

AGENDA
Paralegal Practitioner Steering Committee
 October 18, 2018
 12:00 p.m. – 1:30 p.m.
 Scott M. Matheson Courthouse
 Executive Dining Room, Room W18A
 450 S. State St.
 Salt Lake City, UT. 84111

Welcome ACTION – Approval of draft August 16, 2018 meeting minutes	Tab 1	Justice Himonas
DISCUSSION – Article 9 Client Protection. Reserved for LPPs. Need for amendment to Article 9 for attorneys to include LPPs		Cathy Dupont and Elizabeth Wright
DISCUSSION – URCP 73. Attorney Fees and LPPs and URE 504	Tab 2	Justice Himonas and Cathy Dupont
DISCUSSION – Media plan for LPP Program		Geoff Fattah
UPDATE – LPP test development and the memorandum of understanding with Utah Valley University		Carrie Boren and Elizabeth Wright
Other Business		

Members

Justice Deno Himonas, Chair
 John Baldwin
 Adam Caldwell
 Dr. Tom Clarke
 Terry Conaway
 Sue Crismon
 James Deans
 Cathy Dupont
 Julie Emery

Judge Royal Hansen
 Dixie Jackson
 James S. Jardine
 Scott Jensen
 Steven G. Johnson
 Comm. Kim M. Luhn
 Ellen Maycock
 Dean Robert Adler
 Daniel O'Bannon

Robert O. Rice
 Rick Schwermer
 Monte Sleight
 Gayla Sorenson
 Judge Kate Toomey
 Steve Urquhart
 Elizabeth Wright

Tab 1

**PARALEGAL PRACTITIONER
STEERING COMMITTEE
MEETING**

**Minutes
August 16, 2018
Executive Dining Room
Matheson Courthouse
450 S. State St.
Salt Lake City, Utah 84111
12:00 p.m. – 2:00 p.m.**

Judge Kate Toomey, Presiding

Attendees:

Justice Deno Himonas, Chair
John Baldwin
Carrie Boren
Terry Conaway
Sue Crismon
James Deans
Julie Emery
Judge Royal Hansen
Dixie Jackson
Steven Johnson
Commissioner Kim Luhn
Jacqueline Esty Morrison
Daniel O'Bannon
Rob Rice
Richard Schwermer
Monte Sleight
Judge Kate Toomey
Elizabeth Wright

Excused:

Dean Robert Adler
Adam Caldwell
Dr. Thomas Clarke
Dean Benson Dastrup
Jim Jardine
Scott Jensen
Ellen Maycock
Senator Stephen Urquhart

Staff:

Cathy Dupont
Jeni Wood – Recording secretary

Guests:

1. WELCOME AND APPROVAL OF MINUTES: (Judge Kate Toomey)

Judge Kate Toomey welcomed everyone to the meeting. Judge Toomey noted Justice Deno Himonas would be late.

Motion: Steven Johnson moved to approve the June 21, 2018 committee minutes, as amended. Rob Rice seconded the motion, and it passed unanimously.

2. RGLPP 15-701(p) AND UTAH CODE § 78B-6-801 : (Cathy Dupont)

Cathy Dupont reviewed the proposed amendment to rule 15-701(p) and 14-802. The committee discussed the definition of unlawful detainer and agreed to add “unlawful detainer” to the definitions throughout the LPP Rules. Ms. Wright will assist identifying which rules need to be amended.

Ms. Dupont next discussed name changes. The committee agreed to remove the phrase relating to name changes.

3. DEBT COLLECTION SETTLEMENT AGREEMENT: (Carrie Boren)

Carrie Boren said there were issues with the debt collection test questions. They would like the Forms Committee to create a settlement agreement. Ms. Dupont noted the ODR program has created settlement forms that may be of use in this role. Sue Crismon noted divorce cases have settlement agreements in the form of the decree of divorce and the findings, fact, and conclusions of law form. Mr. Johnson said rule 14-802 states a settlement agreement must be completed. Ms. Dupont will discuss this with the Forms Committee. Ms. Crismon said the Bar provides attorneys with debt collection forms.

4. LPP PRESENTATION TO THE UTAH STATE BAR: (Julie Emery)

Julie Emery said the presentation at the Bar's Summer Convention was successful. Part of the presentation was role-play between LPP's and clients. In attendance was Chief Justice Durrant, judges, paralegals, and family law attorneys. Ms. Dupont said they learned the importance of respect, especially in the public, of the role of LPP's and attorneys. Ms. Emery commented that for future presentations on the LPP profession, the hypotheticals used in the training will focus on different reasons a person might use an LPP, rather than just the cost difference between an LPP and an attorney.

There was discussion related to how attorneys could best utilize the services of LPP's. Mr. Rice said there were interactive discussions with attorneys. Ms. Emery noted Jones, Waldo is considering creating an LPP section at their law firm. Monte Sleight thought including federal judges into this process may help to further the LPP's role, such as with social security cases. Judge Toomey confirmed LPP's will be allowed to work on pro bono cases.

5. MEMORANDUM OF UNDERSTANDING (MOU) WITH UTAH VALLEY UNIVERSITY: (Carrie Boren and Elizabeth Wright)

Ms. Boren said there is a delay with Ergometrix because the contact person resigned. The MOU has been signed by the Bar and Utah Valley University. Mr. Sleight said Salt Lake Community College is working on the curriculum, however, they would like to see the test questions prior to finalizing the curriculum. They believe they are still on schedule for January, 2019.

6. PREPARATION OF RULES: (Cathy Dupont)

Ms. Dupont shared a list of all of the rules (new and revised) that were related to the LPP program. The next step is for the Supreme Court issue an order with an effective date of November 1, 2018. Ms. Dupont noted rule 15-703 needed to be sent out for public comment. The comment period expires in September. Rule 14-403 needed to be revised to allow for LPP's to be members of the Board of Mandatory Continuing Legal Education. The rule will go before

the Supreme Court soon and be effective November 1, 2018. Rule 14-101 inadvertently did not go out for public comment with the other rules. Ms. Dupont believes the Supreme Court will not require this rule to be published because the amendments are conforming amendments from other published rules.

There are a set of rules in the 700 section of the LPP Rules that have blank sections in them where testing dates need to be filled in. Ms. Dupont said the committee can propose dates for the rules. Elizabeth Wright will revise these rules.

7. OTHER BUSINESS

Commissioner Kim Luhn said they have proposed changes in the rules of evidence. This will be addressed at the next executive meeting.

Ms. Dupont said Kim Allard presented on the OCAP forms. Ms. Allard will program a line for "preparers" on forms. Mr. Johnson noted there are several rules of professional conduct that need to be amended to include LPP's. They will prepare the rule amendments for a future meeting. Judge Toomey said some procedural rules will need to be amended as well.

Jacqueline Esty Morrison noted Dean Adler apologized for his absence. Dean Adler said the College of Law will host the Access to Justice next spring (approximately March 10-17, 2019). Dean Adler invited the LPP program to attend. Justice Himonas said this would be a great idea and would like to add the Online Dispute Resolution program, the court forms offered through OCAP, and the Self Help Center.

Ms. Dupont next discussed 2019 meeting dates. Justice Himonas proposed meeting every other month for both the steering committee and executive committee. Judge Toomey said the committee can cancel the meeting if need be.

8. ADJOURN

The meeting adjourned at 12:57 p.m.

Tab 2

1 **Rule 504. ~~Lawyer~~ Legal Professional- Client.**

2 **(a) Definitions.**

3 (1) "Client" means a person, public officer, corporation, association, or other
4 organization or entity, either public or private, who is rendered legal
5 services by a ~~lawyer~~ legal professional or who consults a ~~lawyer or a lawyer~~
6 legal professional or legal professional referral service to obtain legal
7 services.

8 (2) "Client's representative means a person or entity authorized by the client to:

9 (A) obtain legal services for or on behalf of the client;

10 (B) act on advice rendered pursuant to legal services for or on behalf of
11 the client;

12 (C) provide assistance to the client that is reasonably necessary to
13 facilitate the client's confidential communications; or

14 (D) disclose, as an employee or agent of the client, confidential
15 information concerning a legal matter to the ~~lawyer~~ legal professional.

16 (3) "Communication" includes:

17 (A) advice, direction or guidance given by the ~~lawyer, the lawyer's~~ legal
18 professional or the legal professional's representative or a ~~lawyer~~ legal
19 professional referral service in the course of providing legal services; and

20 (B) disclosures of the client and the client's representative to the ~~lawyer,~~
21 ~~the lawyer's~~ legal professional or the legal professional's representative or
22 a ~~lawyer~~ legal professional referral service incidental to the client's legal
23 services.

24 (4) "Confidential communication" means a communication not intended to be
25 disclosed to third persons other than those to whom disclosure is in furtherance
26 of rendition of legal services to the client or to those reasonably necessary for the
27 transmission of the communication.

28 (5) "Lawyer" means a person authorized, or reasonably believed by the client to
29 be authorized, to practice law in any state or nation.

30 (6) "Legal Professional" includes a lawyer and a licensed paralegal practitioner.

31 ~~(6)~~ (7) "Lawyer Legal professional referral service" means an organization, either
32 non-profit or for-profit that is providing intake or screening services to clients or
33 prospective clients for the purpose of referring them to legal services.

34 ~~(7)~~ (8) "Legal services" means the provision by a ~~lawyer~~ legal professional or
35 ~~lawyer~~ legal professional referral service of:

36 (A) professional counsel, advice, direction or guidance on a legal
37 matter or question;

38 (B) professional representation on the client's behalf on a legal matter;

39 or

40 (C) referral to a ~~lawyer~~ legal professional.

41 ~~(8)~~ (9) "Lawyer's Legal Professional's representative" means a person or entity
42 employed to assist the ~~lawyer~~ legal professional in the rendition of legal
43 services.

44 (10) "Licensed Paralegal Practitioner" means a person authorized, or reasonably
45 believed by the client to be authorized, by the Utah Supreme Court to provide
46 legal representation under URGLPP Rule 15-701.

47

48 **(b) Statement of the Privilege.** A client has a privilege to refuse to disclose, and to
49 prevent any other person from disclosing, confidential communications if:

50 (1) the communications were made for the purpose or in the course of obtaining
51 or facilitating the rendition of legal services to the client; and

52 (2) the communications were:

53 (A) between (i) the client or the client's representative and (ii) the ~~lawyer~~ legal
54 professional, the ~~lawyer's~~ legal professional's representatives, or a ~~lawyer~~
55 legal professional representing others in matters of common interest;

56 (B) between clients or clients' representatives as to matters of common
57 interest but only if each clients' ~~lawyer or lawyer's~~ legal professional or
58 legal professional's representatives was also present or included in the
59 communications;

60 (C) between (i) the client or the client's representatives and (ii) a ~~lawyer~~ legal
61 professional referral service; or

62 (D) between (i) the client's ~~lawyer or lawyer's~~ legal professional or legal
63 professional representatives and (ii) the client's ~~lawyer~~ legal professional
64 referral service.

65 **(c) Who May Claim the Privilege.** The privilege may be claimed by:

- 66 (1) the client;
- 67 (2) the client's guardian or conservator;
- 68 (3) the personal representative of a client who is deceased;
- 69 (4) the successor, trustee, or similar representative of a client that was a
70 corporation, association, or other organization, whether or not in existence; and
- 71 (5) the ~~lawyer or the lawyer~~ legal professional or the legal professional referral
72 service on behalf of the client.

73 **(d) Exceptions to the Privilege.** Privilege does not apply in the following
74 circumstances:

- 75 (1) Furtherance of the Crime or Fraud. If the services of the ~~lawyer~~ legal
76 professional were sought or obtained to enable or aid anyone to commit or plan
77 to commit what the client knew or reasonably should have known to be a crime
78 or fraud;
- 79 (2) Claimants through Same Deceased Client. As to a communication relevant
80 to an issue between parties who claim through the same deceased client,
81 regardless of whether the claims are by testate or intestate succession or by inter
82 vivos transaction;
- 83 (3) Breach of Duty by ~~Lawyer~~ Legal Professional or Client. As to a
84 communication relevant to an issue of breach of duty by the ~~lawyer~~ legal
85 professional to the client;
- 86 (4) Document Attested by ~~Lawyer~~ Legal Professional. As to a communication
87 relevant to an issue concerning a document to which the ~~lawyer~~ legal
88 professional was an attesting witness; or
- 89 (5) Joint Clients. As to the communication relevant to a matter of common
90 interest between two or more clients if the communication was made by any of
91 them to a ~~lawyer~~ legal professional retained or consulted in common, when
92 offered in an action between any of the clients.

93 **2018 Advisory Committee Note:** These amendments are limited to the scope of the
94 ~~attorney~~ legal professional-client privilege. Nothing in the amendments is intended to
95 suggest that for other purposes, such as application of the Utah Rules of Professional
96 Conduct or principles of ~~attorney~~ legal professional liability, ~~an attorney~~ a legal
97 professional forms ~~an attorney~~ a legal professional-client relationship with a person
98 merely by making a referral to another ~~lawyer~~ legal professional, even if privileged
99 confidential communications are made in the process of that referral.

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