

Agenda

Paralegal Practitioner Steering Subcommittee

October 20, 2016
12:00pm

Scott M. Matheson Courthouse
Executive Dining Room
450 South State Street, Salt Lake City, UT

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|--|-------|--|
| Welcome and approval of minutes | Tab 1 | Justice Himonas |
| Admissions and Administration Subcommittee | | Judge Royal Hansen Mr. Robert Rice |
| Education Subcommittee | | Dean Robert Adler Dean Allison Belnap |
| Ethics and Discipline Subcommittee | | Judge Kate Toomey |
| Executive Subcommittee | Tab 2 | Justice Deno Himonas |
| Other Business | | |

Members

Justice Deno G. Himonas, Chair
Dean Robert W. Adler
John Baldwin
Dean Allison Belnap
Adam Caldwell
Dr. Thomas Clarke
Terry Conaway
Sue Crismon
James Dean
Julie Emery
Judge Royal Hansen
Dixie Jackson
James S. Jardine
Scott Jensen
Steven Johnson
Comm. Kim Luhn
Ellen Maycock
Daniel O'Bannon

Robert Rice
Monte Sleight
Judge Kate A. Toomey
Senator Stephen Urquhart
Elizabeth Wright

Staff

James N. Ishida
Jody Gonzales

Meeting Schedule

December 15, 2016
February 16, 2017

Tab 1

**PARALEGAL PRACTITIONER
STEERING COMMITTEE
MEETING**

**Minutes
Thursday, August 18, 2016
Executive Dining Room
Matheson Courthouse
Salt Lake City, Utah**

Judge Kate Toomey, Presiding

ATTENDEES:

Jacqueline Morrison for Dean Robert W. Adler
John Baldwin
Allison Belnap
Adam Caldwell (by phone)
Terry Conaway
Sue Crismon
James Deans
Julie Emery
Dixie Jackson
Jim Jardine

STAFF:

James Ishida
Jody Gonzales
Rick Schwermer

GUESTS:

Emy Cordano

ATTENDEES:

Comm. Kim Luhn
Daniel O'Bannon
Rob Rice
Judge Kate Toomey
Senator Stephen Urquhart
Elizabeth Wright

EXCUSED:

Justice Deno Himonas
Dean Robert W. Adler
Thomas Clarke
Judge Royal Hansen
Scott Jensen
Steven Johnson
Ellen Maycock
Monte Sleight

1. WELCOME AND APPROVAL OF MINUTES: (Judge Royal Hansen)

Judge Toomey welcomed everyone to the meeting. She mentioned that Adam Caldwell joined the meeting by phone and other members of the committee may join later.

She welcomed Mr. James Ishida, the new Appellate Court Administrator to the meeting.

Mr. Ishida provided his background and work experience.

Judge Toomey reported that Ms. Mary Jane Ciccarello has resigned as a committee member, but she will assist the committee on an ad hoc basis. She welcomed Ms. Emy Cordano, a solo practitioner, to the meeting.

Motion: Ms. Jackson moved to approve the June 16 committee minutes as amended. Mr. Rice seconded the motion, and it passed unanimously.

2. SUBCOMMITTEE UPDATES:

Admissions and Administration Subcommittee:

Mr. Rice highlighted the following relative to the Admissions and Administration Subcommittee's work:

Mr. Rice asked for clarification as to who will approve the recommendations prepared by the subcommittees. Judge Toomey noted that she thought that approval of subcommittee recommendations would be made by the steering committee as a whole, but she would like to get clarification from Justice Himonas and Judge Hansen at the next meeting.

- Review and revisions are taking place in the following areas: 1) character and fitness, 2) admissions rules, and 3) grandfathering rules.
- Bar Commission policy issues being addressed by the Admissions and Administration Committee: 1) will the licensed paralegal practitioners be able to take advantage of the Blomquist Hale Employee Assistance Program, 2) will the licensed paralegal practitioners be able to adopt contingency fee arrangements with their clients, and 3) will the licensed paralegal practitioners be able to participate in the licensed lawyer referral website.

Mr. Rice noted that the Bar will consider these policy issues at their next Bar Commission meeting.

Follow-up took place as to whether anyone from the steering committee discussed the matter of requesting the Honors College of the Eccles School of Business to create a capstone course, practice lab, or some type of senior project to conduct market research on behalf of the steering committee with Mr. Brent Johnson, the courts general counsel. It was unknown if this discussion has taken place.

Discussion took place.

Education Subcommittee:

Dean Allison Belnap highlighted the following relative to the Education Subcommittee's work regarding their recommendations for exemption provisions of the education requirements:

- A paralegal with an associate's degree in any field of study who has been working as a paralegal for seven out of the last ten years will be exempted from the prior education requirements. The applicant who has worked as a paralegal for seven out of the ten years will have two years from the start of the licensed paralegal practitioner program to apply for exemption of the education requirements. Once the applicant has been granted a waiver, they will have two years to complete their remaining licensure requirements.

Dean Belnap provided a response to the subcommittee's reasoning for limiting the time to apply for exemption of the educational requirements by the paralegals.

- The juris doctorate applicants would be exempted from passing the NALA or NALS exam. Paralegal applicants who have not taken the NALA or NALS exam prior to licensure, would be required to sit for the exam.
- Internships in paralegal study programs, law school internships, clinical programs and clerkships count toward the requirement for 1500 hours of experience. Paralegal applicants who have received an exemption for the education requirement will automatically meet the majority of the requirement of 1500 hours of experience through their work as a paralegal for seven out of the last ten years. However, all applicants must complete 500 hours in the relevant specialty area to be licensed.
- The juris doctorate applicants would be exempted from receiving the required three credits in professional ethics as required of the licensed paralegal practitioner, but it is recommended to pass the licensing exam.
- The juris doctorate applicants would be exempted from receiving the required five credits of specialized instruction in each specialty area as required of the licensed paralegal practitioner, but it is recommended to pass the licensing exam.

Dean Belnap noted that the learning objectives for the specific core areas are still to be finalized.

Consideration of the appropriate format for offering the course information was discussed—formal semester courses, seminar type courses or workshop type courses.

- No exemptions are being recommended relative to passing the appropriate licensing exams.

Clarification was provided on the type of accreditation (regional accreditation) for the schools providing the program coursework.

The question was asked regarding out-of-state applicants who move to Utah and miss the exemption period. Dean Belnap mentioned that the subcommittee will need to discuss the matter further and determine the best course of action.

Discussion took place throughout.

Ethics and Discipline Subcommittee:

Judge Toomey highlighted the following relative to the Ethics and Discipline Subcommittee's work:

- The Ethics and Discipline Subcommittee continued making line-by-line revisions to the appropriate rules.
- The Ethics and Discipline Subcommittee requested feedback from members of the steering committee on whether the licensed paralegal practitioner in their role as being authorized to use court-approved forms to help court patrons with domestic relations matters, will that include helping a minor petition for a protective order.

Discussion took place.

Executive Subcommittee:

Judge Toomey noted that feedback on the Executive Subcommittee's work was included in the meeting materials.

She highlighted Dr. Clarke's report on the activities of the Washington State Supreme Court regarding their LTTT Program.

Discussion took place.

A suggestion was made to set up the licensed paralegal practitioner courses as continuing education courses rather than semester type courses.

3. OTHER BUSINESS

No new business was brought up at this time.

4. ADJOURN

The meeting was adjourned.

Tab 2

**PARALEGAL PRACTITIONER
EXECUTIVE SUBCOMMITTEE
MEETING
Minutes**
Thursday, September 15, 2016 10:00am
Judicial Council Conference Room
Matheson Courthouse
Salt Lake City, Utah

JUSTICE DENO HIMONAS, Presiding

ATTENDEES:

Justice Deno Himonas, Chair
Dean Robert W. Adler
Assistant Dean Allison Belnap
James S. Jardine
Steven G. Johnson
Robert O. Rice
Judge Kate A. Toomey
Elizabeth Wright
James Ishida

GUESTS:

Mary Jane Ciccarello
Brent Johnson

EXCUSED:

Judge Royal I. Hanson, Vice Chair
Dr. Thomas Clarke

I. WELCOME AND APPROVAL OF MINUTES: (Himonas)

Justice Himonas welcomed everyone to the meeting. He mentioned that a few committee members were unable to attend.

Minutes of the last meeting were approved.

II. NOMINATION OF STEVEN G. JOHNSON (Toomey)

Judge Toomey moved that Mr. Johnson fill a vacancy on the committee. Judge Toomey explained that Mr. Johnson has been enormously helpful in advising the Ethics and Discipline Subcommittee on the Rules of Professional Conduct. She also mentioned that Mr. Johnson is the chair of the Supreme Court's Advisory Committee on the Rules of Professional Conduct, and he has an encyclopedic knowledge of the professional conduct rules. Mr. Jardine seconded the motion, and the committee approved it unanimously.

III. SUBCOMMITTEE REPORTS

A. Ethics and Discipline Subcommittee (Toomey)

Judge Toomey reported that her subcommittee had completed its review of all of the Rules of Professional Conduct. Judge Toomey noted that the subcommittee began making great progress once certain foundational issues were resolved, such as decisions on nomenclature and basic policy matters. Judge Toomey also explained that her subcommittee had decided to extend the length of its scheduled meetings by one hour in order to meet the goal of finishing its work by February 2017. Since then, the subcommittee has made great progress, and Judge Toomey was confident that the subcommittee would finish its work on time.

Justice Himonas asked whether it would make sense to start reviewing the subcommittee's work on the Rules of Professional Conduct. Judge Toomey responded that it was probably premature at this point because much proofreading work still needed to be done on the rules. She explained that the subcommittee would carefully proofread the rules, but she also noted that it would be prudent to have a fresh set of eyes review the subcommittee's work as well. Judge Toomey indicated that she had spoken to Mr. Ishida about getting help for the secondary proofreading, and Mr. Ishida replied that arrangements were being made to have court staff attorneys and appellate court law clerks help with the proofreading.

The subcommittee, Judge Toomey said, would begin to address the Rules of Lawyer Discipline and Disability at its next meeting.

A committee member suggested that some thought be given to the approval process of the rules. The member worried that when the package of rules amendments is transmitted to the Steering Committee that that committee may get bogged down in reviewing the minutiae of the proposals and may miss the larger policy issues. Justice Himonas agreed and said that while this committee would welcome comments from the Steering Committee on specific rules, he contemplated that the proposed amendments would be presented as a total package, with an up or down vote by the Steering Committee on the entire package. Judge Toomey concurred, saying that her subcommittee would highlight the larger policy issues for the Steering Committee. Everyone agreed that a line-by-line review by the Steering Committee would be inefficient.

Judge Toomey speculated that her subcommittee would probably be finished with its review of the rules by its November 2016 meeting.

Mr. Johnson wondered whether it made sense to keep the same numbering scheme in the LPP rules as found in the Rules of Professional Conduct. Several members agreed that it made sense to retain the same numbering scheme in order to facilitate legal research and allow for future expansion. Justice Himonas noted consensus on the practice and suggested that the subcommittee adopt the same numbering arrangement for the LPP rules.

Finally, Judge Toomey asked what percentage of lawyers report that they've done pro bono work. Elizabeth Wright mentioned that approximately 10% of lawyers report on their licensing forms that they've done pro bono work. Judge Toomey estimated that the number is probably much higher than what is being reported, and she said that her subcommittee is proceeding on the assumption that LPPs should also participate in pro bono work. She said that the subcommittee will be working on establishing the number of aspirational hours of pro bono work to be done by LPPs.

B. Admissions and Administration Subcommittee (Rice)

Mr. Rice reported that his subcommittee is currently studying the testing and grandfathering standards that had been proposed by the Education Subcommittee. Mr. Rice said that he is very supportive of that subcommittee's proposals, although he noted that there had been a fair amount of discussion within his own subcommittee of the Education Subcommittee's proposals. Mr. Rice then asked for direction as to how his subcommittee should proceed.

Dean Adler noted that when the Education Subcommittee's proposals were introduced at the last Steering Committee meeting, the Steering Committee had offered a fair amount of comments and suggestions on them. Dean Adler suggested that the Education Subcommittee be allowed to consider the comments and suggestions; revise its proposals, as appropriate; and then refer the amended proposals back to the Admissions Subcommittee for its consideration. Several members voiced approval of that procedure. Mr. Rice added that several members of his subcommittee held strong views on the issues, but his subcommittee is looking forward to receiving the Education Subcommittee's revised proposals.

Justice Himonas inquired when the Admissions Subcommittee would finish its work, and Mr. Rice indicated that his subcommittee should have a final recommendation on the testing and grandfathering proposals by the next meeting of the Steering Committee.

Mr. Rice then reported that his subcommittee was grappling with when, where, and how the licensing test would be administered. Mr. Rice noted that his subcommittee was unclear as to which entity would be tasked with constructing the actual examination. John Baldwin, Mr. Rice mentioned, was currently working with Washington State officials to see how that state had resolved some of these issues. Mr. Rice said that his subcommittee had tentatively envisioned that the licensing exam would be divided into two parts. The first part would be on the substantive areas of law, where the examination questions would be created locally. The second part would be a multi-state-type examination, where the questions could come from national paralegal organizations such as the National Association of Legal Assistants (NALA) or the National Association of Legal Secretaries (NALS).

Mr. Rice suggested that his subcommittee will report back to this committee, once Mr. Baldwin completes his fact-finding mission with the Washington State officials. Justice

Himonas agreed, and he suggested that Dr. Thomas Clarke also be consulted on his and the National Center for State Courts views as well. Mr. Ishida was tasked with that assignment.

Dean Adler then raised two issues. First, what should the test should look like? Second, who should write the examination? Justice Himonas acknowledged that those were good questions, and he postulated that it would probably require the appointment of a standing committee that would have jurisdiction over the creation, grading, and administration of the licensure examination.

One member suggested that the testing could be done online, which would obviate the need for a testing facility and proctors, and it would also streamline the testing process. A number of members strongly endorsed that suggestion.

Mr. Rice, as President of the Utah State Bar, was then asked how the Bar views the LPP program. Mr. Rice affirmed that the Bar is in general agreement with the program. He pointed out that at a recent Bar Commissioners retreat, the commissioners voted to allow LPPs to participate in Bloomquist Hale/Lawyers Helping Lawyers assistance program, as well as be permitted to participate in a general client-referral service. The commissioners also agreed that LPPs should not be permitted to charge contingency fees.

Mr. Rice, however, indicated that there seemed to be a lack of understanding about the LPP program among a few new and sitting commissioners, which had prompted a number of questions from them about the LPP program. But Mr. Rice said that once they were able to go back and recount the history of the LPP program and the objectives of what the program is designed to accomplish, then the commissioners readily understood and accepted the program. Mr. Ishida agreed that Mr. Rice and John Lund, President-Elect of the Bar, did a tremendous job of educating the new commissioners and steering the discussions back on a firm and productive footing.

C. Education Subcommittee (Adler)

Dean Adler reported that his subcommittee's last remaining task is to finish work on the specific learning outcomes. He said that Dean Belnap is working with a small subgroup that is examining all the court forms in order to distill the skill sets necessary to complete each form. The work is voluminous, which makes it difficult to devise a specific curriculum for paralegals to fill out every specific form. The subcommittee's goal, Dean Adler explained, will be to identify the key forms, devise a curriculum around those forms, and develop a secondary curricula focused on how LPPs should deal with forms that they've never dealt with before. Dean Adler remarked that the approach would be similar to the skills-based approach taken in law school, where you can't teach students all the law, but you can teach them basic research, critical thinking, and fact and legal application skills.

IV. MARKETING, FORMS, AND TECHNOLOGY ISSUES

Justice Himonas introduced Brent Johnson, the General Counsel for the Utah State Courts, and Mary Jane Ciccarello, outgoing member of the committee and the Director of the Self-Help Center. Justice Himonas noted that Ms. Ciccarello was stepping off the committee due to her many other conflicting obligations, and he expressed the committee's thanks and appreciation for her hard work and dedication.

Marketing. Justice Himonas mentioned an earlier proposal where the courts would have reached out to the University of Utah School of Business for assistance in developing a marketing strategy for newly licensed LPPs. However, there were concerns about the appearance and propriety of having the courts reach out to the business school, so it was later agreed that the Utah Bar, not the courts, would make contact with the business school.

Mr. Rice mentioned that the subcommittee had asked John Baldwin, the Bar's Executive Director, to make contact with the business school so that the marketing initiative would be advanced by the Bar and not the courts. The committee thanked the Bar for its assistance.

Forms. The LPP project, Justice Himonas remarked, raised a number of significant issues involving court forms that the judiciary had not addressed in a very long time. He mentioned that the Supreme Court was moving towards proposing a rule to the Judicial Council that would create a standing committee whose charge would be to review, revise, and update court forms on a regular basis. Brent Johnson observed that when he started working for the courts twenty years ago, the courts were moving away from overseeing forms. Now, Mr. Johnson noted, the courts are returning full circle to a closer oversight of court forms. A number of members agreed that that was a good development.

Dean Adler proposed that whatever direction the project on forms takes that some consideration be given as to how the forms are organized and posted on the court website. Specifically, Dean Adler was concerned that the forms be organized in such a way that it makes it easy for LPPs to identify which forms are appropriate for their use. Other members agreed with that approach. Another member suggested that it may be even more helpful if the forms bore an imprimatur showing that they had been pre-approved and authorized for use by the LPPs.

Technology. A member asked whether the LPPs would be permitted to file documents electronically with the court. Justice Himonas observed that it was his view that LPPs should be permitted to file documents electronically, but he noted that this was an issue to be considered further. Other members agreed that it made sense to allow LPPs to file electronically.

IV. ADJOURN

Justice Himonas thanked the members for a productive meeting, and the meeting was adjourned at 11:00am.