

Agenda

Paralegal Practitioner Steering Subcommittee

February 16, 2017
12:00pm

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

Welcome and approval of minutes • NEW MEMBER - Dean Benson Dastrup	Tab 1	Justice Deno Himonas
Admissions and Administration Subcommittee • ACTION - Should debt collection cases be limited by dollar amount? • ACTION - Proposal to appoint new subcommittee on LPP license examination • ACTION - Proposal to appoint new subcommittee on MCLE rules and program		Judge Royal Hansen Mr. Robert Rice
Ethics and Discipline Subcommittee		Judge Kate Toomey
Education Subcommittee	Tab 2	Dean Robert Adler
Executive Subcommittee	Tab 3	Justice Deno Himonas
Other Business		

Members

Justice Deno G. Himonas, Chair
Dean Robert W. Adler
John Baldwin
Adam Caldwell
Dr. Thomas Clarke
Terry Conaway
Sue Crismon
Dean Benson Dastrup
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

*****Need New Meeting Dates*****

**PARALEGAL PRACTITIONER
STEERING COMMITTEE
MEETING**

**Minutes
Thursday, December 15, 2016
Executive Dining Room
Matheson Courthouse
Salt Lake City, Utah**

Justice Deno Himonas, Presiding

ATTENDEES:

Justice Deno Himonas
Dean Robert W. Adler
John Baldwin
Adam Caldwell
Terry Conaway
Sue Crismon
James Deans
Julie Emery
Judge Royal Hansen
Dixie Jackson
Jim Jardine
Steven Johnson
Ellen Maycock
Rob Rice
Monte Sleight
Judge Kate Toomey
Elizabeth Wright

STAFF:

James Ishida
Jody Gonzales

EXCUSED:

Dean Allison Belnap
Thomas Clarke
Scott Jensen
Comm. Kim Luhn
Daniel O'Bannon
Senator Stephen Urquhart

GUESTS:

Jacqueline Morrison
Amy Cordano

1. WELCOME AND APPROVAL OF MINUTES: (Justice Deno Himonas)

Justice Himonas welcomed everyone to the meeting.

Motion: Judge Toomey moved to approve the October 20 committee minutes. Mr. Rice seconded the motion, and it passed unanimously.

2. SUBCOMMITTEE UPDATES:

Admissions and Administration Subcommittee:

Mr. Rice reported that the first draft of the admissions rules is nearing completion. The draft admissions rules will be distributed at the next subcommittee meeting for review.

Discussion on development of a survey to be given to paralegals and students enrolled in paralegal programs, statewide, will take place at the next subcommittee meeting. Survey questions would focus on addressing questions to determine the level of interest of paralegals in the Licensed Paralegal Practitioner Program, in general, and if they find the program would provide an interesting career opportunity for them. Mr. Rice will provide an update on this discussion topic at the February steering committee meeting.

Survey questions would address the following:

- Interest level of the three practice areas
- Paralegal education level, did they received their education at an ABA approved school, or did they receive their education prior to 2001 and they have been working for 20 years as a paralegal
- Requirements to qualify for the licensed paralegal practitioner exam
- Determine the interest level of the paralegals and if they are already qualified or what needs to be completed to become qualified
- Assessing where paralegals fit in the current model, regardless of level of interest, as it relates to the grandfathering requirements
- Does the paralegal have a national voluntary certification
- How many hours of experience does the paralegal have in the three practice areas

Ways to provide program information to interested paralegals, as well as, to distribute the survey include:

- Available email addresses for paralegals who are members of the Utah State Bar through the Paralegal Division and from the Utah Paralegal Association (UPA)
- Assistance from members of the American Legal Administrators Association to facilitate getting the word out
- Work with school faculty on providing information to paralegal students
- Use of social media to disseminate information on the survey and the program
- Distribute information to members of the Utah State Bar requesting lawyers to share the information with their paralegals

Mr. Rice mentioned that Ms. Emery and Mr. Baldwin are involved with drafting of the exams—what to be included on the exams and how the exams will be administered will be addressed.

Mr. Rice provided an update relative to the request made to the MBA Department at the University of Utah regarding market research to be conducted, on behalf of the Utah State Bar, with regard to the Licensed Paralegal Practitioner Program. The MBA Department has committed to providing student teams to conduct the requested market research. To date, student teams have not yet been assigned to this project.

Discussion took place.

Dean Adler mentioned that he, Ms. Conaway, and Mr. Sleight have reviewed the national licensing exams currently available to paralegals. They are available to answer any exam-related questions.

It was noted that a new Committee on Court Forms is being recommended for approval by the Judicial Council at their December meeting.

Education Subcommittee:

Dean Adler mentioned that Dean Belnap asked to be excused from today's meeting. Dean Belnap noted that Dean Belnap is supervising the efforts regarding development of the subject-specific competencies. It is anticipated that these competencies will be completed in January, and they will be reviewed by members of the Education Subcommittee at their January meeting.

The general core competencies have been drafted. The ethics and professionalism competencies will be addressed next. Dean Adler hopes to have a draft of these competencies completed and available for review by members of the Education Subcommittee at their January meeting.

The admissions and scope of practice issues will be addressed once the Admissions Subcommittee has completed their work and has provided the necessary information to the Education Subcommittee so they can determine whether or not any additional information relative to the admissions and scope of practice areas should be added to the core competencies and learning objectives.

Ethics and Discipline Subcommittee:

Judge Toomey reported that the Ethics and Discipline Subcommittee have been meeting monthly. She highlighted the approach taken by the Ethics and Discipline Subcommittee since formation of the steering committee in 2016 in determining the appropriate rules to be used relative to ethics and discipline by the licensed paralegal practitioner to include:

- First addressed general policy questions
- Reviewed the rules used by the Washington State's Limited Legal Licensing Technician Program and determined that Washington State's rules were not appropriate for application with Utah's Licensed Paralegal Practitioner Program
- Began line editing the appropriate rules
- Reviewed sections of the Immigration Consultants Act
- Reviewed ABA Resolution 105
- Reviewed major sections of various Utah licensing statutes
- Reviewed Utah's rules governing lawyer ethics and discipline and all related subjects

Ultimately, the Ethics and Discipline Subcommittee determined to use the lawyer-related rules as the model for the Licensed Paralegal Practitioner rules.

Basic Assumptions:

- The Utah State Bar will administer all aspects of the Licensed Paralegal Practitioner Program
- The licensed paralegal practitioner will be considered officers of the court and will practice law, but they will not be admitted to the Bar
- All Utah State Bar programs available to lawyers will be available to the licensed paralegal practitioner
- The licensed paralegal practitioners will not be required to sign or acknowledge the forms they prepare

- The licensed paralegal practitioner will be authorized to represent clients in non-mediated negotiations, but limited to matters raised directly related to or included in the forms
- The licensed paralegal practitioner will be able to communicate on behalf of the client with the other party
- The licensed paralegal practitioner will be permitted to e-file
- The licensed paralegal practitioner will be allowed to own Licensed Paralegal Practitioner firms
- The licensed paralegal practitioner will be allowed to own equity interest in a law firm, but they cannot be a controlling interest and they cannot have supervisory responsibility over lawyers

Judge Toomey noted that policy recommendations would be made throughout the appropriate rules and will be adapted to the licensed paralegal practitioner context and incorporating the licensed paralegal practitioner program into an existing body of rules.

The committee is recommending a standalone set of rules, as a single body which would combine all rules, as its own chapter (Chapter 15) adapted to the licensed paralegal practitioner program, following the Chapter 14 format which pertains to lawyers. The newly created chapter would include the Rules of Professional Conduct. Judge Toomey noted that the Rules of Professional Conduct for lawyers is a standalone chapter.

Additional recommendations and considerations:

- The licensed paralegal practitioner will not be allowed to charge contingency fees
- The pro bono requirement for the licensed paralegal practitioner will be 30 hours instead of the 50 hours required for lawyers
- The Ethics and Discipline Subcommittee recommended against allowing “pro hac vice” admissions privileges
- Will not provide for reciprocal licensing, but will provide for reciprocal discipline
- The licensed paralegal practitioner will be required to have trust accounts
- A trust account related rule has been drafted
- The Ethics and Discipline Subcommittee has eliminated all references to liens
- The Ethics and Discipline Subcommittee anticipates additional recommendations when the Admissions Subcommittee completes their work, i.e., a mandatory continuing education requirement placement

Judge Toomey highlighted the recommendations as they related to revisions made to the following chapters:

- Chapter 3 – Standards of Professionalism and Civility, the chapter was amended to shorten cross reference citations and eliminate the standards that did not apply.
- Chapter 5 – Discipline and Disability Rules – the rules currently are drafted for lawyers and non-lawyers. It was determined that it was too soon in the process to add an appropriate notation for the licensed paralegal practitioner, and it would be included after the program is in place and a determination of the appropriate rule to be included.
- Chapter 6 – The Standards for Imposing Sanctions – there were no substantive changes made to the rules. Discussion on the appropriate term to be used when imposing sanctions to the licensed paralegal practitioner.

- Chapter 9 – The Fund for Client Protection – there were no substantive changes to the rule, but it was determined the need to set amounts the licensed paralegal practitioner can contribute to.
- Chapter 10 – The Interest and Licensed Paralegal Practitioner Trust Accounts, it was determined that the IOLTA could not be used, but they would have to be set up as an interest on licensed practitioners account.
- Chapter 11 – Fee Dispute Resolution – it was determined to use the existing structure as referenced as a lawyer member instead of the licensed paralegal practitioner
- Chapter 12 – Rules of Professional Conduct.

Questions and items of information to consider:

- Will disbarred lawyers be allowed to apply to become a licensed paralegal practitioner
- Determine whether to refer to law firms or firms owned by the licensed paralegal practitioner or refer to them as licensed paralegal practitioner firms
- Rule 5.4 of the Rules of Professional Conduct for lawyers will need revision to permit licensed paralegal practitioner ownership interest in law firms
- Evidentiary and statutory privileges should be addressed by the appropriate subcommittee. It was noted that Rule 504 will be redrafted at the appropriate time.
- Inclusion of the definition for the practice of law to be included, at the appropriate time
- The question was raised as whether there will be a new division of the Utah State Bar created for the licensed paralegal practitioner or will they be required to become part of the Paralegal Division

Judge Toomey expressed her appreciation to Mr. Miles Pope for his help in reviewing the rules and providing the appropriate cross references.

Justice Himonas noted that all the rules will be sent out for public comment.

Discussion took place throughout.

Motion: Ms. Crismon moved to approve the rules as proposed by the Ethics and Discipline Subcommittee and send out for public comment. Mr. Adler seconded the motion, and it passed unanimously.

Executive Subcommittee:

All items to be discussed were raised during the meeting.

3. OTHER BUSINESS

No new business was brought up at this time.

4. ADJOURN

The meeting was adjourned.

LEARNING AND COMPETENCY OUTCOMES FOR LICENSED PARALEGAL PRACTITIONERS

(1) GENERAL LEARNING AND COMPETENCY OUTCOMES

For any of the designated practice areas, paralegal practitioners should understand and be professionally competent in the following:

- (1) **Basic Knowledge of Substantive Law.** Though LPP's should not advise clients on the specific exercise of rights outside their approved practice areas, LLPs should be aware that clients will look to them as a source of information about the client's rights generally. LPPs should have sufficient knowledge and experience to be able to recognize that a client may have additional legal rights or responsibilities that lie outside the purview of the LPP's practice. Further, LPPs must understand their strict responsibility to encourage clients in such cases to follow up with a competent, licensed attorney.
- (2) **Legal ethics generally.** The rules and principles of ethical conduct governing the legal profession generally, and the specific rules of practice and principles of professional and ethical conduct governing paralegals and paralegal practitioners.
- (3) **Rules governing the unauthorized practice of law.** The principles that dictate, and the specific rules and laws that regulate, the distinction between the "practice of law" allowed only by licensed attorneys and other kinds of legal services that paralegal practitioners are authorized to provide. A strong understanding of the concept that, when there is any doubt about where that line is, the LPP should refrain from providing that service, counsel the client accordingly, and when requested and appropriate, refer the client to one or more competent attorneys.
- (4) **Client intake and interviewing.** The principles and skills necessary for client intake and interviewing, and direct experience in that skill through simulation courses, clinical internships or similar training. This includes the knowledge and skills necessary to know what information is needed, and how to obtain that information, including how to articulate clear, precise, relevant and objective questions; the listening skills necessary to understand client responses and needs; the ability to re-formulate questions that have not been answered (or not answered fully), and to analyze and formulate appropriate follow-up questions; and the knowledge and skills necessary to analyze and identify what additional documents and other information are necessary to serve the client, and where to obtain it.
- (5) **Providing appropriate information to clients.** Subject to 2, above, the ability to articulate relevant and appropriate information to the client in a clear and precise way, and the listening skills necessary to make sure the information

has been understood fully, and to reframe the information as appropriate if it was not understood, or understood completely. Direct experience in that skill through simulation courses, clinical internships or similar training

- (6) **Reading and analytical skills.** The ability to read documents carefully and precisely, and to understand their relevance to the applicable legal and other related issues facing the client.
- (7) **Writing skills.** Subject to the rule that paralegal practitioners may only “write” for clients in limited contexts (e.g., court-approved legal forms but not original legal documents, and settlement summaries from mediated negotiations but not originally prepared settlement documents), the ability to complete forms and prepare other permitted documents in language that is clear and precise and responsive to the documents and issues facing the client.
- (8) **Research skills.** Subject to 2, above, the knowledge and skills necessary to obtain any factual or other information necessary to fulfill the LPP’s obligations to the client, including library research skills, computer and internet skills, investigative skills, etc.
- (9) **Negotiation and Mediation Skills.** Subject to 2, above, LPPs must demonstrate sufficient knowledge of the negotiation and mediation processes, basic negotiation and mediation theories, and best practices to allow the LPP to assist clients in negotiated and mediated agreements. Such knowledge should include an understanding of various proposed ethical guidelines in the areas of negotiation and mediation such as the Ethical Guidelines for Settlement Negotiations propagated by the Litigation Section of the ABA in 2002 and the Model Standards of Conduct for Mediators approved by the ABA House of Delegates on August 9, 2005. LPPs must understand that they can only assist clients with negotiated or mediated agreements to the extent that such agreements address issues that fall within the LPP’s limited practice areas.
- (10) **General knowledge of the legal system and legal terminology.** A sufficient understanding of the legal system, including common legal terminology, to understand the context in which the paralegal practitioner serves clients and to serve them competently and professionally, to understand fully what matters are beyond the competence and licensure of the paralegal practitioner, and to refer clients to appropriate sources of help (including attorney referrals and referrals to appropriate public officials or other sources of information and assistance) for those matters beyond the licensing and competence of the paralegal practitioner.
- (11) **Knowledge of the court system, relevant administrative tribunals, and relevant procedures.** Sufficient knowledge of the judicial and

administrative systems (state and, as appropriate, federal), and the rules of procedure in those systems, including rules and procedures regarding proper service of process and other legal documents, and responses thereto, to provide competent assistance within the bounds of permissible services, and to provide information (but not legal advice) to clients about the usual or likely course of proceedings that may affect them. This should include, at a minimum, a basic familiarity with the Utah Rules of Civil Procedure and the Utah Rules of Appellate Procedure, and the Utah Rules of Evidence, as well as the rules of any specialty tribunal (civil or administrative) in which the LPP might practice.

(2) SUBSTANCE-SPECIFIC LEARNING AND COMPETENCY OUTCOMES

(1) **Generally.** In each designated practice area, paralegal practitioners should understand and be professionally competent in the following:

- a. **General knowledge of the area of law.** For each of the designated areas of practice for which a paralegal practitioner seeks licensure, a sufficient knowledge of the general principles of law, terminology, sources of law (including relevant statutes, regulations, policies and procedures, most significant cases), and major kinds of legal proceedings and remedies to understand fully the context and implications of those services the paralegal practitioner is permitted to provide, and to understand fully the limits of those services.
- b. **Knowledge and understanding of relevant forms.** LPPs must demonstrate the following as regarding the court-approved forms the LPP is licensed to complete and submit on behalf of a client.
 - i. Detailed familiarity with each of the court-approved forms.
 - ii. A clear understanding of which forms are appropriate for which circumstances and requested relief.
 - iii. The ability to evaluate a client's situation and successfully determine the correct form to use to address the issue and to request relief.
 - iv. The ability to determine which kinds of relief or other services are not properly addressed by an approved form thereby residing beyond the paralegal practitioner's competence and licensure.
- c. **Experience and demonstrated proficiency in completing each of the relevant forms in the area of law.** Direct experience in applying that skill through simulation courses, clinical internships or similar training.

(2) **Knowledge in the area of Landlord-Tenant Law.** In addition to the general requirements above, prospective LPPs desiring to work in the area of Landlord-Tenant Law must demonstrate the following.

- a. **Ability to appropriately respond to eviction attempts.** Sufficient knowledge of the process and remedies available to clients responding to attempts at eviction prior to formal legal action with the court. Knowledge and skills required include the following.
 - i. **Negotiation.** Sufficient knowledge of the negotiation process and basic negotiation theories and best practices.
 - ii. **Rights of tenants and landlords.** Sufficient knowledge of the rights of both landlords and tenants under Utah law.
 - iii. **Legitimate debts.** Sufficient knowledge and experience to recognize legitimate debts and to assist clients in avoiding unreasonable costs in court. Sufficient knowledge to be able to provide clients with information regarding the creation and implementation of move-out plans, payment plans, or both as options to meet the requirements of a legitimate debt.
 - iv. **Underlying concerns.** An awareness that landlord-tenant disputes can be a gateway to short- or long-term homelessness. The knowledge and ability to inform clients about available resources. The ability to recognize and provide information to clients regarding the proximate and far-reaching effects of out-of-court agreements.
- b. **Providing clients with information regarding settlement offers.** LPPs should demonstrate an understanding of how the ethical guidelines, mediation principles, and settlement efforts generally apply in landlord-tenant cases. LPPs should have a strong understanding that a settlement requires compromise on both sides and the skill to accurately communicate that to clients. The ability to understand and inform clients about the effects and requirements of a settlement agreement.
- c. **Ability to competently answer a complaint.** LPPs must have sufficient knowledge of applicable legal principles and rules, including those from statutes, case law, and rules applicable to landlord-tenant claims in Utah, to competently respond to a complaint. This includes the ability to recognize when a response to a complaint will exceed the limited practice of an LPP and must be referred to a licensed attorney. Such legal principles and rules include but are not limited to:

- i. Time to answer a complaint;
 - ii. Affirmative defenses;
 - iii. Counterclaims;
 - iv. Waiver of defenses or counterclaims
 - v. Defective parties;
 - vi. Defective service;
 - vii. Defective notice;
 - viii. Payment;
 - ix. Tender;
 - x. Waiver by acceptance of rent;
 - xi. Compliance with notice;
 - xii. Breach of warranty of habitability
 - xiii. Violations of the Utah Fit Premises Act;
 - xiv. Violation of local fit premises;
 - xv. Rent offset;
 - xvi. Retaliatory eviction;
 - xvii. Constructive eviction;
 - xviii. Failure to mitigate;
 - xix. Unconscionable deceptive acts;
 - xx. Landlord-tenant relationship;
 - xxi. Violations of discrimination law;
 - xxii. Subsidized housing violations;
 - xxiii. Failure to reasonably accommodate a disabled tenant;
 - xxiv. Substantial compliance with the terms of a lease;
 - xxv. Abuse of process;
 - xxvi. Failure to follow mobile home statute;
 - xxvii. Failure to return deposit;
 - xxviii. Conversion of property;
 - xxix. Soldiers and Sailors Act; and
 - xxx. Landlord overcharging in subsidized housing.
- d. **Ability to navigate discovery.** Sufficient knowledge of the discovery process and the rules governing the discovery process, and the ability to

successfully draft discovery requests and to appropriately respond to discovery requests.

- e. **Knowledge of when, why, and how to file a Motion to Set Aside Judgment.** Understand rules regarding timelines and other reasons for setting aside a judgment as set forth in the Utah Rules of Civil Procedure.
- (3) **Knowledge in the area of Collection Law.** In addition to the general requirements above, prospective LPPs desiring to work in the area of Collections Law must demonstrate the following.
- a. **Ability to appropriately respond to out-of-court collection efforts.** Sufficient knowledge of the process and remedies available to clients responding to attempts to collect debts prior to formal legal action with the court. Knowledge and skills required include:
 - i. **Negotiation.** Sufficient knowledge of the negotiation process and basic negotiation theories and best practices.
 - ii. **Rights of debtors.** Sufficient knowledge of the rights of debtors regarding the collection process and familiarity with parameters of the Fair Debt Collection Practices Act (“FDCPA”).
 - iii. **Basic familiarity with landlord-tenant eviction statutes.** Knowledge and skills to recognize when a collection matter has landlord-tenant implications as well.
 - iv. **Legitimate debts.** Sufficient knowledge and experience to recognize legitimate debts and assist clients in avoiding an increase of a legitimate debt. Assist clients in understanding that unnecessarily obtrusive positions with no legitimate defense (i.e. filing fees, court costs, collection fees, additional attorney’s fees missing time from work to attend hearings) are likely to significantly increase the ultimate cost of a legitimate debt.
 - v. **Underlying concerns.** Sufficient knowledge and ability to provide clients with information regarding the possibility that an early call to a creditor or collection agency to negotiate a settlement of a debt before there are collection fees, court costs, attorney’s fees, continuing interest, and penalties.
 - b. **Providing clients with information regarding settlement offers.** A strong understanding that a settlement requires compromise on both sides and the skill to accurately communicate that to clients. An understanding of how economics plays into settlement discussions and agreements. The ability to understand and inform clients about the effects

and requirements of a settlement agreement. Prospective LPPs should take a cooperative approach to settlement rather than adversarial. Adversarial cases will most likely have to be referred to an attorney.

- c. **Ability to competently answer a complaint.** A knowledge of an ability to completely and competently answer a complaint.
 - i. **Time to Respond.** Knowledge and understanding of the 10-Day Summons, 20-Day Summons, and 30-Day Summons Rules (URCP Rules 3(a)(2) and 12).
 - ii. **Defenses.** Understand affirmative defenses and counterclaims.
 - 1. Sufficient knowledge of and ability to understand and include compulsory counterclaims (URCP Rule 13) in an answer. Have a clear understanding of when a compulsory counterclaim mandates the involvement of a licensed attorney. Clearly understand that a party waives all defenses and objections not raised either by motion or by answer (URCP Rule 12(h)). Understand the exception to such waiver.
 - 2. Sufficient knowledge of and ability to understand and, as appropriate, include all compulsory and permissive counterclaims (URCP Rule 13) in an answer.
 - iii. **Statutes of Limitation.** Clearly understand the effect of applicable Statutes of Limitation (Utah Code Ann. 70A-3-118). Know the differences on statutes regarding written contracts, oral contracts, and checks.
 - iv. **Family Expense Statute.** Clearly understand what qualifies as a family expense (Utah Code Ann. 30-2-9). Know the circumstances under which a spouse can be sued for an obligation contracted by the other spouse.
- d. **Ability to navigate discovery.** Sufficient knowledge of the discovery process and the rules governing the discovery process, and the ability to successfully draft discovery requests and to appropriately respond to discovery requests. Strong understanding of the rules regarding initial disclosures (URCP Rule 26) and Interrogatories (URCP Rule 33).
- e. **Ability to identify motions to be filed and the form for each motion.** Clearly understand URCP Rule 7. In particular, understand the uses and timelines of. A Motion to Set Aside a Judgment (URCP Rule 60(b)). Understand applicable time limits (within 90 days of the

judgment) and the acceptable reasons for asking a court to set aside a judgment.

(4) **Knowledge in the area of Divorce & Family Law.** In addition to the general requirements above, prospective LPPs desiring to work in the area of Divorce and Family Law should understand and be competent in the following:

- a. Jurisdiction and Venue (determining the right state/county)
- b. Divorce and Child Custody
 - i. Divorce Education / Orientation Courses (when / where if children are involved)
 - ii. Initial Paperwork for filing – Vital Stats, Child Support Worksheets, Child Location Worksheet, Petition, Summons.
 - iii. Custody – Sole vs. Joint Legal Custody in the context of the full range of family types (understanding and being able to explain the differences, pros/cons to each arrangement) and when the involvement of a licensed attorney is necessary.
 - iv. Parent Time (options below or something in between)
 1. Utah Code 30-3-35
 2. Utah Code 30-3-35.1
 3. 50/50 Parent-time (different ways 50/50 can be accomplished)
 4. Utah Code 30-3-37 (relocation options)
 5. Supervised Parent Time (when appropriate)
 - v. Parenting Plans (Required in Joint Custody Situations)
 - vi. Custody Evaluations (when needed, how to select an evaluator, scope of evaluation) and when the involvement of a licensed attorney is necessary.
 - vii. Child Support
 1. Determining Incomes
 2. Determining Incomes when a Party is not forthcoming with financial information
 3. Discovery Issues
 4. Navigating Child Support Worksheets
 - a. How Parent Time affects Child Support
 - b. Children from prior relations
 5. Circumstances / time frame for updating / modifying child support
 - viii. Alimony a. Utah Code 30-3-5(8)
 - ix. Division of Retirement
 1. Qualified Domestic Relations Orders (QDRO) and that the involvement of a licensed attorney is necessary.

- x. Division of Real Property
 - 1. Timeframe for Refinancing or Selling real properties to remove the other party's name from the financial obligation and understanding when the involvement of a licensed attorney is necessary.
 - 2. Issues on mortgage if one party remains in home and understanding when the involvement of a licensed attorney is necessary.
 - 3. Quit Claim Deed and understanding when the involvement of a licensed attorney is necessary.
- xi. Division of Personal Property – knowing how to divide accounts, protecting joint accounts from future credit problems.
 - 1. QDRO (dividing 401(k) accounts) and that the involvement of a licensed attorney is necessary.
- xii. Mediation (if can't initially settle / selecting a mediator)
- xiii. Final Paperwork – Settlement, Findings, Decree of Divorce, Affidavit of Jurisdiction/Grounds, Affidavit of Income
- xiv. Enforcement
 - 1. Orders to Show Cause
- xv. Petition to Modify

(3) ETHICS

- (a) **Rules Governing Licensed Paralegal Practitioners.** All LPPs should have a detailed understanding of the rules governing LPPs, including Article 3 (Standards of Licensed Paralegal Practitioner Professionalism and Civility), Article 4 (Mandatory Continuing Licensed Paralegal Practitioner Education), Article 5 (Licensed Paralegal Practitioner Discipline and Disability), Article 6 (Standards for Imposing Licensed Paralegal Practitioner Sanctions), Article 7 (Admissions Standards and Procedures for Licensed Paralegal Practitioners), Article 9 (Licensed Paralegal Practitioners' Fund for Client Protection), Article 10 (Interest on Licensed Paralegal Practitioners' Trust Accounts), Article 11 (Resolution of Fee Disputes for Licensed Paralegal Practitioners), and particularly Article 12 (Licensed Paralegal Practitioner Rules of Professional Conduct).
- (b) **Basic principles of LPP ethics, professionalism and civility.** Although LPPs should be familiar with all aspects of the above rules, training programs should ensure in particular that LPPs understand the following major concepts regarding the ethical aspects of practice and client representation:
 - (i) The standards of care and other duties LPPs must exercise on behalf of their clients, including what constitutes reasonable diligence, prudence, objectivity, judgment and advocacy on behalf

- of a client in terms of legal knowledge, research, thoroughness of preparation, and other steps necessary to ensure that the client's interests are advanced and protected.
- (ii) The difference between mandatory (“shall”) and advisory (“should”) standards in the rules of ethics governing LPPs.
 - (iii) The limits of LPP licensing and authority, and the appropriate duty of informing the client and other measures to take when a client needs or requests representation beyond those limits.
 - (iv) The nature of the LPP-client relationship, when it is created, when and how it is or can be declined or terminated, and the duties that arise from that relationship; and the duty to ensure that clients understand the nature and limits of that relationship, and that the LPP is not an attorney.
 - (v) The nature of the LPP duties to former clients.
 - (vi) The LPPs duty of reasonable consultation and communication with clients.
 - (vii) The concept of and importance of informed consent.
 - (viii) The concept and importance of client confidentiality and privilege, and when confidentiality can or should be breached.
 - (ix) The permissible and appropriate fee arrangements LPPs can enter into with clients.
 - (x) LPP duties regarding client funds and other property held by the LPP on behalf of the client.
 - (xi) The nature of business relationships within which LPPs may practice, and the constraints associated with those relationships.
 - (xii) The meaning and implications of various disciplinary sanctions and how they affect the ability to practice as an LPP, including delicensure, suspension, interim suspension, reprimand, admonition, and restitution.
 - (xiii) The concept of conflict of interest, what constitutes an inappropriate conflict, and the appropriate steps to prevent or mitigate any conflicts.
 - (xiv) The principle that LPPs, as well as attorneys and other key players in the legal system, are officers of the legal system and have duties and responsibilities to the system of justice as well as their clients, including the duty of candor to courts and other tribunals, honesty and fairness, and the duty to avoid frivolous or otherwise non-meritorious claims or arguments.
 - (xv) The appropriate roles of third-party neutrals and how that differs from advocacy roles, and the differences between negotiation, mediation, arbitration and adjudication.
 - (xvi) The concept and limits of “zealous” advocacy on behalf of clients, and the responsibility to balance that role against principles of justice, professionalism and civility to opposing parties and counsel.
 - (xvii) The principles governing and limiting communications with other represented and unrepresented individuals.

- (xviii) The nature of organizational clients, how they differ from individual clients, and the implications of those differences for purposes of client representation.
 - (xix) The importance of pro bono representation and other measures to improve access to justice for under-represented parties.
 - (xx) The principles and rules governing and limiting advertising and other measures to obtain clients, including appropriate information about the nature, scope, and limitations of the LPP's practice, including the approved areas of practice.
 - (xxi) The importance of negotiating settlement agreements fairly and representing the agreement fairly and accurately in reducing settlement negotiations to writing.
 - (xxii) How to address situations in which a client wants the LPP to do something unethical or illegal.
- (c) **Associated concepts of law.** To the extent they have not learned them in connection with the substantive areas of knowledge identified above, LPPs should understand the basic meaning and significance of the following general legal principles, as necessary to understand and apply all of the relevant rules governing LPP practice:
- (i) Ex parte communications and other inappropriate means of communicating with or influencing tribunals.
 - (ii) Default judgments.
 - (iii) The difference between civil and criminal proceedings, and the implications of those differences.
 - (iv) Statutes of limitations, and why they are important.
 - (v) The meaning and significance of burden of proof, and differences between various standards of proof and why they are significant, including: probable cause, preponderance of the evidence, substantial evidence, clear and convincing evidence.
 - (vi) Procedures for and standards of appellate review, including de novo review, the arbitrary and capricious standard, abuse of discretion.
 - (vii) Basic principles of equity, including irreparable harm.
 - (viii) The nature of trusts and the role and duties of trustees.
 - (ix) The nature of receiverships and the roles and duties of receivers.
 - (x) The concept and elements of fraud, unlawful or otherwise wrongful conversion and embezzlement.
 - (xi) The nature and importance of bonds, sureties, insurance and subrogation provisions or agreements.
 - (xii) The nature of liens.
 - (xiii) The difference between objective and subjective knowledge or beliefs.
 - (xiv) The difference between fact and inference.
 - (xv) The concepts of relevance and materiality.
 - (xvi) Contingency fees and the difference between them and hourly fees, fixed fees, or other kinds of fee arrangements.

- (xvii) The concepts of jurisdiction and the authority and limits of the courts and other tribunals relevant to the LPP's practice.
- (xviii) The concept of negligence (and the difference between negligent and intentional or willful conduct).

**PARALEGAL PRACTITIONER
EXECUTIVE SUBCOMMITTEE
MEETING
Minutes**

**Thursday, January 19, 2017 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
Steven G. Johnson
Robert O. Rice
Judge Kate A. Toomey
James Ishida
Miles Pope, Law Clerk to Justice Himonas

EXCUSED:

Judge Royal I. Hanson, Vice Chair
Assistant Dean Allison Belnap
Dr. Thomas Clarke
James S. Jardine
Elizabeth Wright

I. WELCOME AND APPROVAL OF MINUTES: (Himonas)

Justice Himonas welcomed everyone to the meeting. Minutes of the last meeting were approved.

II. SUBCOMMITTEE REPORTS

A. Ethics and Discipline Subcommittee (Toomey)

Judge Toomey reported that the Admissions and Administration Subcommittee had transmitted a draft Rule 14-802 (Authorization to practice law) to her subcommittee for its consideration. She said that her subcommittee had reviewed the proposed rule, and it added a new subsection (c) to the proposal (Exceptions and Exclusions for Licensed Paralegal Practitioners), along with an explanatory committee note. Judge Toomey explained that subsection (c) carves out three distinct subject-matter areas where a Licensed Paralegal Practitioner may practice law: (1) temporary separation, divorce, paternity, cohabitant abuse, civil stalking, custody and support, and name change; (2) forcible entry and detainer; and (3) debt

collection. The formulation of subsection (c), Judge Toomey acknowledged, seemed awkward and stilted, but the characterization of the three practice areas was taken directly from the *Supreme Court Task Force to Examine Limited Legal Licensing* report (2015).

Mr. Rice noted that the first and second subject-matter areas seem self explanatory, but the third – debt collection – is a little vague because that practice could compass many things. Dean Adler agreed, pointing out that this relates to the issue of defining the scope of an LPP practice with court-approved forms, which is constantly evolving. Justice Himonas suggested that perhaps debt collection could be limited by a dollar amount. That is, an LPP could practice in the area of debt collection up to a certain monetary limit. The subcommittee members thought that was a sensible approach, so Justice Himonas asked Miles Pope to contact Kim Allard to request statistical information on small claims cases and the amount of the claims. Once Miles completes his research, Justice Himonas said, the issue will be referred to the Steering Committee for its consideration.

Next, Judge Toomey drew the subcommittee’s attention to subsection (c)(1)(D) — “completing a form approved by the Judicial Council or board of district court judges” — and pointed out there is now a new Judicial Council Committee on Forms, but she wasn’t entirely clear which body would approve the forms for LPP use. After some discussion, it was agreed that the task of creating LPP-approved forms should be reserved for the Judicial Council, with the understanding that the Judicial Council may delegate that task to its newly created Committee on Forms or some other body. The subcommittee therefore agreed to strike the phrase, “or board of district court judges” from subsection (c)(1)(D).

B. Admissions and Administration Subcommittee (Rice)

Mr. Rice recognized the hard work of Elizabeth Wright, and he commended her for her work on the proposed draft rules. The proposed rules, Mr. Rice reported, are nearly complete and his subcommittee should be ready to present them to the Steering Committee at its next meeting or the following meeting. Mr. Rice promise to confirm the precise delivery date within the next week to 10 days. Justice Himonas welcomed the great news, and he thanked Mr Rice and his subcommittee for their excellent work.

Mr. Rice also reported that the last substantive work of the subcommittee involved defining the three practice areas. He then summarized the number of practice hours that an applicant must complete during the past three years prior to sitting for the examination — 1,500 total hours, with 500 hours required to be licensed in family law or 100 hours to be licensed in landlord/tenant or debt collection. Mr. Rice noted that the subcommittee needed to further refine the definition of substantive law-related experience in the area of landlord/tenant law.

Mr. Rice then raised a number of administrative issues for the subcommittee’s consideration.

Drafting the LPP Examination. Mr. Rice passed along a suggestion from Ms. Wright, recommending that a new subcommittee be appointed to create the LPP license test. Mr. Rice said that it made sense that membership of this new subcommittee be drawn from the Admissions and Education subcommittees. Justice Himonas concurred, and he suggested that the subcommittee submit a formal recommendation to that effect to the Steering Committee for its consideration. Mr. Rice agreed.

Fees. Mr. Rice indicated that Bar staff still needs to calculate the costs involved in licensing and testing in order to come up with the appropriate application fee, licensing fee, testing fee, etc., that would cover the cost of these activities. He also noted that this schedule of fees will need to be established by the Supreme Court once the amount of the fees have been finalized. His subcommittee, Mr. Rice said, will be making a recommendation to that effect.

Developing CLE and CLE Rules. Finally, Mr. Rice explained that the development of CLE programs and rules are probably outside the jurisdiction of his subcommittee, but he noted that these are important issues that will need to be addressed. Justice Himonas suggested that the subcommittee make such a recommendation, and Mr. Rice agreed to recommend that the Steering Committee appoint a new CLE subcommittee.

C. Education Subcommittee (Adler)

National Federation of Paralegal Associations Examination. Dean Adler reported that two members of the Education Subcommittee — Monte Sleight and Terry Conaway — had considered a proposal from the Admissions Subcommittee on the testing eligibility requirements, namely, whether the test administered by the National Federation of Paralegal Associations (NFPA) would be considered an acceptable substitute for the testing requirements already approved by the Steering Committee. (Dean Adler reminded everyone that the Steering Committee had already approved the Education Subcommittee’s proposal that passage of the National Association of Legal Assistants (NALA) exam or the National Association of Legal Secretaries (NALS) exam would be sufficient in order to sit for the LPP licensing examination.)

Dean Adler pointed out that the basic NFPA exam is not equivalent to the NALA or NALS exam because the NFPA exam is much shorter than the NALA or NALS exam, and it’s comprised entirely of multiple choice questions, whereas the NALA and NALS exams have writing components in them. But Dean Adler also mentioned that they later discovered there are two NFPA examinations — a basic core competency exam and an advance competency examination — which together are roughly equivalent to the NALA or NALS examinations. Therefore, Dean Adler reported that his subcommittee had decided to recommend that an applicant who passed both NFPA examinations be allowed to sit for the LPP licensing exam, provided that the licensing exam also contains a writing component in it.

Status of Learning Outcomes. Finally, Dean Adler reported that the subcommittee was finalizing the substance-specific practice areas of the learning outcomes, which should be ready by the next Steering Committee meeting. He also mentioned that the subcommittee had just finished work on a new ethics section, and he wanted to circulate it to the Executive

Subcommittee for its consideration and comment. Dean Adler explained that the new ethics section is comprised of three major sections: (1) the rules that every LPP should know, (2) basic principles of ethics, professionalism, and civility, and (3) essential legal knowledge (e.g., what is an ex parte communication, etc.).

Mr. Johnson commented that LPPs should know what QDROs are and how they work, but because of their complexity LPPs should also know that they cannot prepare one for their clients. Justice Himonas congratulated Dean Adler and his subcommittee on their excellent work, and he invited members of the Executive Subcommittee to submit any comments or corrections to Dean Adler.

D. Miscellaneous

Forms. Justice Himonas asked Judge Toomey, as a member of the Judicial Council, to request guidance from the Council as to which body will be approving LPP forms — the new Council Standing Committee on Forms or a separate LPP forms committee.

Dean Adler reminded everyone that the Education Subcommittee had been tasked with dividing the family law, debt collection, and eviction forms into three categories: (1) those that an LPP can use, (2) those that an LPP cannot use, and (3) those where it's uncertain. But Dean Adler also pointed out that this is a real chicken-and-egg scenario — until the new Judicial Council Forms Committee or some other forms committee approves the forms, it would be problematic for the Education Subcommittee to begin its work. Justice Himonas suggested that the Education Subcommittee begin its work now on the forms available, and the subcommittee's final recommendations will be submitted to whatever body is tasked with approving the LPP forms. Dean Adler agreed and promised that the subcommittee's forms recommendations will be ready by the April Steering Committee meeting.

Legislators. Justice Himonas reported that he had made a presentation on the LPP and ODR programs at the recent legislative breakfast, and he said that the legislators were overwhelmingly supportive of both programs.

Client Trust Accounts. Finally, Judge Toomey mentioned that she had had a conversation with the Executive Director of the Utah Bar Foundation, who expressed concern about LPPs and IOLTA accounts.

III. ADJOURN

Justice Himonas thanked the members, and the meeting was adjourned at 10:40am.