedings upon the panel's determination or recommendation to the Committee chair. The record of the panel's proceedings ~~before the panel~~ must be preserved for at least one year after ~~delivery of~~ the panel's determination or recommendation ~~to the Committee chair~~ and for such additional time as any further proceedings on the matter are pending or might be instituted under this rule.

(i) **- Screening panel determination or recommendation.** After ~~reviewing all the facts developed by the Complaint, answer, investigation, and screening panel~~ hearing, is complete and the screening panel considers any additional materials submitted under paragraph (g), the screening panel will make one of the following determinations or recommendations:

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

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

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

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

(5) The OPC must file an Action against the Respondent ~~if~~ based on the ~~panel~~ panel's finding of finds probable cause to believe there are grounds for public discipline that merit an Action; or

(6) The OPC must file an Action ~~if~~based on the ~~panel finds~~panel's finding of misconduct ~~and the misconduct that~~ is similar to the misconduct alleged in ~~an~~another Action against the Respondent that ~~has been~~was recommended by a screening panel or is pending in district court at the time of the screening panel hearing.

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

(k)- **Multiple cases involving the same Respondent.** More than one case involving the same Respondent may be scheduled before the same panel, but that panel must separately consider each case and may consider only the factual allegations relevant to each case in determining whether a rule has been violated ~~in one case, only the factual allegations in that case may be considered.~~

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

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

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

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

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

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

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

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

(e) Procedure on exceptions.

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

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

(3) **Transcript Request.** Upon request, the Committee chair must extend the deadlines for filing exceptions or responses no more than 60 days to allow a party time to obtain a transcript of the screening panel proceedings, so long as the audio or video recording is requested within 28 days of the date the screening panel's determination

26 [or recommendation is issued](#). The requesting party will bear the costs of such
27 transcript and must file the transcript with the Committee clerk at the time of or before
28 filing an exception or response, together with an unsworn declaration establishing the
29 transcript's chain of custody.

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

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

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

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

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

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

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

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

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

21 (2) an abuse of discretion;

22 (3) arbitrary or capricious; or

23 (4) contrary to Chapter ~~1~~1, Article 5 of the Supreme Court Rules of Professional
24 Practice.

Rule 1-542. Additional rules of procedure.

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

(b) **Standard of proof.** ~~A misconduct~~ Claims or requests for relief brought in an Action, a petition for reinstatement and relicensure, ~~and~~ or a petition for transfer to and from disability status ~~will~~ must be established by a preponderance of the evidence. A ~~motion~~ claim for interim discipline under Rule 1-563 ~~will~~ must also be established by a preponderance of the evidence.

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

(d) **Related pending litigation.** Either party may request a stay of an Action because ~~of~~ ~~substantial similarity~~ the claims alleged in the Action are substantially similar to the material allegations of a pending criminal, or civil, case or ~~disciplinary~~ Action.

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

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

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

(3) restitution by the Respondent.

(f) **Complaints against OPC Counsel, Committee members, the Bar Commission, or Lawyers employed by the Bar.** The Committee chair will assign a screening panel any Complaint filed against OPC Counsel, a Committee member, a Bar Commission member, or a Lawyer employed by the ~~Utah State~~ Bar. The assigned panel chair will review the

Complaint and any additional material that the screening panel chair asks the Respondent to provide.

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

(A) frivolous or unintelligible;

(B) barred by the statute of limitations;

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

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

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

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

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

(5) If the screening panel chair determines not to dismiss the Complaint, or the Committee chair reverses the dismissal on appeal, the Committee chair must request that the Supreme Court appoint a special counsel to present the case, and if necessary, a special screening panel. In all other respects, the matter will proceed in accordance with this article. Special counsel must be a lawyer outside of the OPC appointed by the Supreme Court to act as counsel for investigation and prosecution of the 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~~any program~~(s)~~ to which the ~~attorney~~Respondent
9 will be diverted, the general purpose of the diversion, the manner in which
10 compliance is to be 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. The Respondent may use counsel to assist in the negotiation phase
13 of diversion. The Respondent may also request that the OPC draft the proposed
14 diversion contract.

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

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

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

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

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

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

(d) **Status of complaint.** After a diversion contract is executed by the Respondent, the 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).

Rule 1-561. Accessing disciplinary information.

(a) **Confidentiality.** Before the OPC initiates an Action or publishes notice of a public reprimand, OPC Counsel, OPC staff, the Committee, Committee volunteers, Committee staff, Committee employees, special counsel appointed pursuant to [Rule 1-542](#), and special counsel employees or assistants, must keep the proceeding confidential, but the OPC may disclose the pendency, subject matter, and status of an investigation if the proceeding is based on [an](#) ~~allegation~~s disseminated through the mass media, or include either the conviction of a crime or reciprocal public discipline. The proceeding is not confidential to the extent:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) disclosure is essential to that investigation.

(i) **Participants' duty.** OPC Counsel, OPC staff, the Committee, Committee volunteers, Committee staff, Committee employees, special counsel appointed pursuant to [Rule 41-542](#), and special counsel employees or assistants in a proceeding under these rules must maintain confidentiality. Unless otherwise authorized, persons receiving private records under paragraph (e) will not provide access to the records to anyone else.

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

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

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

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

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

(1) If an order is entered:

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

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

(2) If an order for interim discipline is not obtained, the OPC must dismiss the [petition for](#) interim ~~Action-discipline~~ and will process the matter as it does any other information coming to the 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.

Rule 1-567. Reciprocal discipline.

(a) **Duty to notify the OPC of discipline or transfer to disability inactive status.** When another court, jurisdiction, or regulatory body having disciplinary jurisdiction publicly disciplines or transfers to disability inactive status a Lawyer licensed to practice in Utah, such Lawyer must inform the OPC of the discipline or transfer within 28 days. If the OPC receives notification from any source that a Lawyer within the Supreme Court's jurisdiction has been publicly disciplined or transferred to disability inactive status by any other jurisdiction, the OPC must obtain a certified copy of the disciplinary order.

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

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

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

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

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

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

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

(B) imposing discipline would result in grave injustice;

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

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

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

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

1 **Rule 1-570. Notice of disability or suspension; return of ~~clients'~~clients' property;**
2 **refund of 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~~practice law; except that during
9 any period between the date an order is entered and its effective date, the Respondent
10 may, with the consent of the client after full disclosure, wind up or complete any matters
11 pending on 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~~do 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 ~~paper~~documents or other property to which the client
22 is entitled or, if delivery cannot reasonably be made, make arrangements satisfactory
23 to the client or co-counsel of a reasonable time and place where ~~paper~~documents and
24 other property 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;

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

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

(7) within ~~21~~¹⁴ days after the effective date of delicensure or suspension, file an unsworn declaration with the OPC showing complete performance of the foregoing requirements. The Respondent must keep and maintain for the OPC's inspection all records of the steps taken to accomplish the requirements of this rule.

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

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

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

Rule 1-580. Purpose and nature of sanctions.

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

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

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

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

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

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

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.

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

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

(B) restitution;

(C) assessment of costs;

(D) limitation on practice;

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

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

(G) mental health counseling and treatment;

(H) abstinence from drugs and alcohol;

(I) medical evaluation and treatment;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) restitution;

(2) assessment of costs;

(3) limitation upon practice;

(4) appointment of a receiver;

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

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

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

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

A Respondent who has been suspended for no more than six months or placed on probation pursuant to disciplinary proceedings will be reinstated at the end of the suspension or probation upon filing with the district court and serving on the OPC an unsworn declaration stating that the Respondent has fully complied with the requirements of the suspension or probation order and that the Respondent has fully reimbursed the Bar's Lawyers' Fund for Client Protection ~~or Licensed Paralegal Practitioners' Fund for Client Protection~~ for any amounts paid on account of the Respondent's conduct. Within 14 days of service of the Respondent's declaration, the OPC may file an objection. ~~and t~~The district court will then determine whether the Respondent may be reinstated, holding a hearing if warranted.

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

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

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

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

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

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

(A) informs Bar members of the application for reinstatement or relicensure, and

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

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

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

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

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

(i) lack of candor;

(ii) unlawful conduct;

(iii) false or misleading statements or omissions;

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

(v) abuse of the legal process;

(vi) neglecting financial responsibilities;

(vii) violating court order;

(viii) evidence of mental or emotional instability; and

(ix) evidence of drug or alcohol dependency;

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

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

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

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

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

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

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

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

(2) object in writing to the petition.

(g) **Hearing; report.** If the OPC objects, the district court, as soon as reasonably practicable and within a target date of 90 days of the ~~filing~~ service of the petition, will conduct a hearing at which the Respondent will have the burden of demonstrating by a preponderance of the evidence that the Respondent has met each of the criteria in paragraph (e) or, if not, that there is good and sufficient reason why the Respondent should nevertheless be reinstated or relicensed. The district court will enter its findings and order. If the OPC does not object, the district court will review the petition without a hearing and enter its findings and order.

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

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

(j) **Reciprocal reinstatement or relicensure.** If a Respondent has been suspended or delicensed solely because of discipline imposed by another court, another jurisdiction, or a regulatory body having disciplinary jurisdiction, and if the Respondent is later reinstated or relicensed by that court, jurisdiction or regulatory body, the Respondent may petition for reciprocal reinstatement or relicensure in Utah. The Respondent must file with the district court and serve the OPC with a petition for reciprocal reinstatement or relicensure. The petition must include a certified or otherwise authenticated copy of the order of reinstatement or relicensure from the other court, jurisdiction, or regulatory body. Within 21 days of receiving the petition, the OPC may object based solely on 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.

Tab 3

1 **Rule 1-533. General procedures.**

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 disciplinary proceedings and Actions.

5 **(b) Testimony.** All testimony given before a screening panel or the Exceptions Officer
6 must be under oath.

7 ~~(b) Service.~~ ~~To the extent applicable, the Utah Rules of Civil Procedure govern the service~~
8 ~~or filing of documents.~~

9 ~~(c) Abeyance of~~ **(cb) Standard of proof.** Claims or requests for relief brought in an Action,
10 a petition for reinstatement and relicensure, or a petition for transfer to and from
11 disability status must be established by a preponderance of the evidence. A claim for
12 interim discipline under Rule 1-563 must also be established by a preponderance of the
13 evidence.

14 **(ed) Burden of proof.** The OPC carries the burden of proof in a discipline proceeding and
15 in seeking a transfer to disability status. The Respondent carries the burden of proof in
16 seeking a reversal of a screening panel recommendation of discipline, reinstatement,
17 relicensure, or transfer from disability status.

18 **(de) Related pending litigation.** Either party may request a stay of an Action or an
19 abeyance of disciplinary proceedings. ~~A disciplinary proceeding may be held in abeyance~~
20 ~~by the Committee chair at any time before a screening panel hearing, when because the~~
21 ~~allegations or claims alleged in the Complaint contain matters of substantial similarity to~~
22 ~~the material allegations of pending criminal or Action are substantially similar of a~~
23 pending criminal or civil litigation in which the Respondent is involved. ~~case or Action.~~
24 Requests for ~~abeyance~~ stays or abeyances and requests to remove proceedings from
25 abeyance must be filed with the Committee clerk.

26 **(ef) The Complainant's actions.** An Action will not be abated due to:

- 27 (1) the Complainant's unwillingness to prosecute a Complaint;
- 28 (2) settlement or compromise between the Complainant and the Respondent; or
- 29 (3) restitution by the Respondent.

30 ~~Effective: 12/15/2020~~

31

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Rule 1-542. Complaints against OPC Counsel, Committee members, the Bar Commission, or Lawyers employed by the Bar. ~~Additional rules of procedure.~~

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

~~(b) Standard of proof. Claims or requests for relief brought in an Action, a petition for reinstatement and relicensure, or a petition for transfer to and from disability status must be established by a preponderance of the evidence. A claim for interim discipline under Rule 11-563 must also be established by a preponderance of the evidence.~~

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

~~(d) Related pending litigation. Either party may request a stay of an Action because the claims alleged in the Action are substantially similar to the material allegations of a pending criminal or civil case or Action.~~

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

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

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

~~(3) restitution by the Respondent.~~

~~(f) Complaints against OPC Counsel, Committee members, the Bar Commission, or Lawyers employed by the Bar.~~ The Committee chair will assign to a screening panel chair or vice chair any Complaint filed against OPC Counsel, a Committee member, a Bar Commission member, or a Lawyer employed by the Bar.

(1) The assigned ~~panel~~ chair will review the Complaint and any additional material that the ~~screening panel~~ assigned chair asks the Respondent to provide. Upon request

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to the OPC, the assigned chair will have access to any information the OPC ordinarily would consider in reviewing a complaint, including other Complaints filed by the Complainant or against the Respondent.

(2) The assigned chair may dismiss or decline to prosecute the Complaint for the reasons identified in Rule 1-530(i).

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

~~(A) frivolous or unintelligible;~~

~~(B) barred by the statute of limitations;~~

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

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

~~(2)~~ The ~~screening panel~~ Committee chair must notify the OPC and the Complainant of the dismissal and the reasons for dismissal.

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

~~(b3)~~ **Appeal.** The Complainant may appeal the ~~screening panel assigned~~ chair's dismissal to the Committee chair within 21 days after notification of the dismissal is sent.

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51 ~~(4) Upon appeal, the Committee chair must conduct a de novo review of the file, and~~
52 ~~either affirm or reverse the dismissal. The appeal will proceed in accordance with Rule~~
53 ~~1-530(j).~~

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