

AGENDA

Utah Supreme Court Oversight Committee for the Office of Professional Conduct

Location: Judicial Council Room
Scott M. Matheson Courthouse, 450 S. State St., Salt Lake City, UT 84111

Date: January 28, 2020

Time: 4:00 to 5:30 p.m.

Action: Welcome and introductions of each committee member and general practice area (Required under CJA 11-501) Tab 1: Draft meeting minutes for November 14, 2019.	Judge Diana Hagen
Discussion and action: Reviewing ABA/OPC recommendations and progress report for rule changes. Tab 2: Progress Report/Recommendations Tab 3: Redline of proposed rules Tab 4: Clean copy of proposed rules	Judge Diana Hagen
Discussion: Proposed performance metrics	Billy Walker
Other business: Schedule next meeting	

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

Tab 1

**Utah Supreme Court Oversight Committee for the
Office of Professional Conduct**

Meeting Minutes DRAFT

November 14, 2019

Scott M. Matheson Courthouse

Judicial Council Room

Administrative Office of the Courts, Suite N31

450 South State Street

Salt Lake City, Utah 84111

4:00 – 5:30 p.m.

Judge Diana Hagen, Presiding

Attendees:

Judge Diana Hagen, Chair

Art Berger

Margaret Plane

Roger Smith

John Baldwin, Ex-officio member

Staff:

Larissa Lee

Marina Kelaidis, Recording Secretary

Guests:

Billy Walker, Office of Professional Conduct

Excused:

Magistrate Judge Brooke Wells

1. Welcome, introductions and approval of minutes: (Judge Diana Hagen)

Judge Diana Hagen welcomed everyone to the meeting and introduced Larissa Lee as the new staff member for the committee and the new Appellate Court Administrator.

Margaret Plane moved to approve the June 19, 2019 minutes. Art Berger seconded the motion, and it passed unanimously.

2. Discussion and Action – OPC Annual Report overview and update from the OPC:
(Billy Walker)

Billy Walker presented the OPC's request to change the annual reporting period to an annual basis (January 1 – December 31). With this change, the report would be prepared in January and distributed by February. Mr. Walker suggested the committee revise Rules 11-501 and 14-503(i) accordingly. Judge Hagen agreed to take this request under advisement before the committee.

Mr. Walker presented the OPC's most recent annual report and findings. The annual report includes information on the termination of the Ethics Hotline (now offered through the Bar). The report notes that the OPC interprets Rule 14-504 as not specifically requiring the OPC to provide informal guidance through an Ethics Hotline.

Mr. Walker presented the OPC's new website to the committee: <https://www.opcutah.org/>.

3. **Discussion - Update on reports to the Supreme Court regarding: (1) the budget, (2) the Ethics Hotline and (3) amendments to Rule 14-515:** (Judge Diana Hagen)

Judge Hagen reported that the Supreme Court voted to approve the budget, although it is unclear in the Rule if the Supreme Court is required to vote to approve the budget for the OPC. Judge Hagen reported that the Supreme Court did not object to this committee's proposal that the OPC will no longer be responsible for staffing or conducting the Ethics Hotline. John Baldwin reports that the Utah State Bar Commission and Elizabeth Wright, General Counsel, have taken on the responsibility of providing the Ethics Hotline.

4. **Discussion – Scope of authority for the Oversight Committee:** (Judge Diana Hagen)

Judge Diana Hagen proposed that the Oversight Committee review the Guardian Ad Litem Oversight Committee Rule (4-906) for ideas of how to measure the scope of this committee's authority. The main takeaway being that anything affecting the OPC itself is under the purview of the Chief Disciplinary Counsel (prosecutorial discretion), and anything affecting anyone outside of the OPC falls under the purview of the Committee and the Committee can work with the OPC's various stakeholders. If the Committee disagrees on a particular issue, Judge Hagen suggested that the disagreement be put before the Supreme Court for decision. All other rules and decisions may be passed by the committee.

Judge Hagen and Larissa Lee will draft a proposal formalizing this scope of authority to be presented at the next committee meeting. Ms. Lee will also contact the Bar Commission to see about adding Judge Hagen to the next commissioners' meeting to speak about the Oversight Committee.

5. **Discussion – Committee responsibilities (CJA Rule 11-501(2)(B)): Developing performance metrics and formal policies and conducting a needs assessment:** (Judge Diana Hagen):

Judge Hagen asked the committee for any suggestions for additional metrics that would be informative to include in the OPC's annual report. Mr. Walker presented how the OPC is currently tracking and measuring the aging of cases from the initial filing of a complaint to how quickly it moves through the various OPC processes within the reporting year up to case resolution. Judge Hagen presented a proposal to obtain more accurate metrics of the time periods in which the OPC has control over, barring external factors over which the OPC has limited control. Judge Hagen identified three potential time periods:

- I. The time between when the complaint is made and the time the OPC meets to conduct its initial assessment and first action on the case.
- II. The time between when the OPC sends respondent the notice and complaint to the time that the case is either dismissed or referred to the screening panel.
- III. The time between when the screening panel votes for a case to become formal to the time the case is moved to the district court.

The committee and Mr. Walker identified possible factors that may potentially delay the accurate measurement of these metrics including scheduling conflicts for hearings and continued hearings. Mr. Walker reported that the OPC has software for tracking these case management metrics. Mr. Walker will create a baseline of metrics for the committee to review at a future meeting.

Art Berger recommended including more than one year's metrics into the pie chart featured on page 28. Margaret Plane recommended including more than two years for comparison in the annual report. Judge Hagen agreed and offered that the Supreme Court may be interested in learning from a more longitudinal comparison report once the committee and the OPC have identified the most meaningful metrics to include in the report. John Baldwin informed the committee that the American Bar Association uses this report to educate lawyers on the purpose of the OPC. Judge Hagen asked Mr. Baldwin if he can expand on pages 23-34 of the report for an article to be published in the Bar Journal.

6. Adjournment and scheduling the next meeting:

The meeting adjourned at 5:30 p.m. The next meeting will be held December 17, 2019 from 4:00 p.m.–5:30 p.m. in the Judicial Council room at Matheson Courthouse.

Tab 2

OPC OVERSIGHT COMMITTEE PROGRESS REPORT

Summary of Recommendations

1. OPC GOVERNANCE, PUBLIC TRUST, AND CONFIDENCE

✓1.1 The Office of Professional Conduct's name should be changed to the Office of Legal Professional Conduct (OPC). The new name better describes the function of the office and is broad enough to include the new Licensed Paralegal Practitioner.

Status: Recommendation not accepted by the Supreme Court. Name to stay the same.

✓1.2 It is important for the public to understand that the OPC is not a part of the Utah State Bar (USB), and that the OPC is part of the Supreme Court's regulation of the practice of law. The OPC and the USB should take steps to help the public understand that OPC operates independently from the USB.

Status: Receptionist answers phone "Utah Law and Justice Center." Building signage has changed to Utah Law and Justice Center. Headings on daily room schedules say Utah Law and Justice Center. Signs that refer to Character and Fitness Screening Panels now refer to Supreme Court Screening Panels. Receptionist for OPC answers the phone "Office of Professional Conduct." Chrome lettering behind the reception desk has been replaced with "Utah Law and Justice Center." TV monitors behind the reception desk include more info about tenant schedules instead of exclusively bar activities and schedules. Outdoor banners have changed to say Utah Law and Justice Center.

Rule changes: 14-102(a)(2), (b)(4)-(5), (c); 14-103(b)(2); 14-105(a) and title; 14-202(d); 14-208(b); 14-402(x); 14-502(i); 14-502(i), (m); 14-504(a); 14-510(a)(1); 14-701(ee); 14-705(b)(1); 14-712(d)(2); 14-718(f)(1); 14-801(j); 14-904(e); 14-912(c).

†1.3 OPC should create a website that is separate from the USB website, and the website should:

- †Include information about all components of the disciplinary process
 - **Status:** Some information but not all components of disciplinary process
 - <https://www.opcutah.org/the-purpose-of-the-opc/>
- †Provide links to rules and uniform downloadable forms, including a complaint form in multiple languages
 - **Status:** English only, OPC does not recall that it was decided the complaint form would be provided in multiple languages.
 - <https://www.opcutah.org/rules/>; <https://www.opcutah.org/file-a-request-for-assistance/>
- ✓Remove warning language to a complainant that is currently included on the website, that is inconsistent with OPC practice, and might discourage complaints

- **Status:** Warning language regarding confidentiality does not exist on the website and has been removed from the initial letter the OPC sends to the complainant.
- ✓ Include the names of attorneys who have received a public disciplinary action within the past 10 years, and the status of the disciplinary actions
 - **Status:** <https://www.opcutah.org/attorney-public-discipline/> includes a searchable pdf of past bar journal notices of public discipline. **Any plans to update this?**

Status: OPC launched its own website on November 6, 2019, with the url OPCutah.org. See above in blue regarding outstanding individual requirements.

✓1.4 To increase public confidence in the disciplinary process, OPC should contact civic organizations, organizations that serve underrepresented populations in the state, and specialty bar associations, and offer to provide talks and information about the lawyer discipline process.

Status: This must be an ongoing effort. Judge Hagen and Keith Call authored an article for the State Bar Journal to inform attorneys about the reforms for the OPC and the discipline process. OPC spoke to the Inns of Court in October. The OPC speaks at various CLE events and the website has an easy to find request form for OPC speakers at CLE events.

✓1.5 OPC governance should be more transparent to the public and attorneys. An OPC Oversight Committee should be created with 5 voting members, including a judge, a member of the public (with an accounting background), the State Court Administrator or the administrator's designee, 2 attorneys (one of whom is a past chair or vice-chair of the Ethics and Discipline Committee), and the Executive Director of the Bar, as an ex-officio non-voting member. The oversight committee, independent of the USB, should be authorized to:

- Assist OPC and the USB with implementing the recommendations adopted by the Supreme Court
- Develop realistic performance metrics and conduct annual performance evaluations for OPC Chief Disciplinary Counsel
- Develop an annual budget for OPC and submit the annual budget to the Supreme Court and to the USB
- Conduct a needs assessment for OPC, setting forth a 3 to 5 year funding plan for the disciplinary process, including technology and staffing needs
- Annually, and in conjunction with OPC Chief Disciplinary Counsel and the Chair of the Ethics and Discipline Committee, report to the Court regarding the operations of the OPC and the general standing of disciplinary matters and procedures
- Develop formal policies for OPC such as records retention policies

Status: The Supreme Court adopted Rule 11-501, which created the OPC Oversight Committee, including its membership and duties. The Bar Executive Director is an ex-officio, non-voting member.

✓1.6 The oversight committee should not have authority to interfere with the prosecutorial independence of the OPC but should have access to confidential information as necessary to carry out its duties.

Status: See 11-501(2)(C): “Authority. The 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.”

2. OPC STAFF AND BUDGET

✓2.1 The Supreme Court should appoint the OPC Chief Disciplinary Counsel.

Status: The oversight committee recommended and the Supreme Court appointed the Chief Disciplinary Counsel. See also proposed rule changes.

Rule changes: 14-502(m), 14-504(a)

✓2.2 OPC staff titles should be changed as follows – Chief Disciplinary Counsel, Deputy Chief Disciplinary Counsel, and Assistant Disciplinary Counsel.

Status: See Rule 11-501 and proposed rule changes. Note: no provision for a Deputy Chief Disciplinary Counsel, added to 14-502(e). All letterhead, name placards, etc. have been changed.

Rule changes: 14-502(e), (m).

✓2.3 OPC should be provided with funding to hire an investigator as part of the OPC staff and to hire forensic experts as needed.

Status: The OPC budget now includes funding for an investigator, who has been hired, and includes funding for a forensic expert to be used when needed.

✓2.4 OPC should create a policy and budget that requires more standardized training for staff, including training on substantive law, use of technology, behavioral health, and effective investigation techniques.

Status: The OPC budget includes funding for training and technology.

✓2.5 The USB should continue to fund the OPC budget without creating a separate, direct assessment to fund the disciplinary process.

Status: Done.

✓2.6 The USB should adopt the budget created by the Oversight Committee unless the USB petitions the Supreme Court for a different budget for the OPC, and the Supreme

Court approves a different budget for the OPC, in which case, the USB should adopt the budget approved by the Supreme Court.

Status: 11-501(2)(b)(ii) provides that the Oversight Committee should submit the budget to the USB but does not include a provision for the USB to petition the Supreme Court for changes. See proposed revisions to Rule 14-207(b) for this recommendation.

Rule changes: 11-501(2)(b)(ii); 14-207(b).

✓**2.7** OPC Chief Disciplinary Counsel should evaluate OPC technology needs and take steps to update current equipment and software, and acquire needed IT staff.

Status: The State Bar's new Director of Technology and new Technology Administrator focus on the hardware, database, and software needs of OPC, including monthly meetings with OPC senior staff, and more direct daily attention with the software provider when problems occur. The budget includes additional hardware and software purchases as needed. The State Bar upgraded servers, which benefits OPC.

✓**2.8** OPC should create a budget to assist the Ethics and Discipline Committee with implementing enhanced training for Ethics and Discipline Committee Screening Panel volunteers.

Status: The OPC budget includes funding for Ethics and Discipline Committee training.

3. OPC RECORDS

✚**3.1** OPC should continue the current practice of providing information about disciplinary actions by phone, or other means, for actions more than 10 years old. OPC should publish on its website, the names of attorneys who have been publicly disciplined in the last 10 years. The USB should continue to publish attorney licensure status on the USB website.

Status: OPC's website includes searchable disciplinary information from the Utah Bar Journal issues going back to 1988. Proposed revisions to Rule 14-516 shift responsibility from the Bar executive director to the OPC. **Should this recommendation be included in the rules?**

Rule changes: 14-516 Dissemination of disciplinary information shifts responsibility for notifying the public of discipline from the Bar executive director to the OPC.

✚**3.2** OPC should collect the following information from an attorney who is the subject of a disciplinary action: years of practice, county of practice, and practice area involved in the

complaint. OPC should publish the following aggregate data as part of its annual report: years of practice for attorneys subject to disciplinary action, the number of attorneys in a particular county who were disciplined in the past year, and the number of attorneys in a particular practice area who were disciplined in the past year.

Status: This information was not included in the last annual report. JustWare, the OPC's case management software, currently lists the number or years each attorney has been practicing. The other information suggested can be pulled from the Bar's licensing software, but funding will be needed for the programming to make this happen and also for the programming that will be required to enable the OPC to run a report to obtain the information.

✓3.3 A Rule of Lawyer Discipline and Disability should be adopted to formalize the current record retention practices for OPC and OPC should find a more secure location in the Law and Justice Center to store discipline records.

Status: See proposed records retention rule.

4. COMPLAINT INTAKE PROCESS

✚4.1 The complaint process should be more accessible to the public. OPC should modify its intake process as follows:

- OPC should develop an online complaint form available in multiple languages and should accept online submission of a complaint
- Notarization of a complaint should be discontinued, but a declaration, under penalty of perjury, should be required
- References in rules to formal and informal complaints should be replaced with "complaints"

Status: The OPC does not recall that it was decided the complaint form would be provided in multiple languages. Online form will be updated once rules are changed. See below for rule changes re notarization vs. declaration, and "complaint" for informal complaints and "action" for formal complaints.

Rule changes: Declaration instead of notarization: 14-502(f) 14-510(a)(2). Removal of references to "formal" and "informal" passim. Instead, using "action" for formal complaints and "complaint" for informal complaints.

✓4.2 OPC should continue to conduct an informal screening /investigation stage of a complaint before deciding to refer a complaint to the screening panel, but OPC should discontinue using confusing terminology related to a complaint, such as "Requests for Assistance," "informal complaints," and "Notice of Informal Complaints" (NOIC). Rules that include the confusing terminology should be amended.

Status: See revisions throughout all of the rules.

Rule changes: **NOIC:** 14-502(h now g); 14-510(a)(5), (a)(6), (a)(7)(B), (b)(1), (b)(5).
Requests for assistance: not in rules

✓**4.3** OPC should have the authority to compel an attorney to provide information to OPC during an initial investigation of a complaint. The Rules of Lawyer Discipline and Disability should give OPC the authority to issue investigative subpoenas prior to a matter being referred to a Screening Panel and upon the approval of the Chair of the Ethics and Discipline Committee.

Status: See proposed rule changes.

Rule changes: 14-504(e); 14-509(f).

✓**4.4** The Court should amend Rule 14-509 of the Rules of Lawyer Discipline and Disability to make a lawyer's willful failure to comply with a subpoena validly issued by OPC or a Screening Panel, or knowing failure to respond to a lawful demand from OPC counsel, a separate ground for discipline.

Status: See proposed rule changes.

Rule changes: 14-509(f).

✓**4.5** If OPC dismisses a complaint, OPC should continue its current practice of providing notice to the complainant of the decision to dismiss the complaint and notice of a complainant's right to appeal an OPC decision to the Chair of the Ethics and Discipline Committee.

Status: Rule already required notice to the complainant but not notice of a complainant's right to appeal to the Committee chair.

Rule changes: 14-510(a)(7)(B).

✓**4.6** Discipline by consent should be encouraged at all stages of the proceeding.

Status: This has been discussed and everyone is on board.

✓**4.7** The Court should amend the rules to allow OPC to initiate reciprocal disability inactive status proceedings when another jurisdiction has made a determination of disability.

Status: See proposed rule changes.

Rule changes: 14-522(a)

5. ETHICS AND DISCIPLINE COMMITTEE SCREENING PANELS

(a) Role of Screening Panels

✓5.1 The Ethics and Discipline Committee Screening Panels provide complainants an important opportunity to tell their story, and provide important due process to an attorney accused of violating a rule of professional conduct. The Committee supports the role of the Screening Panels in the attorney discipline process and does not support the ABA Report's suggestions to diminish the function of the Screening Panels.

Status: No changes.

(b) Membership and Training

✚5.2 The number of screening panel members who sit for a hearing varies between Screening Panels. The Screening Panel hearings should be standardized. The Screening Panel members required for a hearing should be reduced from 8 members to 5 members, with one of the 5 being a public member. All Screening Panel hearings should require 5 panel members unless all parties agree to fewer than 5 panel members.

Status: See proposed rule changes. EDC information is still on the Bar's website. Should this be removed as the OPC information has?
<https://www.utahbar.org/ethics-discipline-committee/>

Rule changes: 14-503(d).

✓5.3 The Supreme Court and the Chair of the Ethics and Discipline Committee have done a good job of increasing diversity of members related to gender, race, ethnicity, geography, and firm size. They should continue their efforts to increase diversity of the members on Screening Panels. The volunteer solicitation process should include communication with community groups and bar associations that represent minority or underrepresented populations. The applications, the application process, and volunteer opportunities should be prominently displayed on the Court website, the USB website, and the OPC website.

Status: The Supreme Court is tracking all of the diversity initiatives described above. Larissa will work on adding links for application and application process to the Supreme Court's website. This will likely take several months.

✓5.4 Terms for members of the Ethics and Discipline Committee should be limited to 3 years with a maximum of 2 consecutive terms, unless a member is appointed chair or vice chair of a screening panel, in which case, the member may serve more than 2 terms.

Status: See proposed rule changes.

Rule change: 14-503(a).

†5.5 The Chair of the Ethics and Discipline Committee and OPC Chief Disciplinary Counsel should implement enhanced training for Screening Panel volunteers.

Status: The OPC invites panel members to attend various national trainings. The Ethics and Discipline Committee holds lunchtime training held over the summer (approx. 90% of screening panel members attend, those who don't attend receive informal training from the vice chair). Larissa emailed Christine Greenwood to see if the Committee wants a rule re minimum training requirements for screening panel volunteers (01.22.2020).

(c) **Process**

✓5.7 Rule 14-515 should be amended to apply the confidentiality restrictions for disciplinary proceedings only to non-party participants unless the Screening Panel Chair issues an order of confidentiality for the parties based on a showing of good cause. If the Screening Panel Chair issues an order of confidentiality for the parties, the rule should establish enforcement mechanisms for the order of confidentiality through a petition filed with the District Court, under seal.

Status: See amended rule 14-515 (effective Nov. 1, 2019).

✓5.8 The Court should adopt a disqualification and abstention rule applicable to Screening Panel members who serve on a particular case. Screening Panel members and OPC staff should be barred from representing a lawyer in a discipline case for one year after service on a panel or committee.

Status: See proposed rule changes.

Rule changes: 14-503(i)

✓5.9 The Ethics and Discipline Committee Chair should continue to review the Screening Panel's findings and recommendations for complaints that are resolved without a recommendation to file an action in the District Court. The Ethics and Discipline Committee Chair should not make changes to Screening Panel findings and recommendations, other than changes needed for clarity, and should prepare the order to execute the Screening Panel's findings and recommendations.

Status: See proposed rule changes.

Rule changes: 14-510(e)(1)

✓**5.10** When the Screening Panel recommends a public reprimand, the respondent should be permitted to choose one of three options: accept the public reprimand; file an exception with the Chair of the Ethics and Discipline Committee with the right to appeal the ruling on the exception; or elect a trial de novo with the District Court.

Status: See proposed rule changes.

Rule changes: 14-510(e)(2)

✓**5.11** When the Screening Panel recommends the filing of a complaint with the District Court, the Ethics and Discipline Committee Chair should be given notice of the Screening Panel recommendation and a copy of the complaint, but should not approve the recommendation or sign the complaint filed with the District Court.

Status: See proposed rule changes.

Rule changes: 14-511(a).

6. Diversion Programs

✓**6.1** The Court should streamline the diversion process and OPC should enhance the use of diversion.

Status: Proposed rule changes to 14-533. Added well-being hour to OPC Ethics School. OPC will emphasize mitigation factors with respondent and has added that to its checklist, with the goal to match up better diversions.

Rule changes: 14-533

✓**6.2** The Diversion Committee should be eliminated and OPC should be responsible for overseeing and operating the diversion programs, including, negotiating the diversion contract with the attorney tailored to the specific case, and designating a monitor for compliance who will be responsible to report to OPC.

Status: See rule changes.

Rule changes: 14-510(b)(7)(B), (e); 14-533(a), (b), (d), (f), (j now i), (k now j).

✓**6.3** The OPC should establish diversion programs that educate lawyers on practice management and trust account management.

Status: OPC will hold a trust accounting CLE once per year and OPC ethics school twice per year. Referral to counseling services and other programs in 14-533.

†6.4 The USB should increase public awareness of the USB’s voluntary fee dispute program to increase its use among attorneys and clients.

Status: Check in with Elizabeth/John on progress.

7. PROBATION AND INTERIM SUSPENSIONS

✓7.1 The Supreme Court Advisory Committee on Rules of Professional Conduct should consider amending rules to better address potential harm to the public and profession that may occur while an attorney discipline case is being litigated.

Status: We have this procedure under 14-518.

Rule changes: 14-518

✓7.2 Rules 14-603 Sanctions, and 14-504 OPC Counsel, should be amended to provide details relating to probation, including:

- Change the nature of probation so that it can be used as a set of conditions accompanied with a sanction, rather than using it as the sanction itself
- Provide guidance regarding when probation is appropriate
- Provide a non-exclusive list of standard terms and conditions for probation, such as
 - Behavioral health treatment
 - Restitution
 - Completion of the MPRE
 - Completion of a course of study
 - Regular, periodic reports to OPC
 - Payment of disciplinary costs

Status: See proposed revisions to 14-603(g).

Rule changes: 14-603(g).

✓7.3 Utah Rule of Professional Practice 14-518 Interim Suspension for Threat of Harm, should be amended to:

- Permit an interim suspension based on serious harm to the public
- Use a preponderance of the evidence standard
- Use the same procedure to obtain the interim suspension as the procedure for a temporary restraining order under URCP 65A
- Permit OPC to request and the Court to impose other types of interim orders to protect the public, such as supervision or limited practice while a case is pending

Status: See proposed rule revisions.

Rule changes: 14-517(b); 14-518.

- ✓7.4 Amend Rule 14-519 Lawyers convicted of a crime:
- Permit interim suspension after a finding or admission of guilt (as opposed to a conviction of guilt), including a plea in abeyance
 - Clarify that the hearing permitted before the interim suspension, is only for the purpose of determining whether a finding or admission of guilt was for a serious crime or misdemeanor that reflects adversely on the lawyer's honesty, trustworthiness, or fitness to practice law

Status: See proposed rule revisions.

Rule changes: 14-519(a), (b).

8. COMPLAINTS FILED IN DISTRICT COURT

✓8.1 The ABA Report recommended that the Court undertake a study regarding the feasibility of retaining District Courts as the adjudicators in discipline cases. The report suggested that the Court consider using lawyer and non-lawyer adjudicators for disciplinary matters who would submit findings and recommendations to the Court for entering a final order. The committee believed that the trier of fact should continue to be the District Court.

Status: The committee recommends no changes. The OPC still strongly recommends that we have a central presiding judge at district court level, similar to Colorado, Oregon, California, and Arizona. This was recommended by the ABA and rejected by the ABA review committee.

✚8.2 The Utah Rules of Civil Procedure Advisory Committee should adopt rules to apply to attorney discipline cases filed in District Court to require active case management for attorney discipline cases, including:

- Requiring a Rule 16 scheduling conference at the beginning of attorney discipline cases, similar to the now completed Case Management Pilot Program for Tier III cases
- Promulgating specific Rule 26 requirements and deadlines for attorney discipline cases similar to Rules 26.1 to 26.3

Status: Larissa emailed Nancy to see if this is on the Civil Rules Committee's radar (01.22.2020). Do we need to propose language for the committee?

✚8.3 The District Courts should make it a priority to train judges about the attorney disciplinary process. The training could be included at judicial conferences, at new judge orientation, and in bench books.

Status: Once the rules changes are adopted, the Committee will ensure the judges are appropriately trained.

✓**8.4** Utah Rule of Professional Practice 14-511(f) should be amended to remove the requirement that the court hold a sanctions hearing within 30 days after it enters findings of fact and conclusions of law, and to remove the requirement that the court issue its order sanctioning the defendant within 5 days after the sanctions hearing. Instead, a disciplinary action filed in District Court should follow the time requirements that are applied to all cases in District Court under the Rules of Civil Procedure, except as modified by an active case management program.

Status: See proposed rule revisions.

Rule changes: 14-511(f).

Tab 3

Rules to be updated (bulleted rules will all be moved to Chapter 11, Article 5):

- 14-102 Regulation ~~of~~ ing the practice of law.
- 14-103 Bar ~~Organization and management of the Bar.~~
- 14-105 ~~Conduct of~~ Promulgating rules to regulate licensed lawyers, Licensed Paralegal Practitioners, and judicial officers; ~~complaints, investigations, and discipline.~~
- 14-107 ~~Annual license, fees, disbursements of funds~~ Duties of lawyers, foreign legal consultants, and licensed paralegal practitioners.
- 14-202 ~~Purposes of the~~ Bar's purposes.
- 14-208 Special rules and regulations.
- 14-402 Definitions.
 - 11-501 Oversight Committee for the Office of Professional Conduct.
 - 14-501 Lawyer disciplinary and disability proceedings: Purpose, authority, scope, and structure ~~of lawyer disciplinary and disability proceedings.~~
 - 14-502 Definitions.
 - 14-503 Ethics and Discipline Committee.
 - 14-504 OPC counsel.
 - 14-505 Expenses.
 - 14-506 Jurisdiction.
 - 14-507 Roster of lawyers and current record information.
 - 14-508 Periodic assessment of lawyers.
 - 14-509 Grounds for discipline.
 - 14-510 Prosecution and appeals.
 - 14-511 ~~Proceedings subsequent to finding of probable cause.~~ Actions in district court.
 - 14-512 Sanctions.
 - 14-513 Immunity from civil suits.
 - 14-514 Service.
 - 14-515 ~~Access to~~ Accessing disciplinary information.
 - 14-516 Dissemination of Disseminating disciplinary information.
 - 11-??? Retaining records.
 - 14-517 Additional rules of procedure.
 - 14-518 Interim ~~suspension~~ discipline for threat of harm.
 - 14-519 Lawyers ~~convicted~~ found guilty of a crime.
 - 14-520 Discipline by consent.
 - 14-521 Resignation with discipline pending.

- 14-522 Reciprocal discipline.
- 14-523 Proceedings in which lawyer is declared to be incompetent or alleged to be incapacitated.
- 14-524 Reinstatement following a suspension of no more than six months ~~or less~~.
- 14-525 Reinstatement following a suspension of more than six months; readmission.
- 14-526 Notice of disability or suspension; return of clients' property; refund of unearned fees.
- 14-527 Appointment of trustee to protect clients' interest when lawyer disappears, dies, is suspended or disbarred, or is transferred to disability status.
- 14-528 Appeal by complainant.
- 14-529 Statute of limitations.
- 14-530 Costs.
- 14-531 Noncompliance with child support order, child visitation order, subpoena or order relating to paternity or child support proceeding.
- 14-532 Failure to answer charges.
- 14-533 Diversion.
- 14-601 Definitions.
- 14-602 Purpose and nature of sanctions.
- 14-603 Sanctions.
- 14-604 Factors to be considered in imposing sanctions.
- 14-605 Imposition of sanctions.
- 14-606 Prior discipline orders.
- 14-607 Aggravation and mitigation.

14-701 Definitions.

14-705 Admission by motion.

14-712 Qualifications for admission based on UBE.

14-718 Licensing of Foreign Legal Consultants.

14-801 Definitions.

14-806 Admission pro hac vice.

14-904 Funding.

14-912 Processing claims.

15-402 Definitions.

15-701 Definitions.

1 **Chapter 14. Rules Governing the Utah State Bar.**

2 **Article 1. Integration and Management**

3 **Rule 14-102. Regulating ~~on~~ of the practice of law.**

4 (a) **Vested ~~ing of~~ authority.**

5 (a)(1) ~~Under the power vested to it by the Constitution of Utah, the~~ Supreme Court ~~by~~
6 ~~its constitutional power—hereby~~ authorizes and designates the Bar to administer rules
7 and regulations ~~which that~~ govern the practice of law in Utah, including ~~the regulation~~
8 ~~of regulating legal representation by~~ Licensed Paralegal Practitioners. All persons
9 authorized to practice law in Utah ~~shall~~ must be licensed by the Bar in accordance with
10 this chapter and Chapter 15 of the Supreme Court Rules of Professional Practice.

11 (a)(2) The Supreme Court recognizes a compelling state interest in ~~its use of~~ fusing the Bar
12 to assist the Court in governing admission to the practice of law, ~~the conduct and~~
13 ~~discipline of persons admitted to practice law,~~ and ~~to improve~~ ing the quality of legal
14 services in the state. ~~The Court also finds that~~ the requirements imposed, the delegations
15 made, and the authority granted to the Bar provide the best ways to promote these
16 compelling state interests and ~~that~~ there are no less restrictive alternatives available to
17 achieve those results.

Comment [LL1]: Recommendation 1.2

18 (b) **Responsibilities of the Bar.** ~~The Bar's~~ Purposes, duties, and responsibilities ~~of the Bar~~
19 include, ~~but are not limited to, the following:~~

20 (b)(1) ~~to advance~~ advancing the administration of justice according to law;

21 (b)(2) ~~to aid~~ aiding the courts in ~~carrying on~~ the administration of justice;

22 (b)(3) ~~to regulate~~ regulating the admission of persons seeking to practice law;

23 ~~b)(4) to regulate the licensing of Licensed Paralegal Practitioners; b)(5) to provide for the~~
24 ~~regulation and discipline of persons practicing law;~~

Comment [LL2]: Recommendation 1.2

25 (b)(~~6~~4) ~~to foster~~ ing and ~~to maintain~~ ing integrity, learning competence, public service, and
26 high standards of conduct among those practicing law;

27 (b)(~~7~~5) ~~to represent~~ representing the Bar before legislative, administrative, and judicial
28 bodies;

1 (b)(86) ~~to prevent~~ preventing the unauthorized practice of law;

2 (b)(97) ~~to promote~~ promoting professionalism, competence, and excellence ~~in those~~
3 ~~practicing law~~ through continuing legal education and ~~by~~ other means;

4 (b)(108) ~~to provide~~ providing a service to the public, ~~to the~~ judicial system, and ~~to~~
5 ~~members of the~~ Bar members;

6 (b)(119) ~~to educate~~ educating the public about the rule of law and ~~their~~ responsibilities
7 under the law; and

8 (b)(1210) ~~to assist~~ assisting Bar members ~~of the Bar~~ in improving the quality and
9 efficiency of their practice.

10 (c) **Qualifications.** This chapter prescribes the qualifications, duties, and obligations of lawyers,
11 ~~and~~ foreign legal consultants, and Licensed Paralegal Practitioners admitted licensed for
12 ~~admission~~ to practice law in Utah, ~~the licensing qualifications for Licensed Paralegal~~
13 ~~Practitioners, the duties and, obligations and the grounds for discipline of members, and~~
14 ~~Licensed Paralegal Practitioners, and the method of establishing such grounds, subject to the~~
15 ~~right of this~~ The Supreme Court is responsible for ~~to discipline~~ a Bar member or Licensed
16 Paralegal Practitioner, admitted to the Bar or a Licensed Paralegal Practitioners, shall be as
17 ~~prescribed in this chapter.~~

Comment [LL3]: Recommendation 1.2

18 (d) **Licensure required.** No suspended or disbarred person may ~~shall~~ practice law in Utah or
19 hold ~~himself or herself~~ themselves out as one who may practice law in Utah. A person may only
20 practice law in Utah if that person is ~~unless~~;

21 (d)(1) a licensed lawyer ~~he or she has been admitted~~ and ~~is~~ an active ~~member of the~~ Bar
22 member in good standing;

23 (d)(2) or is an inactive member in good standing providing pro bono legal services for or
24 on behalf of a legal services organization approved by the Bar upon meeting certification
25 and performance standards, conditions, and rules established by the Board.;

26 (d)(3) or has been a foreign legal consultant licensed by the Bar ~~as a foreign legal~~
27 ~~consultant; or~~

1 ~~(d)(4) -No suspended or disbarred lawyer or foreign legal consultant shall practice law in~~
2 ~~Utah or hold himself or herself out as one who may practice law in Utah while suspended~~
3 ~~or disbarred.(e) **Licensure Required for Licensed Paralegal Practitioners.** No person~~
4 ~~shall practice as a Licensed Paralegal Practitioners or hold him or herself out as one who~~
5 ~~is a Licensed Paralegal Practitioners unless he or she has been a licensed as a Licensed~~
6 ~~Paralegal Practitioners and is an active licensee of the Bar and in good standing. No~~
7 ~~delicensed Licensed Paralegal Practitioner shall practice law in Utah or hold him or~~
8 ~~herself out as one who may practice law in Utah while suspended or delicensed.~~

1 **Rule 14-103. Bar Organization and management ~~of the Bar.~~**

2 (a) **Board of Commissioners; number, term, and vacancies, ~~powers and duties.~~**

3 (a)(1) Number. ~~There shall be a Bar's~~ Board of Commissioners ~~of the Bar~~ consisting of
4 ~~no fewer than at least~~ 13 but no more than 15 voting members, including 11 elected
5 lawyers and two non-lawyers appointed by the Supreme Court.

6 (a)(2) Term. ~~The initial term of office of one of the non-lawyer commissioners shall be~~
7 ~~for two years. Except as~~Unless otherwise provided, the term of office of each
8 commissioner ~~shall be~~is three years and until a successor is elected and qualified. The
9 initial term of office of one of the nonlawyer commissioners is two years.

10 (a)(3) Vacancies.

11 (a)(3)(A) If a lawyer vacancy on the Board occurs ~~prior to~~before ~~the expiration of~~
12 the completed term of office, the remaining commissioners ~~shall~~will:

13 (a)(~~3~~)(A)(i) conduct a special election;

14 (a)(~~3~~)(~~B~~)(ii) appoint an interim successor from among the active
15 ~~members of the~~ Bar members whose business mailing addresses on the
16 Bar's records ~~of the Bar~~ are in the division from which the commissioner
17 was elected, who ~~shall~~will serve until the ~~following~~next annual election;
18 or

19 (a)(~~3~~)(~~C~~)(iii) fill the vacancy ~~through~~during the next regular annual
20 election.

21 (a)(~~2~~)(B) If a lawyer vacancy on the Board is filled by either a special or regular
22 election, the Board may establish the term of the successor to be ~~either~~ a one, two
23 or full three-year term, provided that there would be ~~not more than three but not~~
24 ~~fewer than two~~ only two or three commissioners from the Third Division whose
25 terms expire in any one year and ~~not more than five but not fewer than four~~ only
26 four or five Board commissioners ~~on the Board~~ whose terms expire in any one
27 year.

1 (a)(3)(C) A President's unexpired Commission term ~~shall~~will be filled in the
2 regular election cycle immediately preceding the time he or she succeeds to the
3 office of President.

4 (b) Board's powers. The Board ~~is granted and~~ may exercise all powers necessary and proper to
5 carry out ~~the its~~ duties and responsibilities ~~of the Bar and the purposes of these rules and shall~~
6 ~~have~~has all authority ~~which is~~ not specifically reserved to the Supreme Court. The Court
7 specifically reserves the authority to:

8 (b)(1) approve Bar admission and licensure fees for attorneys and Licensed Paralegal
9 Practitioners;

10 (b)(2) approve all rules and regulations ~~formulated by the Board~~ for admission, licensure,
11 professional conduct, client security fund, fee arbitration, ~~procedures of discipline and~~
12 ~~disability~~, legislative activities, unauthorized practice of law, and Bar Examination
13 review and appeals; and

14 (b)(3) establish appropriate rules and regulations governing mandatory continuing legal
15 education.

16 (c) **Territorial divisions.** The First Division includes the First Judicial District ~~shall be known as~~
17 ~~the First Division~~; the Second Division includes the Second Judicial District ~~shall be known as~~
18 ~~the Second Division~~; the Third Division includes the Third Judicial District ~~shall be known as~~
19 ~~the Third Division~~; the Fourth Division includes the Fourth Judicial District ~~shall be known as~~
20 ~~the Fourth Division~~; and the Fifth Division includes the Fifth, Sixth, Seventh, and Eighth Judicial
21 Districts ~~shall be known as the Fifth Division~~.

22 (d) **Number of lawyer commissioners from each division.** Each division will have ~~There shall~~
23 ~~be~~ one lawyer commissioner ~~member of the Board from each of the divisions~~, except the Third
24 Division ~~from which there shall be~~ will have seven lawyer commissioners. No more than one
25 lawyer commissioner from any division except from the Third Division, and no more than seven
26 lawyer commissioners from the Third Division, ~~shall~~may serve on the Board at the same time.

27 (e) **Nomination and eligibility of lawyer commissioners.** To nominate a person for
28 commissioner for a particular division, a ~~L member~~ lawyer's ~~ss whose~~ business mailing addresses on

Comment [LL4]: Recommendation 1.2

1 the Bar's records ~~must be of the Bar are within~~ that a particular division, ~~shall alone have the~~
2 ~~right to nominate persons for the office of commissioner from that division.~~ To be eligible for the
3 office of lawyer commissioner in a division, the nominee's business mailing address on the Bar's
4 records must be within that division, ~~as shown by the records of the Bar.~~ Nomination to the
5 office of commissioner ~~shall~~must be by written petition of at least ten-10 or more Bar members
6 ~~of the Bar~~ in good standing. Any number of candidates may be nominated on a single petition.
7 Nominating petitions ~~shall~~will be provided to the executive director within a period ~~to be fixed~~
8 by the ~~rules made by the~~ Board's rules.

9 (f) Commissioner Elections ~~of commissioners.~~

10 (f)(1) ~~The lawyers on the Board~~ Lawyer commissioners ~~must~~shall be elected by ~~the vote~~
11 ~~of the~~ resident active Bar members ~~of the Bar~~ as follows:

12 (f)(1)(A) beginning ~~in the year~~ 1983 and every third year thereafter, one member
13 from the Second Division and two members from the Third Division, ~~except~~
14 ~~that but~~ ~~in the year~~ 1983 only, there ~~shall~~will be four members elected from the
15 Third Division;

16 (f)(1)(B) beginning ~~in the year~~ 1984 and every third year thereafter, one member
17 from the First Division and three members from the Third Division; and

18 (f)(1)(C) beginning ~~in the year~~ 1985 and every third year thereafter, two members
19 from the Third Division and one each from the Fourth and Fifth Divisions.

20 (f)(2) The candidate from any division, and the two or three ~~or two~~ candidates from the
21 Third Division, receiving the greatest number of votes of that division ~~shall~~will be the
22 commissioner ~~from of~~ such division. ~~For the year 1983, the candidate from the Third~~
23 ~~Division receiving the fourth greatest number of votes shall be the commissioner for a~~
24 ~~two-year term.~~ A member ~~is limited to~~ may only ~~voting~~ for commissioner candidates ~~for~~
25 ~~commissioner from the in the~~ division in which ~~his or her~~ the member's business mailing
26 address on the Bar's records is located, ~~as shown by the records of the Bar.~~ The ballots
27 ~~shall will~~ be returned to the Bar offices in accordance with its rules. There ~~shall~~will be an
28 annual election by the resident active ~~members of the Bar~~ members for the purpose of
29 filling vacancies. The Board ~~shall~~will fix the time for holding the annual election and

1 prescribe such rules and regulations ~~in in regard thereto not in conflict with~~ accordance
2 with this chapter. The Board ~~shall must, in accordance with its rules, give~~ mail annual
3 election notices ~~of the annual election by mail~~ at least 90 days ~~prior to~~ before the date on
4 which ballots will be counted.

5 ~~(f)(3) Those persons holding office as commissioners at the time of the adoption of these~~
6 ~~rules or who were elected under the existing statute will continue in office for the period~~
7 ~~of time elected to serve.~~

8 (g) President-elect's n ~~Nomination and election of president-elect~~. The Board ~~must~~ shall
9 nominate ~~at least one~~ two active lawyers in good standing ~~on active status~~ to run for the office of
10 president-elect, to be elected by ~~the vote of~~ the active ~~members of the Bar~~ members. The
11 president and the president-elect ~~shall will~~ hold office until their successors are elected and
12 seated. A secretary, and such other assistants as the Board may require, may be selected from
13 within or without the Board to hold office at the pleasure of the Board and to be paid such
14 compensation as the Board ~~shall~~ determines.

15 (h) Board o ~~Officers and organization of Board~~. The Board ~~shall be~~ is organized and authorized
16 to conduct business ~~by the seating of~~ through its elected commissioners, and ~~the Bar's~~ a president
17 and president-elect ~~of the Bar~~. The president-elect for the previous year ~~shall will~~ automatically
18 succeed to the office of president. A president and ~~a~~ president-elect who are not elected
19 commissioners have the authority to vote on matters brought before the Board. In the event of a
20 tie vote, the matter at hand ~~will~~ shall fail to pass.

21 (i) Annual and special meetings notice. There ~~shall must~~ be an annual meeting of the Bar,
22 presided over by the Bar president ~~of the Bar~~, open to all members in good standing, and held at
23 such time and place as the Board may designate, for ~~the discussion of the~~ discussing Bar affairs
24 ~~of the Bar~~ and the administration of justice. Special Bar meetings ~~of the Bar~~ may be held at such
25 times and places as the Board ~~may~~ designates. Notice of all meetings ~~shall must~~ be published to
26 the Bar's website ~~given by mail to all members of the Bar members~~ not fewer than 15 days ~~prior~~
27 ~~to~~ before the date of such meeting.

28 (j) Bylaws. The Board ~~shall have power to~~ may adopt Bylaws, not ~~in~~ conflicting with any of these
29 rules' terms ~~of these rules~~, concerning ~~the officer~~ selection and tenure ~~of its officers~~, ~~the~~ creation

- 1 of sections and committees and their powers and duties, and generally for the control and
- 2 regulation of the business of the Board and of the Bar.

1 **Rule 14-105 ~~Conduct of~~Promulgating rules to regulate** licensed lawyers, Licensed Paralegal
2 **Practitioners, and judicial officers; ~~complaints, investigations, and discipline.~~**

Comment [LL5]: Recommendation 1.2

3 (a) **Formulating Rules.** The Board~~shall~~ formulates rules governing the conduct of all persons
4 admitted or licensed to practice in Utah, including foreign legal consultants and those licensed as
5 Licensed Paralegal Practitioners, and Bar members of the Bar holding judicial office. ~~and shall~~
6 ~~investigate unethical, questionable or improper conduct of persons admitted to the practice of the~~
7 ~~law, including members of the Bar holding judicial office.~~ The Board Supreme Court ~~shall also~~
8 formulates rules governing procedures in cases involving alleged misconduct of Bar members of
9 ~~the Bar~~, including those holding judicial office.

Comment [LL6]: Recommendation 1.2

10 (b) **Court to approve rules and regulations.** All rules and regulations formulated by the Board
11 ~~shall~~must be submitted to and approved by the Supreme Court.

12

1 **Rule 14-107. ~~Annual license, fees; disbursements of funds~~ Duties of lawyers, foreign legal**
2 **consultants, and licensed paralegal practitioners.**

3 (a) **Roster and current record information.** The Bar must collect, maintain, and have ready
4 access to current information of **Bar members, foreign legal consultants, and licensed paralegal**
5 **practitioners including:**

6 (a)(1) full name;

7 (a)(2) date of birth;

8 (a)(3) current physical addresses, and current telephone numbers for law office and
9 residence, except that full-time judges are exempt from providing residential addresses
10 and telephone numbers;

11 (a)(4) current e-mail address;

12 (a)(5) date of admission;

13 (a)(6) date of any transfer to or from inactive status;

14 (a)(7) all specialties in which certified;

15 (a)(8) other jurisdictions in which the lawyer is admitted and date of admission; and

16 (a)(9) nature, date, and place of any discipline imposed and any reinstatements.

17 (b) **Assessments.**

18 (b)(1) **Annual licensing fee.** To effectuate the Bar's purposes, every lawyer, foreign legal
19 consultant, and licensed paralegal practitioner admitted or licensed to practice in Utah
20 must pay to the Bar on or before July 1 of each year an annual license fee for each fiscal
21 year to be fixed by the Bar Commission from time to time and approved by the Supreme
22 Court. The fee must be sufficient to pay the costs of disciplinary administration and
23 enforcement. The Bar administers the funds.

24 (b)(2) **Failure to renew annual license.** Failure to pay the annual licensing fee or
25 provide the required annual licensing information will result in administrative
26 suspension. Any lawyer, foreign legal consultant, or licensed paralegal practitioner who
27 practices law after failure to renew their license violates the Rules of Professional

Comment [LL7]: Moved over from 14-507. This is a Bar requirement, not an OPC requirement.

Comment [LL8]: Defined in Article 1 as solely lawyers, but defined in Article 2 as both lawyers and foreign legal consultants. It would be preferable to have both definitions match, one way or the other.

Comment [LL9]: Moved over from 14-508. This is a Bar requirement, not OPC.

1 Conduct or Licensed Paralegal Practitioner Rules of Professional Conduct and may be
2 disciplined. The executive director or their designee must give notice of such removal
3 from the rolls to such noncomplying member at the designated mailing address on the
4 Bar's records and to the state and federal courts in Utah.

5 (b)(3) **Reenrollment within three years of administrative suspension.** A lawyer,
6 foreign legal consultant, or licensed paralegal practitioner who is administratively
7 suspended for failing to pay licensing fees for three years or less may apply in writing for
8 reenrollment. The request should be made to the Utah State Bar Licensing Department
9 and include payment equal to the fees the lawyer, foreign legal consultant, or licensed
10 paralegal practitioner would have been required to pay had they remained an inactive
11 member to the date of the request for reenrollment and a \$200 reinstatement fee. Upon
12 receipt, the Bar will order reenrollment and so notify the courts. Reenrollment based on
13 failure to renew does not negate any orders of discipline.

14 (b)(4) **Reenrollment after three years of administrative suspension.** A lawyer, foreign
15 legal consultant, or licensed paralegal practitioner who is administratively suspended for
16 three years or more for failing to pay license fees must comply with the admissions
17 requirements set forth in the Supreme Court Rules of Professional Practice governing
18 admission for lawyers who have been administratively suspended for nonpayment for
19 three or more years before being reinstated.

Comment [LL10]: Bar removed confusing terminology re "resignation."

1 **Article 2. Bylaws**

2 **Rule 14-202. Purposes of the Bar.**

3 The purposes of the Bar are to:

4 (a) advance the administration of justice according to law;

5 (b) aid the courts in carrying on the administration of justice;

6 (c) regulate the admission of persons seeking to practice law;

7 ~~(d) provide for the regulation and discipline of persons practicing law;~~

Comment [LL11]: Recommendation 1.2

8 (ed) foster and maintain integrity, learning, competence, public service, and high
9 standards of conduct among those practicing law;

10 (fe) represent the Bar before the legislative, administrative, and judicial bodies;

11 (gf) prevent the unauthorized practice of law;

12 (hg) promote professionalism, competence, and excellence in those practicing law
13 through continuing legal education and by other means;

14 (ih) provide services to the public, to the judicial system, and to Bar members of the Bar;

15 (ji) educate the public about the rule of law and their responsibilities under the law;

16 (kj) assist Bar members of the Bar in improving the quality and efficiency of their
17 practice;

18 (lk) to engage freely in all lawful activities and efforts, including the solicitation
19 of soliciting grants and contributions that may reasonably be intended or expected to
20 promote and advance these purposes; and

21 (ml) carry on any other business connected with or incidental to the foregoing objectives
22 and purposes, and to have and exercise all the powers conferred under law of Utah upon
23 corporations formed under the Utah Revised Nonprofit Corporation Act.

24

1 **Rule 14-207. Finances.**

2 ~~(a) Annual licensing fees. The annual licensing fees to be paid each year by all members of the~~
3 ~~Bar shall be fixed by the Board with prior Supreme Court approval.~~

Comment [LL12]: This is already a requirement in 14-107.

4 (ba) **Budget.** The Board shall ~~must~~ prepare an annual budget which shall ~~that be~~ is published for
5 comment ~~prior to before~~ final adoption. The Board shall ~~must~~ adopt the budget at its first regular
6 meeting following the reorganization meeting. No obligations shall ~~may~~ be incurred unless within
7 the limits of the budget and within the scope of the authorized objectives of the Board. The
8 annual budget must include a budget for OPC, jointly developed by the Commission and OPC
9 and approved by the Oversight Committee. The Commission must adopt the budget for OPC
10 approved by the Oversight Committee unless the Commission petitions the Supreme Court for
11 modifications, in which case the Commission must adopt the budget for OPC approved by the
12 Supreme Court.

Comment [LL13]: Recommendation 2.6

13 (eb) **Section dues.**

14 (eb)(1) ~~Bar S~~sections ~~of the Bar~~ may, with ~~the Board~~ approval ~~of the Board~~, charge an
15 annual membership fee ~~in order~~ to obtain the commitment of members to section
16 activities and to provide revenue to carry out the section's purposes ~~of the section~~. The
17 amount of such membership fees shall ~~will~~ be fixed by the section subject to the approval
18 of the Board.

19 (eb)(2) The Bar must hold any Funds raised by sections from membership fees shall ~~be~~
20 ~~held by the Bar~~ as separately identifiable funds of the sections, and disbursed ~~d~~ to the
21 sections as needed, to carry out the functions of the sections. Such funds shall ~~must~~ not
22 revert to the general Bar fund at the end of the budget year, but shall ~~will~~ continue to be
23 held as a separately identifiable fund.

24 (ec) **Disbursements.**

25 (ec)(1) ~~Bar F~~unds ~~of the Bar shall be~~ are disbursed only in accordance with the
26 provisions of law and by these Bylaws, and at the direction of the Board.

27 (ec)(2) Checking accounts shall ~~must~~ be maintained with banks to be designated by the
28 Board in such amounts as the Board shall ~~will~~ determine.

1 (d)(3) No check ~~shall~~may be drawn on ~~the Bar funds of the Bar~~ except as the Board
2 authorized ~~ds~~by the Board.

3 (d)(4) Checks under ~~the amount of~~ \$1,000 ~~can~~may be signed by ~~an~~ny one of the
4 ~~members of the~~ Executive Committee member or by the executive director. Checks over
5 ~~the amount of~~ \$1,000 ~~shall~~must bear the signatures of any two ~~members of the~~ Executive
6 Committee members or any one ~~member of the~~ Executive Committee member and the
7 executive director, unless the funds come from the ~~except that there shall be a~~ revolving-
8 fund account for day-to-day operating needs, in which case any amount of check may~~can~~
9 be signed by ~~an~~ny one of the members of the Executive Committee member or by the
10 executive director. The Board designates t~~The size of the revolving-fund account shall be~~
11 ~~designated~~ annually ~~by the Board~~ and can may revise this~~be revised~~ at any time ~~by Board~~
12 action.

13 (de) Investment of funds. The Board must direct any investment of Bar f~~Funds of the Bar~~
14 ~~shall be invested at the direction of the Board.~~

1 **Rule 14-208. Special rules and regulations.**

2 (a) ~~Bar Admission to the Bar~~. The Board ~~shall~~must promulgate rules for applicant Bar
3 admission ~~of applicants to the Bar~~ pursuant to Article 1, Integration and Management, and ~~shall~~
4 must recommend to the Supreme Court for approval rules governing qualifications and
5 requirements for admission to the practice of law as a lawyer and as a foreign legal consultant
6 and for the examination of applicants-

7 ~~(b) Conduct and discipline. The Board shall promulgate rules governing the conduct and~~
8 ~~discipline of members of the Bar and shall recommend to the Supreme Court for approval rules~~
9 ~~governing the conduct of members of the Bar and rules governing the disciplinary and disability~~
10 ~~procedures in cases involving alleged misconduct or incapacity of members.~~

Comment [LL14]: Recommendation 1.2

11 (e**b**) **Student practice rules.** The Board may promulgate and recommend to the Supreme Court
12 for approval rules governing student practice or student court assistance programs.

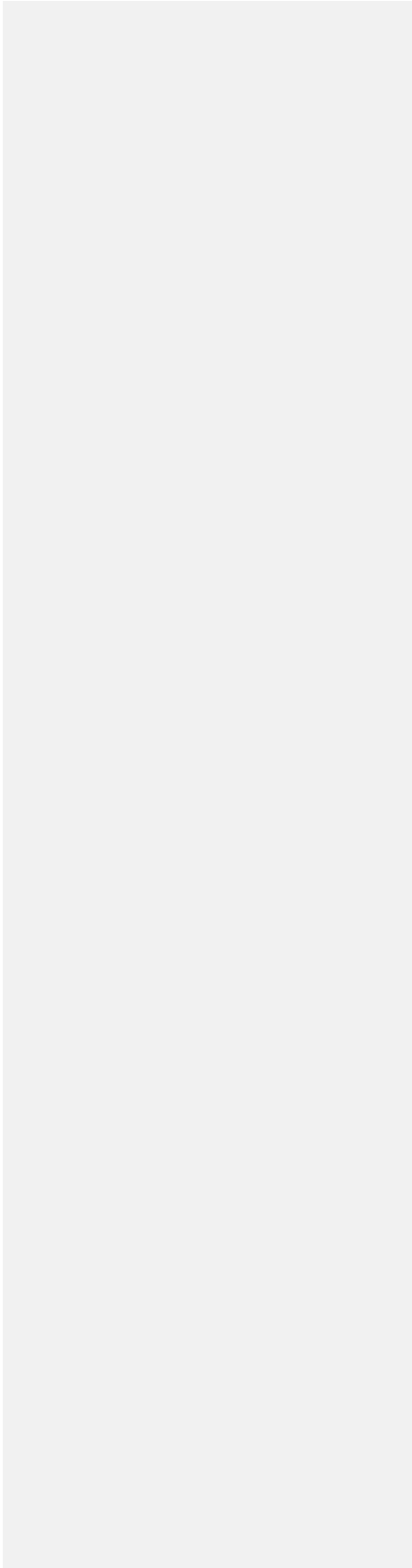
13 (e**c**) **Sections, standing committees, special committees.** To facilitate ~~the accomplishment~~
14 ~~of accomplishing~~ the Bar's purposes and objectives ~~of the Bar~~, the Board ~~shall~~must create
15 appropriate sections, standing committees, and special committees ~~of the Bar~~ to which matters
16 may be referred, ~~for handling and/or recommendation to the Board~~. The Board may call for
17 regular or periodic reports from such committees and sections at times and to such extent as ~~shall~~
18 the Board deems ~~appear~~ appropriate ~~to the Board~~.

19 (e**d**) **Committees.** The Board will select a chair and the members of each committee. Bar
20 Committees ~~of the Bar shall be~~ consist of:

21 (e**d**)(1) Standing committees, which ~~shall continue in existence~~ until abolished by the
22 Board. Standing committee Mmembers ~~shall be appointed to standing committees~~
23 ~~for serve in~~ staggered, three-year terms ~~of three years;~~ and

24 (e**d**)(2) Ad hoc committees, ~~which, having been~~ created for a specific purpose, which
25 ~~shall will be terminated~~ terminate upon completion of that purpose. Ad hoc committee
26 Mmembership ~~on ad hoc committees shall be for the time~~ lasts through the committee's is
27 ~~in~~-existence.

28 (e**e**)(3) ~~The Board shall select a chair and the members of each committee.~~



1 **Article 4. Mandatory Continuing Legal Education**

2 **Rule 14-402. Definitions.**

3 As used in this article:

4 (a) “**Active emeritus**” or “**active emeritus lawyer**” means a lawyer who has been a [Bar](#)
5 member-~~of the Bar~~ for 50 years or who is 75 years of age as of July 1 of the current year
6 and who qualifies for active emeritus status as defined under the Bar’s rules, regulations,
7 and policies;

8 (b) “**Active status**” or “**active status lawyer**” means a lawyer who has elected to be on
9 active status as defined under the Bar’s rules, regulations, and policies; state judges,
10 federal judges and magistrates, court commissioners, active senior judges, and active
11 justice court judges, both full and part time, meet CLE requirements through the
12 Administrative ~~o~~[Office](#) of the Courts;

13 (c) “**Admission on motion applicant or lawyer**” means a lawyer who has applied [or has](#)
14 [been admitted](#) for reciprocal admission as defined under Rule 14-705-~~or has been~~
15 ~~admitted as such~~;

16 (d) “**Approved law school**” means an ABA approved law school as defined under Rule
17 14-701;

18 (e) “**Bar**” means the Utah State Bar;

19 (f) “**Bar Examination**” means the Bar Examination as defined in Rules 14-710 and 14-
20 711 and includes the UBE, regardless of where the UBE was taken;

21 (g) “**Board**” means the Utah State Board of Mandatory Continuing Legal Education as
22 set forth in Rule 14-403;

23 (h) “**Board of Bar Commissioners**” means the governing board of the Bar;

24 (i) “**Certificate of Compliance**” means a written report evidencing a lawyer’s
25 completion of accredited CLE as required and defined under Rule 14-414;

26 (j) “**CLE**” means continuing legal education;

- 1 (j)(1) “**Live CLE**” means a CLE program presented in a classroom setting where
2 the lawyer is in the same room as the presenter;
- 3 (j)(2) “**Live Attendance**” means in-person attendance at a Utah state courthouse
4 where a course is streamed by live audio-visual communication from another
5 Utah state courthouse or from the Law and Justice Center;
- 6 (j)(3) “**Self-Study CLE Program**” means a program presented in a suitable
7 setting where the lawyer can view approved self-study activities;
- 8 (k) “**Comity Certificate**” is a Certificate that is filed to show MCLE compliance with a
9 reciprocal jurisdiction;
- 10 (l) “**Compliance Cycle**”- means the period of ~~2~~two years beginning July 1 through June
11 30;
- 12 (m) “**Ethics**” means standards set by the Utah Rules of Professional Conduct with which
13 a lawyer must comply to remain authorized to practice law in Utah and remain in good
14 standing;
- 15 (n) “**Full exam**” means all components of the Bar Examination as defined under Rule 14-
16 710;
- 17 (o) “**House Counsel**” means a lawyer admitted with a restricted House Counsel license
18 as defined in Rule 14-719, which is required and limits ~~his or her~~the lawyer’s practice of
19 law to the business of ~~his or her~~the lawyer’s employer;
- 20 (p) “**Inactive status**” or “**inactive status lawyer**” means a lawyer who has elected to be
21 on inactive status as defined under the Bar’s rules, regulations, and policies;
- 22 (q) “**MCLE**” means mandatory continuing legal education as defined under this article;
- 23 (r) “**Multi-State Compliance Reciprocity**” means Utah has established that MCLE
24 compliance in certain states (Idaho, Oregon, Washington) may be used as MCLE
25 compliance in Utah by an active lawyer whose principal practice is in one of the
26 established reciprocal states;
- 27 (s) “**New admittee**” means a lawyer newly admitted to the Utah State Bar;

1 (t) “**NLTP**” means the New Lawyer Training Program as set forth in Rule 14-404 and
2 Rule 14-808;

3 (u) “**Presumptively approved sponsor**” means those CLE sponsors or providers who
4 qualify under the standards set forth in Rule 14-412;

5 (v) “**Presumptive CLE accreditation**” means those CLE courses or activities that
6 qualify under the standards set forth in Rule 14-412;

7 (w) “**Professionalism and Civility**” means conduct consistent with the tenets of the legal
8 profession by which a lawyer demonstrates civility, honesty, integrity, character, fairness,
9 competence, ethical conduct, public service, and respect for the rules of law, the courts,
10 clients, other lawyers, witnesses, and unrepresented parties;

11 (x) “**OPC**” means the **Bar’s** Office of Professional Conduct;

Comment [LL15]: Recommendation 1.2

12 (y) “**OPC ethics school**” means the OPC biannual seminar on the Utah Rules of
13 Professional Conduct, which provides six CLE credit hours;

14 (z) “**Supreme Court**” means the Utah Supreme Court; and

15 (aa) “**UBE Transfers**” means applicants who gain admission by transferring a uniform
16 bar exam score.

17

Rule 11-501. Oversight Committee for the Office of Professional Conduct.

Intent:

~~To establish an oversight committee for the Office of Professional Conduct (“OPC”).~~

~~To establish a method for appointing committee members, membership terms, a meeting schedule, and committee purposes and responsibilities.~~

Applicability: _____

~~This rule shall apply to the Oversight Committee for the Office of Professional Conduct.~~

Statement of the Rule:

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

~~(a)~~(A1) **Composition.**

~~(a)(1)(A)(i)~~ The Oversight Committee ~~shall~~ consists of five voting members, at least one of whom is 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 ~~shall~~ must have an accounting background.

~~(a)(1)(A)(ii)~~ The Executive Director of the Utah ~~State~~ Bar ~~shall~~ will be an ex-officio, non-voting member of the Oversight Committee.

~~(a)~~(B2) **Appointment and member roles.** The Utah Supreme Court appoints Oversight Committee members ~~shall be appointed by the Utah Supreme Court and who~~ may serve up to two staggered four-year terms. The Supreme Court ~~shall~~ will select a chair from among the Oversight Committee’s members. Oversight Committee members shall 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 ~~member of the~~ Committee member first attends, each Committee

member ~~shall~~must briefly disclose the general nature of the member's legal or other practice.

(a)(3) Meeting schedule. ~~The Oversight Committee will meet as often as necessary to accomplish its purposes but at least annually.~~

~~(1a)(C4)~~ (4a)(C4) **Vacancies.** ~~In the event of~~If there is an ~~vacancy on the~~ Oversight Committee vacancy, the Supreme Court ~~shall~~ will appoint a new Committee member to serve for the remainder of the unexpired term.

~~(1a)(D5)~~ (4a)(D5) **Absences.** ~~In the event that~~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.

~~(1a)(E6)~~ (4a)(E6) **Administrative support.** The Administrative Office of the Courts ~~shall~~ must coordinate administrative support to the Oversight Committee.

(2b) **Oversight Committee purpose, responsibilities, and authority.**

(2b)(A1) ~~**Purpose of the**~~ **Purpose of the** Oversight Committee purpose. The Oversight Committee's purpose ~~of the Committee~~ is to assist the OPC in implementing ~~the~~ reforms to the attorney discipline process adopted by the Utah Supreme Court and to provide oversight for the OPC.

(2b)(B2) **Oversight** Committee responsibilities. The following comprise the Oversight Committee's responsibilities:

(b)(2)(BA)(i) ~~Develop and implement realistic performance metrics and conduct annual evaluations of OPC and its~~ Chief ~~Disciplinary~~ Counsel;

(b)(2)(B)(ii) ~~Develop a~~ Approve the budget for the OPC and annually submit the budget by May 1 to the Utah Supreme Court and ~~to the~~ Utah State Bar;

(b)(2)(BC)(iii) 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;

(b)(2)(BD)(iv) Annually, in conjunction with ~~OPC Chief~~ Disciplinary Counsel and the ~~Chair of the~~ Ethics and Discipline Committee chair, report to the Court regarding the operations of the OPC and the general standing of disciplinary matters and procedures; ~~and~~

(b)(2)(BE)(v) Develop and monitor formal policies for the OPC, including records retention policies;

(b)(2)(F) Recommend rules of administration and procedure to the Supreme Court;

(b)(2)(G) Recommend a chief disciplinary counsel to be appointed by the Supreme Court; and

(b)(2)(H) Monitor the OPC's workload and recommend to the Supreme Court adequate staffing of OPC counsel and staff.

~~(2b)(E3)~~ **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. ~~(3) Meeting schedule. The Committee shall meet as often as necessary to accomplish its purposes but at least annually.~~

(c) Complaints and appeals.

(c)(1) Any person may file with the Oversight Committee chair a complaint alleging malfeasance regarding the chief disciplinary counsel, not including complaints regarding OPC counsel or staff. If necessary, the Oversight Committee may enter a recommendation to the Supreme Court, which may take appropriate action.

(c)(2) If a complaint 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.

(c)(3) Any person may file with the chief disciplinary counsel a complaint alleging malfeasance regarding OPC 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 whom the complaint is filed.

(c)(4) A complaint must be in writing, stating the name and contact information of the complainant, the nature of the complaint, and the facts on which the complaint is based.

(c)(5) Unless the appropriate action taken on a complaint is part of a formal proceeding, any action taken is confidential.

1 Article 5. Lawyer Discipline and Disability

2 Rule 14-501. Lawyer disciplinary and disability proceedings: Purpose, authority, scope,
3 and structure of lawyer disciplinary and disability proceedings.

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

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

13 (c) All disciplinary proceedings ~~shall~~must be conducted in accordance with this article ~~and~~
14 ~~Article 6, Standards for Imposing Lawyer Sanctions.~~ Formal disciplinary and disability
15 proceedings are civil in nature. These rules ~~shall~~will be construed so as to achieve substantial
16 justice and fairness in disciplinary matters with dispatch and at the least expense to all concerned
17 parties.

Comment [LL16]: Combining articles 5 and 6 into one article (Chapter 11, Article 5).

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

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

Comment [LL17]: Incorporating Chapter 15, articles 5 and 6 into existing Chapter 14, articles 5 and 6. These will then be combined into one article and moved into Chapter 11, Article 5.

1 **Rule 14-502. Definitions.**

2 As used in this article:

3 (a) ~~“Action”~~ or “misconduct action” means a lawsuit filed by the OPC in district court
4 alleging lawyer misconduct or seeking to transfer a lawyer to disability status;

Comment [LL18]: Recommendation 4.1: All prior references to “formal complaint” now refer to “action.”

5 (b) “Bar” means the Utah State Bar;

6 (bc) ~~“Board Bar Commission-”~~ or “Commission” means the Board of Bar
7 Commissioners of the Utah State Bar;

8 (ed) “Chief disciplinary counsel” means the lawyer the Supreme Court appoints to
9 manage the OPC;

Comment [LL19]: Recommendation 1.2

10 (e) “Committee” means the Ethics and Discipline Committee of the Utah Supreme
11 Court;

12 (df) “eComplainant” means either (1) the person who files a ~~an informal~~ complaint, or
13 (2) the OPC ~~when the OPC determines to open an investigation based on information it~~
14 has received ~~after opening an investigation;~~

15 (e) ~~OPC counsel means senior counsel and any assistant counsel employed to assist~~
16 ~~senior counsel;~~

17 (f) ~~“formal complaint” means a complaint filed in the district court alleging misconduct~~
18 ~~by a lawyer or seeking the transfer of a lawyer to disability status;~~

Comment [LL20]: Recommendation 4.1 only one reference to “complaint.” Using term “action” to clarify when the OPC brings a lawsuit in district court.

19 (g) “Complaint” means any written allegation of lawyer misconduct or incapacity
20 containing a declaration under penalty of perjury as to the accuracy of the information
21 provided;

22 (g) ~~informal complain means any written, notarized allegation of misconduct by or~~
23 ~~incapacity of a lawyer which also contains a declaration under penalty of perjury as~~
24 ~~verification attesting to the accuracy of the information provided;~~

Comment [LL21]: Recommendation 4.1 discontinue notary requirement, but a declaration, under penalty of perjury, should be required

25 (h) “Injury” means harm to a client, the public, the legal system, or the profession that
26 results from a lawyer’s misconduct. The level of injury can range from “serious” injury to

Comment [LL22]: Moved over from sanctions article

1 “little or no” injury; a reference to “injury” alone indicates any level of injury greater
2 than “little or no” injury;

3 (i) “Intent” means the conscious objective or purpose to accomplish a particular result;

Comment [LL23]: Moved over from sanctions article

4 (j) “Knowledge” means the conscious awareness of the nature or attendant circumstances
5 of the conduct but without the conscious objective or purpose to accomplish a particular
6 result;

Comment [LL24]: Moved over from sanctions article

7 (k) “Lawyer” includes foreign legal consultants and licensed paralegal practitioners,
8 insofar as the licensed paralegal practitioner is authorized to practice under Utah Special
9 Practice Rule 14-802, unless provided otherwise.

Comment [LL25]: Includes LPPs so that we may combine Chapters 14 and 15 (only for articles 5 and 6).

10 (l) “Negligence” means a lawyer’s failure to heed a substantial risk that circumstances
11 exist or that a result will follow, which failure is a deviation from the standard of care that
12 a reasonable lawyer would exercise in the situation;

Comment [LL26]: Moved over from sanctions article

13 (m) “Notice” means the notice~~Notice of Informal Complaint~~ the OPC sends~~sent~~ to
14 the respondent after a preliminary investigation, which identifies the possible violation(s)
15 of the Rules of Professional Conduct or Licensed Paralegal Practitioner Rules of
16 Professional Conduct, raised by the complaint as OPC has preliminarily determined;

17 (n) “OPC” means the ~~Bars~~ Office of Professional Conduct;

Comment [LL27]: Recommendation 1.2

18 (o) “OPC counsel” means chief disciplinary counsel, deputy chief counsel, and any
19 assistant disciplinary counsel;

20 (p) “Oversight committee” means the committee established in Rule 11-501 to oversee
21 the OPC;

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

Comment [LL28]: Moved over from sanctions article

26 (r) “Respondent” means a lawyer subject to the disciplinary jurisdiction of the~~Utah~~
27 Supreme Court against whom an ~~informal or formal~~ complaint has been filed
28 or an action has been initiated;

- 1 (k) **“Rules of Professional Conduct”** means the rules in Chapter 13 of the Supreme
2 Court Rules of Professional Practice~~Utah Rules of Professional Conduct (including the~~
3 ~~accompanying comments) initially adopted by the Utah Supreme Court in 1988, as~~
4 ~~amended from time to time~~ and **“Licensed Paralegal Practitioner Rules of Professional**
5 **Conduct”** means the rules in Chapter 15, article 12 of the Supreme Court Rules of
6 Professional Practice;
- 7 (l) **“sScreening panel”** means Committee members ~~of the Committee~~ who participate in
8 hearings and make determinations under Rule 14-503;
- 9 (m) ~~“senior counsel” means the lawyer appointed by the Board to manage the OPC; and~~
- 10 (n) **“Supreme Court”** means the Utah Supreme Court.

1 **Rule 14-503. Ethics and Discipline Committee.**

2 (a) **Composition.** The Supreme Court appoints the Committee ~~members shall be appointed by~~
3 ~~the Supreme Court.~~ The Committee ~~shall~~ consists of ~~eight~~ four public members and 21
4 ~~29~~ lawyers ~~of the Bar~~ who have demonstrated a high standard of professional conduct. All
5 appointments ~~shall be~~ are for a term of three years with no committee member serving more than
6 two consecutive terms unless appointed as a screening panel chair or vice chair. The Supreme
7 Court ~~shall~~ designates one lawyer member as Committee ~~chair~~ chair and four lawyer members as
8 Committee vice ~~chair~~ chairs.

Comment [LL29]: Recommendation 5.4

9 (b) **Committee chair** chair. The Committee ~~chair~~ chair ~~shall~~ supervises the Committee and
10 screening panels. The ~~chair~~ chair is responsible ~~to~~ for:

11 (b)(1) maintaining an adequate check on the screening panels' work ~~of the screening~~
12 ~~panels~~ to ensure that matters move forward expeditiously;

13 (b)(2) to determineing that screening panels have a uniform basis for the judgments
14 rendered;

15 (b)(3) and to provideing the screening panels with information concerning ethics and
16 judicial decisions necessary to their activities; and

17 (b)(4) The chair shall makemaking recommendations to the Supreme Court concerning
18 appointments to and removals from the screening panels and reports concerning ~~the~~
19 screening panel activities ~~of the screening panels~~ and the overall work of the Committee.

20 (c) **Vice chair** chairs. The Committee vice ~~chair~~ chairs ~~shall~~ will act ~~in the event of~~ if the
21 ~~chair~~ chairs is absent~~ed~~ or resignation~~s~~. In ~~the~~ such event ~~of the chairs absence or resignation~~, a
22 vice ~~chair~~ chair will become the ~~chair~~ chair. The ~~chair~~ chair may call upon any vice ~~chair~~ chair to
23 assist in any of the Committee ~~chair~~ chair's duties.

24 **(d) Screening panels, quorums.**

Comment [LL30]: Recommendation 5.2

25 (d)(1) Screening panel composition. The Committee members, except for the Committee
26 ~~chair~~ chair and ~~Committee~~ vice ~~chair~~ chairs, ~~shall be~~ are divided into four screening panel
27 sections of five members each, including six ~~four~~ lawyers ~~of the Bar~~ and one ~~two~~ public
28 members. Whenever a screening panel is assigned a complaint involving a licensed

1 paralegal practitioner, the Committee chair may appoint up to two licensed paralegal
2 practitioners to the screening panel as voting members, with all of the responsibilities and
3 duties of other members of the screening panel.

4 (d)(2) Screening panel number. All screening panel hearings must have five panel
5 members present unless all parties agree to fewer than five, but not fewer than three,
6 panel members. A panel chair or vice chair and a public member must be present at each
7 screening panel hearing.

8 (d)(3) Chair and vice chair. The Supreme Court ~~shall~~ will name a ~~chair~~ chair and vice
9 ~~chair~~ chair for each screening panel. The ~~chair~~ chair or, in the ~~chair's~~ chair's absence ~~of the~~
10 ~~chair~~ chair, ~~the vice chair~~ the vice chair ~~shall~~ presides over ~~the~~ screening panel hearings. The panel
11 ~~chair~~ chair may call upon the vice ~~chair~~ chair to assist in any of the panel ~~chair's~~ chair's
12 duties. ~~Chair~~ Chairs or vice ~~chair~~ chairs from other panels may conduct hearings if the
13 regular ~~chair~~ chair and vice ~~chair~~ chair are unable to attend. ~~In the event of~~ If the
14 ~~chair's~~ chair's ~~is removed~~ is ~~or resignations,~~ the vice ~~chair~~ chair will become the
15 ~~chair~~ chair, and the Court ~~shall~~ will appoint a ~~member of the~~ Committee member to serve
16 as vice ~~chair~~ chair.

17 (d)(4) Voting. All screening panel hearings should ~~must have five panel members present~~
18 ~~unless all parties agree to fewer than five, but not fewer than three, panel members. A~~
19 ~~panel chair or vice chair and a public member must be present at each screening~~
20 ~~panel hearing. Two members of the Bar plus one public member shall constitute a~~
21 ~~quorum of a screening panel. The concurrence of a~~ A ~~majority~~ vote of those members
22 present and voting at any proceeding ~~shall be~~ is required for a screening panel
23 determination. If an even number of screening panel members participate in a proceeding,
24 the ~~chair~~ chair, or vice ~~chair~~ chair ~~if the chair is not present, shall~~ may not vote ~~unless~~
25 ~~necessary to break a tie.~~ The ~~chair~~ chair or vice ~~chair~~ chair ~~shall~~ may, however, fully
26 participate in the proceeding.

27 (d)(5) Meetings. Each screening panel ~~shall~~ meets as is necessary to effectively and
28 promptly carry out its duties. The ~~chair~~ chair ~~may convene the~~ entire Committee ~~may be~~

1 ~~convened~~ at such other times ~~by the chair~~ as necessary to effectively and promptly carry
2 out ~~its~~ the Committee's duties.

3 (e) **Removal, alternates.** The Committee ~~chair~~chair may recommend removal of a Committee
4 member by notifying the Supreme Court of the recommendation of removal and reasons for the
5 recommendation. The removal ~~shall take~~takes effect upon the Supreme Court's acceptance of the
6 recommendation. Members of any screening panel may serve as alternate members on different
7 screening panels. The Committee ~~chair~~chair and the Committee vice ~~chair~~chairs may serve as
8 alternate members on all screening panels.

9 (f) **Responsibilities.**

10 ~~(f)(1) Informal~~Complaints ~~shall be~~are randomly assigned to a screening panels. The
11 screening panels ~~shall~~ review, investigate, and hear all ~~informal~~ complaints charging that
12 a lawyer engaged in unethical or unprofessional conduct ~~members~~. ~~After such review,~~
13 ~~investigation, hearing, and analysis, the s~~ Screening panels ~~shall~~ determine the action to
14 be taken on any ~~informal~~ complaint ~~which~~that, based upon the facts of the particular case,
15 is most consistent with the public interest and the Rules of Professional Conduct or
16 Licensed Paralegal Practitioner Rules of Professional Conduct.

17 ~~(f)(2) Except as~~Unless otherwise provided in this article, whenever OPC counsel may be
18 present before a screening panel during a hearing, the respondent may also be present.

19 ~~(f)(3) Within three months after filing a n~~informal complaint of unprofessional or
20 unethical conduct of a respondent, the OPC must advise the complainant concerning the
21 initial consideration of the informal complaint, and will promptly advise such party in
22 writing of the subsequent disposition of the informal complaint and the reasons therefor.

23 (g) **Subpoenas.** ~~Any party~~The Respondent or a screening panel, for good cause ~~shown~~, may
24 petition the district court under seal ~~the district court for issuance of~~ to issue a subpoena,
25 subpoena duces tecum, or any order allowing discovery ~~prior to the filing of~~before the OPC
26 commences an action against respondent~~filing a formal complaint~~. Except for good cause ~~shown~~,
27 all petitions under this rule ~~shall~~ require a five-day written notice to the opposing party ~~prior to~~
28 ~~the issuance of~~before issuing a ~~n~~ appropriate order of subpoena.

1 (g)(1) ~~Subpoena Enforcement of subpoena~~. A district court in the district in which the
2 attendance or production is required may, upon proper application, enforce the attendance
3 and testimony of any witnesses and the production of any documents subpoenaed.

4 (g)(2) Quashing subpoena. The Committee chair or the court wherein the subpoena
5 enforcement is being sought will hear and determine ~~Any~~ attack on an issued
6 subpoena's ~~the validity of a subpoena so issued shall be heard and determined by the~~
7 ~~Committee chair or by the court wherein enforcement of the subpoena is being sought.~~
8 Any resulting order is not appealable ~~prior to the~~before entry of a final order in the
9 proceeding.

10 (g)(3) Witnesses and fees. Subpoena fees, witness fees, and mileage ~~shall will beare~~
11 reimbursed in the amounts provided under Rule 45 of the Utah Rules of Civil Procedure.

12 (h)~~(1)~~ ~~Clerk of the Committee~~ clerk. The clerk is subject to the confidentiality requirements of
13 Rule 14-515. The ~~Clerk of the~~ Committee clerk is responsible for: ~~the~~

14 (h)(1) handling the Committee's administrative affairs ~~of the Committee~~,

15 (h)(2) accepting documents filed with the ~~e~~Committee,

16 (h)(3) handling screening panel calendars,

17 (h)(4) giving notice to persons whose attendance is requested,

18 (h)(5) notifying ~~those who have filed informal complaints~~the complainant of the times
19 and dates their matters will be heard,

20 (h)(6) notifying the complainant, the respondent, and any counsel of record of the
21 disposition of each matter, and

22 (h)(7) otherwise performing or providing the secretarial and administrative functions of
23 the Committee and screening panels. ~~The Clerk is subject to confidentiality requirements~~
24 ~~of Rule 14-515. Except as otherwise provided in this article, whenever OPC counsel may~~
25 ~~be present before a screening panel during a hearing, the respondent may also be present.~~

26 ~~(h)(2) OPC counsel shall within three months after the filing of an informal complaint of~~
27 ~~unprofessional or unethical conduct of a respondent, advise the party making the informal~~

1 ~~complaint concerning the initial consideration of the informal complaint, and shall~~
2 ~~promptly advise such party in writing of the subsequent disposition of the informal~~
3 ~~complaint and the reasons therefor.~~

4 (i) **Disclosure, recusal, and disqualification.** Disclosure, recusal, and disqualification apply to
5 Committee members' participation in a screening panel hearing, exception, or other proceeding
6 in which a respondent's conduct is considered under these rules. ~~Disclosures, recusal, and~~
7 ~~disqualification of committee members shall apply to members participation in a screening panel~~
8 ~~hearing, exception or other proceeding in which a respondents conduct is considered under these~~
9 ~~rules.~~

Comment [LL31]: Recommendation 5.8

10 (i)(1) Disclosure.

11 (i)(1)(A) Committee members shall must make disclosures prior to before or, at the
12 latest, at the start of a screening panel hearing or other hearing in which a
13 respondent's conduct is considered.

14 (i)(1)(B) Each Committee member shall must disclose to the parties any
15 professional or personal relationship or conflict of interest with a party or a
16 lawyer of a party's counsel in the proceeding that may affect an unbiased
17 evaluation of the respondent.

18 (i)(1)(C) Relationships that may affect an unbiased evaluation of the respondent
19 include any contact or association that might influence a Committee member's
20 ability to fairly and reasonably evaluate the conduct of any respondent or to assess
21 that respondent without bias or prejudice, including but not limited to:

22 (i)(1)(C)(i) family relationships to a party or lawyer of a party in the
23 proceeding, within the third degree of relationship to any of them
24 (grandparents, parents or parents-in-law, aunts or uncles, children, nieces
25 and nephews and their spouses), or domestic partner of such a person;

26 (i)(1)(C)(ii) any business relationship between the Committee member and
27 a party or lawyer of a party in the proceedings;

1 (i)(1)(C)(iii) any personal litigation directly or indirectly involving a party
2 or a lawyer of a party in the proceeding and the Committee member, the
3 Committee member's family or the Committee member's business;

4 (i)(1)(D) A Committee member exhibits bias or prejudice when the Committee
5 member is predisposed to decide a cause or an issue in a way that does not leave
6 the Committee member's mind open to exercising the Committee member's
7 duties impartially in a particular case.

8 (i)(2) Recusal.

9 (i)(2)(A) As used in this rule, recusal is a voluntary act of self-disqualification by
10 a Committee member.

11 (i)(2)(B) After making a disclosure, a Committee member may voluntarily recuse
12 if the Committee member believes the relationship with the respondent or other
13 parties will affect an unbiased evaluation of the respondent.

14 (i)(3) Disqualification procedures.

15 (i)(3)(A) A respondent may move ~~for the disqualification of~~ to disqualify a
16 screening panel Committee member if such member:

17 (i)(3)(A)(i) ~~a Committee member~~ makes a disclosure and does not
18 voluntarily recuse, and that ~~Committee member's~~ impartiality might
19 reasonably be questioned; or

20 (i)(3)(A)(ii) ~~a Committee member~~ does not make a disclosure, but known
21 circumstances suggest ~~that~~ the Committee member's impartiality might
22 reasonably be questioned.

23 (i)(3)(B) A motion ~~for disqualification~~ to disqualify ~~of~~ a screening panel
24 Committee member ~~from a screening panel~~ must be submitted to the ~~Clerk of the~~
25 Committee clerk for review by the screening panel cChair or vVice cChair ~~of the~~
26 screening panel ~~prior to~~ before or during the screening panel hearing.

27 (i)(3)(C) A motion ~~for disqualification of~~ to disqualify a Committee member from
28 an exception or other hearing or review must be submitted to the ~~Clerk of the~~

1 Committee clerk for review by the Committee chair or a Committee vice
2 chair prior to before any hearing on the matter.

3 (i)(4) Disqualification after committee service. A former Committee member may not
4 personally represent a respondent in any proceeding as provided in these rules within one
5 year following completion of after completing the former Committee member's service.
6 In addition to the one-year prohibition, a former Committee member shall may not
7 personally represent a respondent in any proceedings as provided in these rules in which
8 the former Committee member previously participated in during his or her their service on
9 the Committee.

10
11 ~~(i) **Annual report.** Senior counsel shall prepare and submit an annual report to the Supreme~~
12 ~~Court and the Board encompassing the scope and nature of the Committee work. The report shall~~
13 ~~be submitted on or about August 1 of each year for the preceding fiscal year and shall set forth~~
14 ~~the number of disciplinary cases investigated, the number brought before the Committee, formal~~
15 ~~complaints filed, dispositions, cases dismissed, informal ethics opinions issued, diversionary~~
16 ~~dispositions and such other information as may be helpful to the Supreme Court in~~
17 ~~comprehending the operations of the OPC as well as the efficiency and effectiveness of the~~
18 ~~disciplinary system. Such report may contain Committee recommendations for rule amendments~~
19 ~~or changes in Committee procedure. The chair and senior counsel shall annually consult with the~~
20 ~~Board and the Supreme Court regarding the level of activity and general standing of disciplinary~~
21 ~~matters and procedures.~~

Comment [LL32]: Moved to 14-504 (OPC responsibilities). The EDC doesn't prepare this report and I'm not sure why it's in this rule.

11-501(2)(B)(iv) outlines the Oversight Committee's responsibilities with respect to the report but not the OPC's responsibilities, this should not be deleted.

1 **Rule 14-504. Chief disciplinary counsel and OPC counsel appointment and responsibilities.**

2 (a) **Appointment and qualifications.** The Supreme Court Board ~~shall~~ will appoint a lawyer
3 admitted to practice in Utah to serve as ~~senior~~ chief disciplinary counsel. Neither the ~~senior~~ chief
4 disciplinary counsel nor any full-time assistant disciplinary counsel ~~shall~~ may engage in the
5 private practice of law for payment.

Comment [LL33]: Recommendation 1.2

6 **(b) Chief disciplinary counsel responsibilities.** The chief disciplinary counsel has the following
7 responsibilities:

Comment [LL34]: The following two paragraphs are adapted from the Guardian ad litem oversight rule.

8 (b)(1) Manage OPC counsel and staff to ensure quality investigations, discipline, and
9 sanctions.

10 (b)(2) Develop the budget for Oversight Committee approval.

11 (b)(3) Monitor the services of the OPC, staff, and volunteers by regularly consulting with
12 users and observers of OPC services, including Bar members, judges, and the public and
13 by requiring the submission of appropriate written reports from OPC counsel.

14 (b)(4) Select OPC counsel and staff for employment as provided in this rule.

15 (b)(5) Supervise, evaluate, and discipline OPC counsel and staff.

16 (b)(6) Monitor and report to the Oversight Committee compliance of the OPC counsel
17 and staff with federal and state statutes, rules, and case law.

18 (b)(7) Prepare and submit an **annual report** to the Oversight Committee and Supreme
19 Court in January encompassing the scope and nature of the OPC's work. The report must
20 be submitted on or about February 1 of each year for the preceding calendar year and
21 must include the number of disciplinary cases investigated, the number brought before
22 the Committee, actions filed, dispositions, cases dismissed, informal ethics opinions
23 issued, diversionary dispositions, and such other information as may be helpful to the
24 Supreme Court in understanding the OPC's operations and the efficiency and
25 effectiveness of the disciplinary system. Such report may contain recommendations for
26 rule amendments or changes in OPC or Ethics and Discipline Committee procedure. The
27 Oversight Committee may amend the report before releasing to the Supreme Court.

Comment [LL35]: Moved from 14-503 (the OPC prepares this report, not the ED committee).

11-501(2)(B)(iv) outlines the Oversight Committee's responsibilities with respect to the report but not the OPC's responsibilities, this should not be deleted.

28 **(c) OPC counsel.**

1 (c)(1) Qualification and responsibilities. OPC counsel must be admitted to practice law in
2 Utah and must demonstrate experience and interest in the applicable law and procedures.
3 { Any additional qualifications?}

4 (c)(2) Selecting OPC counsel for employment.

5 (c)(2)(A) An OPC counsel employed by the OPC is an at-will employee subject to
6 dismissal by the chief disciplinary counsel with or without cause.

7 (c)(2)(B) OPC counsel employed by the OPC will be selected by the chief
8 disciplinary counsel. Before the chief disciplinary counsel makes a selection, a
9 panel will interview applicants and make hiring recommendations to the chief
10 disciplinary counsel.

11 (c) Disqualification and conflicts of interest. In addition to complying with the Rules of
12 Professional Conduct regarding successive government and private employment (Rule 1.11 of
13 the Rules of Professional Conduct), former OPC counsel may not personally represent a
14 respondent in any proceeding as provided in these rules within one year after completing the
15 former OPC counsel's service. In addition to the one-year prohibition, former OPC counsel may
16 not personally represent a respondent in any proceedings as provided in these rules that former
17 OPC counsel investigated or prosecuted during their OPC employment.

18 (d) Expenses. The Bar, as directed by the Oversight Committee, will pay the salaries of OPC
19 counsel and staff, their expenses, administrative costs, and the expenses of screening panel
20 members

Comment [LL36]: This is moved up from 14-508.

22 (b) Powers and duties. The ~~senior~~ chief disciplinary counsel ~~shall~~ will perform all prosecutorial
23 functions and have the following powers and duties, which may be delegated to other staff:

Comment [LL37]: I recommend moving all of these powers to a separate rule entitled "OPC prosecutorial powers and duties."

24 (b)(1) screen all information coming to the attention of the OPC to determine whether it
25 is within the jurisdiction of the OPC in that it relates to misconduct by a lawyer or to the
26 incapacity of a lawyer;

1 (b)(2) investigate all information coming to the attention of the OPC which, if true, would
2 be grounds for discipline or transfer to disability status, and investigate all facts
3 pertaining to petitions for reinstatement or readmission;

4 (b)(3) for each matter not covered in Rule 14-510, ~~brought to the attention of~~ the OPC
5 may:

6 (b)(3)(A) dismiss;

7 (b)(3)(B) decline to prosecute;

8 (b)(3)(C) refer non-frivolous and substantial ~~informal~~ complaints to the
9 Committee for hearing; or

10 (b)(3)(D) petition ~~to~~ the district court for transfer to disability status;

11 (b)(4) prosecute before the screening panels, the district courts, the Supreme Court, and
12 any other courts, including but not limited to, any court of the United States all
13 disciplinary cases and proceedings for transfer to or from disability status;

14 (b)(5) attend the Character and Fitness Committee proceedings in all cases for
15 readmission, and represent the OPC before the district courts, Supreme Court, and any
16 other courts including, but not limited to, any court of the United States in all cases for
17 reinstatement and readmission;

18 (b)(6) employ or appoint and supervise staff needed for the performance of prosecutorial
19 functions and delegate such responsibilities as may be reasonably necessary to perform
20 prosecutorial functions, including supervising attorneys who provide pro bono services to
21 the Bar, by supervising the practice of respondents who have been placed on probation;

22 (b)(7) notify each jurisdiction in which a respondent is admitted of a transfer to disability
23 status or any public discipline imposed in Utah;

24 (b)(8) seek reciprocal discipline where appropriate when informed of any public
25 discipline imposed by another court, another jurisdiction, or a regulatory body having
26 disciplinary jurisdiction;

1 (b)(9) forward a certified copy of the judgment of conviction to the disciplinary agency in
2 each jurisdiction in which a lawyer is admitted when the lawyer is convicted of a crime in
3 Utah which reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a
4 lawyer;

5 (b)(10) maintain ~~permanent~~ records of discipline and disability matters subject to any
6 expungement requirements and compile statistics to aid in the administration of the
7 system, including but not limited to, a log of all ~~informal~~ complaints received,
8 investigative files, statistical summaries of rules violated and dispositions, any transcripts
9 of proceedings, and other records as the Supreme Court requires to be maintained;

10 ~~(b)(11) expunge after seven years all records or other evidence of the existence of any~~
11 ~~informal complaint terminated by dismissal or a declination to prosecute;~~

Comment [LL38]: Moved to new rule re
retaining records.

12 ~~(b)(11)(A) Notice to respondent. If the OPC contacts the respondent regarding an~~
13 ~~informal complaint or otherwise knows the respondent is aware of the informal~~
14 ~~complaint, the OPC must give the respondent was contacted by the OPC~~
15 ~~concerning the informal complaint, or the OPC otherwise knows that the~~
16 ~~respondent is aware of the existence of the informal complaint, the respondent~~
17 ~~shall be given prompt written notice of the expungement.~~

18 ~~(b)(11)(B) Effect of expungement. After a file has been expunged, any OPC~~
19 ~~response to an inquiry requiring a reference to the matter shall must state that~~
20 ~~there is no record of such matter. The respondent may answer any inquiry~~
21 ~~requiring a reference to an expunged matter by stating that no informal complaint~~
22 ~~was made.~~

23 (b)(12) provide informal guidance concerning professional conduct to lawyers ~~of the Bar~~
24 requesting guidance, participate in seminars ~~which~~ that will promote ethical conduct,
25 formulate diversionary programs, monitor probations, and disseminate disciplinary
26 results to the Bar and the public through the Utah Bar Journal and otherwise as
27 appropriate, maintaining the confidentiality of respondents subject to private discipline. ~~;~~
28 ~~and~~

1 ~~(b)(13) along with the executive director annually formulate the budget for the OPC and~~
2 ~~submit the budget to the Board for approval. OPC counsel may petition the Supreme Court for~~
3 ~~review of modifications to the budget imposed by the Board.~~

4
5 ~~(c) **Disqualification.** In addition to complying with the Rules of Professional Conduct regarding~~
6 ~~successive government and private employment (Rule 1.11 of the Rules of Professional~~
7 ~~Conduct), a former OPC counsel shall may not personally represent a respondent lawyer in any~~
8 ~~proceeding as provided in these rules within one year following completion of after completing~~
9 ~~the former OPC counsel's service. In addition to the one year prohibition, former OPC counsel~~
10 ~~shall may not personally represent a respondent following completion of the OPC counsel's~~
11 ~~service in any proceedings as provided in these rules which former OPC counsel investigated or~~
12 ~~prosecuted during his or her employment by OPC.~~

13 (d) **Effect of ethics advisory opinions.**

14 (d)(1) Effect of ethics advisory opinions. The OPC shall may not prosecute a Utah
15 lawyer for conduct that ~~is in compliance~~ complies with an ethics advisory opinion that has
16 not been withdrawn at the time of the conduct in question. No court is bound by an ethics
17 opinion's interpretation of the ~~Utah~~ Rules of Professional Conduct or Licensed Paralegal
18 Practitioner Rules of Professional Conduct.

19 (d)(2) Reviewing, modifying, or withdrawing ethics advisory opinions.

20 (d)(~~2~~)(A) The OPC may at any time request the Bar's Ethics Advisory Opinion
21 Committee to review, modify, or withdraw an ethics advisory opinion and ~~if so,~~
22 any OPC investigation or prosecution is suspended pending the final outcome of
23 the request. The Ethics Advisory Opinion Committee may issue a modified
24 opinion, withdraw the opinion, or decline to take any action but ~~shall~~ will report
25 its action or recommendation to the ~~Board of Bar Commissioners~~ and the
26 ~~Board~~ Commission will take such final action as it deems appropriate.

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

Comment [LL39]: I recommend moving this into its own rule. The OPC does not write these opinions and it doesn't fit with the OPC's duties and responsibilities.

1 (e) Investigative Subpoenas. ~~In accordance with Following receipt of information, and in~~
2 ~~accordance with its duties under Rule 14-504~~ subsection (b), OPC ~~counsel~~ may request that the
3 ~~Committee Chair~~ Chair issue a subpoena to be served serve on a respondent or a third party a
4 subpoena to produce documents, electronically stored information, or tangible things in the
5 possession, custody, or control of that person.

6 (e)(1) Request for subpoena Requesting a subpoena, OPC ~~Counsel shall~~ must file a
7 written request for a subpoena with the Committee ~~cChair~~ and mail ~~A~~ a copy of the
8 request ~~shall be mailed~~ to the respondent's ~~at the~~ address according to the Bar's records
9 ~~with the Bar~~. The request ~~shall~~ must describe the purpose for ~~which~~ seeking -the subpoena
10 ~~is sought~~. Any objections to the request ~~shall~~ must be filed with the ~~Chair~~ chair within
11 seven days of ~~from the date of the~~ subpoena request. ~~W~~ Within three business days
12 ~~following~~ after the ~~expiration of the~~ time for filing an objection expires, ~~the Committee~~
13 ~~Chair shall review each subpoena request and~~ the Committee chair will grant or deny the
14 subpoena request, without a hearing, based on the following considerations:

15 (e)(1)(A) a weighing of the materiality and necessity of the requested documents,
16 electronically stored information, or tangible things ~~sought to be obtained~~; and

17 (e)(1)(B) a weighing of the burden to the custodian of producing the documents,
18 electronically stored information, or tangible things.

19 (e)(2) Service of Serving the subpoena. If the Committee ~~Chair~~ chair grants the request,
20 OPC ~~Counsel~~ may obtain a signed subpoena form, ~~signed~~, but otherwise blank, from the
21 ~~Clerk of the~~ Committee clerk. OPC ~~Counsel shall~~ will fill out the subpoena and ~~have it~~
22 ~~served it upon~~ the respondent or third party.

23 (e)(3) Witnesses and fees. Subpoena fees, witness fees, and mileage ~~shall will be~~ are
24 reimbursed in the amounts provided under Rule 45 of the Utah Rules of Civil Procedure.
25 The requesting party bears ~~t~~ The cost associated with producing documents or
26 electronically stored information ~~shall will be borne by the requesting party~~.

27 (e)(4) Quashing or E ~~enforcement of~~ enforcement of a subpoena. A district court in the district in
28 which the attendance or production is being sought ~~required~~ may, upon proper
29 application, quash the subpoena, or enforce the attendance and testimony of any

Comment [LL40]: Recommendation 4.3

Comment [LL41]: I would recommend moving this into its own rule.

1 witnesses and the production of any documents subpoenaed as provided for in Rule 45 of
2 the Utah Rules of Civil Procedure. Any resulting order is not appealable ~~prior to~~ before
3 the entry of a final order in the disciplinary proceeding.

4

1 **Rule 14-505. Expenses.**

2 ~~(a) The Bar, as directed by the Oversight Committee, will pay the salaries of OPC counsel and~~
3 ~~staff, their expenses, administrative costs, and the expenses of the members of the screening~~
4 ~~panels, shall be paid by the Bar, as directed by the Oversight Committee~~

5 ~~(b) The budget prepared by the executive director and senior counsel pursuant to Rule 14-~~
6 ~~504(b)(14) shall reasonably ensure the accomplishment of the goals of the disciplinary system,~~
7 ~~the professional development of the staff, and salaries that will encourage continued employment~~
8 ~~of competent professionals and support staff and will provide compensation approximately~~
9 ~~equivalent to current salaries in comparable service.~~

Comment [LL42]: Moved this language into 14-504(d).

Comment [LL43]: Replaced with 11-501(2)(B)(ii)

1 **Rule 14-506. Jurisdiction.**

2 (a) **Persons practicing law.** The persons subject to the disciplinary jurisdiction of the Supreme
3 Court and the OPC include any lawyer admitted or licensed to practice law in Utah, any lawyer
4 admitted but currently not properly licensed to practice in Utah, any formerly admitted lawyer
5 with respect to acts committed while admitted to practice in Utah or with respect to acts
6 subsequent thereto, which amount to the practice of law or constitute a violation of any rule
7 promulgated, adopted, or approved by the Supreme Court or any other disciplinary authority
8 where the attorney was licensed to practice or was practicing law at the time of the alleged
9 violation, any lawyer specially admitted by a Utah ~~court of Utah~~ for a particular proceeding, and
10 any other person not admitted in Utah who practices law or who renders or offers to render any
11 legal services in Utah.

12 (b) **Incumbent and sitting judges.** Incumbent and sitting judges are subject to the OPC's
13 jurisdiction ~~of OPC~~ only for conduct that occurred ~~prior to the~~ before taking ~~of~~ office.

14 (c) **Former judges.** A former judge who has resumed the status of a lawyer is subject to the
15 jurisdiction of the Supreme Court not only for conduct as a lawyer but also for misconduct that
16 occurred while the lawyer was a judge and would have been grounds for lawyer discipline,
17 provided that the misconduct was not the subject of a judicial disciplinary proceeding as to
18 which there has been a final determination by the Supreme Court.

19 (d) **Part-time judges.** Part-time judges, while in office, are subject to lawyer disciplinary and
20 disability proceedings for acts outside their judicial capacity.

21

1 **Rule 14-507. Roster of lawyers and current record information.**

Comment [LL44]: This is a Bar requirement, not OPC. We have moved this to Rule 14-107.

2 The Bar ~~shall~~must collect, maintain, and have ready access to Bar members' current information
3 ~~relating to members of the Bar~~ including:

4 (a) full name;

5 (b) date of birth;

6 (c) current physical addresses, and current telephone numbers for law office and residence,
7 except that full-time judges are exempt from providing residential addresses and telephone
8 numbers;

9 (d) current e-mail address;

10 (e) date of admission-;

11 (f) date of any transfer to or from inactive status;

12 (g) all specialties in which certified;

13 (h) other jurisdictions in which the lawyer is admitted and date of admission; and

14 (i) nature, date, and place of any discipline imposed and any reinstatements.

15

1 **Rule 14-508. Periodic assessment of lawyers.**

2 (a) **Annual licensing fee.** Every lawyer admitted or licensed to practice in Utah ~~shall~~must pay to
3 the Bar on or before July 1 of each year an annual license fee for each fiscal year to be fixed by
4 the ~~Board~~Bar Commission from time to time and approved by the Supreme Court. The fee ~~shall~~
5 must be sufficient to pay the costs of disciplinary administration and enforcement under this
6 article.

7 (b) **Failure to renew annual license.** Failure to pay the annual licensing fee or provide the
8 required annual licensing information ~~shall~~ will result in administrative suspension. Any lawyer
9 who practices law after failure to renew ~~his or her~~their license violates the Rules of Professional
10 Conduct or Licensed Paralegal Practitioner Rules of Professional Conduct and may be
11 disciplined. The executive director or ~~his or her~~their designee ~~shall~~must give notice of such
12 removal from the rolls to such non-complying member at the designated mailing address on the
13 Bar's records ~~at the Bar~~ and to the state and federal courts in Utah.

14 (c) **Reenrollment within three years of administrative suspension.** A lawyer who is
15 administratively suspended for failure to pay licensing fees for three years or less may apply in
16 writing for reenrollment. The request should be made to the Utah State Bar Licensing
17 Department and include payment equal to the amount of fees the lawyer would have been
18 required to pay had the lawyer remained an inactive member to the date of the request for
19 reenrollment and a \$200 reinstatement fee. Upon receiving the same, the Bar ~~shall~~will order
20 reenrollment and so notify the courts. Re-enrollment based on failure to renew does not negate
21 any orders of discipline.

22 (d) **Reenrollment after three years of administrative suspension.** A lawyer who is
23 administratively suspended for three years or more for failure to pay license fees ~~will be~~is
24 deemed to have resigned and ~~shall~~must comply with the admissions requirements set forth in the
25 Supreme Court Rules of Professional Practice governing admission for lawyers who have
26 resigned.

Comment [LL45]: This is a Bar requirement, not OPC. We have moved this to Rule 14-107.

1 **Rule 14-509. Grounds for discipline.**

2 It ~~shall be~~constitutes a ground for discipline for a lawyer to:

3 (a) violate the Rules of Professional Conduct or Licensed Paralegal Practitioner Rules of
4 Professional Conduct;

5 (b) willfully violate a valid court order ~~of a court~~ or a screening panel imposing
6 discipline;

7 (c) be publicly disciplined in another jurisdiction;

8 (d) fail to comply with the requirements of Rule 14-526(e); ~~or~~

9 (e) fail to notify the OPC of public discipline in another jurisdiction in accordance with
10 Rule 14-522(a); ~~or~~

11 (f) willfully fail to comply with a validly issued subpoena from the OPC or screening
12 panel, or knowingly fail to respond to a lawful demand from OPC.

Comment [LL46]: Recommendations 4.3 &
4.4

1 **Rule 14-510. Prosecution and appeals.**

2 (a) **Informal complaint** ~~U of un~~professional conduct **complaints**.

3 (a)(1) **Filing.** ~~Any person, the OPC, or the Committee may initiate a~~ disciplinary
4 proceeding ~~may be initiated~~ against any ~~member of the Bar member lawyer by any~~
5 ~~person, OPC counsel or the Committee,~~ by filing with the ~~Bar OPC, in writing, an written~~
6 ~~informal~~ complaint in ~~ordinary, plain and~~ concise language setting forth the acts or
7 omissions claimed to constitute unprofessional conduct, ~~either through the mail or~~
8 ~~through the OPC's website at opcutah.org. Upon filing, an informal complaint shall be~~
9 ~~processed in accordance with this article.~~

10 (a)(2) **Form of informal complaint.** The ~~informal~~ complaint need not be in any
11 particular form or style and may be by letter or other informal writing, although ~~the OPC~~
12 ~~may provide~~ a form ~~may be provided by the OPC~~ to standardize the ~~informal complaint~~
13 format. ~~It is unnecessary that the~~ ~~The~~ informal complaint ~~need not~~ recite disciplinary
14 rules, ethical canons, or a prayer requesting specific disciplinary action. The ~~complainant~~
15 ~~must sign the~~ informal complaint ~~shall be signed by the complainant and shall set~~
16 ~~forth~~ ~~include~~ the complainant's address, and may list the names and addresses of other
17 witnesses. The ~~informal~~ complaint ~~shall must be notarized and~~ contain a
18 ~~verification~~ ~~declaration under penalty of perjury as attesting~~ to the accuracy of the
19 information ~~contained~~ in the complaint. In accordance with Rule 14-504(b), complaints
20 filed by OPC are not required to contain a verification. ~~The substance of the~~ ~~An~~ informal
21 complaint's ~~substance shall~~ prevails over the form.

22 (a)(3) **Initial investigation.** ~~Upon the filing of an informal~~ ~~On receiving a~~ complaint, OPC
23 ~~counsel shall will~~ conduct a preliminary investigation to ascertain whether the ~~informal~~
24 complaint's ~~allegations is~~ ~~are~~ sufficiently clear ~~as to its allegations~~. If ~~it is~~ not, OPC
25 ~~counsel shall will~~ seek additional facts from the complainant; ~~The complainant must~~
26 ~~submit a signed writing containing any~~ additional facts ~~shall also be submitted in writing~~
27 ~~and signed by the complainant.~~

28 (a)(4) **Potential Referral to Professionalism and Civility Counseling Board.** ~~OPC~~
29 ~~counsel may~~ ~~In~~ connection with any conduct that comes to their attention, ~~whether by~~

Comment [LL47]: I'd recommend splitting this into 7 separate rules (a), (b), (c), etc. each as its own rule.

Comment [LL48]: Recommendation 1.2

Comment [LL49]: Recommendation 4.1
Notarization of a complaint should be discontinued, but a declaration, under penalty of perjury, should be required

1 ~~means of an informal complaint, a preliminary investigation, or any other means, OPC~~
2 ~~counsel may, at its discretion, ___~~ refer any matter to the Professionalism and Civility
3 Counseling Board established ~~pursuant to the~~ under Rule 14-303 ~~Supreme Court's~~
4 ~~Standing Order No. 7~~. Such referral may be in addition to or in lieu of any further
5 proceedings related to the subject matter of the referral. Such referral should be in writing
6 and, ___ at the discretion of OPC ~~counsel, ___~~ may include any or all information included
7 in ~~an informal~~ the complaint or additional facts submitted by a ~~the~~ complainant.

8 (a)(5) ~~Notice of informal complaint to respondent. Upon completion of~~ On completing
9 the preliminary investigation, OPC ~~counsel shall will~~ determine whether the ~~informal~~
10 complaint can be resolved in the public interest, the respondent's interest, and the
11 complainant's interest. ~~OPC counsel and/or the screening panel may use their efforts to~~
12 ~~resolve the informal complaint.~~ If the ~~informal~~ complaint cannot be ~~so~~ resolved or if it
13 ~~sets forth~~ alleges facts ~~which that~~, by their very nature, should be brought before the
14 screening panel, or if good cause otherwise exists to bring the matter before the screening
15 panel, OPC ~~counsel shall cause to be served~~ must:

16 (a)(5)(A) serve the respondent with a notice identifying with particularity the
17 possible violation(s) of the Rules of Professional Conduct or Licensed Paralegal
18 Practitioner Rules of Professional Conduct raised by the complaint as OPC has
19 preliminarily determined;

20 (a)(5)(B) attach a copy of the signed complaint; and

21 (a)(5)(C) mail the documents ~~serve a NOIC by regular mail upon to~~ the
22 respondent's ~~at the~~ address as reflected in the Bar's records ~~of the Bar;~~

23 ~~(a)(5)(B) The NOIC shall have attached a true copy of the signed informal~~
24 ~~complaint against the respondent and shall identify with particularity the possible~~
25 ~~violation(s) of the Rules of Professional Conduct raised by the informal complaint~~
26 ~~as preliminarily determined by OPC counsel.~~

27 (a)(6) **Answer to informal complaint.** Within 20 days after the respondent is served ~~iee~~
28 ~~of with~~ the complaint and notice ~~NOIC on the respondent,~~ the respondent ~~shall~~ must file
29 with OPC ~~counsel a signed,~~ written ~~and signed~~ answer setting forth in full an explanation

Comment [LL50]: Recommendation 4.2
Discontinue "NOIC"

Comment [LL51]: Recommendation 4.2
Discontinue "NOIC"

1 ~~of explaining~~ the facts surrounding the ~~informal~~ complaint, together with all defenses and
2 responses to the claims of possible misconduct. For good cause ~~shown~~, OPC ~~counsel~~ may
3 extend the time for ~~the filing of an answer by the respondent~~ not to exceed an additional
4 30 days. ~~Upon~~When the answer ~~having been~~is filed or if the respondent fails to respond,
5 OPC ~~counsel shall will~~ refer the case to a screening panel for investigation, consideration,
6 and determination or recommendation. OPC ~~counsel shall must~~ forward a copy of the
7 answer to the complainant.

8 (a)(7) ~~Dismissal of informal~~Dismissing the -complaint.

9 (a)(7)(A) Reasons for dismissal. OPC ~~counsel~~ may dismiss an informal
10 complaint without referral to a screening panel hearing if the OPC determines the
11 complaint is: An informal complaint which, upon consideration of all factors, is
12 determined by OPC counsel to be

13 (a)(7)(A)(i) frivolous, unintelligible, ~~unsupported by fact, or fails to raise~~
14 probable cause of any unprofessional misconduct;

15 (a)(7)(A)(ii) barred by the statute of limitations;

16 (a)(7)(A)(iii) more adequately addressed in another forum; ~~or unsupported~~
17 by fact or which does not raise probable cause of any unprofessional
18 conduct;

19 (a)(7)(A)(iv) ~~or one in~~ which the OPC declines to prosecute, ~~may be~~
20 dismissed by OPC counsel without hearing by a screening panel.

21 (a)(7)(B) Notification and appeal.

22 (a)(7)(B)(i) When OPC dismisses a complaint, it ~~OPC counsel shall must:~~

23 (a)(7)(B)(i)(a) notify the complainant that it has dismissed the
24 informal complaint;

25 (a)(7)(B)(ii) ~~and of such dismissal~~ stating the reasons ~~therefor~~for
26 dismissal;

1 (a)(7)(B)(iii) include a notice of the complainant's right to appeal
2 an OPC decision to the Committee chair.

Comment [LL52]: Recommendation 4.5. Added requirement that OPC include notice of complainant's right to appeal to the Committee chair.

3 (a)(7)(B)(ii) The complainant may appeal ~~at the~~ dismissal ~~by OPC counsel~~
4 by filing written notice with the ~~Clerk of the~~ Committee clerk within 15
5 days after ~~notification of~~ the dismissal notification is mailed. The
6 complainant has no other right of appeal in this chapter. ~~Upon~~

Comment [LL53]: This language is taken from 14-528 and fully incorporates 528 ("The complainant shall not have a right of appeal, except as provided in Rule 14-510(a)(7) to appeal a dismissal of a complaint.")

7 (a)(7)(B)(iii) On appeal, the Committee ~~chair~~ chair ~~shall~~ will conduct a de
8 novo review of the file, either affirm the dismissal or require OPC ~~counsel~~
9 to prepare a NOIC notice of the complaint, and set the matter for hearing
10 by a screening panel. ~~In the event of~~ If the chair's recusales, the chair ~~shall~~
11 will appoint the vice chair or one of the screening panel chairs to review
12 and determine the appeal.

Comment [LL54]: Recommendation 4.2 discontinue "NOIC"

13 **(b) Proceedings before Committee and screening panels.**

14 (b)(1) Review and investigation. ~~In their role as~~ fact finders and investigators, screening
15 panels ~~shall~~ will review all ~~informal~~ complaints the OPC refer ~~red~~ s to them ~~by OPC~~
16 ~~counsel~~, including all ~~the~~ facts developed by in the ~~informal~~ complaint, answer,
17 investigation, and hearing, and ~~the OPC's~~ recommendations ~~of OPC counsel~~. ~~Prior~~
18 ~~to~~ Before any hearing, OPC may file with the clerk and serve on the respondent a
19 summary of its investigation. If filed, the summary ~~shall~~ must identify with particularity
20 any additional violations of the Rules of Professional Conduct or Licensed Paralegal
21 Practitioner Rules of Professional Conduct as ~~subsequently~~ determined by OPC after it
22 ~~serv~~ iced respondent with the notice of the complaint ~~of the NOIC~~. If OPC ~~provid~~ es d to
23 the summary to the screening panel, ~~the OPC must also provide the~~ summary ~~shall also~~
24 ~~be provided~~ to the respondent and ~~shall~~ the summary will serve as notice of any
25 additional violations the OPC did not previously charged ~~by OPC in the NOIC~~. If OPC
26 alleges additional rule violations ~~are alleged~~ in the summary, the summary ~~shall~~ must be
27 served on the respondent ~~no less than~~ at least seven days ~~prior to~~ before the hearing. In
28 cases where a judicial officer has not addressed or reported a respondent's alleged

Comment [LL55]: Recommendation 4.2 discontinue NOIC

1 misconduct, the screening panel ~~should~~may not consider this inaction to be evidence
2 either that misconduct has occurred or has not occurred.

3 (b)(2) Respondent's appearance. The screening panel must, with at least 30 days' notice,
4 afford the respondent an opportunity to appear before the screening panel B before taking
5 any action ~~is taken~~ that may result in ~~the recommendation~~recommending of an
6 admonition or public reprimand, or ~~the the OPC's filing of a misconduct action in district~~
7 court formal complaint, the screening panel shallmust, upon at least 30 days' notice,
8 ~~afford the respondent an opportunity to appear before the screening panel.~~ Respondent
9 and any witnesses the respondent ~~called by the respondent~~ may testify, and respondent
10 may present oral argument with respect to the ~~informal~~ complaint. Respondent may also
11 submit a written brief to the screening panel at least 10 days ~~prior to~~before the hearing,
12 which ~~shall~~may not exceed 10 pages ~~in length~~ unless ~~permission for enlargement is~~
13 ~~extended by~~ the panel ~~chair~~chair or vice ~~chair~~chair allows an extension for good cause
14 ~~shown. OPC counsel will forward Aa~~ copy of the brief ~~shall be forwarded by OPC~~
15 ~~counsel~~ to the complainant. If OPC identifies additional rule violations in the summary
16 referenced in (b)(1), the respondent may file an additional written response addressing
17 those alleged violations ~~prior to~~before the hearing.

18 (b)(3) Complainant's appearance. A complainant ~~shall~~has the right to appear before
19 the screening panel personally and may testify, together with any witnesses the
20 complainant ~~called by the complainant,~~ may testify.

21 (b)(4) Right to hear evidence; cross-examination. The complainant and ~~the~~ respondent
22 ~~shall~~ have the right to be present during ~~the~~ presentation of ~~the~~ evidence unless excluded
23 by the screening panel chair for good cause ~~shown~~. Respondent may be represented by
24 counsel, and complainant may be represented by counsel or ~~some~~an other representative.
25 Either complainant or respondent may request that the panel chair seek responses or pose
26 questions to ~~from~~ the other party at the hearing ~~by posing questions or areas of inquiry to~~
27 ~~be asked by the panel chair~~. Direct cross-examination will ordinarily not be permitted
28 ~~except~~unless, upon request, ~~when~~ the panel chair deems that it would materially assist the
29 panel in its deliberations.

1 (b)(5) Rule ~~V~~violations ~~N~~not ~~C~~charged by OPC. During the screening panel hearing, but
2 not after, the panel may find that rule violations have occurred not previously charged by
3 OPC ~~in the NOIC or summary memorandum have occurred~~. If so, the screening panel
4 ~~shall will~~ give ~~the~~ respondent a reasonable opportunity to respond during the hearing. The
5 respondent may address the additional charges at the hearing and also file with the
6 ~~Clerk~~Clerk and serve on OPC within two business days of the hearing a written response
7 to the new charges along with supplemental materials related to the new charges. ~~Prior~~
8 ~~to~~Before making a determination or recommendation, the response and any supplemental
9 materials ~~shall~~must be reviewed and considered by at least a quorum of the panel
10 members present at the original hearing.

Comment [LL56]: Recommendation 4.2
discontinue NOIC

11 (b)(6) Hearing ~~R~~record. The proceedings of any screening panel hearing ~~before a~~
12 ~~screening panel~~ under this subsection (b) ~~shall will~~ be recorded at an level of audio
13 quality level that permits an accurate transcription of the proceedings. The ~~Clerk~~Clerk
14 ~~shall will~~ assemble a complete record of the proceedings and deliver it to the ~~chair of the~~
15 Committee chair upon the ~~rendering of the~~ panel's determination or recommendation to
16 the Committee ~~chair~~chair. The record of the proceedings before the panel ~~shall must~~ be
17 preserved for ~~not less than at least~~ one year following after delivery of the panel's
18 determination or recommendation to the ~~chair of the~~ Committee chair and for such
19 additional period time as any further proceedings on the matter are pending or might be
20 instituted under this section.

21 (b)(7) Screening panel determination or recommendation. The screening panel—
22 Upon after reviewing ~~of~~ all the facts developed by the ~~informal~~ complaint, answer,
23 investigation, and hearing, ~~the screening panel shall — will~~ make one of the following
24 determinations or recommendations:

25 (b)(7)(A) The preponderance of evidence ~~presented~~ does not establish that the
26 respondent ~~was~~ engaged in misconduct, in which case the OPC will dismiss the
27 ~~informal~~ complaint ~~shall will be dismissed~~. A letter of caution may also be issued
28 with the dismissal. The letter ~~shall must~~ be signed by OPC counsel or the
29 screening panel chair and ~~shall will~~ serve as a guide for the future conduct of

1 | the respondent. The complainant ~~shall will also~~ be confidentially notified of the
2 | caution;

3 | (b)(7)(B) The ~~informal~~ complaint ~~shall will~~ must be referred to the ~~Diversion~~
4 | ~~Committee~~ OPC for diversion. In this case, the specific material terms of the
5 | Diversion Contract agreed to by the respondent ~~are to will~~ be recorded as a part of
6 | the screening panel record, along with any comments by the complainant. The
7 | screening panel ~~shall will~~ have no further involvement in processing the
8 | diversion. The ~~Diversion Committee~~ OPC ~~shall will~~ process the diversion in
9 | accordance with Rule 14-533-;

Comment [LL57]: Recommendation 6.2

Comment [LL58]: Recommendation 6.2

10 | (b)(7)(C) The ~~informal~~ complaint ~~shall will~~ must be referred to the Professionalism and
11 | Civility Counseling Board established ~~pursuant to under the Supreme Court's~~
12 | ~~Standing Order No. 7~~ Rule 14-303;

13 | (b)(7)(D) The ~~informal~~ complaint ~~shall will~~ must be referred to the Committee
14 | ~~chair~~ chair with an accompanying screening panel recommendation that the
15 | respondent be admonished;

16 | (b)(7)(E) The ~~informal~~ complaint ~~shall will~~ must be referred to the Committee
17 | ~~chair~~ chair with an accompanying screening panel recommendation that the
18 | respondent receive a public reprimand; ~~or~~

19 | (b)(7)(F) The OPC must file a formal an action ~~complaint shall must be filed~~
20 | ~~against in district lawsuit~~ the respondent if the panel finds ~~there is~~ probable cause
21 | to believe there are grounds for public discipline ~~and that~~ merit a discipline
22 | action ~~formal complaint is merited; or~~

23 | (b)(7)(G) The OPC must file an action in district court ~~A formal complaint shall~~
24 | ~~must also be filed~~ if the panel finds ~~there was~~ misconduct and the misconduct is
25 | similar to the misconduct alleged in ~~a formal complaint~~ an action against the
26 | respondent that has been recommended by a screening panel or is pending in
27 | district court at the time of the hearing.

1 (b)(8) Aggravation and ~~M~~mitigation. The respondent and OPC may present evidence and
2 argument as to mitigating and aggravating circumstances during the screening panel
3 hearing, but this evidence ~~shall will~~ not be considered until after the panel has determined
4 the respondent engaged in misconduct.

5 (b)(9) Multiple cases involving the same respondent. More than one case involving the
6 same respondent may be scheduled before the same panel, ~~but i~~in determining whether a
7 rule has been violated in one case, a screening panel ~~shall may~~ not consider facts raised in
8 other cases~~the fact it may be hearing multiple cases~~ against the same respondent.

9 (b)(10) Recommendation of admonition or public reprimand. A screening panel
10 recommendation that the respondent ~~should~~ be disciplined under subsection (b)(7)(D) or
11 (b)(7)(E) ~~shall must~~ be in writing and ~~shall~~ state the substance and nature of the ~~informal~~
12 complaint and defenses and the basis upon which the screening panel has concluded, by a
13 preponderance of the evidence, that the respondent ~~should~~ be admonished or publicly
14 reprimanded. The screening panel must deliver ~~A copy~~ies of the recommendation ~~shall be~~
15 ~~delivered~~ to the Committee ~~chair~~chair, ~~and a copy served upon the~~ respondent, and OPC.

16 (c) **Exceptions to screening panel determinations and recommendations.**

17 (c)(1) Within 30 days ~~of after~~ the date of service of the screening panel's determination
18 or recommendation: ~~of the screening panel of a dismissal, dismissal with letter of caution,~~
19 ~~a referral to the Diversion Committee, a referral to the Professionalism Counseling~~
20 ~~Board, or the recommendation of an admonition, or the recommendation of a public~~
21 ~~reprimand;~~

22 (c)(1)(A) OPC may file ~~with the Clerk of the Committee~~ exceptions to the
23 determination or recommendation and may request a hearing, ~~and respondent will~~
24 have 30 days to respond with any exceptions to a recommendation of admonition
25 or public reprimand; and ~~The respondent shall then have 30 days within which to~~
26 ~~make a response, and the response shall include respondents exceptions, if any, to~~
27 ~~a recommendation of an admonition or reprimand.~~

28 (c)(1)(B) ~~Within 30 days after service of the recommendation of an admonition or~~
29 ~~public reprimand on respondent,~~ the respondent may file ~~with the Clerk of the~~

1 ~~Committee~~ exceptions to the determination or recommendation and may request a
2 hearing, and OPC ~~shall~~ will have 30 days ~~within which to file a re~~ response.

3 (c)(2) The Committee ~~chair~~ chair may allow a reply to any response.

4 (c)(3) No exception may be filed to a screening panel determination that an action ~~formal~~
5 complaint shall will be filed against a respondent ~~pursuant to~~ under Rule 14-511.

6 (c)(4) All exceptions ~~shall~~ must include a memorandum, not ~~to exceed~~ exceeding 20
7 pages, stating the grounds for review, the relief requested, and the bases in law or in fact
8 for the exceptions.

9 **(d) Procedure on exceptions.**

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

12 (d)(2) Hearing requested. If a request for a hearing is made, the Committee ~~chair~~ chair or
13 a screening panel ~~chair~~ chair designated by the Committee ~~chair~~ chair ~~shall~~ will serve as
14 the Exceptions Officer and hear the matter in an expeditious manner, with OPC counsel
15 and the respondent having the opportunity to be present and give an oral presentation.
16 The complainant need not appear personally.

17 (d)(3) Transcript Request. Upon request the Committee ~~chair~~ chair ~~shall~~ must extend the
18 deadlines for filing exceptions or responses ~~in order~~ to allow a party time to obtain a
19 transcript of the screening panel proceedings. The requesting party will bear ~~the~~ costs of
20 such transcript. ~~shall be borne by the requesting party. The party obtaining the transcript~~
21 ~~shall and must~~ file it with the ~~Clerk~~ Clerk, together with an affidavit establishing the
22 transcript's chain of custody ~~of the record~~.

23 (d)(4) Burden of proof. The party who files exceptions under subsection (c) ~~shall have~~ has
24 the burden of showing that the determination or recommendation of the screening panel
25 is unsupported by substantial evidence or is arbitrary, capricious, legally insufficient, or
26 otherwise clearly erroneous.

Comment [LL59]: Committee clerk?

1 (d)(5) Record on exceptions. The proceedings of any hearing on exceptions under this
2 subsection (d) ~~shall~~must be recorded at a level of audio quality that permits an accurate
3 transcription of the proceedings.

4 (e) **Final Committee disposition.**

5 (e)(1) Either upon the completion of ~~on completing~~ the exceptions procedure under
6 subsection (d) or if no exceptions have been filed under subsection (c), the Committee
7 ~~chair~~chair shall will issue a final, written determination review the screening panel's
8 findings and recommendations and will prepare the order to execute those findings and
9 recommendations that either sustains, dismisses, or modifies the determination or
10 recommendation of the screening panel. The Committee chair may not make changes to
11 screening panel findings and recommendations, other than changes needed for clarity. If
12 no exception is filed, the Committee chair need not issue a ~~No~~ final, written determination
13 is needed by the Committee chair to a screening panel determination to for a dismissal, a
14 dismissal with a letter of caution, or a referral to the Diversion Committee ~~OPC?~~ if no
15 exception is filed.

Comment [LL60]: Recommendation 5.9

Comment [LL61]: Recommendation 6.2

16 (e)(2) If the screening panel recommends a public reprimand, the respondent may:

17 (e)(2)(A) accept the public reprimand.

18 (e)(2)(B) file an exception with the Committee chair with the right to appeal the
19 ruling on the exception; or

20 (e)(2)(C) elect a trial de novo with the district court.

Comment [LL62]: Recommendation 5.10

21 (f) **Appeal of** Appealing **a final Committee determination.**

22 (f)(1) Within 30 days after the Committee chair ~~services of~~ a final, written
23 determination ~~of the Committee chair~~ under subsection (e), the respondent or OPC may
24 ~~file a request for review with~~ appeal the determination to the Supreme Court and ask the
25 Court by the Supreme Court seeking to ~~reversal~~ or modification ~~of~~ the final Committee
26 determination ~~of the Committee. A request for review~~ An appeal under this subsection
27 ~~shall is~~ is only be available in cases where exceptions have been filed under subsection (c).
28 Until the time for filing an appeal expires, D ~~is~~ is dissemination of disciplinary information

1 ~~pursuant to~~under Rules 14-504(b)(13) or 14-516 ~~shall~~will be automatically stayed ~~during~~
2 ~~the period within which a request for review may be filed under this subsection~~. If a
3 timely ~~request for review~~appeal is filed, the stay ~~shall~~will remain in place pending ~~the~~
4 ~~Supreme Court's~~ resolution ~~by the Supreme Court~~ unless the Court ~~orders~~orders otherwise
5 ~~orders~~.

6 (f)(2) ~~A request for review~~An appeal under this subsection (f) will be subject to the
7 procedures set forth in Title III of the Utah Rules of Appellate Procedure. Documents
8 submitted under this Rule ~~shall~~must conform to the requirements of Rules 27(a) and
9 27(b) of the Utah Rules of Appellate Procedure.

10 (f)(3) A party requesting a transcript~~ion~~ of the record below ~~shall~~will bear the costs. The
11 party obtaining the transcript ~~shall~~must file it with the ~~appellate Clerk~~appellate Clerk of the Court,
12 together with an affidavit establishing the ~~transcript's~~ chain of custody ~~of the record~~.

13 (f)(4) The Supreme Court ~~shall~~will conduct a review of the matter on the record.

14 (f)(5) The party requesting review ~~shall have~~has the burden of demonstrating that the
15 Committee action was:

16 (f)(5)(A) ~~B~~Based on a determination of fact ~~that is~~ not supported by substantial
17 evidence when viewed in light of the whole record before the Court;

18 (f)(5)(B) ~~A~~An abuse of discretion;

19 (f)(5)(C) ~~A~~Arbitrary or capricious; or

20 (f)(5)(D) ~~C~~Contrary to ~~Chapter 11, Articles 5 and Chapter 14, Article 6 of Chapter~~
21 ~~14 of the Supreme Court~~ Rules of Professional Practice ~~of the Supreme Court~~.

22 (g) **General procedures.**

23 (g)(1) Testimony. All testimony given before a screening panel or the Exceptions Officer
24 ~~shall~~must be under oath.

25 (g)(2) Service. To the extent applicable, service or filing of documents under this Rule ~~is~~
26 ~~to be~~must be made in accordance with Utah Rules of Civil Procedure 5(b)(1), 5(d) and
27 6(a).

1 (g)(3) Continuance of disciplinary proceedings. A disciplinary proceeding may be held in
2 abeyance by the Committee ~~chair~~chair ~~prior to~~before the filing ~~of an action in district~~
3 court ~~formal complaint~~ when the allegations or the ~~informal~~ complaint contain matters of
4 substantial similarity to the material allegations of pending criminal or civil litigation in
5 which the respondent is involved.

6

1 **Rule 14-511. ~~Proceedings subsequent to finding of probable cause~~ Actions in district court.**

2 (a) **Commencement of ing an action.** If the screening panel finds probable cause to believe ~~that~~
3 there are grounds for public discipline ~~and that~~ merit filing an action ~~a formal complaint is~~
4 ~~merited~~, OPC ~~counsel shall~~ will ~~prepare and file with the district court~~ an action ~~a formal~~
5 ~~complaint in district court, beginning with a complaint~~ setting forth in plain and concise
6 language the facts upon which the charge of unprofessional conduct is based and the applicable
7 provisions of the Rules of Professional Conduct or Licensed Paralegal Practitioner Rules of
8 Professional Conduct. The Committee chair must be given notice of the screening panel
9 recommendation and a copy of the filed complaint, but may not approve the recommendation or
10 sign the complaint ~~formal complaint shall be signed by the Committee chair or, in the chair's~~
11 ~~absence, by the Committee vice chair or a screening panel chair designated by the Committee~~
12 ~~chair.~~

Comment [LL63]: Recommendation 5.11

13 (b) **Venue.** Unless the parties stipulate to a change of venue in accordance with applicable law,
14 ~~The action shall~~ must be brought and the trial ~~shall~~ must be held:

15 (b)(1) in the county in which an alleged offense occurred; or

16 (b)(2) in the county where the respondent resides, ~~or~~ practices law, or last practiced law
17 in Utah; provided, however, that if the respondent is not a resident of Utah and the
18 alleged offense is not committed in Utah, the trial ~~shall~~ will be held in a county designated
19 by the Chief Justice of the Supreme Court. ~~The parties may stipulate to a change of venue~~
20 ~~in accordance with applicable law.~~

21 (c) **Style of proceedings.** All proceedings instituted by the OPC ~~shall~~ must be styled: "In the
22 Matter of the Discipline of (name of respondent and respondent's Bar number), Respondent."

23 (d) **Change of judge as a matter of right.**

24 (d)(1) Notice of change.

25 (d)(1)(A) The respondent or OPC ~~counsel~~ may request reassignment to another
26 district court judge from the same district, by filing a notice ~~indicating~~ stating:

27 (d)(1)(A)(i) ~~The~~ name of the assigned judge,

28 (d)(1)(A)(ii) the date on which the ~~formal complaint~~ action was filed, and

1 (d)(1)(A)(iii) that a good faith effort has been made to serve all parties;
2 ~~change the judge assigned to the case.~~

3 (d)(1)(B) The notice ~~shall~~ may not specify any reason for the change of judge.

4 (d)(1)(C) The party filing the notice ~~shall~~ must send a copy of the notice to the
5 assigned judge and to the presiding judge. ~~The party filing the notice may request
6 reassignment to another district court judge from the same district, which request
7 shall be granted.~~

8 (d)(1)(D) Under no circumstances ~~shall~~ will more than one change of judge be
9 allowed to each party under this rule.

10 (d)(2) Time. Unless extended by the court ~~upon a showing of~~ for good cause, the notice
11 must be filed within 30 days after the action commencement ~~s of the action~~ or ~~prior~~
12 ~~to~~ before the notice of trial setting, whichever occurs first. Failure to file a timely notice
13 precludes any change of judge under this rule.

14 (d)(3) Assignment of action. Upon ~~the filing of~~ filing a notice of change, the assigned
15 judge ~~shall~~ will take no further action in the case. The presiding judge ~~shall~~ will promptly
16 determine whether the notice is proper and, if so, ~~shall~~ reassign the action. If the
17 presiding judge is also the assigned judge, the ~~clerk~~ clerk ~~shall~~ will promptly send the
18 notice to the Chief Justice of the Supreme Court, who ~~shall~~ will determine whether the
19 notice is proper and, if so, ~~shall~~ reassign the action.

20 (d)(4) Rule 63 and Rule 63A unaffected. This rule does not affect any rights a party may
21 have pursuant to Rule 63 or Rule 63A of the Utah Rules of Civil Procedure.

22 (e) **Actions tried to the bench; findings and conclusions.** All actions tried according to this
23 article ~~shall~~ will be tried to the bench, and the district court ~~shall~~ will enter findings of fact and
24 conclusions of law. Neither masters nor commissioners ~~shall~~ may be ~~utilized~~ used.

25 (f) **Sanctions hearing.** ~~Upon a finding of misconduct and as soon as reasonably practicable,
26 within a target date of not more than 30 days after~~ If the district court ~~enters its findings of fact
27 and conclusions of law~~ finds misconduct, it ~~shall~~ will hold a hearing to receive relevant evidence
28 in aggravation and mitigation, and ~~shall~~ will ~~within five days thereafter,~~ enter an order

Comment [LL64]: Recommendation 8.4

1 sanctioning the respondent. Upon reasonable notice to the parties, the court, at its discretion, may
2 hold the sanctions hearing immediately after the misconduct proceeding.

3 (g) **Review**. Any discipline order by the district court may be reviewed by the Supreme Court
4 through a petition for review pursuant to the Utah Rules of Appellate Procedure.

5

Comment [LL65]: Do both the respondent and OPC have authority to petition the Supreme Court for review of a discipline order? If so, I recommend rewording this to say "Either the OPC or respondent may file with the Supreme Court a petition to review the discipline order."

1 | ~~Rule 14-512. Sanctions.~~

2 | ~~The imposition of sanctions against a respondent who has been found to have engaged in~~
3 | ~~misconduct shall be governed by Chapter 14, Article 6, Imposing Lawyer Sanctions. Rule~~
4 | ~~14-513. Immunity from civil suits.~~

5 | Participants in proceedings conducted under this article shall be entitled to the same
6 | protections for statements made in the course of the proceedings as participants in judicial
7 | proceedings. Except as provided in Utah Rules of Civil Procedure 65A and 65B, the district
8 | courts, Committee members, special counsel appointed pursuant to Rule 14-517(f), supervising
9 | attorneys engaged in pro bono assistance, trustees appointed pursuant to Rule 14-527, and OPC
10 | counsel and staff shall be immune from suit, ~~except as provided in Utah Rules of Civil~~
11 | ~~Procedure 65A and 65B,~~ for any conduct committed in the course of their official duties,
12 | including the investigatory stage. There is no immunity from civil suit for intentional
13 | misconduct.

Comment [LL66]: This seems unnecessary, especially after we combine Articles 5 and 6.

1 **Rule 14-514. Service.**

2 (a) ~~Service of formal~~Serving a **complaint or other petition.** ~~Service of the formal~~Serving a
3 complaint or petition upon the respondent in any action ~~in any disciplinary proceeding or the~~
4 ~~petition in any disability proceeding shall~~must be made in accordance with the Utah Rules of
5 Civil Procedure.

6 (b) ~~Service of~~Serving **other papers.** ~~Service of~~Serving any other papers or notices required by
7 this article ~~shall~~must be made in accordance with the Utah Rules of Civil Procedure.

8

1 **Rule 14-515. Accessing ~~to~~ disciplinary information.**

2 (a) **Confidentiality.** ~~Prior to the~~ Before the OPC filing of a formal complaint initiates an action or
3 ~~the issuance~~ of a public reprimand ~~under~~ pursuant to Rule 14-510 ~~in a discipline matter~~, OPC
4 counsel, OPC ~~employees~~ staff, the Committee, Committee volunteers, Committee staff,
5 Committee employees, special counsel appointed pursuant to Rule 14-517(f), and special counsel
6 employees or assistants, ~~shall~~ must keep the proceeding confidential, ~~except that~~ but the OPC
7 may disclose the pendency, subject matter, and status of an investigation ~~may be disclosed by~~
8 ~~OPC counsel~~ if the proceeding is based ~~up~~ upon allegations ~~that have been~~ disseminated through the
9 mass media, or include either the conviction of a crime or reciprocal public discipline. The
10 proceeding ~~shall is not~~ not be deemed confidential to the extent:

Comment [LL67]: Recommendation 5.7, amendments effective Nov. 1, 2019.

11 (a)(1) the respondent has given an express written waiver of confidentiality;

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

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

17 (a)(4) a referral is made to the Professionalism Counseling Board pursuant to Rule 14-
18 510 (a)(4) or (b)(6)(C)-, ~~In the~~ which event ~~of such a referral~~, OPC counsel, ~~members of~~
19 ~~the~~ Committee members, ~~and of any~~ screening panel members, and ~~members of the~~
20 Professionalism and Civility Counseling Board members may share all information
21 between and among them with the expectation that such information will in all other
22 respects be subject to applicable confidentiality rules or exceptions.

23 (b) **Public proceedings.** ~~Upon the~~ On filing ~~of an action~~ formal complaint in a discipline matter,
24 ~~the filing of a~~ petition for reinstatement, or ~~the filing of a~~ motion or petition for interim
25 suspension, the proceeding is public, except as provided in paragraph (d) below.

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

28 (d) **Protective order.** ~~In order to~~ To protect the interest of a complainant, witness, third party, or
29 respondent, the district court may, ~~upon application~~ on of any person’s request and for good cause

1 | ~~shown~~, issue a protective order prohibiting the disclosure of specific information and direct that
2 | the proceedings be conducted so as to implement the order, including requiring that the hearing
3 | be conducted in such a way as to preserve the confidentiality of the information that is the
4 | subject of the application.

5 | (e) **Request for nonpublic information.** Nonpublic information ~~shall be~~ is confidential, other
6 | than as authorized for disclosure under paragraph (a), unless: ~~(e)(1) the request for information is~~
7 | ~~made by the Board, any Bar committee, a committee or consultant appointed by the Supreme~~
8 | ~~Court or the Board to review OPC operations, or the executive director, and is required in the~~
9 | ~~furtherance of their duties; or t~~

10 | ~~(e)(12) t~~the request for information is approved by OPC and there is compliance with ~~the~~
11 | ~~provisions of~~ paragraphs (f) and (g) of this rule.

12 | (f) **Notice to the respondent.** Except as provided in paragraph (g), if the Committee decides to
13 | provide nonpublic information requested pursuant to paragraph (e), and if the respondent has not
14 | signed an express written waiver permitting the party requesting the information to obtain the
15 | nonpublic information, the respondent ~~shall~~ must be notified in writing at the respondent's ~~last~~
16 | ~~known designated~~ mailing address as shown by Bar records of ~~that~~ the information ~~which that~~ has
17 | been requested and by whom, together with a copy of the information proposed to be released.
18 | The notice ~~shall~~ must advise the respondent that the information ~~shall~~ will be released ~~at the end~~
19 | ~~of~~ 21 days ~~following after the notice's~~ mailing ~~of the notice~~ unless the respondent objects to the
20 | disclosure. If the respondent timely objects to the disclosure, the information ~~shall~~ must remain
21 | confidential unless the requesting party obtains a court order authorizing its release.

22 | (g) **Release without notice.** If a requesting party as outlined in paragraph (e) ~~(2)~~ has not obtained
23 | an express written waiver from the respondent to obtain nonpublic information, and requests that
24 | the information be released without giving notice to the respondent, the requesting party ~~shall~~
25 | must certify that:

26 | (g)(1) the request ~~is made in furtherance of~~ will further an ongoing investigation into the
27 | respondent's misconduct ~~by the respondent~~;

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

Comment [LL68]: Replaced with 11-501(2)(C)

1 | (g)(3) ~~disclosure of~~disclosing the existence of the investigation to the respondent would
2 | seriously prejudice that investigation.

3 | (h) Disclosure without notice. OPC ~~can~~may disclose nonpublic information without notice to
4 | the respondent if:

5 | (h)(1) ~~disclosure is made in furtherance of~~disclosure furthers an ongoing OPC
6 | investigation into the respondent's misconduct ~~by the respondent~~; and

7 | (h)(2) ~~the information that is sought through~~ disclosure is essential to that investigation.

8 | (i) Duty of Pparticipants' duty. OPC counsel, OPC employees, the Committee, Committee
9 | volunteers, Committee staff, Committee employees, special counsel appointed pursuant to Rule
10 | 14-517(f), and special counsel employees or assistants in a proceeding under these rules ~~shall~~
11 | ~~conduct themselves so as to~~ must maintain confidentiality. ~~Except as~~Unless otherwise authorized
12 | ~~by other statutes or rules~~, persons receiving private records under paragraph (e) will not provide
13 | access to the records to anyone else.

14

1 **Rule 14-516. ~~Dissemination of~~Disseminating disciplinary information.**

2 (a) **Notice to disciplinary agencies.** The OPC ~~shall~~must ~~transmit~~send notice of public

3 discipline, resignation with discipline pending, transfers to or from disability status,

4 reinstatements, readmissions, and certified copies of judgments of conviction to the disciplinary

5 enforcement agency of every other jurisdiction in which the respondent is admitted, and to the

6 American Bar Association's National Lawyer Regulatory Database ~~maintained by the American~~

7 ~~Bar Association.~~

8 (b) **Notice to the public.** The ~~executive director~~ OPC ~~shall~~will ~~publish~~cause notices of

9 admonition, public reprimand, suspension, disbarment, resignation with discipline pending,

10 transfer to disability status, and petitions for reinstatement or readmission to:

11 (b)(1) the OPC's website, and

12 (b)(2) be published in the Utah Bar Journal, and

13 ~~(b)(3). The executive director OPC also shall cause notices of suspension, disbarment,~~

14 ~~resignation with discipline pending, transfer to disability status and petitions for~~

15 ~~reinstatement or readmission to be published in a newspaper of general circulation in~~

16 ~~each judicial district within Utah in which the respondent maintained an office for the~~

17 ~~practice of law.~~

18 (c) **Notice to the courts.** The ~~executive director~~ OPC ~~shall~~must promptly ~~cause transmittal~~

19 ~~of~~forward notices of suspension, disbarment, delicensure, resignation with discipline pending,

20 transfer to or from disability status, reinstatement, ~~or~~ readmission, or relicensure to all Utah state

21 courts for licensed paralegal practitioners and both Utah state and federal courts ~~in Utah~~for

22 lawyers.

23

Comment [LL69]: Recommendation 3.1:
OPC should continue the current practice of providing information about disciplinary actions by phone, or other means, for actions more than 10 years old. OPC should publish on its website, the names of attorneys who have been publicly disciplined in the last 10 years. The USB should continue to publish attorney licensure status on the USB website.

1 **Rule _____ . Retaining records.**

2 **(a) No imposed discipline.** The OPC must expunge (i.e. destroy) after three years all records or
3 other evidence of the existence of complaints that the OPC dismisses or declines to prosecute.

4 **(a)(1) Exception.** On OPC’s application, notice to respondent, and a showing of good
5 cause, the Oversight Committee may permit OPC to retain such records for one
6 additional period of time not to exceed three years.

7 **(a)(2) Notice to respondent.** If the OPC contacts the respondent regarding a complaint or
8 otherwise knows the respondent is aware of a complaint, the OPC must give the
9 respondent prompt written notice that a dismissed complaint has been expunged.

10 **(b) Public reprimand, suspension, disbarment.** The OPC must expunge after 30 years all
11 records or other evidence of the existence of complaints that resulted in public reprimand,
12 suspension, or disbarment, running from the date the discipline expired.

13 **(c) Disciplinary history letters.** The OPC must expunge after three years all records of
14 disciplinary history letters, running from the date of the latter.

15 **(d) Requests for information.** The OPC must expunge after three years any other requests for
16 information, running from the date the OPC responds to the request.

17 **(e) Effect of expungement.** After a file has been expunged, any OPC response to an inquiry
18 requiring a reference to the matter must state that there is no record of such matter. The
19 respondent may answer any inquiry requiring a reference to an expunged matter by stating that
20 no complaint was made.

21

1 **Rule 14-517. Additional rules of procedure.**

2 (a) **Governing rules.** ~~Except as~~ Unless otherwise provided in this article, the Utah Rules of Civil
3 Procedure, ~~the~~ Utah Rules of Appellate Procedure ~~governing civil appeals~~, and ~~the~~ Utah Rules of
4 Evidence apply in formal discipline actions and disability actions.

5 (b) **Standard of proof.** ~~A Formal complaints of~~ misconduct action, petitions for reinstatement
6 and readmission or relicensure, and petitions for transfer to and from disability status ~~shall will~~
7 be established by a preponderance of the evidence. ~~A M~~ otions for interim suspension ~~pursuant~~
8 ~~to~~ under Rule 14-518 ~~shall will also~~ be established by a preponderance of the clear and
9 convincing evidence.

Comment [LL70]: Recommendation 7.3

10 (c) **Burden of proof.** The OPC carries the burden of proof in discipline proceedings and seeking
11 discipline or transfers to disability status ~~is on the OPC~~. The respondent carries the burden of
12 proof in ~~proceedings~~ seeking a reversal of a screening panel recommendation of discipline, ~~or~~
13 ~~seeking~~ reinstatement, readmission, relicensure, or transfer from disability status ~~is on the~~
14 ~~respondent~~.

15 (d) **Related pending litigation.** ~~Upon a showing of good cause, a~~ An formal action or a disability
16 proceeding may be stayed because of substantial similarity to the material allegations of a
17 pending criminal, civil, or disciplinary action.

Comment [LL71]: Who carries this burden?

18 (e) **The complainant's actions.** Disciplinary proceedings will not be abated due to:

19 (e)(1) Neither unwillingness of the complainant's unwillingness to prosecute an informal
20 or formal complaint; ~~nor~~

21 (e)(2) settlement or compromise between the complainant and the respondent; ~~or~~

22 (e)(3) nor restitution by the respondent; ~~shall, in and of itself, justify abatement of~~
23 ~~disciplinary proceedings.~~

24 (f) ~~Informal and formal complaints~~ Complaints and actions against OPC counsel,
25 Committee members, the BoardBar Commission, or lawyers employed by the Utah State
26 Bar. The Committee chair will assign a screening panel ~~A any informal-complaint or actions~~ filed
27 against OPC counsel, ~~a members of the~~ Committee member, a BoardBar Commission member,
28 or a lawyer employed by the Utah State Bar, ~~or a member of the Board~~ ~~shall be assigned by the~~

1 ~~Chair to a screening panel.~~ The ~~chair of the~~ assigned panel ~~chair shall will~~ review the ~~informal~~
2 complaint and ~~any~~ additional material, ~~if any~~; that the screening panel ~~chair~~ ~~chair~~ asks the
3 respondent to provide.

4 ~~(f)(1) A n informal~~ complaint ~~will be dismissed without hearing by a screening panel~~
5 ~~if~~ ~~which~~, ~~upon~~ ~~after~~ consideration of all factors, ~~the chair determines the complaint is~~ ~~is~~
6 ~~determined by the screening panel chair to be~~

7 ~~(f)(1)(A) frivolous~~ ~~or~~; unintelligible;:

8 ~~(f)(1)(B) barred by the statute of limitations~~;

9 ~~(f)(1)(C) is~~ being or should have been addressed in another more appropriate
10 forum; ~~or~~

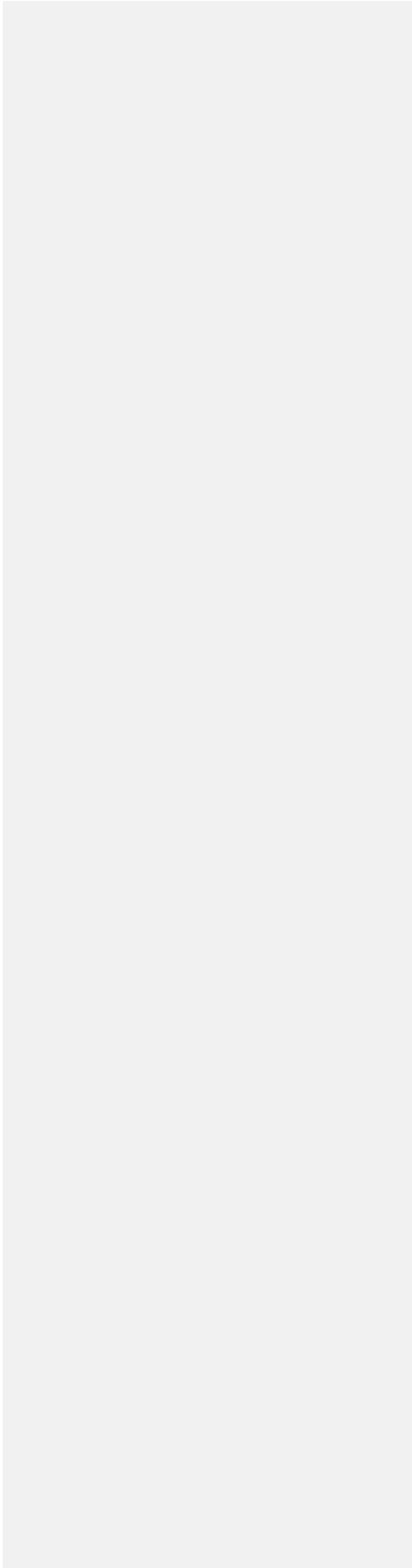
11 ~~(f)(1)(D) -~~unsupported by fact or ~~which~~ does not raise probable cause of
12 any ~~unprofessional~~ ~~conduct~~, ~~shall be dismissed without hearing by a screening~~
13 ~~panel~~.

14 ~~(f)(2) -~~The ~~chair of the~~ screening panel ~~chair shall must~~ notify the complainant of the
15 dismissal ~~and~~ ~~stating~~ the reasons ~~therefor~~ ~~for~~ ~~dismissal~~.

16 ~~(f)(3) The complainant may appeal a~~ ~~the screening panel chair's~~ dismissal ~~by the chair of~~
17 ~~the screening panel~~ to the Committee ~~chair~~ ~~chair~~ within 15 days after notification of the
18 dismissal is mailed.

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

21 ~~(f)(5) If the screening panel~~ ~~chair~~ ~~chair~~ determines not to dismiss the complaint, or the
22 Committee ~~chair~~ ~~chair~~ reverses the dismissal on appeal, the Committee ~~chair~~ ~~chair~~ ~~shall~~
23 ~~must~~ request that the Supreme Court appoint a special counsel to present the case, and if
24 necessary, a special screening panel. In all other respects, the matter ~~shall will~~ proceed in
25 accordance with this article. Special counsel ~~shall must~~ be a lawyer outside of the OPC
26 appointed by the Supreme Court to act as counsel for investigation and prosecution of the
27 disciplinary complaint. Special counsel ~~shall must~~ notify the OPC of the results of the
28 investigation.



1 **Rule 14-518. Interim ~~suspension~~ discipline for threat of harm.**

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

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

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

13 ~~An action is commenced under this rule when the petition for interim suspension is filed.~~

14 (b) **Immediate interim ~~suspension~~ discipline**. After conducting a hearing on the petition, the
15 district court may enter an order immediately suspending the respondent, limiting the
16 respondent's practice area, or requiring supervision of the respondent pending final disposition
17 of a disciplinary proceeding ~~predicated upon the conduct causing the harm~~, or may order such
18 other action as deemed appropriate. If an order is entered:

19 (b)(1) the district court may appoint a trustee, pursuant to Rule 14-527, to protect the
20 interests of the respondent's clients; and

21 (b)(2) the OPC may file ~~a formal complaint~~ a misconduct action in the district court
22 without presenting the matter to a screening panel.

23 (c) **Notice to clients**. A respondent ~~suspended~~ subject to interim discipline pursuant to paragraph

24 (b) ~~shall~~ must comply with the notice requirements in Rule 14-526 as ordered by the district
25 court.

26 (d) **Motion ~~for dissolution of~~ to dissolve or modify interim ~~suspension~~ discipline**. On ~~two~~ 48
27 hours' ~~days~~ notice to ~~the~~ OPC ~~counsel~~, a respondent suspended pursuant to paragraph (b) may
28 appear and move ~~for dissolution or modification of the~~ to dissolve or modify the order of

Comment [LL72]: Recommendations 7.1 and 7.3

Comment [LL73]: Recommendation 7.3 (permit OPC to request and Court to impose other types of interim orders to protect the public)

Comment [LL74]: Recommendation 7.3

Comment [LL75]: I think this may not be necessary.

1 | ~~suspension~~discipline, and ~~in that event, the~~such motion ~~shall~~will be heard and determined as
2 | expeditiously as ~~the ends of~~ justice requires.
3 |

1 **Rule 14-519. Lawyers ~~found guilty~~ convicted of a crime.**

2 (a) ~~Transmittal of~~ **Forwarding the judgment of guilt** ~~conviction~~ **(after a finding or admission**

3 **of guilt).** ~~The court in which~~ When a lawyer is ~~guilty~~ convicted of or has entered a plea in

4 ~~abeyance for~~ any felony or ~~of any~~ misdemeanor ~~which that~~ reflects adversely on the lawyer's

5 honesty, trustworthiness, or fitness as a lawyer, ~~the court shall~~ will forward a certified copy of the

6 ~~judgment to OPC;~~ — within 30 days after the ~~judgment of guilt~~ conviction, ~~— transmit a certified~~

7 ~~copy of the judgment of conviction to OPC counsel.~~

8 (b) **Motion for interim suspension.** On being advised that a lawyer has been ~~found guilty~~

9 ~~convicted~~ of ~~or has entered a plea in abeyance for a felony or misdemeanor~~ ~~crime which that~~

10 reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer, OPC ~~shall~~

11 ~~must~~ determine whether the crime warrants interim suspension. Upon a determination that the

12 crime warrants interim suspension, OPC ~~shall~~ must file a ~~suspension~~ ~~formal complaint~~ ~~action,~~

13 accompanied by the certified copy of the judgment ~~of conviction,~~ and concurrently file a motion

14 for immediate interim suspension. ~~A~~ ~~suspension~~ action ~~is commenced~~ commences under this

15 rule when both the petition for interim suspension and the ~~formal~~ complaint are filed. The

16 respondent may assert any jurisdictional deficiency ~~which establishing~~ establishes that the interim

17 suspension may not properly be ordered, such as ~~that~~ the crime ~~is not a felony or a misdemeanor~~

18 ~~which that does not~~ reflects adversely on the respondent's honesty, trustworthiness, or fitness as a

19 lawyer, or that the respondent is not the individual ~~found guilty~~ convicted. ~~The respondent is not~~

20 ~~entitled to an evidentiary hearing but may request an informal hearing, solely to determine~~

21 ~~whether the finding or admission of guilt was for a felony or misdemeanor that reflects adversely~~

22 ~~on the respondent's honesty, trustworthiness, or fitness to practice law.~~ If an order for interim

23 suspension is not obtained, ~~the OPC must dismiss the~~ ~~formal complaint~~ suspension action ~~shall~~

24 ~~and must be dismissed and OPC counsel shall~~ will process the matter as it does any other

25 information coming to the ~~OPC's~~ attention ~~of the OPC.~~

26 (c) **Imposition.** The district court ~~shall~~ will place a respondent on interim suspension upon proof

27 that the respondent has been ~~found guilty~~ convicted of a ~~felony or a misdemeanor~~ ~~crime~~

28 ~~which that~~ reflects adversely on the respondent's honesty, trustworthiness, or fitness as a lawyer

29 regardless of ~~any~~ the pendency ~~of any~~ appeal.

Comment [LL76]: Recommendation 7.4

Comment [LL77]: Recommendation 7.4

- 1 | (d) ~~Dissolution of~~Dissolving interim suspension. Interim suspension may be dissolved as
2 | provided in Rule 14-518(d).
- 3 | (e) Judgment of guilt~~Conviction~~ as conclusive evidence. Except as provided in paragraph (b),
4 | a certified copy of thea judgment ~~of conviction~~ constitutes conclusive evidence that the
5 | respondent committed the crime.
- 6 | (f) **Automatic reinstatement from interim suspension upon reversal of judgment~~conviction~~.**
7 | If a respondent suspended solely under ~~the provisions of~~ paragraph (c) demonstrates that the
8 | underlying judgment~~conviction~~ has been reversed or vacated, the order for interim suspension
9 | ~~shall will~~ be vacated and the respondent placed on active status. ~~The vacating of~~Vacating the
10 | interim suspension ~~shall will~~ not automatically terminate any disciplinary proceeding then
11 | pending against the respondent, the disposition of which ~~shall will~~ be determined based upon~~on~~
12 | ~~the basis of~~ the available evidence other than the judgment~~conviction~~.
- 13 | (g) **Notice to clients and other of interim suspension.** An interim suspension under this rule
14 | ~~shall~~ constitutes sa suspension of the respondent for the purpose of Rule 14-526.
15

1 **Rule 14-520. Discipline by consent.**

2 (a) **Discipline by consent prior to filing a misconduct action of formal complaint.** A
3 respondent against whom a ~~n informal~~ complaint has been filed may, ~~prior to the~~ before the OPC
4 files ~~ing of a formal complaint~~ misconduct action, tender a proposal for discipline by consent,
5 including a conditional admission to the ~~informal~~ complaint or portions thereof in exchange for a
6 disciplinary sanction and final disposition of the ~~informal~~ complaint. The proposal ~~shall~~ must
7 include a waiver of right to a screening panel hearing. The respondent must submit the
8 proposal ~~shall~~ to the OPC, who ~~shall~~ will forward the proposal to the Committee chair with a
9 recommendation in favor of or opposed to the proposal and a statement of the basis for such
10 recommendation. If the Committee chair approves the proposal ~~is approved by the Committee~~
11 ~~chair~~, the sanction ~~shall~~ will be imposed as provided in this rule. If the proposal is rejected by the
12 Committee chair, the proposal and admission ~~shall~~ will be withdrawn and cannot be used against
13 the respondent in subsequent proceedings.

14 (b) **Discipline by consent after filing of formal complaint a misconduct action.** A respondent
15 against whom an ~~an action formal complaint~~ has been filed may tender a conditional admission to
16 the allegations in the OPC's ~~formal~~ complaint or to a particular count thereof in exchange for a
17 stated form of discipline and final disposition of the ~~formal complaint~~ action. The proposal
18 ~~shall~~ must be submitted to OPC ~~counsel~~, who ~~shall~~ will then forward the proposal to the district
19 court with a recommendation favoring or opposing the proposal and a statement of the basis for
20 such recommendation. The district court ~~shall~~ will either approve or reject the proposal. If the
21 district court approves the proposal and the stated form of discipline includes public discipline, it
22 ~~shall~~ will enter the appropriate disciplinary order as provided in paragraph (d). If the district court
23 rejects the proposal, the proposal and conditional admission ~~shall~~ will be withdrawn and cannot
24 be used against the respondent in subsequent proceedings.

25 (c) **Order of discipline by consent.** The final order of discipline by consent ~~shall~~ will be
26 predicated ~~upon~~:

27 (c)(1) the ~~informal~~ complaint and ~~any NOIC~~ the OPC's notice to the respondent if no
28 ~~formal complaint~~ action has been filed;

29 (c)(2) the ~~formal complaint~~ misconduct action, if filed;

1 (c)(3) the approved proposal for discipline by consent; and

2 (c)(4) an affidavit of consent by the respondent to be disciplined.

3 (d) **Affidavit of consent.** A respondent whose proposal for discipline by consent has been
4 approved as provided in this rule, ~~shall~~must submit an affidavit to the Committee chair or the
5 district court as appropriate, consenting to ~~the imposition of~~ the approved disciplinary sanction
6 and affirming that:

7 (d)(1) the consent is freely and voluntarily entered;

8 (d)(2) the respondent is not acting under coercion or duress;

9 (d)(3) the respondent is fully aware of the implications of submitting the consent;

10 (d)(4) the respondent is aware that there is presently pending an investigation into, or
11 proceeding involving, allegations that there exist grounds for discipline, the nature of
12 which ~~shall~~must be specifically set forth;

13 (d)(5) for purposes of disciplinary proceedings, the respondent acknowledges that the
14 material facts so alleged are true; and

15 (d)(6) the respondent submits consent because the respondent knows that if a misconduct
16 action ~~n informal or formal complaint were~~ predicated ~~up~~ upon the ~~matters~~allegations under
17 investigation were filed, or the pending action~~formal charges~~ were prosecuted, the
18 respondent could not successfully defend against the charges upon which the discipline is
19 based.

20

21

1 **Rule 14-521. Resignation with discipline pending.**

2 (a) A respondent may resign from the Bar, prior to the adjudication of a pending complaint, only
3 with the consent of the Supreme Court and upon such terms as the Supreme Court may impose
4 for the protection of the public.

5 (b) The respondent ~~shall~~must submit a sworn petition:

6 (b)(1) admitting for purposes of the disciplinary proceedings the facts upon which the
7 allegations of misconduct are based;

8 (b)(2) admitting that the facts constitute grounds for discipline;

9 (b)(3) stating that the respondent's resignation is freely and voluntarily tendered and that
10 it is submitted without coercion or duress;

11 (b)(4) verifying that the respondent is fully aware of the implications of submitting the
12 resignation;

13 (b)(5) acknowledging that the discipline matter, the petition, and the sanction ~~shall~~will
14 be available to the public and that a notice of the resignation ~~shall~~will be published in the
15 Utah Bar Journal;

16 (b)(6) agreeing to comply with these rules, including Rule 14-526(b) regarding notice to
17 clients and return of clients' property; and

18 (b)(7) agreeing to comply with other Supreme Court orders ~~of the Supreme Court~~.

19 (c) A copy of the petition ~~shall~~must be submitted to OPC ~~counsel~~. OPC ~~counsel~~ may, within 20
20 days, object to the petition. If OPC ~~counsel~~ consents to the petition, the Supreme Court ~~shall~~will
21 review the petition and enter an appropriate order. If OPC ~~counsel~~ files a timely objection, the
22 matter ~~shall~~will be set for hearing in the district court. Within ten days after the hearing, the
23 district court will transmit its's findings of fact and conclusions of law ~~shall be transmitted~~ to the
24 Supreme Court ~~for~~to review and ~~the entry of~~enter an appropriate order.

25 (d) If the Supreme Court accepts the resignation, it will~~shall~~ enter an order specifying the
26 effective date of the resignation. The order may include additional or alternative terms and
27 conditions deemed appropriate, including conditions precedent to readmission or relicensure.

1 (e) A respondent whose resignation is accepted must comply with Rule 14-525 and may not
2 apply for readmission [or relicensure](#) until five years after the effective date of the resignation
3 unless the Supreme Court orders otherwise in ~~the~~ [its](#) order accepting the resignation.
4

1 **Rule 14-522. Reciprocal discipline.**

2 (a) **Duty to notify OPC of discipline or transfer to disability inactive status.** When another
3 court, jurisdiction, or regulatory body having disciplinary jurisdiction publicly disciplines or
4 transfers to disability inactive status a lawyer admitted to practice in Utah, ~~Upon being publicly~~
5 disciplined by another court, another jurisdiction, or a regulatory body having disciplinary
6 jurisdiction, a lawyer admitted to practice in Utah shall ~~such~~ lawyer must inform the OPC of the
7 discipline or transfer within 30 days. If the OPC receives notification ~~inform the OPC of the~~
8 discipline. ~~Upon~~ notification from any source that a lawyer within the Supreme Court's
9 jurisdiction of the Supreme Court has been publicly disciplined or transferred to disability
10 inactive status by another court, another jurisdiction, or a regulatory body having disciplinary
11 jurisdiction any other jurisdiction, OPC ~~shall~~ must obtain a certified copy of the disciplinary
12 order.

13 (b) ~~Notice served upon~~ Serving notice on lawyer. ~~Upon receipt of~~ On receiving a certified copy
14 of an order demonstrating that a lawyer admitted to practice in Utah has been publicly
15 disciplined or transferred to disability inactive status by another court, ~~another~~ jurisdiction, or a
16 regulatory body having disciplinary jurisdiction, OPC ~~shall~~ will issue a notice directed to the
17 lawyer containing:

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

19 (b)(2) a notice giving the lawyer the right to inform OPC, within 30 days from service of
20 the notice, of any claim by the lawyer predicated ~~upon~~ on the grounds set forth in paragraph

21 (d), that the imposition of the equivalent discipline or transfer in Utah would be
22 ~~unwarranted, and~~ unwarranted and stating the reasons for that claim.

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

26 (d) **Discipline to be imposed.** Upon the expiration of 30 days from service of the notice ~~pursuant~~
27 ~~to~~ under paragraph (b), the district court ~~shall~~ will take such action as may be appropriate to cause
28 the equivalent discipline or transfer to be imposed in this jurisdiction, unless it clearly appears
29 ~~upon~~ on the face of the record from which the discipline or transfer is predicated that:

1 (d)(1) the procedure was so lacking in notice or opportunity to be heard as to constitute a
2 deprivation of due process;

3 (d)(2) the imposition of equivalent discipline would result in grave injustice; ~~or~~

4 (d)(3) the misconduct ~~established~~ warrants substantially different discipline in Utah or is
5 not misconduct in this jurisdiction; or

6 (d)(4) the reason for the original transfer to disability inactive status no longer exists.-

7 If the district court determines that any of these elements exist, it ~~shall~~will enter such other order
8 as it deems appropriate. The burden is on the ~~respondent~~lawyer seeking different discipline or
9 transfer to demonstrate that the imposition of equivalent discipline or transfer is not appropriate.

10 (e) ~~Conclusiveness of adjudication in o~~Other jurisdictions' final adjudications. Except as
11 provided in paragraphs (c) and (d) above, a respondent who has been found guilty of misconduct
12 or is transferred to disability inactive status in a final adjudication of ~~the an~~ other court,
13 jurisdiction, or regulatory body ~~that a respondent has been guilty of misconduct or should be~~
14 ~~transferred to disability inactive status shall~~ will establish conclusively the misconduct or the
15 disability for purposes of a disciplinary or disability proceeding in Utah.

16

1 **Rule 14-523. Proceedings in which lawyer is declared to be incompetent or alleged to be**
2 **incapacitated.**

3 (a) **Involuntary commitment or adjudication of incompetency.** If a lawyer has been judicially
4 declared incompetent or is involuntarily committed on the grounds of incompetency, ~~then OPC~~
5 ~~counsel,~~ upon proper proof of the fact, ~~shall~~ OPC must file a petition with the district court for the
6 immediate transfer of the lawyer to disability status for an indefinite period until further order of
7 the district court. OPC must serve a ~~A~~ copy of the order ~~shall be served by OPC counsel up~~ on the
8 lawyer or the lawyer's guardian or, if no guardian or legal representative has been appointed,
9 ~~up~~ upon the director of the institution to which the lawyer has been committed.

10 (b) **Inability to properly defend.** If a lawyer alleges in the course of a disciplinary proceeding
11 an inability to assist in the defense due to mental or physical incapacity, the district court
12 ~~shall will~~ immediately transfer the lawyer to disability status pending determination of the
13 incapacity.

14 (b)(1) If the district court determines the claim of inability to defend is valid, the
15 disciplinary proceeding ~~shall will~~ be deferred and the lawyer retained on disability status
16 until the district court subsequently considers a petition for transfer of the lawyer to
17 active status. If the district court considering the petition for transfer to active status
18 determines the petition should be granted, the interrupted disciplinary proceedings may
19 resume.

20 (b)(2) If the district court determines the claim of incapacity to defend to be invalid, the
21 disciplinary proceeding ~~shall will~~ resume.

22 (c) **Proceedings to determine incapacity.** Information relating to a lawyer's physical or mental
23 condition ~~which that~~ adversely affects the lawyer's ability to practice law ~~shall will~~ be
24 investigated, and if warranted, ~~shall will~~ be the subject of formal proceedings to determine
25 whether the lawyer ~~must shall~~ be transferred to disability status. Hearings ~~shall will~~ be conducted
26 in the same manner as disciplinary proceedings, except that all of the proceedings ~~shall will~~ be
27 confidential. The district court ~~shall will~~ provide the lawyer with ~~for~~ such notice ~~to the lawyer~~ of
28 proceedings in the matter as it deems proper and advisable and may appoint counsel to represent
29 the lawyer if the lawyer is without adequate representation. The district court may take or direct
30 whatever action it deems necessary or proper to determine whether the lawyer is so

1 incapacitated, including designating qualified experts to~~the examination of~~ the lawyer ~~by~~
2 ~~qualified experts designated by the district court~~. If, ~~upon due consideration of the matter,~~ the
3 district court concludes that the lawyer is incapacitated from continuing to practice law, it ~~shall~~
4 will enter an order transferring the lawyer to disability status for an indefinite period and until the
5 further order ~~of the district court~~. Any pending disciplinary proceedings against the lawyer ~~shall~~
6 will be held in abeyance.

7 (d) **Reinstatement from disability status.**

8 (d)(1) Court order. No lawyer transferred to disability status may resume active status
9 except by district court order ~~of the district court~~.

10 (d)(2) Petition. Any lawyer transferred to disability status ~~is~~shall be entitled to petition for
11 transfer to active status once a year, or at whatever shorter intervals the district court may
12 direct in the order transferring the lawyer to disability status or any modifications thereof.

13 (d)(3) Examination. ~~Upon the filing of~~On filing a petition for transfer to active status, the
14 district court may take or direct whatever action it deems necessary or proper to
15 determine whether the disability has been removed, including directing designated
16 qualified experts to a~~direction for an~~ examination of the lawyer ~~by qualified experts~~
17 ~~designated by the district court~~. In its discretion, the district court may direct the lawyer
18 to pay the examination expense~~that the expense of the examination be paid by the lawyer~~.

19 (d)(4) Waiver of privilege. ~~When~~with the filing ~~of~~ a petition for reinstatement to active
20 status, the lawyer ~~shall~~will be required to disclose the name of each psychiatrist,
21 psychologist, physician, or other health care provider and hospital or other institution by
22 whom or in which the lawyer has been examined or treated related to the disability since
23 the transfer to disability status. The lawyer ~~shall~~must furnish written consent to each
24 listed provider to divulge information and records relating to the disability if requested by
25 the district court or the district court's appointed experts.

26 (d)(5) Learning in law; Bar ~~E~~examination. The district court may also direct that the
27 lawyer establish proof of competence and learning in law, which proof may include the
28 Bar's certification ~~by the Bar of that the lawyer has~~ successfully ~~completion of an~~
29 examination for admission to practice.

1 | (d)(6) Granting petition for transfer to active status. The district court ~~shall~~will grant the
2 | petition for transfer to active status ~~up~~on a showing by clear and convincing evidence that
3 | the disability has been removed.

4 | (d)(7) Judicial declaration of competence. If a lawyer transferred to disability status on
5 | the basis of a judicial determination of incompetence is subsequently judicially declared
6 | to be competent, the district court may dispense with further evidence that the lawyer's
7 | disability has been removed and may immediately order the lawyer's reinstatement to
8 | active status upon terms as are deemed proper and advisable.

9 |

1 **Rule 14-524. Reinstatement following a suspension of no more than six months~~-or less~~.**
2 A respondent who has been suspended for no more than six months~~-or less~~ pursuant to
3 disciplinary proceedings ~~shall~~will be reinstated at the end of the suspension period~~-of suspension~~
4 upon filing with the district court and serving ~~upon~~ OPC ~~counsel~~ an affidavit stating that the
5 respondent has fully complied with the requirements of the suspension order and that the
6 respondent has fully reimbursed the Bar's Lawyers' Fund for Client Protection or Licensed
7 Paralegal Practitioners' Fund for Client Protection for any amounts paid on account of the
8 respondent's conduct. Within ten days, OPC ~~counsel~~ may file an objection and ~~thereafter~~ the
9 district court ~~shall conduct~~will hold a hearing.

10

1 **Rule 14-525. Reinstatement following a suspension of more than six months; readmission**
2 **or relicensure.**

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

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

21 (c) **Service of petition.** The respondent ~~shall~~must serve OPC with a copy of the petition ~~upon~~
22 ~~OPC counsel.~~

23 (d) **Publication of notice of petition.** ~~At the time~~When a respondent files a petition for
24 reinstatement or readmission, OPC ~~counsel shall~~must:

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

26 (d)(1)(A) ~~The notice shall~~ informs Bar members ~~of the Bar of~~ about the
27 application for reinstatement or readmission, and

28 (d)(1)(B) ~~shall~~ requests that any individuals file notice of their opposition or
29 concurrence with the district court within 30 days of the date of publication; and

1 (d)(2) send a ~~In addition, OPC counsel shall notify to each complainant the~~
2 complainant's last known address according to OPC records, to each complainant in the
3 disciplinary proceeding that led to the respondent's suspension or disbarment informing
4 such complainant that:

5 (d)(2)(A) the respondent is applying for reinstatement or readmission; ~~and shall~~

6 ~~(d)(3) inform each complainant that~~ the complainant has 30 days from the date of
7 mailing to raise objections to or to support the respondent's petition. ~~Notice shall~~
8 ~~be mailed to the last known address of each complainant in OPC counsel's~~
9 ~~records.~~

10 (e) **Criteria for reinstatement and readmission.** A respondent may be reinstated or readmitted
11 only if the respondent meets each of the following criteria, or, if not, presents good and sufficient
12 reason why the respondent should nevertheless be reinstated or readmitted.

13 (e)(1) The respondent has fully complied with the terms and conditions of all prior
14 disciplinary orders except to the extent they are abated by the district court.

15 (e)(2) The respondent has not engaged nor attempted to engage in the unauthorized
16 practice of law during the period of suspension or disbarment.

17 (e)(3) If the respondent was suffering from a physical or mental disability or impairment
18 which was a causative factor of the respondent's misconduct, including substance abuse,
19 the disability or impairment has been removed. Where substance abuse was a causative
20 factor in the respondent's misconduct, the respondent ~~shall~~ must not be reinstated or
21 readmitted unless the respondent:

22 (e)(3)(A) ~~the respondent~~ has recovered from the substance abuse as demonstrated
23 by a meaningful and sustained period of successful rehabilitation;

24 (e)(3)(B) ~~the respondent~~ has abstained from the use of the abused substance and
25 the unlawful use of controlled substances for the preceding six months; and

26 (e)(3)(C) ~~the respondent~~ is likely to continue to abstain from the substance abused
27 and the unlawful use of controlled substances.

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

7 (e)(5) The respondent has kept informed about recent developments in the law and is
8 competent to practice.

9 (e)(6) In cases of suspensions for one year or more, the respondent ~~shall~~ will be required
10 to pass the Multistate Professional Responsibility Examination.

11 (e)(7) In all cases of disbarment, the respondent ~~shall~~ will be required to pass the student
12 applicant Bar Examination and the Multistate Professional Responsibility Examination.

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

16 (f) **Review of petition.** Within 60 days ~~after of~~ receiving a respondent's petition for
17 reinstatement or readmission, OPC ~~must~~ counsel shall either:

18 (f)(1) advise the respondent and ~~the~~ district court that OPC ~~counsel~~ will not object to the
19 respondent's reinstatement or readmission; or

20 (f)(2) file a written objection to the petition.

21 (g) **Hearing; report.** If OPC files an objection ~~is filed by OPC counsel~~, the district court, as soon
22 as reasonably practicable and within a target date of 90 days of the filing of the petition, ~~shall~~ will
23 conduct a hearing at which the respondent ~~shall~~ will have the burden of demonstrating by a
24 preponderance of the evidence that the respondent has met each of the criteria in paragraph (e)
25 or, if not, that there is good and sufficient reason why the respondent should nevertheless be
26 reinstated or readmitted. The district court ~~shall~~ will enter its findings and order. If OPC does not
27 file an ~~no~~ objection ~~is filed by OPC counsel~~, the district court ~~shall~~ will review the petition
28 without a hearing and enter its findings and order.

1 (h) **Successive petitions.** Unless otherwise ordered by the district court, no respondent ~~shall~~may
2 apply for reinstatement or readmission within one year following an adverse judgment ~~upon~~
3 petition for reinstatement or readmission.

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

9 (j) **Reciprocal reinstatement or readmission.** If a respondent has been suspended or disbarred
10 solely ~~on the basis~~because of discipline imposed by another court, another jurisdiction, or a
11 regulatory body having disciplinary jurisdiction, and if the respondent is later reinstated or
12 readmitted by that court, jurisdiction, or regulatory body, the respondent may petition for
13 reciprocal reinstatement or readmission in Utah. The respondent ~~shall~~must file with the district
14 court and serve ~~upon~~upon OPC ~~counsel~~a petition for reciprocal reinstatement or readmission, ~~as the~~
15 ~~ease may be~~. The petition ~~shall~~must include a certified or otherwise authenticated copy of the
16 order of reinstatement or readmission from the other court, jurisdiction, or regulatory body.
17 Within 20 days of ~~receiving service of~~receiving service of the petition, OPC ~~counsel~~may file an objection ~~thereto~~
18 based solely ~~upon~~upon substantial procedural irregularities. If ~~the OPC objects~~an objection is filed,
19 the district court ~~shall~~will hold a hearing and enter its findings and order. If no objection is filed,
20 the district court ~~shall~~will enter its order based ~~upon~~upon the petition.

21

1 **Rule 14-526. Notice of disability or suspension; return of clients' property; refund of**
2 **unearned fees.**

3 (a) **Effective date of order; winding up affairs.** Each order that imposes disbarment or
4 suspension is effective 30 days after the order's date ~~of the order~~, or at such ~~other~~ time as the
5 order provides. Each order that transfers a respondent to disability status is effective immediately
6 ~~upon the date of the order~~, unless the order otherwise provides. After the court enters ~~y~~ of any
7 order of disbarment, suspension, or transfer to disability status, the respondent ~~shall~~ may not
8 accept any new retainer or employment as a lawyer in any new case or legal matter; ~~provided,~~
9 ~~however~~ except, that during any period between the date an order is entered ~~of entry of an order~~
10 and its effective date, the respondent may, with the consent of the client after full disclosure,
11 wind up or complete any matters pending on the date the order is entered ~~of entry of the order~~.

12 (b) **Notice to clients and others.** In every case in which a respondent is disbarred or suspended
13 for more than six months, the respondent ~~shall~~ must, within 20 days after the order is entered ~~of~~
14 ~~the entry of the order~~, accomplish the following acts:

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

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

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

1 (b)(5) in each matter pending before a court, agency, or tribunal, notify opposing counsel
2 or, in the absence of counsel, the adverse party, of the respondent's disbarment or
3 suspension and consequent disqualification to further participate as a lawyer in the
4 matter;

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

7 (b)(7) within ten days after the effective date of disbarment or suspension, file an
8 affidavit with OPC ~~counsel~~ showing complete performance of the foregoing requirements
9 ~~of this rule~~. The respondent ~~shall~~must keep and maintain for OPC's inspection ~~by OPC~~
10 ~~counsel~~ all records of the steps taken to accomplish the requirements of this rule.

11 (c) **Lien.** Any attorney's lien for services rendered ~~which~~that are not tainted by reason of
12 disbarment or suspension ~~shall~~may not be rendered invalid merely because of the order of
13 discipline.

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

18 (e) **Compliance.** Substantial compliance with the provisions of paragraphs (a), (b) and (d)
19 ~~shall~~will be a precondition for reinstatement or readmission. Willful failure to comply with
20 paragraphs (a), (b) and (d) ~~shall~~ constitute contempt of court and may be punished as such or by
21 further disciplinary action.

22

1 **Rule 14-527. Appointment of trustee to protect clients' interest when lawyer disappears,**
2 **dies, is suspended or disbarred, or is transferred to disability status.**

3 (a) **Protective appointment of trustee.** If a lawyer has disappeared or died, or if a respondent
4 has been suspended or disbarred or transferred to disability status, and if there is evidence that
5 the lawyer or respondent has not complied with the provisions of Rule 14-526 and no partner,
6 executor, or other responsible party capable of conducting the lawyer's or respondent's affairs is
7 known to exist, a district judge of the judicial district in which the lawyer or respondent
8 maintained a principal office may, on the OPC's request, appoint a trustee to inventory the
9 lawyer's or respondent's files, notify the lawyer's or respondent's clients, distribute the files to
10 the clients, return unearned fees and other funds, and take any additional action the judge
11 authorizes.

12 (b) **Confidentiality.** No attorney-client relationship exists between the client and the trustee
13 except to the extent necessary to maintain and preserve the client's confidentiality ~~of the client~~.
14 The trustee ~~shall~~may not disclose any information contained in the files so inventoried without
15 the consent of the client to whom such files relate, except as necessary to carry out the court's
16 order ~~of the court~~ making the appointment.

17 (c) **Immunity.** Any person appointed as a trustee ~~shall~~has~~have~~ the immunity granted by Rule
18 14-513.

19

1 **Rule 14-528. Appeal by complainant.**
2 ~~The complainant shall not have a right of appeal, except as provided in Rule 14-510(a)(7) to~~
3 ~~appeal a dismissal of an informal complaint.~~
4

Comment [LL79]: This language has been fully incorporated into Rule 14-510(a)(7).

1 **Rule 14-529. Statute of limitations.**

2 | Proceedings under this article ~~shall~~must be commenced within four years of ~~the discovery~~
3 | ~~of discovering~~ the acts allegedly constituting a violation of the Rules of Professional Conduct or
4 | Licensed Paralegal Practitioner Rules of Professional Conduct.

5

1 **Rule 14-530. Costs.**

2 | (a) **Assessment.** The prevailing party in a ~~proceeding on a formal complaint~~misconduct action
3 may be awarded judgment for costs in accordance with Rule 54(d) of the Utah Rules of Civil
4 Procedure.

5 | (b) **Offer of discipline by consent.** OPC ~~counsel shall~~will not be deemed to have prevailed in
6 the action on any count of the complaint ~~in the formal complaint~~ unless the sanction imposed
7 exceeds any sanction to which the respondent conditionally consented under Rule 14-520(b)
8 ~~prior to~~before the hearing.

9 | (c) **Disability cases.** Costs ~~shall~~will not be awarded in disability cases except pursuant to
10 paragraph (d).

11 | (d) **Trusteeship.** Court-appointed trustees, including the OPC in cases in which ~~it~~OPC is
12 appointed the trustee, may collect costs for ~~notification to~~notifying the respondent's clients,
13 including charges for copying, postage, publication, and fees from money collected.

14

1 **Rule 14-531. Noncompliance with child support order, child visitation order, subpoena or**
2 **order relating to paternity or child support proceeding.**

3 | (a) Upon ~~entry of~~entering an order holding a lawyer in contempt for the lawyer's noncompliance
4 | with a child support order, child visitation order, or a subpoena or order relating to a paternity or
5 | child support proceeding, a district court may suspend the lawyer's license to engage in the
6 | practice of law consistent with applicable law and, if suspended, ~~shall~~will also impose
7 | conditions of reinstatement.

8 | (b) If a district court suspends a lawyer's license to engage in the practice of law, the court ~~shall~~
9 | will provide a copy of the order to the OPC.

10

11

1 **Rule 14-532. Failure to answer charges.**

2 (a) **Failure to answer.** If having received actual notice of the charges filed, the respondent fails
3 to answer the charges within 20 days, the respondent ~~shall~~will be deemed to have admitted the
4 factual allegations.

5 (b) **Failure to appear.** If the Committee orders the respondent to appear and the respondent,
6 ~~having been ordered by the Committee to appear and~~ having received actual notice of that order,
7 fails to appear, the respondent ~~shall~~will ~~have been~~ deemed to have admitted the factual
8 allegations which were the subject of such appearance. The Committee ~~may~~shall not, absent
9 good cause, continue or delay proceedings because of the respondent's failure to appear.

10 (c) **Notice of consequences.** Any notice within the scope of paragraph (a) or (b) above ~~shall~~must
11 expressly state the consequences, as specified above, of the respondent's failure to answer or
12 appear.

13

1 **Rule 14-533. Diversion.**

2 (a) **Referral to diversion.** In a matter involving less serious misconduct as outlined in subsection
3 (c), ~~upon receipt of an informal~~ on receiving a complaint and before filing an action formal
4 ~~complaint~~, the respondent may have the option of electing to have the matter referred to
5 diversion, the appropriateness of which the OPC ~~will be determined by the chair of the Diversion~~
6 ~~Committee after consultation with OPC. The option for diversion also may be initiated by OPC~~
7 ~~or the Ethics and Discipline Committee screening panel.~~ Diversion may require the respondent's
8 participation ~~of the respondent~~ in one or more of the following:

- 9 (a)(1) fee arbitration;
- 10 (a)(2) mediation;
- 11 (a)(3) law office management assistance;
- 12 (a)(4) lawyer or licensed paralegal practitioner assistance programs;
- 13 (a)(5) psychological and behavioral counseling;
- 14 (a)(6) monitoring;
- 15 (a)(7) restitution;
- 16 (a)(8) continuing legal education programs including, but not limited to, ethics school; or
- 17 (a)(9) any other program or corrective course of action to address the respondent's
- 18 conduct.

19 ~~(b) Diversion Committee.~~

20 ~~(b)(1) Composition. Members of the Diversion Committee shall be appointed by the Supreme~~
21 ~~Court. The committee shall consist of five members, four of whom shall be members of the Bar~~
22 ~~who have demonstrated a high standard of professional conduct, preferably with at least~~
23 ~~one Bar member having past experience on the Supreme Court Ethics and Discipline Committee,~~
24 ~~and one public member with professional training in the area of substance abuse and/or stress~~
25 ~~management. All appointments shall be for four-year terms with one of the lawyers' terms~~
26 ~~expiring each year. Committee members shall not serve more than two consecutive terms. The~~
27 ~~Supreme Court shall designate one of the Bar members as committee chair.~~(b)(2)

Comment [LL80]: Recommendation 6.1

Comment [LL81]: I would recommend splitting this into separate rules.

Comment [LL82]: Recommendation 6.2 eliminate diversion committee

Comment [LL83]: Recommendation 6.2 eliminate diversion committee

1 **(b) Authority and responsibility.** The ~~Diversion Committee~~ OPC may negotiate and execute
2 diversion contracts, assign monitoring to a lawyers or licensed paralegal practitioner assistance
3 program, determine of the lawyer compliance with the terms of diversion contracts, and
4 determine if the lawyer fulfilledment or any-materially breached the-of diversion contracts,
5 ~~subject to review under subsection (j)(3) of this rule,~~ and adopt such policies and procedures as
6 may be appropriate to accomplish its duties under this rule. The ~~Diversion Committee~~ OPC shall
7 ~~have~~has authority to establish subcommittees of volunteer attorneys and other professionals for
8 the specific purpose of monitoring the compliance of any attorney under diversion and reporting
9 compliance to OPC, ~~and the Diversion Committee on a regular basis.~~

Comment [LL84]: Recommendation 6.2
eliminate diversion committee

Comment [LL85]: Recommendation 6.2
eliminate diversion committee

Comment [LL86]: Recommendation 6.2:
designating a monitor for compliance who will
be responsible to report to OPC.

10 **(c) Less serious misconduct.** Conduct ~~which-that~~ would result in a suspension, ~~or~~ disbarment, ~~or~~
11 ~~delicensure~~ is not considered to be less serious misconduct. Conduct is not ordinarily considered
12 less serious misconduct if any of the following considerations apply:

- 13 (c)(1) the misconduct involves the misappropriation of client funds;
- 14 (c)(2) the misconduct results in or is likely to result in substantial prejudice to a client or
15 other person, absent adequate provisions for restitution;
- 16 (c)(3) the respondent has been sanctioned in the last three years;
- 17 (c)(4) the misconduct is of the same nature as misconduct for which the respondent has
18 been sanctioned in the last three years;
- 19 (c)(5) the misconduct involves dishonesty, deceit, fraud, or misrepresentation;
- 20 (c)(6) the misconduct constitutes a substantial threat of irreparable harm to the public; a
21 felony; or a misdemeanor which reflects adversely on the respondent's honesty,
22 trustworthiness or fitness as a lawyer; or
- 23 (c)(7) the misconduct is part of a pattern of similar misconduct.

24 **(d) Factors for consideration.** ~~The Diversion Committee~~ OPC considers ~~the following~~these
25 factors in negotiating and executing the diversion contract:

Comment [LL87]: Recommendation 6.2
eliminate diversion committee

- 26 (d)(1) whether in the OPC's opinion, the presumptive sanction that would be imposed, ~~in~~
27 ~~the opinion of OPC or the Diversion Committee~~ is likely to be no more severe than a
28 public reprimand or private admonition;

Comment [LL88]: Recommendation 6.2
eliminate diversion committee

1 (d)(2) whether participation in diversion is likely to improve the respondent's future
2 professional conduct and accomplish the goals of lawyer discipline;

3 (d)(3) whether aggravating or mitigating factors exist; and

4 (d)(4) whether diversion was already tried.

5 (e) **Notice to complainant.** The OPC will notify the complainant, if any, of the proposed
6 decision to refer the respondent to diversion, and the complainant may submit written comments.
7 The complainant will be notified when the complaint is diverted and when the complaint is
8 dismissed. All notices will be sent to the complainant's address of record on file with the OPC.
9 Such decision to divert or dismiss is not appealable.

10 (f) **Diversion contract.**

11 (f)(1) If the respondent agrees or elects to participate in diversion as provided by this rule,
12 the terms of the diversion ~~shall~~ must be set forth in a written contract. ~~If the contract is~~
13 ~~entered prior to a hearing of a screening panel of the Ethics and Discipline Committee~~
14 ~~pursuant to Rule 14-510(b), the~~ The contract ~~shall~~ will be between the respondent and
15 OPC. ~~If diversion is agreed to and entered after a screening panel of the Ethics and~~
16 ~~Discipline Committee has convened pursuant to Rule 14-510(b), the contract shall be~~
17 ~~made as part of the decision of that screening panel. OPC will memorialize the contract~~
18 ~~and decision. If diversion is agreed to and entered after a complaint has been filed~~
19 ~~pursuant to Rule 14-512, the diversion contract shall be made as part of the ruling and~~
20 ~~order of the Court. Except as otherwise part of an order of a court, the~~ Diversion
21 Committee The OPC shall must monitor and supervise the conditions of diversion and the
22 terms of the diversion contract. The contract ~~shall~~ must specify the program(s) to which
23 the attorney will ~~shall~~ be diverted, the general purpose of the diversion, the manner in
24 which compliance is to be monitored, and any requirement for payment of restitution or
25 cost. The respondent ~~attorney shall~~ will bear the burden of drafting and submitting the
26 proposed diversion contract. Respondent may ~~utilize~~ use counsel to assist in the
27 negotiation phase of diversion. Respondent may also request that OPC draft the proposed
28 diversion contract. Respondent may also ~~utilize Bar~~ use benefits programs provided by
29 the Bar, such as a lawyer or licensed paralegal practitioner assistance program to assist in

Comment [LL89]: Recommendation 6.2
eliminate diversion committee

1 developing terms and conditions for the diversion contract appropriate to that
2 respondent's particular situation. Use of a lawyer~~s~~ or licensed paralegal
3 practitioner assistance program to assess appropriate conditions for diversion ~~shall~~ will
4 not conflict that entity from providing services under the contract. The terms of each
5 contract ~~shall~~ must be specifically tailored to the respondent's individual circumstances.
6 The contract is confidential and its terms ~~shall~~ may not be disclosed to anyone other than
7 the parties to the contract.

8 (f)(2) All diversion contracts must contain at least ~~all the following~~:

9 (f)(2)(A) the signatures of respondent, ~~his~~ respondent's counsel (if any), and the
10 ~~chair of the Diversion Committee~~ OPC;

Comment [LL90]: Recommendation 6.2

11 (f)(2)(B) the terms and conditions of the plan for respondent and, the identity, if
12 appropriate, of any service provider, mentor, monitor and/or supervisor and that
13 individual's specific responsibilities. If respondent uses a professional or service
14 ~~is utilized~~, and it is necessary to disclose confidential information, respondent
15 must sign a limited conditional waiver of confidentiality permitting the
16 professional or service to make the necessary disclosures ~~in order~~ for the
17 respondent to fulfill ~~their~~ his duties under the contract;

18 (f)(2)(C) the necessary terms providing for oversight of ~~fulfillment of~~ fulfilling the
19 contract terms, including provisions for those involved to report any alleged
20 breach of the contract to OPC;

21 (f)(2)(D) the necessary terms providing that respondent will pay all costs incurred
22 in connection with the contract and those costs further specified pursuant to
23 subsection (k) and any costs associated with the complaints to be deferred; and

24 (f)(2)(E) a specific acknowledgement that a material violation of a contract term
25 renders the respondent's participation in diversion voidable by the ~~chair of the~~
26 ~~Diversion Committee or his designee~~ OPC.

Comment [LL91]: Recommendation 6.2

27 (f)(3) The contract may be amended on subsequent agreement of respondent and OPC.

1 ~~(f)(4) The chair of the Ethics and Discipline Committee and OPC shall be given copies of~~
2 ~~every diversion contract entered and signed by the respondent and the Diversion~~
3 ~~Committee chair.~~

4 ~~(g) Affidavit supporting diversion. A diversion contract must be supported by the respondents~~
5 ~~or the respondents lawyer's affidavit or declaration as approved by the Diversion Committee setting~~
6 ~~forth the purpose for diversion and how the specific terms of the diversion contract will address~~
7 ~~the allegations raised by the complaint. The respondent is not required to admit to the allegations~~
8 ~~in the complaint upon entering diversion. However, an admission and/or acknowledgement may~~
9 ~~be relevant and necessary as part of treatment in diversion. Such an admission shall be~~
10 ~~confidential for treatment purposes, shall not be released to any third party, and shall not be~~
11 ~~treated as an admission against interest nor used for future prosecution should diversion fail.~~

12 ~~(h)~~(g) **Status of complaint.** After a diversion contract is executed by the respondent, the
13 disciplinary complaint is deferred pending successful completion of the contract.

14 ~~(i)~~(h) **Effect of non-participation in diversion.** The respondent has the right to decline to
15 participate in diversion. If the respondent chooses not to participate in diversion, the matter
16 proceeds pursuant to the Rules of Lawyer Discipline and Disability.

17 ~~(j)~~(i) **Termination of diversion.**

18 ~~(j)(i)(1) Fulfillment of the contract. The contract terminates when the respondent has~~
19 ~~fulfilled the terms of the contract and gives the Diversion Committee and OPC an~~
20 ~~affidavit or declaration demonstrating fulfillment. Upon ~~receipt of~~receiving this affidavit~~
21 ~~or declaration, the Diversion Committee and OPC must acknowledge receipt and request~~
22 ~~that the chair of the Ethics and Discipline Committee or his designee dismiss any~~
23 ~~complaint(s) deferred pending successful completion of the contract or notify the~~
24 ~~respondent that fulfillment of the contract is disputed based on an OPC claim of material~~
25 ~~breach. The complainant cannot appeal the dismissal. Successfully completing ~~on of~~~~
26 ~~the contract is a bar to any further disciplinary proceedings based on the same allegations and~~
27 ~~successfully completi~~ng of~~ng of diversion shall may not constitute a form of discipline.~~

28 ~~(j)(i)(2) Material breach. A material~~Materially breaching of the contract is cause for
29 terminating ~~ng of~~ the contract. After a material breach, OPC must notify the respondent of

Comment [LL92]: Recommendation 6.2

1 the alleged breach and intent to terminate the diversion. Thereafter, disciplinary
2 proceedings may be instituted, resumed, or reinstated.

3 ~~(j)(3) Review by the chair. The Diversion Committee may review disputes regarding the~~
4 ~~alleged material breach of any term of the contract on the request of the respondent or~~
5 ~~OPC. The request must be filed with the Diversion Committee chair within 15 days of~~
6 ~~notice to the respondent of the determination for which review is sought. The respondent~~
7 ~~is entitled to a hearing before the Diversion Committee on any alleged breach to the~~
8 ~~diversion contract. Determinations under this section are not subject to further review and~~
9 ~~are not reviewable in any proceeding.~~

10 ~~(k)(j) Costs. Upon entering diversion, r~~Respondent ~~shall~~ must pay an initial fee of \$250 upon
11 entering diversion. During diversion, respondent ~~shall~~ must pay a monthly fee of \$50 ~~per month~~.
12 All such fees are payable to the Bar's general fund. ~~These fees may be waived upon a hardship~~
13 ~~request, the validity or appropriateness of which shall be determined by the chair of the~~
14 ~~Diversion Committee or his designee.~~

1 **Rule 14-601 Article 6. Standards for Imposing Lawyer Sanctions**

2 Rule 14-601. Definitions:

3 As used in this article:

4 (a) ~~“complainant” means the person who files an informal complaint or the OPC when the OPC~~
5 ~~determines to open an investigation based on information it has received;~~

6 (b) ~~“formal complaint” means a complaint filed in the district court alleging misconduct by a~~
7 ~~lawyer or seeking the transfer of a lawyer to disability status;~~

8 (c) ~~“informal complaint” means any written, notarized allegation of misconduct by or~~
9 ~~incapacity of a lawyer;~~

10 (d) ~~“injury” means harm to a client, the public, the legal system, or the profession which results~~
11 ~~from a lawyer’s misconduct. The level of injury can range from “serious” injury to “little or no”~~
12 ~~injury; a reference to “injury” alone indicates any level of injury greater than “little or no” injury;~~

13 (e) ~~“intent” means the conscious objective or purpose to accomplish a particular result;~~

14 (f) ~~“knowledge” means the conscious awareness of the nature or attendant circumstances of the~~
15 ~~conduct but without the conscious objective or purpose to accomplish a particular result;~~

16 (g) ~~“negligence” means the failure of a lawyer to heed a substantial risk that circumstances exist~~
17 ~~or that a result will follow, which failure is a deviation from the standard of care that a~~
18 ~~reasonable lawyer would exercise in the situation;~~

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

22 (i) ~~“respondent” means a lawyer subject to the disciplinary jurisdiction of the Supreme Court~~
23 ~~against whom an informal or formal complaint has been filed; and~~

24 (j) ~~“Rules of Professional Conduct” means the Utah Rules of Professional Conduct (including~~
25 ~~the accompanying comments) initially adopted by the Supreme Court in 1988, as amended from~~
26 ~~time to time.~~

Comment [LL93]: These definitions are incorporated into article 5, because we will be merging both articles 5 and 6 into Chapter 11, article 5.

1 **Rule 14-602. Purpose and nature of sanctions.**

2 ~~(a) **Summary.** This article is based on the Black Letter Rules contained in the Standards for~~
3 ~~Imposing Lawyer Sanctions prepared by the American Bar Association's Center for Professional~~
4 ~~Responsibility. They have been substantially revised by the Supreme Court. Notably, ABA~~
5 ~~Standards 4 through 8 have been reduced into a single Rule 14-605.~~

Comment [LL94]: This no longer seems necessary.

6 (b) **Purpose of lawyer discipline proceedings.** The purpose of imposing lawyer sanctions is to
7 ensure and maintain the high standard of professional conduct required of those who undertake
8 the discharge of professional responsibilities as lawyers, and to protect the public and the
9 administration of justice from lawyers who have demonstrated by their conduct that they are
10 unable or likely to be unable to discharge properly their professional responsibilities.

11 (c) **Public nature of lawyer discipline proceedings.** The ultimate disposition of lawyer
12 discipline ~~shall~~ will be public in cases of disbarment, suspension, and reprimand; and nonpublic
13 in cases of admonition.

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

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

24 (d)(2) consideration of the appropriate weight of such factors in light of the stated goals
25 of lawyer discipline; and

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

28

1 **Rule 14-603. Sanctions.**

2 (a) **Scope.** A disciplinary sanction is imposed on a lawyer upon a finding or acknowledgement
3 that the lawyer has engaged in professional misconduct.

4 (b) **Disbarment or Delicensure.** Disbarment or delicensure terminates the individual's status as
5 a lawyer. A lawyer who has been disbarred or delicensed may be readmitted or relicensed as
6 provided in Rule 14-525.

7 (c) **Suspension.** Suspension ~~is the removal of~~removes a lawyer from the practice of law for a
8 specified minimum ~~period of time, generally six months or more. Generally, suspension should~~
9 ~~be imposed for a specific period of time equal to or greater than six months, but if~~ in no event
10 should the time ~~period prior to~~before application for reinstatement be more than three years.

11 ~~(e)(1) A lawyer who has been suspended for six months or less may be reinstated as set~~
12 ~~forth in Rule 14-524.~~

13 ~~(e)(2) A lawyer who has been suspended for more than six months may be reinstated as~~
14 ~~set forth in Rule 14-525.~~

Comment [LL95]: Redundant of Rule 14-525

15 (d) **Interim suspension.** Interim suspension ~~is the temporarily suspension of~~ a lawyer from the
16 practice of law. Interim suspension may be imposed as set forth in Rules 14-518 and 14-519.

17 (e) **Reprimand.** Reprimand is public discipline ~~which that~~ declares the lawyer's conduct ~~of the~~
18 ~~lawyer~~ improper, but does not limit the lawyer's right to practice law.

19 (f) **Admonition.** Admonition is nonpublic discipline ~~that which~~ declares the conduct of the
20 lawyer improper, but does not limit the lawyer's right to practice law.

21 (g) **Probation.** Probation ~~is a sanction that~~ allows a lawyer to practice law under specified
22 conditions. Probation ~~can~~may be public or nonpublic, ~~can be~~ imposed alone or in conjunction
23 with other sanctions, and ~~can be~~ imposed as a condition of readmission or reinstatement.

Comment [LL96]: Recommendation 7.2

24 (g)(1) A respondent ~~attorney~~ may be placed on probation if they can demonstrate that
25 they:

26 (g)(1)(A) can perform legal services and the continued practice of law will not
27 cause the courts or the profession to fall into disrepute:

1 (g)(1)(B) are unlikely to harm the public during the period of rehabilitation and
2 the necessary conditions of probation can be adequately supervised;

3 (g)(1)(C) have a disability which is temporary or minor and does not require
4 treatment and transfer to disability status;

5 (g)(1)(D) have not committed acts involving dishonesty, fraud, ~~and/~~ or deceit; and

6 (g)(1)(E) have not committed acts warranting disbarment.

7 (g)(2) Probation may include, but is not limited to, ~~the following~~ these conditions:

8 (g)(2)(A) no further violations of the Rules of Professional Conduct or Licensed
9 Paralegal Practitioner Rules of Professional Conduct;

10 (g)(2)(B) restitution;

11 (g)(2)(C) assessment of costs;

12 (g)(2)(D) limitation on practice;

13 (g)(2)(E) requirement that the lawyer pass the Multistate Professional
14 Responsibility Exam;

15 (g)(2)(F) requirement that the lawyer take continuing legal education courses;

16 (g)(2)(G) mental health counseling and treatment;

17 (g)(2)(H) abstinence from drugs and ~~or~~ alcohol;

18 (g)(2)(I) medical evaluation and ~~or~~ treatment;

19 (g)(2)(J) periodic reports to the ~~C~~ourt and OPC; and

20 (g)(2)(K) monitoring of all or ~~a~~ part of respondent's work by a supervising
21 attorney.

22 (g)(3) The respondent ~~attorney shall~~ ~~is~~ be responsible for all costs of evaluation,
23 treatment, and supervision. ~~Failing~~ ~~ure~~ to pay these costs ~~prior to~~ ~~before~~ probation ~~tion of~~
24 ~~probation shall constitute~~ terminates is a violation of probation.

25 (g)(34) A ~~R~~espondent may terminate their probation by filing with the district court and
26 serving ~~upon~~ OPC ~~counsel~~ an affidavit stating that the respondent has fully complied

1 with the requirements of the probation order. OPC ~~counsel~~ may file an objection and
2 thereafter the court ~~shall~~ will conduct a hearing.

3 (g)(45) Violations. If during the period of probation, ~~the~~ OPC receives information that
4 any probation term has been violated, ~~the~~ OPC may file a motion specifying the alleged
5 violation and seeking to have the probation terminated. ~~Upon filing of~~ On filing such
6 motion, the ~~R~~espondent ~~shall~~ must have the opportunity to respond and a hearing ~~shall~~
7 will be held, at which time the ~~C~~ourt ~~shall~~ will determine whether to revoke probation
8 ~~should be revoked.~~

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

11 (h)(1) Rule 14-533 governs ~~d~~iversion matters ~~prior to a filing of~~ before the OPC files a
12 misconduct action ~~formal complaint pursuant to~~ under Rule 14-511, ~~are to be governed by~~
13 ~~the provisions of Rule 14-533.~~

14 (h)(2) For a misconduct action ~~formal complaints filed pursuant to~~ under Rule 14-511, the
15 following criteria will determine the appropriateness of a ~~D~~iversion ~~shall~~ will be
16 ~~determined by the following criteria:~~

17 (h)(2)(A) The misconduct does not involve the misappropriation of funds or
18 property; fraud, dishonesty, deceit or misrepresentation; or the commission of a
19 misdemeanor involving moral turpitude or any felony;

20 (h)(2)(B) The misconduct appears to be the result of inadequate law office
21 management, chemical dependency, a physical or mental health condition,
22 negligence or lack of training, education or other similar circumstance; and

23 (h)(2)(C) There appears to be a reasonable likelihood that the successful
24 completion of a remedial program will prevent the recurrence of conduct by the
25 attorney similar to that under consideration for diversion.

26 (h)(~~23~~)(~~D~~) In addition to the above-required criteria of (~~a~~A), (~~b~~B) and (~~e~~C), other
27 considerations may ~~be~~ include whether the misconduct is a one-time act or ~~if the~~

1 ~~misconduct is based upon~~ a chronic condition and whether there is sufficient evidence
2 ~~connecting the chronic condition to the misconduct.~~

3 ~~(h)(2)(E) Diversion determinations should specifically set forth~~ must include compliance
4 ~~conditions to address the misconduct and at the time period for completion.~~

5 ~~(h)(2)(F) If the lawyer completes the conditions of the Diversion, the formal~~
6 ~~complaint~~ misconduct action will be ~~is~~ dismissed with prejudice.

7 ~~(h)(2)(G) If the lawyer does not complete the conditions of the Diversion within the~~
8 ~~required time period, the lawyer shall~~ will be subject to a suspension of six months and a
9 ~~day.~~

10 ~~(h)~~ **Resignation with discipline pending.** Resignation with discipline pending is a form of
11 public discipline ~~which that~~ allows a respondent to resign from the practice of law while either
12 an informal or formal complaint is pending against the respondent. Resignation with discipline
13 pending may be imposed as set forth in Rule 14-521.

14 ~~(i)~~ **Other sanctions and remedies.** Other sanctions and remedies which may be imposed
15 include:

16 ~~(i)~~(1) restitution;

17 ~~(i)~~(2) assessment of costs;

18 ~~(i)~~(3) limitation upon practice;

19 ~~(i)~~(4) appointment of a receiver;

20 ~~(i)~~(5) a requirement that the lawyer take the Bar Examination or professional
21 responsibility examination; and

22 ~~(i)~~(6) a requirement that the lawyer attend continuing education courses.

23 ~~(j)~~ **Reciprocal discipline.** Reciprocal discipline ~~is the imposition of~~ is imposing a disciplinary
24 sanction on a lawyer who has been disciplined in another court, another jurisdiction, or a
25 regulatory body having disciplinary jurisdiction.

26

1 **Rule 14-604. Factors to be considered in imposing sanctions.**

2 The following factors should be considered in imposing a sanction after a finding of lawyer
3 misconduct:

4 (a) the duty violated;

5 (b) the lawyer's mental state;

6 (c) the potential or actual injury caused by the lawyer's misconduct; and

7 (d) the existence of aggravating or mitigating factors.

8

1 | **Rule 14-605. Imposition of** ~~ing~~ **sanctions.**

2 | Absent aggravating or mitigating circumstances, upon ~~application of~~ **applying** the factors set out
3 | in Rule 14-604, the following sanctions are generally appropriate.

4 | (a) **Disbarment.** Disbarment is generally appropriate when a lawyer:

5 | (a)(1) knowingly engages in professional misconduct as defined in Rule 8.4(a), (d), (e),
6 | or (f) of the Rules of Professional Conduct [or Licensed Paralegal Practitioner Rules of](#)
7 | [Professional Conduct](#), with the intent to benefit the lawyer or another or to deceive the
8 | court, and causes serious or potentially serious injury to a party, the public, or the legal
9 | system, or causes serious or potentially serious interference with a legal proceeding; or

10 | (a)(2) engages in serious criminal conduct, a necessary element of which includes
11 | intentional interference with the administration of justice, false swearing,
12 | misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution, or
13 | importation of controlled substances; or the intentional killing of another; or an attempt
14 | or conspiracy or solicitation of another to commit any of these offenses; or

15 | (a)(3) engages in any other intentional misconduct involving dishonesty, fraud, deceit, or
16 | misrepresentation that seriously adversely reflects on the lawyer's fitness to practice law.

17 | (b) **Suspension.** Suspension is generally appropriate when a lawyer:

18 | (b)(1) knowingly engages in professional misconduct as defined in Rule 8.4(a), (d), (e),
19 | or (f) of the Rules of Professional Conduct [or Licensed Paralegal Practitioner Rules of](#)
20 | [Professional Conduct](#) and causes injury or potential injury to a party, the public, or the
21 | legal system, or causes interference or potential interference with a legal proceeding; or

22 | (b)(2) engages in criminal conduct that does not contain the elements listed in Rule 14-
23 | 605(a)(2) but nevertheless seriously adversely reflects on the lawyer's fitness to practice
24 | law.

25 | (c) **Reprimand.** Reprimand is generally appropriate when a lawyer:

26 | (c)(1) negligently engages in professional misconduct as defined in Rule 8.4(a), (d), (e),
27 | or (f) of the Rules of Professional Conduct [or Licensed Paralegal Practitioner Rules of](#)

1 | [Professional Conduct](#) and causes injury to a party, the public, or the legal system, or
2 | causes interference with a legal proceeding; or

3 | (c)(2) engages in any other misconduct that involves dishonesty, fraud, deceit, or
4 | misrepresentation and that adversely reflects on the lawyer's fitness to practice law.

5 | (d) **Admonition.** Admonition is generally appropriate when a lawyer:

6 | (d)(1) negligently engages in professional misconduct as defined in Rule 8.4(a), (d), (e),
7 | or (f) of the Rules of Professional Conduct [or Licensed Paralegal Practitioner Rules of](#)
8 | [Professional Conduct](#) and causes little or no injury to a party, the public, or the legal
9 | system or interference with a legal proceeding, but exposes a party, the public, or the
10 | legal system to potential injury or causes potential interference with a legal proceeding;
11 | or

12 | (d)(2) engages in any professional misconduct not otherwise identified in this rule that
13 | adversely reflects on the lawyer's fitness to practice law.

14

1 **Rule 14-606. Prior discipline orders.**

2 | Absent aggravating or mitigating circumstances, upon ~~application of~~ applying the factors set out
3 in Rule 14-604, the following principles generally apply in cases involving prior discipline.

4 (a) The district court or Supreme Court may impose further sanctions upon a lawyer who violates
5 the terms of a prior disciplinary order.

6 (b) When a lawyer engages in misconduct similar to that for which the lawyer has previously
7 been disciplined, the appropriate sanction will generally be one level more severe than the
8 sanction the lawyer previously received, provided that the harm requisite for the higher sanction
9 is present.

10

1 **Rule 14-607. Aggravation and mitigation.**

2 After misconduct has been established, aggravating and mitigating circumstances may be
3 considered and weighed in deciding what sanction to impose.

4 (a) **Aggravating circumstances.** Aggravating circumstances are any considerations or factors
5 that may justify an increase in the degree of discipline to be imposed. Aggravating circumstances
6 may include:

7 (a)(1) prior record of discipline;

8 (a)(2) dishonest or selfish motive;

9 (a)(3) a pattern of misconduct;

10 (a)(4) multiple offenses;

11 (a)(5) obstruction of the disciplinary proceeding by intentionally failing to comply with
12 rules or orders of the disciplinary authority;

13 (a)(6) submission of false evidence, false statements, or other deceptive practices during
14 the disciplinary process;

15 (a)(7) refusal to acknowledge the wrongful nature of the misconduct involved, either to
16 the client or to the disciplinary authority;

17 (a)(8) vulnerability of victim;

18 (a)(9) substantial experience in the practice of law;

19 (a)(10) lack of good faith effort to make restitution or to rectify the consequences of the
20 misconduct involved; and

21 (a)(11) illegal conduct, including the use of controlled substances.

22 (b) **Mitigating circumstances.** Mitigating circumstances are any considerations or factors that
23 may justify a reduction in the degree of discipline to be imposed. Mitigating circumstances may
24 include:

25 (b)(1) absence of a prior record of discipline;

26 (b)(2) absence of a dishonest or selfish motive;

- 1 (b)(3) personal or emotional problems;
- 2 (b)(4) timely good faith effort to make restitution or to rectify the consequences of the
3 misconduct involved;
- 4 (b)(5) full and free disclosure to the client or the disciplinary authority prior to the
5 discovery of any misconduct or cooperative attitude toward proceedings;
- 6 (b)(6) inexperience in the practice of law;
- 7 (b)(7) good character or reputation;
- 8 (b)(8) physical disability;
- 9 (b)(9) mental disability or impairment, including substance abuse when:
- 10 (b)(9)(A) the respondent is affected by a substance abuse or mental disability; and
- 11 (b)(9)(B) the substance abuse or mental disability causally contributed to the
12 misconduct; and
- 13 (b)(9)(C) the respondent's recovery from the substance abuse or mental disability
14 is demonstrated by a meaningful and sustained period of successful rehabilitation;
15 and
- 16 (b)(9)(D) the recovery arrested the misconduct and the recurrence of that
17 misconduct is unlikely;
- 18 (b)(10) unreasonable delay in disciplinary proceedings, provided that the respondent did
19 not substantially contribute to the delay and provided further that the respondent has
20 demonstrated prejudice resulting from the delay;
- 21 (b)(11) interim reform in circumstances not involving mental disability or impairment;
- 22 (b)(12) imposition of other penalties or sanctions;
- 23 (b)(13) remorse; and
- 24 (b)(14) remoteness of prior offenses.
- 25 (c) **Other circumstances.** The following circumstances should not be considered as either
26 aggravating or mitigating:

- 1 (c)(1) forced or compelled restitution;
- 2 (c)(2) withdrawal of complaint against the lawyer;
- 3 (c)(3) resignation prior to completion of disciplinary proceedings;
- 4 (c)(4) complainant's recommendation as to sanction; and
- 5 (c)(5) failure of injured client to complain.

6

1 **Article 7. Admissions**

2 **Rule 14-701. Definitions.**

3 As used in this article:

4 (a) “**ABA**” means the American Bar Association;

5 (b) “**Active Practice**” means work performed by an attorney holding an “active” status law
6 license and having professional experience and responsibilities involving the Full-time Practice
7 of Law as defined in sections (t) and (ff). The Active Practice of law includes any ~~combination of~~
8 the following activities provided that such employment is available only to licensed attorneys
9 and the activities are performed in the jurisdiction in which the Applicant is admitted;

10 (b)(1) sole practitioner, or partner, shareholder, associate, or of counsel in a law firm;

11 (b)(2) an organization’s employee whose principal responsibility is to provide legal
12 advice or service;

13 (b)(3) government employee whose principal duties are to provide legal advice or
14 service;

15 (b)(4) service in the United States armed forces as a lawyer or judge;

16 (b)(5) judge of a court of general or appellate jurisdiction provided that such employment
17 requires admission to the bar for the appointment thereto and for the performance of the
18 duties thereof;

19 (b)(6) law clerk to a judge of a court of general or appellate jurisdiction; or

20 (b)(7) teaching full-time at an Approved Law School; and

21 (b)(8) the Active Practice of law ~~shall~~ does not include work that, as undertaken,
22 constitutes the unauthorized practice of law in the jurisdiction in which it was performed
23 or in the jurisdiction in which the clients receiving the unauthorized services were
24 located, nor ~~shall~~ does it include work completed in advance of any bar admission.

25 (c) “**Admissions Committee**” means those Utah State Bar members or others appointed by the
26 Board or president of the Bar who are charged with recommending standards and procedures for
27 admission to the Bar and with implementation of this article. The Admissions Committee is

1 responsible for supervising the work of the Bar Examiner Committee, the Test Accommodations
2 Committee, and the Character and Fitness Committee, handling requests for review as provided
3 herein and performing other work relating to the admission of Applicants;

4 (d) “**Applicant**” means each person requesting admission to the Bar. For purposes of this article,
5 an Applicant is classified as a Student Applicant, a Foreign Law School Applicant, an Attorney
6 Applicant, a Motion Applicant, a Disbarred Attorney Applicant, a Foreign Legal Consultant
7 Applicant, or a House Counsel Applicant.

8 (e) “**Approved Law School**” means a law school which is fully or provisionally approved by the
9 ABA pursuant to its Standards and Rules of Procedure for Approval of Law Schools. To qualify
10 as approved, the law school must have been fully or provisionally approved at the time of the
11 Applicant’s graduation, or at the time of the Applicant’s enrollment, provided ~~that~~ the Applicant
12 graduated within a typical and reasonable ~~period of~~ time;

13 (f) “**Attorney Applicant**” means any person who satisfies the requirements of Rule 14-704;

14 (g) “**Bar**” means the Utah State Bar, including its employees, committees and the Board;

15 (h) “**Bar Examination**” means the Bar Examination as defined in Rules 14-710 and 14-711;

16 (i) “**Bar Examiner Committee**” means those Bar members or others appointed by the Board or
17 president of the Bar who are charged with grading the Bar Examination;

18 (j) “**Board**” means the Board of Bar Commissioners;

19 (k) “**Character and Fitness Committee**” means those Bar members or others appointed by the
20 Board or president of the Bar who are charged with assessing the character and fitness of
21 Applicants and making determinations thereon;

22 (l) “**Complete Application**” means an application that includes all fees and necessary
23 application forms, along with any required supporting documentation, character references, a
24 criminal background check, a photo, an official certificate of law school graduation and if
25 applicable, a test accommodation request with supporting medical documentation, a certificate of
26 admission and/or good standing, and a certificate of discipline;

27 (m) “**Confidential Information**” is defined in Rule 14-720(a);

- 1 (n) **“Deputy General Counsel for Admissions”** or **“Deputy General Counsel”** are terms used
2 interchangeably to mean the Bar’s attorney in charge of admissions or ~~her or his~~[their](#) designee;
- 3 (o) **“Disbarred Attorney Applicant”** means a person who has previously been licensed to
4 practice law in Utah and who is no longer licensed to practice law because of disbarment or
5 resignation with discipline pending or their equivalent and who satisfies the requirements of Rule
6 14-708(g) and 14-717;
- 7 (p) **“Executive Director”** means the executive director of the Utah State Bar or ~~her or his~~[their](#)
8 designee;
- 9 (q) **“First Professional Degree”** means a degree that prepares the holder for admission to the
10 practice of law (e.g. juris doctorate) by emphasizing competency skills along with theory and
11 analysis. An advanced, focused, or honorary degree in law is not recognized as a First
12 Professional Degree (e.g. master of laws or doctor of laws);
- 13 (r) **“Foreign Law School”** means any school located outside of the United States and its
14 protectorates, that is accredited by that jurisdiction’s legal accreditation body, if one exists,
15 where principles of English Common Law form the predominant basis for that country’s system
16 of jurisprudence, and whose graduates are otherwise permitted by that jurisdiction’s highest
17 court to practice law;
- 18 (s) **“Foreign Legal Consultant Applicant”** means any Applicant who satisfies the requirements
19 of Rule 14-718;
- 20 (t) **“Full-time Practice”** means the Active and lawful Practice of Law for no fewer than 80 hours
21 per month. Time spent on administrative or managerial duties, continuing legal education, or
22 client development and marketing does not qualify as part of the required 80 hours of legal work;
- 23 (u) **“General Counsel”** means the General Counsel of the Utah State Bar or ~~her or his~~[their](#)
24 designee;
- 25 (v) **“House Counsel Applicant”** means any Applicant who satisfies the requirements of Rule
26 14-719;
- 27 (w) **“House Counsel”** means a person granted a license under Rule 14-719;
- 28 (x) **“Inactive”** means an attorney’s law license is held in “inactive status” or an equivalent term;

- 1 (y) “**MBE**” means the Multistate Bar Examination prepared by the NCBE;
- 2 (z) “**MEE**” means the Multistate Essay Examination prepared by the NCBE;
- 3 (aa) “**Motion Applicant**” means any person who satisfies the requirements of Rule 14-705;
- 4 (bb) “**MPRE**” means the Multistate Professional Responsibility Examination prepared by the
5 NCBE;
- 6 (cc) “**MPT**” means the Multistate Performance Test prepared by the NCBE;
- 7 (dd) “**NCBE**” means the National Conference of Bar Examiners, an organization that develops,
8 maintains, and applies reasonable and uniform standards of bar examination education and
9 testing;
- 10 (ee) “**OPC**” means the **Bar’s** Office of Professional Conduct;
- 11 (ff) “**Person**” includes the plural as well as the singular and legal entities as well as natural
12 persons.
- 13 ~~(gg) “**Practice of Law**” means employment available only to licensed attorneys where the~~
14 ~~primary duty of the position is to represent the interests of another person by informing,~~
15 ~~counseling, advising, assisting, advocating for or drafting documents for that person through~~
16 ~~application of the law and associated legal principles to that person’s facts and circumstances.~~
17 ~~“**Person**” includes the plural as well as the singular and legal entities as well as natural persons.~~
18 The Practice of Law constitutes more than merely working with legally-related matters;
- 19 ~~(hh) “**Privileged Information**” in this article includes: information subject to the attorney-~~
20 ~~client privilege, attorney work product, test materials and applications of examinees;~~
21 ~~correspondence and written decisions of the Board, Admissions Committee, Bar Examiner~~
22 ~~Committee, Character and Fitness Committee, and Test Accommodations Committee; and the~~
23 ~~identity of individuals participating in the drafting, reviewing, grading and scoring of the Bar~~
24 ~~Examination;~~
- 25 ~~(ii) “**Reapplication for Admission**” means that for two years after the filing of an original~~
26 ~~application, an Applicant may reapply by completing a Reapplication for Admission form~~
27 ~~updating any information that has changed since the prior application was filed and submitting a~~
28 ~~new criminal background check;~~

Comment [LL97]: Recommendation 1.2

1 | (jj) “**Resigned Applicant**” means a person who has previously been licensed to practice law in
2 | Utah who is no longer licensed to practice law because of resignation without discipline pending
3 | or resignation under Rule 14-508(d) and who satisfies the requirements of Rule 14-717(a);

4 | (kk) “**Student Applicant**” means any person who satisfies the requirements of Rule 14-703(a);

5 | (ll) “**Supreme Court**” means the Utah Supreme Court;

6 | (mm) “**Test Accommodations Committee**” means those Bar members or others appointed by
7 | the Board or president of the Bar who are charged with the review of requests from Applicants
8 | seeking to take the Bar Examination with test accommodations and who make determinations
9 | thereon;

10 | (nn) “**Unapproved Law School**” means a law school that is not fully or provisionally
11 | approved by the ABA. For an Unapproved Law School’s graduates to be eligible for admission,
12 | the law school must be accredited in the jurisdiction where it exists, provide legal education that
13 | is the substantial equivalent of the legal education provided by an Approved Law School, and not
14 | be based on correspondence or internet study;

15 | (oo) “**UBE**” means the Uniform Bar Examination as prepared by the NCBE;

16 | (pp) “**Updated Application**” means that an Applicant is required to amend and update ~~her or~~
17 | ~~his~~their application on an ongoing basis and correct any information that has changed since the
18 | application was filed; and

19 | (qq) “**Written Component**” means that ~~portion~~part of the Bar Examination that consists of
20 | MEE and MPT questions.

1 **Rule 14-705. Admission by Motion.**

2 (a) **Reciprocal admission.** An Applicant is eligible to be admitted by motion if the Applicant
3 meets all the requirements of this rule. Admission by Motion is not a right; the burden of proof is
4 on the Applicant to establish by clear and convincing evidence that she or he:

5 (a)(1) has paid the prescribed nonrefundable fee and filed the required Complete
6 Application as a Motion Applicant;

7 (a)(2) is at least 21 years old;

8 (a)(3) has been admitted by bar examination to practice law before the highest court of a
9 U.S. state, territory or the District of Columbia;

10 (a)(4) holds a First Professional Degree in law from an Approved Law School;

11 (a)(5) has successfully passed the MPRE;

12 (a)(6) has demonstrated that the U.S. state, territory or the District of Columbia that
13 licenses the Applicant reciprocally allows the admission of licensed Utah lawyers under
14 terms and conditions similar to those set forth in this rule;

15 (a)(7) has been Actively licensed and lawfully engaged in the Full-time Practice of Law
16 as defined in Rule 14-701(b), (t) and (ff) in the reciprocal jurisdiction(s) where licensed
17 for 60 of the 84 months immediately preceding the date of the filing of the application for
18 admission. For purposes of admission under this rule, any time practicing at an office
19 located in Utah will not be counted as time practicing in a reciprocal jurisdiction;

20 (a)(8) is a member in good standing in all jurisdictions where currently admitted;

21 (a)(9) has a proven record of ethical, civil, and professional behavior and has never been
22 disbarred or resigned with discipline pending, or their equivalent, in any jurisdiction and
23 is not currently subject to lawyer discipline or the subject of a pending disciplinary
24 matter;

25 (a)(10) is of good moral character and satisfies the requirements of Rule 14-708;

26 (b) **Continuing legal education requirement.** All Applicants admitted to practice law pursuant
27 to this rule ~~shall~~must complete and certify no later than six months following the Applicant's

1 | admission that ~~she or he has~~ they have attended at least 15 hours of continuing legal education on
2 | Utah practice and procedure and ethics requirements.

3 | (b)(1) The Board may by regulation specify the number of the required 15 hours that
4 | must be in particular areas of practice, procedure, and ethics. Included in this mandatory
5 | 15 hours is attendance at the ~~Bas~~ OPC ethics school.

Comment [LL98]: Recommendation 1.2

6 | (c) **Form and content of application.** The Board may require additional proof of any facts
7 | stated in the application. ~~In the event of the failure or the refusal of~~ If the Applicant ~~fails or~~
8 | ~~refuses~~ to furnish any information or proof, or to answer any Board inquiry ~~of the Board~~
9 | pertinent to the pending application, the Board may deny the application without hearing.

10 | (d) **Timing of application and admission.** An application may be filed at any time but the
11 | Applicant must be able to demonstrate that she or he satisfies the requirements of this rule as of
12 | the date the application is filed. Processing of the application and the character and fitness
13 | investigation require a minimum of four months to complete.

14 | (d)(1) An Applicant not eligible for admission pursuant to this rule may qualify for
15 | admission as an Attorney Applicant pursuant to Rule 14-704.

16 | (d)(2) Upon approval the Applicant must comply with ~~the provisions of~~ Rule 14-716
17 | concerning licensing and enrollment fees.

18 | (e) Motion Applicants. Only persons who are active, licensed ~~members of the Bar~~ members in
19 | good standing may engage in the practice of law in Utah. However, a Motion Applicant with a
20 | pending Bar application may be eligible to practice for a limited period upon ~~satisfaction~~
21 | ~~of satisfying all of the requirements of~~ Rule 14-809 and ~~receipt of~~ receiving a Practice Pending
22 | Admission Certificate.

1 **Rule 14-712. Qualifications for admission based on UBE.**

2 (a) ~~▲Timing of application and admission~~ timing. An application may be filed at any time.
3 Processing ~~of~~ the application and ~~the~~ character and fitness investigation require a minimum of
4 four months to complete.

5 (b) **UBE score transferability.** An Applicant who has taken and completed the UBE in a single
6 administration in a jurisdiction other than Utah may transfer the UBE score by filing an
7 application, provided:

8 (b)(1) the Applicant meets all the requirements of Rule 14-703 or Rule 14-704;

9 (b)(2) the Applicant has not been denied by any jurisdiction on character and fitness
10 grounds;

11 (b)(3) the UBE score is 270 or above; and

12 (b)(4) the Bar receives the Applicant's UBE score no later than nine months after ~~the~~
13 ~~filing of~~ filing the application. To transfer a UBE score, an Applicant must send a written
14 transfer request, along with the prescribed fee, to the NCBE.

15 (c) **Time limitations on transferability.** ~~The transferability of~~ Transferring the UBE score ~~will~~
16 ~~be~~ is subject to the following time limitations:

17 (c)(1) the UBE score is transferable for all Applicants only if the application is filed
18 within 24 months of the administration of the UBE in which the passing score was
19 earned;

20 (c)(2) the UBE may be transferable for up to five years from the administration of the
21 UBE in which the passing score was earned if the Attorney Applicant can prove by clear
22 and convincing evidence ~~that she or he~~ they ~~has~~ yes been admitted to a U.S. state, territory,
23 or the District of Columbia and ~~has~~ yes been Actively engaged in the Full-time Practice of
24 Law as defined in Rule 14-701(b), (t) and (ff) for at least one-half of the time ~~period~~ since
25 the score was earned. ~~(d) Utah legal education requirement.~~

26 (d) **Continuing legal education.**

1 (d)(1) Applicants who gain admission by transferring a UBE score and who have less
2 than two years of legal practice must complete the New Lawyer Training Program as
3 outlined in Rules 14-404 and 14-808.

4 (d)(2) Applicants who gain admission by transferring a UBE score ~~that and~~ have two or
5 more years of legal practice ~~shall~~ must complete and certify no later than six months
6 following the Applicant's admission that ~~she or he has~~ they have attended at least 15
7 hours of continuing legal education on Utah practice and procedure, ~~and~~ ethics, and
8 civility ~~requirements~~.

9 (d)(2) The Board may ~~by regulation~~ specify the number of the required 15 hours that
10 must be in particular areas of practice, procedure, ethics, and civility. OPC ethics school
11 is ~~included~~ in this mandatory 15 hours ~~is attendance at the Bar's OPC ethics school~~.

Comment [LL99]: Recommendation 1.2

1 **Rule 14-718. Licensing of Foreign Legal Consultants.**

2 (a) **Requirements of Foreign Legal Consultants.** The burden of proof is on the Applicant to
3 establish by clear and convincing evidence that she or he:

4 (a)(1) is a member in good standing of a recognized legal profession in a foreign country,
5 the members of which are admitted to practice as attorneys or counselors at law or the
6 equivalent and are subject to effective regulation and discipline by a duly constituted
7 professional body or a public authority; and

8 (a)(2) has paid the prescribed fee and filed a Complete Application as a Foreign Legal
9 Consultant Applicant;

10 (a)(3) is of the good moral character and satisfies the requirements of Rule 14-708;

11 (a)(4) intends to practice as a legal consultant in this state and to maintain an office in this
12 state for that purpose; and

13 (a)(5) has passed the MPRE.

14 (b) **Proof required.** An Applicant ~~shall~~must file with the Bar's Admissions Office:

15 (b)(1) a certificate from the professional body or public authority in such foreign country
16 having final jurisdiction over professional discipline, certifying as to the Applicant's
17 admission to practice and the date, and ~~as to her or his~~the Applicant's good standing as
18 such attorney or counselor at law or the equivalent;

19 (b)(2) a duly authenticated English translation of such certificate, if it is not in English;
20 and

21 (b)(3) such other evidence as to the Applicant's educational and professional
22 qualifications, good moral character and general fitness, and compliance with the
23 requirements of this rule as the Bar may require.

24 (c) **Scope of practice.** A person licensed to practice as a Foreign Legal Consultant under this
25 rule may render legal services in this state with respect to the law of the foreign county in which
26 such person is admitted to practice law. The Foreign Legal Consultant ~~She or he shall~~may not
27 violate any provision of ~~the~~ Rule 14-802 and ~~shall~~may not:

1 (c)(1) appear for a person other than herself or himself as attorney in any court, or before
2 any magistrate or other judicial officer, in Utah other than as permitted under Rule 14-
3 802 or upon qualified admission pro hac vice pursuant to Rule 14-806; or

4 (c)(2) render professional legal advice on the law of this state or of the United States;

5 (c)(3) be, or in any way hold herself or himself out as a ~~member of the~~ Bar member; or

6 (c)(4) carry on ~~her or his~~ a practice under, or ~~utilize~~ use in connection with such practice,
7 any name, title or designation other than the following:

8 (c)(5)(A) ~~her or his~~ the Foreign Legal Consultant's own name;

9 (c)(5)(B) the name of the law firm or other entity with which she or he is
10 affiliated, in each case only in conjunction with the title "Foreign Legal
11 Consultant" as set forth below;

12 (c)(5)(C) ~~her or his~~ the Foreign Legal Consultant's authorized title in the foreign
13 country ~~of her or his~~ in which the Foreign Legal Consultant is ~~admission~~ tted to
14 practice, in each case only in conjunction with the title "Foreign Legal
15 Consultant" as set forth below; and

16 (c)(5)(D) the title "Foreign Legal Consultant," which ~~shall~~ must be used in
17 conjunction with the words "admitted to the practice of law only in [name of the
18 foreign country ~~or her or his admission~~ in which the Foreign Legal Consultant is
19 admitted to practice]."

20 (d) **Rights and obligations.** Subject to the limitations set forth in paragraph (d), a person
21 licensed as a Foreign Legal Consultant ~~shall~~ will be considered a lawyer affiliated with the Bar
22 as permitted by this rule and ~~shall~~ will be entitled and subject to:

23 (d)(1) the rights and obligations set forth in the Utah Rules of Professional Conduct or
24 arising from the other conditions and requirements that apply to a ~~member of the~~ Bar
25 member under rules adopted by the Supreme Court; and

26 (d)(2) attorney-client privilege, work-product privilege and similar professional
27 privileges.

1 (e) **Subject to disciplinary proceedings.** A person licensed to practice as a Foreign Legal
2 Consultant ~~shall be~~ subject to professional discipline in the same manner and to the same extent
3 as ~~members of the Bar~~ members and specifically ~~shall be~~ subject to discipline by the Supreme
4 Court as delegated by rule and ~~shall is~~ otherwise ~~be~~ governed by Chapter 13, the Utah Rules of
5 Professional Conduct; Chapter 14, Article 5, Lawyer Discipline and Disability; Article 6,
6 Standards for Imposing Lawyer Sanctions; and other applicable ~~rules adopted by the~~ Supreme
7 Court rules.

8 (f) **Requirements for licensure.** Every person licensed to practice as a Foreign Legal Consultant
9 must:

10 (f)(1) attend the OPC ethics school ~~prior to before~~ receiving a license to practice as a
11 Foreign Legal Consultant, ~~shall must attend the Bars OPC ethics school; and~~

Comment [LL100]: Recommendation 1.2

Comment [LL101]: Recommendation 1.2

12 (f)(2) ~~shall must~~ execute and file with the Bar, in such form and manner as the Supreme
13 Court may prescribe:

14 (f)(2)(A) ~~her or his~~ their understanding of, and commitment to observe, the Utah
15 Rules of Professional Conduct and ~~other the other rules adopted by the~~ Supreme
16 Court rules, and to the extent applicable to the legal services authorized under
17 paragraph (c) of this rule;

18 (f)(2)(B) written notice to the OPC of any change in ~~her or his~~ the Foreign Legal
19 Consultant's membership status, good standing, or authorization to practice law in
20 any jurisdiction where licensed, including the commencement of all formal
21 disciplinary proceedings and of all final disciplinary actions taken in any other
22 jurisdiction.

23 (g) **License fees.** A person licensed as a Foreign Legal Consultant ~~shall must~~ pay annual license
24 fees ~~which shall be~~ equal to the fees ~~required to be~~ paid by a ~~member of the~~ Bar member on
25 Active status.

26 (h) **Revocation of license.** ~~In the event that~~ if a ~~person~~ licensed ~~as a~~ Foreign Legal Consultant no
27 longer meets the requirements for licensure set forth in paragraph (a) or (g), ~~her or his~~ their

1 | license ~~shall~~will be revoked following the procedures set forth in Chapter 14, Article 5, Lawyer
2 | Discipline and Disability;³ and Article 6, Standards for Imposing Lawyer Sanctions.

3 | (i) **Admission to Bar.** ~~In the event that a person~~If a licensed ~~as a~~ Foreign Legal Consultant is
4 | subsequently admitted as a ~~member of the~~ Bar member under Chapter 14, Article 7, Admission
5 | to the Utah State Bar, ~~the~~ ~~the license granted to such person shall be deemed superseded by the~~
6 | license granted to such person to practice law as a ~~member of the~~ Bar member supersedes the
7 | Foreign Legal Consultant license.

8 |

1 **Article 8. Special Practice Rules**

2 **Rule 14-801. Definitions.**

3 As used in this article:

4 (a) “**A**ctive status” means a Bar licensing category as defined by Rule 14-203(a) and Rule 14-
5 802, and the Bar’s rules, regulations and policies;

6 (b) “**A**pproved legal services organization” means a Utah ~~not for~~ nonprofit legal services
7 organization ~~which is~~ approved by the Bar as set forth herein. A legal services organization
8 seeking approval ~~from the Bar shall~~ must file a petition with the Bar, attaching copies of its
9 Articles of Incorporation and Bylaws, if any, and certifying that it is a ~~not for~~ nonprofit
10 organization, reciting with specificity:

11 (b)(1) the structure of the organization and whether it accepts funds from its clients;

12 (b)(2) the major sources of funds used by the organization;

13 (b)(3) the criteria used to determine potential clients’ eligibility for legal services
14 performed by the organization;

15 (b)(4) the types of legal and nonlegal service ~~performed by~~ the organization performs;

16 (b)(5) the names of all Bar members ~~of the Bar who are~~ employed by the organization or
17 who regularly perform legal work for the organization; and

18 (b)(6) the existence and extent of malpractice insurance ~~which~~ that will cover the
19 volunteer attorneys, with such documentation being updated on an annual basis;

20 (c) “**A**ttorney applicant” means a lawyer applicant as defined by ~~the~~ Rule 14-701;

21 (d) “**B**ar” means the Utah State Bar;

22 (e) “**C**LE” means MCLE accredited continuing legal education;

23 (f) “**I**nactive status” means a Bar licensing category as defined by Rule 14-203(a), Rule 14-802,
24 and the Bar’s rules, regulations and policies;

25 (g) “**M**CLE” means Mandatory Continuing Legal Education as set forth in Rule 14-401 et seq.;

1 (h) “Mentoring Completion Certification” means the certification form in the NLTP appendix
2 of forms.

3 (i) “NLTP” means the Bar’s New Lawyer Training Program as set forth in Rule 14-808;

4 (j) “OPC” means the ~~Bar’s~~ Office of Professional Conduct;

Comment [LL102]: Recommendation 1.2

5 (k) ~~except as used in Rule 14-807, “s~~Supervising attorney,” ~~except as used in Rule 14-807,~~
6 means an active ~~member of the~~ Bar ~~member~~ who generally supervises a volunteer attorney. The
7 supervising attorney must:

8 (k)(1) be employed by an approved legal services organization;

9 (k)(2) assume professional responsibility as contemplated by Rule 5.1 of the Utah Rules
10 of Professional Conduct for supervising the conduct of any litigation, administrative
11 proceeding or other legal services in which the volunteer attorney participates providing,
12 however, that concurrent administrative or judicial appearance is at the discretion of the
13 supervising attorney;

14 (k)(3) assist the volunteer attorney’s ~~in his or her~~ legal service preparation to the extent
15 that the supervisory attorney considers it necessary; and

16 (k)(4) ensure along with the agency that the volunteer attorney has appropriate and
17 adequate training, knowledge and competency to perform the legal service permitted.
18

1 **Rule 14-806. Admission pro hac vice.**

2 (a) Applicability. An attorney who is not a Bar member ~~of the Bar~~ but ~~who~~ is admitted to
3 practice law in another state or in any court of the United States or territory or insular possession
4 of the United States ~~shall~~ may apply to be admitted pro hac vice in accordance with this rule
5 ~~prior to~~ before appearing as counsel in any Utah court ~~of record or not of record~~.

6 (b) Admission is discretionary. Nonresident counsel may be permitted to appear in a particular
7 case if the court in which the case is pending determines that admission pro hac vice will serve
8 the interests of the parties and the efficient and just administration of the case. Resident counsel
9 may be permitted only if he or she has received a Practice Pending Admission Certificate.
10 Admission pro hac vice under this rule is discretionary with the court in which the application for
11 admission is made. The court may revoke ~~A~~ admission pro hac vice ~~may be revoked by the court~~
12 upon its own motion or the motion of a party if, after notice and a hearing, the court determines
13 that admission pro hac vice is inappropriate. Admission pro hac vice ~~shall~~ must be denied or, if
14 granted, ~~shall be~~ revoked if the court determines that the process is being used to circumvent the
15 normal requirements for the admission of attorneys to the practice of law in Utah.

16 (c) Factors in determining admission and revocation. In determining whether to enter or
17 revoke the order of admission pro hac vice, the court may consider any relevant information,
18 including whether nonresident counsel:

19 (c)(1) is familiar with Utah rules of evidence and procedure, including applicable local
20 rules;

21 (c)(2) is available to opposing parties;

22 (c)(3) has particular familiarity with the legal affairs of the party relevant to the case;

23 (c)(4) complies with the rulings and orders of the court;

24 (c)(5) has caused delay or been disruptive; and

25 (c)(6) has been disciplined in any other jurisdiction within the prior ~~5~~ five years.

26 (d) Application requirements. The attorney seeking admission pro hac vice ~~shall~~ must complete
27 under oath and submit to the Bar an application form available from the Utah State Bar or court
28 ~~clerk~~ clerk's office. The applicant ~~shall~~ must attach to the application form a Certificate of Good

1 Standing from the licensing state in which the applicant resides. The applicant ~~shall~~must
2 complete a separate application for each case in which the applicant wants to appear. The fee for
3 each application is \$250, which ~~shall~~must be paid to the Utah State Bar. Fees paid under this
4 rule ~~shall~~will be used for attorney discipline investigations and proceedings. The following are
5 exempt from the fee:

6 (d)(1) attorneys who are employees of and representing the United States of America or
7 any of its departments or agencies; and

8 (d)(2) attorneys representing indigent clients on a pro bono basis.

9 (e) Application form. A copy of the application and a receipt showing fee payment ~~of the fee~~
10 ~~shall~~will be filed in the court in which the case is pending, with a motion by a Bar member ~~of~~
11 ~~the Bar~~ to admit the applicant pro hac vice and a consent by ~~that~~such Bar member ~~of the Bar~~ to
12 appear as associate counsel. Associate counsel ~~shall~~must be a resident of Utah. The application
13 form ~~shall~~must include:

14 (e)(1) the name, address, telephone number, fax number, e-mail address, bar
15 identification number(s), and state(s) of the applicant's admission ~~of the applicant~~;

16 (e)(2) the name and number of the case in which the applicant is seeking to appear as the
17 attorney of record or, if the case has not yet been filed, a description of the partis;

18 (e)(3) the name, number, and court of other cases pending or closed within the prior five
19 years in any state or federal court of Utah in which the applicant or a member of the
20 applicant's firm appears pro hac vice;

21 (e)(4) a statement whether, in any state, the applicant:

22 (e)(4)(A) is currently suspended or disbarred from the practice of law;

23 (e)(4)(B) has been disciplined within the ~~prior~~past five years; or

24 (e)(4)(C) is the subject of any pending disciplinary proceedings;

25 (e)(5) a statement that the applicant:

26 (e)(5)(A) submits to the disciplinary authority and procedures of the Bar;

- 1 (e)(5)(B) is familiar with the rules of procedure and evidence, including
2 applicable local rules;
- 3 (e)(5)(C) will be available for depositions, hearings, and conferences; and
4 (e)(5)(D) will comply with the rulings and orders of the court;
- 5 (e)(6) the name, address, Bar identification number, telephone number, fax number, and
6 e-mail address of the member of the Utah State Bar to serve as associate counsel;
- 7 (e)(7) for resident counsel only, a copy of the Practice Pending Admission Certificate;
8 and
- 9 (e)(8) any other information relevant to the standards for the admission of the applicant.

10 (f) Utah counsel requirements. Utah counsel associated with nonresident or resident counsel
11 seeking admission pro hac vice ~~shall~~must:

- 12 (f)(1) file a motion for admission of the applicant pro hac vice;
- 13 (f)(2) serve the motion by mail, hand-delivery or facsimile on the Utah State Bar's
14 general counsel on or before filing with the court and include a certificate of service with
15 the motion evidencing service on the Bar's general counsel and upon the opposing
16 parties, or, if represented, their counsel;
- 17 (f)(3) file a written consent to appear as associate counsel;
- 18 (f)(4) sign the first pleading filed;
- 19 (f)(5) continue as one of the counsel of record in the case unless another Bar member ~~of~~
20 ~~the Bar~~ is substituted as associate counsel; and
- 21 (f)(6) be available to opposing counsel and the court for communication regarding the
22 case and the service of papers.

23 (g) Utah counsel responsibilities. The court may require Utah counsel to appear at all hearings.
24 Utah counsel ~~shall have~~has the responsibility and authority to act for the client in all proceedings
25 if the nonresident attorney fails to appear or fails to respond to any ~~order of the court~~ order.

1 | (h) Complying with Utah laws. An attorney admitted pro hac vice ~~shall~~must comply with and
2 | is subject to Utah statutes, rules of the Supreme Court, including the Rules of Professional
3 | Conduct and Article 5, Lawyer Discipline and Disability, the rules of the court in which the
4 | attorney appears, and the rules of the Code of Judicial Administration.

5

1 **Article 9. Lawyers' Fund for Client Protection**

2 **Rule 14-904. Funding.**

3 (a) The Supreme Court ~~shall~~will provide for funding by the lawyers licensed in this state in
4 amounts adequate for the proper payment of claims and costs of administering the Fund subject
5 to paragraph (c).

6 (b) All determinations ~~with regards to~~regarding funding ~~shall~~will be within the discretion of the
7 Board, subject to the Supreme Court's approval~~of the Supreme Court.~~

8 (c) The Bar ~~shall have the~~has authority to assess its members for purposes of maintaining the
9 Fund at sufficient levels to pay eligible claims in accordance with these rules. The Committee
10 ~~shall~~must report annually to the Commission on a timely basis as to known prospective claims
11 as well as total claims paid to date so that an appropriate assessment can be made for the
12 upcoming fiscal year. After the assessment at the beginning of the fiscal year is determined, the
13 Fund balance ~~shall~~must be set in an amount of ~~not less than~~at least \$200,000. The Bar ~~shall~~will
14 then report to the Supreme Court as to known prospective claims as well as total claims paid to
15 date after which the final assessment and fund balance ~~shall~~will be set with the Court's
16 approval.

17 (d) A lawyer's failure to pay any fee assessed under paragraph (c) ~~shall be~~is cause for
18 administrative suspension from practice until payment ~~has been made~~is received.

19 (e) Any lawyer whose actions have caused payment of funds to a claimant from the Fund ~~shall~~
20 must reimburse the Fund for all monies paid out as a result of ~~his or her~~the lawyer's conduct with
21 interest at legal rate, in addition to payment of the assessment for the procedural costs of
22 processing the claim and reasonable attorney fees incurred by the ~~Bar's~~ Office of Professional
23 Conduct or any other attorney or investigator engaged by the Committee to investigate and
24 process the claim as a condition of continued practice.

25 (e)(1) In lawyer discipline cases for which the Fund pays an eligible claim, the lawyer's
26 license to practice ~~shall~~will be administratively suspended for non-payment until the
27 lawyer has reimburse~~ment~~ed to the Fund ~~has been made by the lawyer.~~

Comment [LL103]: Recommendation 1.2

1 **Rule 14-912. Processing claims.**

2 (a) Whenever it appears that a claim is not eligible for reimbursement pursuant to these rules, the
3 claimant ~~shall~~must be advised of the reasons why the claim may not be eligible for
4 reimbursement, and that unless additional facts to support eligibility are submitted to the
5 Committee, the claim file ~~shall~~will be closed. The ~~chair~~chairperson of the Fund chair may
6 appoint themselves or any ~~member of the~~ Committee member ~~and/or his/herself~~ to determine the
7 eligibility of claims.

8 (b) A certified copy of an order disciplining a lawyer for the same dishonest act or conduct
9 alleged in the claim, or a final judgment imposing civil or criminal liability therefor, ~~shall be~~is
10 evidence that a lawyer committed such dishonest act or conduct.

11 (c) The ~~Bar's~~ Office of Professional Conduct ~~Senior Counsel~~ ~~shall~~must be promptly notified of
12 each and every claim.

Comment [LL104]: Recommendation 1.2

13 (d) The lawyer alleged to have engaged in dishonest conduct ~~shall~~must be provided a copy of
14 the claim and given an opportunity to respond to the Committee in writing within 20 days of ~~the~~
15 ~~receipt thereof to the Committee~~receiving the claim.

16 (e) The Committee may request that testimony be presented. The lawyer or lawyer's
17 representative ~~shall~~must be given an opportunity to be heard if they so request within 20 days of
18 receiving a notice from the Committee that the Committee will process the claim.

19 (f) The Committee may make a finding of dishonest conduct for purposes of adjudicating a
20 claim. Such a determination is not a finding of dishonest conduct for the purposes of professional
21 discipline and further, represents only a recommendation to the Board. A claim may only be
22 considered if the individual lawyer involved has been disciplined to a threshold level of a public
23 reprimand or is no longer in practice.

24 (g) The claim ~~shall~~will be determined on the basis of all available evidence, and notice ~~shall~~
25 must be given to the claimant and the lawyer of the final decision by the Board after a
26 recommendation has been made by the Committee. The recommendation for ~~approval or denial~~
27 ~~of approving or denying~~ a claim ~~shall~~requires the affirmative votes of ~~at least~~ a majority of the
28 Committee members and a quorum of the voting ~~members of the~~ Board members.

- 1 (h) Any proceeding ~~up~~ on a claim ~~shall~~will not be conducted according to technical rules relating
2 to evidence, procedure, and witnesses. Any relevant evidence ~~shall~~must be admitted if it is the
3 sort of evidence on which responsible persons are accustomed to rely ~~on~~ in the conduct of
4 serious affairs, regardless of ~~the existence of~~ any common law or statutory rule ~~which~~that
5 ~~may~~might make improper the admission of such evidence over objection in court proceedings. The
6 claimant ~~shall have~~has the duty to supply relevant evidence to support the claim.
- 7 (i) The Board ~~shall~~must determine the order and manner of payment and pay those claims it
8 deems meritorious. ~~U~~but unless the Board directs otherwise, no claim ~~should~~will be approved
9 during ~~the pendency of a~~ pending disciplinary proceeding involving the same act or conduct as
10 alleged in the claim; ~~specifically, n~~ No determination ~~and/or~~ hearing ~~shall~~will take place until
11 ~~such time that~~ all disciplinary proceedings ~~have, in fact, been completed~~are complete.
- 12 (j) ~~The Board must advise B~~ both the claimant and the lawyer ~~shall be advised~~ of the status of the
13 Board's consideration of the claim and after having received the recommendation of the
14 Committee, must also ~~shall~~ be informed of the final determination.
- 15 (k) The claimant may request reconsideration within 30 days of the denial or determination of
16 the amount of the claim.

17

1 **Chapter 15. Rules Governing Licensed Paralegal Practitioners**

2 **Article 4. Mandatory Continuing Licensed Paralegal Practitioner Education**

3 **Rule 15-402. Definitions.**

4 As used in this article:

5 (a) Reserved;

6 (b) “**Accredited CLE**” means a CLE course that has been approved the Board in accordance
7 with Rule 15-410.;

8 (c) “**Active status**” or “**active status “licensed paralegal practitioner**” means a licensed
9 paralegal practitioner who has elected to be on active status as defined under the Bar’s rules,
10 regulations, and policies;

11 (d) ~~Reserved;~~

12 ~~(e)(1)~~ “**Approved law school**” means an ABA approved law school as defined under Rule 14-
13 701;

14 ~~(e)(2)~~ “**Approved paralegal education program**” means a program offered by an accredited
15 school as that term is defined in Rule 15-701;

16 (f) “**Bar**” means the Utah State Bar;

17 (g) Reserved;

18 (h) “**Board**” means the Utah State Board of Mandatory Continuing Legal Education as set forth
19 in Rule 14-403;

20 (i) “**Board of Bar Commissioners**” means the governing board of the Bar;

21 (j) “**Certificate of Compliance**” means a written report evidencing a licensed paralegal
22 practitioner’s completion of accredited CLE as required and defined under Rule 15-414;

23 (k) “**CLE**” means continuing legal education;

24 (k)(1) “**Live CLE**” means a CLE program presented in a classroom setting where
25 the licensed paralegal practitioner is in the same room as the presenter;

- 1 (k)(2) **“Live Attendance”** means in person attendance at a Utah state courthouse where a
2 course is streamed by live audio-visual communication from another Utah state
3 courthouse or from the Law and Justice Center;
- 4 (k)(3) **“Self-Study CLE Program”** means a program presented in a suitable setting
5 where the licensed paralegal practitioner can view approved self-study activities;
- 6 (l) Reserved;
- 7 (m) **“Compliance Cycle”** means the period of two ~~2~~-years beginning July 1 through June 30;
- 8 (n) **“Ethics”** means standards set by the Utah Rules of Professional Conduct with which
9 a licensed paralegal practitioner must comply to remain authorized to certify as a licensed
10 paralegal practitioner in Utah and remain in good standing;
- 11 (o) Reserved;
- 12 (p) Reserved;
- 13 (q) **“Inactive status”** or **“inactive status licensed paralegal practitioner”** means a licensed
14 paralegal practitioner who has elected to be on inactive status as defined under the Bar’s rules,
15 regulations and policies;
- 16 (r) **“MCLE”** means mandatory continuing legal education as defined under this article;
- 17 (s) Reserved;
- 18 (t) **“New licensee”** means a licensed paralegal practitioner newly licensed by the Utah State Bar;
- 19 (u) Reserved;
- 20 (v) **“Presumptively approved sponsor”** means those CLE sponsors or providers who qualify
21 under the standards set forth in Rule 15-412;
- 22 (w) **“Presumptive CLE accreditation”** means those CLE courses or activities that qualify
23 under the standards set forth in Rule 15-412;
- 24 (x) **“Professionalism and Civility”** means conduct consistent with the tenets of the legal
25 profession by which a licensed paralegal practitioner demonstrates civility, honesty, integrity,
26 character, fairness, competence, ethical conduct, public service, and respect for the rules of law,

1 the courts, clients, lawyers, other licensed paralegal practitioners, witnesses and unrepresented
2 parties;

3 (y) “**OPC**” means the ~~Bar’s~~ Office of Professional Conduct;

4 (z) Reserved; and

5 (aa) “**Supreme Court**” means the Utah Supreme Court; ~~and~~.

6 ~~(bb) Reserved~~

7

Comment [LL105]: Recommendation 1.2

1 **15-701. Definitions.**

2 As used in this article:

3 (a) “**ABA**” means the American Bar Association.

4 (b) “**Accredited Program**” means a course of instruction in paralegal studies from a program
5 officially recognized as meeting the standards and requirements of a regional or national
6 accrediting organization that is approved by the U.S. Department of Education, or a paralegal
7 school or paralegal studies program that has been fully or provisionally approved by the ABA
8 Standing Committee on Paralegals.

9 (c) “**Accredited School**” means a school officially recognized as meeting the standards and
10 requirements of a regional or national accrediting organization that is approved by the U.S.
11 Department of Education.:-

12 (d) “**Applicant**” means each person requesting licensure as a Licensed Paralegal Practitioner.

13 (e) “**Approved Law School**” means a law school which is fully or provisionally approved by
14 the ABA pursuant to its Standards and Rules of Procedure for Approval of Law Schools. To
15 qualify as approved, the law school must have been fully or provisionally approved at the time of
16 the Applicant’s graduation, or at the time of the Applicant’s enrollment, provided ~~that~~ the
17 Applicant graduated within a typical and reasonable ~~period of~~ time.

18 (f) “**Associate Degree**” means an undergraduate academic degree conferred by a college upon
19 completion of the curriculum required for an associate degree.

20 (g) “**Bachelor’s Degree**” means an academic degree conferred by a college or university upon
21 completion of the undergraduate curriculum.

22 (h) “**Bar**” means the Utah State Bar, including its employees, committees and the Board.

23 (i) “**Board**” means the Board of Bar Commissioners.

24 (j) “**Complete Application**” means an application that includes all fees and necessary
25 application forms, along with any required supporting documentation, character references, a
26 criminal background check, a photo, an official certificate of graduation and if applicable, a test
27 accommodation request with supporting medical documentation.

- 1 (k) “**Confidential Information**” is defined in Rule 15-720(a).
- 2 (l) “**Disbarred Lawyer**” means an individual who was once a licensed lawyer and is no longer
3 permitted to practice law.
- 4 (m) “**Executive Director**” means the executive director of the Utah State Bar or ~~her or his~~their
5 designee.
- 6 (n) “**First Professional Degree**” means a degree that prepares the holder for admission to the
7 practice of law (e.g. juris doctorate) by emphasizing competency skills along with theory and
8 analysis. An advanced, focused, or honorary degree in law is not recognized as a First
9 Professional Degree (e.g. master of laws or doctor of laws).
- 10 (o) “**Full-time**” means providing legal services as a paralegal for no fewer than 80 hours per
11 month.
- 12 (p) “**General Counsel**” means the General Counsel of the Utah State Bar or ~~her or his~~their
13 designee.
- 14 (q) “**Licensed Paralegal Practitioner**” means a person licensed by the Utah Supreme Court to
15 provide limited legal representation in the areas of (1) temporary separation, divorce, parentage,
16 cohabitant abuse, civil stalking, and custody and support; (2) forcible entry and detainer and
17 unlawful detainer; or (3) debt collection matters in which the dollar amount in issue does not
18 exceed the statutory limit for small claims cases.
- 19 (r) “**LPP**” means Licensed Paralegal Practitioner.
- 20 (s) “**LPP Administrator**” means the Bar employee in charge of LPP licensure or ~~his or her~~their
21 designee.
- 22 (t) “**LPP Admissions Committee**” means those Utah State Bar members or others appointed by
23 the Board or president of the Bar who are charged with recommending standards and procedures
24 for licensure of LPPs, with implementation of this article, reviewing requests for test
25 accommodations, and assessing the qualifications of applicants.
- 26 (u) “**NALA**” means the National Association of Legal Assistants.
- 27 (v) “**NALS**” means The Association for Legal Professionals.

- 1 (w) “**NFPA**” means the National Federation of Paralegal Associations.
- 2 (x) “**National Certification**” means Certified Paralegal (CP or CLA) credential from the
3 National Association of Legal Assistants (NALA); the Professional Paralegal (PP) credential
4 from the National Association of Legal Professionals (NALS); or the Registered Paralegal (RP)
5 credential from the National Federation of Paralegal Associations (NFPA).
- 6 (y) “**OPC**” means the ~~Bar’s~~ Office of Professional Conduct.
- 7 (z) “**Paralegal**” means a person qualified through education, training, or work experience, who
8 is employed or retained by a lawyer, law office, governmental agency, or the entity in the
9 capacity or function which involves the performance, under the ultimate direction and
10 supervision of an attorney, of specifically delegated substantive legal work, which work, for the
11 most part, requires a sufficient knowledge of legal concepts that absent such assistance, the
12 attorney would perform.
- 13 (aa) “**Paralegal Certificate**” means verification that an individual has successfully completed a
14 paralegal studies program from an Accredited Program that includes at least 15 credit hours of
15 paralegal studies. The certificate must be offered, taught, and granted by an Accredited Program.
- 16 (bb) “**Paralegal Studies**” and “**Paralegal Studies Degree**” mean course work that prepares a
17 holder to work as a paralegal.
- 18 (cc) “**Privileged Information**” in this article includes: information subject to the attorney-client
19 privilege, attorney work product, test materials and applications of examinees; correspondence
20 and written decisions of the Board and LPP Admissions Committee, and the identity of
21 individuals participating in the drafting, reviewing, grading and scoring of the LPP Licensure
22 Examination.
- 23 (dd) “**Reapplication for Licensure**” means that for two years after the filing of an original
24 application, an Applicant may reapply by completing a Reapplication for Licensure form
25 updating any information that has changed since the prior application was filed and submitting a
26 new criminal background check.
- 27 (ee) “**Substantive Law-Related Experience**” means the provision of legal services as a
28 Paralegal, paralegal student or law student including, but not limited to, drafting pleadings, legal

1 documents or correspondence, completing forms, preparing reports or charts, legal research, and
2 interviewing clients or witnesses. Substantive Law-Related Experience does not include routine
3 clerical or administrative duties. Substantive Law-Related Experience for licensure in landlord-
4 tenant and debt collection includes, but is not limited to, the provision of legal services as a
5 Paralegal supervised by a licensed attorney, paralegal student or law student in the areas of
6 bankruptcy, real estate, mortgage and/or banking law.

7 (ff) “**Supreme Court**” means the Utah Supreme Court.

8 (gg) “**Unapproved Law School**” means a law school that is not fully or provisionally approved
9 by the ABA.

10 (hh) “**Updated Application**” means that an Applicant is required to amend and update ~~her or his~~
11 [the Applicant’s](#) application on an ongoing basis and correct any information that has changed
12 since the application was filed.

13

Tab 4

Rules to be updated (bulleted rules will all be moved to Chapter 11, Article 5):

14-102 Regulating the practice of law.

14-103 Bar organization and management.

14-105 Promulgating rules to regulate licensed lawyers, Licensed Paralegal Practitioners, and judicial officers.

14-107 Duties of lawyers, foreign legal consultants, and licensed paralegal practitioners.

14-202 Bar's purposes.

14-208 Special rules and regulations.

14-402 Definitions.

- 11-501 Oversight Committee for the Office of Professional Conduct.
- 14-501 Lawyer disciplinary and disability proceedings: purpose, authority, scope, and structure.
- 14-502 Definitions.
- 14-503 Ethics and Discipline Committee.
- 14-504 OPC counsel.
- 14-505 Expenses.
- 14-506 Jurisdiction.
- 14-507 Roster of lawyers and current record information.
- 14-508 Periodic assessment of lawyers.
- 14-509 Grounds for discipline.
- 14-510 Prosecution and appeals.
- 14-511 Actions in district court.
- 14-512 Sanctions.
- 14-513 Immunity from civil suits.
- 14-514 Service.
- 14-515 Accessing disciplinary information.
- 14-516 Disseminating disciplinary information.
- 11-??? Retaining records.
- 14-517 Additional rules of procedure.
- 14-518 Interim discipline for threat of harm.
- 14-519 Lawyers found guilty of a crime.
- 14-520 Discipline by consent.
- 14-521 Resignation with discipline pending.
- 14-522 Reciprocal discipline.

- 14-523 Proceedings in which lawyer is declared to be incompetent or alleged to be incapacitated.
- 14-524 Reinstatement following a suspension of no more than six months.
- 14-525 Reinstatement following a suspension of more than six months; readmission.
- 14-526 Notice of disability or suspension; return of clients' property; refund of unearned fees.
- 14-527 Appointment of trustee to protect clients' interest when lawyer disappears, dies, is suspended or disbarred, or is transferred to disability status.
- 14-528 Appeal by complainant.
- 14-529 Statute of limitations.
- 14-530 Costs.
- 14-531 Noncompliance with child support order, child visitation order, subpoena or order relating to paternity or child support proceeding.
- 14-532 Failure to answer charges.
- 14-533 Diversion.
- 14-601 Definitions.
- 14-602 Purpose and nature of sanctions.
- 14-603 Sanctions.
- 14-604 Factors to be considered in imposing sanctions.
- 14-605 Imposition of sanctions.
- 14-606 Prior discipline orders.
- 14-607 Aggravation and mitigation.

14-701 Definitions.

14-705 Admission by motion.

14-712 Qualifications for admission based on UBE.

14-718 Licensing of Foreign Legal Consultants.

14-801 Definitions.

14-806 Admission pro hac vice.

14-904 Funding.

14-912 Processing claims.

15-402 Definitions.

15-701 Definitions.

1 **Chapter 14. Rules Governing the Utah State Bar.**

2 **Article 1. Integration and Management**

3 **Rule 14-102. Regulating the practice of law.**

4 (a) **Vested authority.**

5 (a)(1) The Supreme Court—by its constitutional power—authorizes and designates the
6 Bar to administer rules and regulations that govern the practice of law in Utah, including
7 regulating Licensed Paralegal Practitioners. All persons authorized to practice law in
8 Utah must be licensed by the Bar in accordance with this chapter and Chapter 15 of the
9 Supreme Court Rules of Professional Practice.

10 (a)(2) The Supreme Court recognizes a compelling state interest in using the Bar to assist
11 the Court in governing admission to the practice of law and improving the quality of legal
12 services in the state. The requirements imposed, the delegations made, and the authority
13 granted to the Bar provide the best ways to promote these compelling state interests and
14 there are no less restrictive alternatives available to achieve those results.

Comment [LL1]: Recommendation 1.2

15 (b) **Responsibilities of the Bar.** The Bar’s purposes, duties, and responsibilities include:

16 (b)(1) advancing the administration of justice according to law;

17 (b)(2) aiding the courts in the administration of justice;

18 (b)(3) regulating the admission of persons seeking to practice law;

Comment [LL2]: Recommendation 1.2

19 (b)(4) fostering and maintaining integrity, learning competence, public service, and high
20 standards of conduct among those practicing law;

21 (b)(5) representing the Bar before legislative, administrative, and judicial bodies;

22 (b)(6) preventing the unauthorized practice of law;

23 (b)(7) promoting professionalism, competence, and excellence through continuing legal
24 education and other means;

25 (b)(8) providing a service to the public, the judicial system, and Bar members;

26 (b)(9) educating the public about the rule of law and responsibilities under the law; and

1 (b)(10) assisting Bar members in improving the quality and efficiency of their practice.

2 (c) **Qualifications.** This chapter prescribes the qualifications, duties, and obligations of lawyers,
3 foreign legal consultants, and Licensed Paralegal Practitioners licensed to practice law in Utah.
4 The Supreme Court is responsible for disciplining a Bar member or Licensed Paralegal
5 Practitioner.

6 (d) **Licensure required.** No suspended or disbarred person may practice law in Utah or hold
7 themselves out as one who may practice law in Utah. A person may only practice law in Utah if
8 that person is:

9 (d)(1) a licensed lawyer and an active Bar member in good standing;

10 (d)(2) an inactive member in good standing providing pro bono legal services for or on
11 behalf of a legal services organization approved by the Bar upon meeting certification
12 and performance standards, conditions, and rules established by the Board;

13 (d)(3) a foreign legal consultant licensed by the Bar; or

14 (d)(4) a Licensed Paralegal Practitioner and an active licensee of the Bar in good
15 standing.

1 **Rule 14-103. Bar organization and management.**

2 (a) **Board of Commissioners: number, term, and vacancies.**

3 (a)(1) Number. The Bar's Board of Commissioners consists of at least 13 but no more
4 than 15 voting members, including 11 elected lawyers and two nonlawyers appointed by
5 the Supreme Court.

6 (a)(2) Term. Unless otherwise provided, the term of office of each commissioner is three
7 years and until a successor is elected and qualified. The initial term of office of one of the
8 nonlawyer commissioners is two years.

9 (a)(3) Vacancies.

10 (a)(3)(A) If a lawyer vacancy on the Board occurs before the completed term of
11 office, the remaining commissioners will:

12 (a)(3)(A)(i) conduct a special election;

13 (a)(3)(A)(ii) appoint an interim successor from among the active Bar
14 members whose business mailing addresses on the Bar's records are in the
15 division from which the commissioner was elected, who will serve until
16 the next annual election; or

17 (a)(3)(A)(iii) fill the vacancy during the next regular annual election.

18 (a)(3)(B) If a lawyer vacancy on the Board is filled by either a special or regular
19 election, the Board may establish the term of the successor to be a one, two or full
20 three-year term, provided that there would be only two or three commissioners
21 from the Third Division whose terms expire in any one year and only four or five
22 Board commissioners whose terms expire in any one year.

23 (a)(3)(C) A President's unexpired Commission term will be filled in the regular
24 election cycle immediately preceding the time he or she succeeds to the office of
25 President.

26 (b) **Board's powers.** The Board may exercise all powers necessary and proper to carry out its
27 duties and responsibilities and has all authority not specifically reserved to the Supreme Court.
28 The Court specifically reserves the authority to:

1 (b)(1) approve Bar admission and licensure fees for attorneys and Licensed Paralegal
2 Practitioners;

3 (b)(2) approve all rules and regulations for admission, licensure, professional conduct,
4 client security fund, fee arbitration, legislative activities, unauthorized practice of law,
5 and Bar Examination review and appeals; and

6 (b)(3) establish appropriate rules and regulations governing mandatory continuing legal
7 education.

8 (c) **Territorial divisions.** The First Division includes the First Judicial District; the Second
9 Division includes the Second Judicial District; the Third Division includes the Third Judicial
10 District; the Fourth Division includes the Fourth Judicial District; and the Fifth Division includes
11 the Fifth, Sixth, Seventh, and Eighth Judicial Districts.

12 (d) **Number of lawyer commissioners from each division.** Each division will have one lawyer
13 commissioner, except the Third Division will have seven lawyer commissioners. No more than
14 one lawyer commissioner from any division except from the Third Division, and no more than
15 seven lawyer commissioners from the Third Division, may serve on the Board at the same time.

16 (e) **Nomination and eligibility of lawyer commissioners.** To nominate a person for
17 commissioner for a particular division, a member's business mailing address on the Bar's records
18 must be within that division. To be eligible for the office of lawyer commissioner in a division,
19 the nominee's business mailing address on the Bar's records must be within that division.
20 Nomination to the office of commissioner must be by written petition of at least 10 Bar members
21 in good standing. Any number of candidates may be nominated on a single petition. Nominating
22 petitions will be provided to the executive director within a period fixed by the Board's rules.

23 (f) **Commissioner Elections.**

24 (f)(1) Lawyer commissioners must be elected by resident active Bar members as follows:

25 (f)(1)(A) beginning in 1983 and every third year thereafter, one member from the
26 Second Division and two members from the Third Division, but in 1983 only,
27 there will be four members elected from the Third Division;

Comment [LL3]: Recommendation 1.2

1 (f)(1)(B) beginning in 1984 and every third year thereafter, one member from the
2 First Division and three members from the Third Division; and

3 (f)(1)(C) beginning in 1985 and every third year thereafter, two members from the
4 Third Division and one each from the Fourth and Fifth Divisions.

5 (f)(2) The candidate from any division, and the two or three candidates from the Third
6 Division, receiving the greatest number of votes of that division will be the commissioner
7 of such division. A member may only vote for commissioner candidates in the division in
8 which the member's business mailing address on the Bar's records is located. The ballots
9 will be returned to the Bar offices in accordance with its rules. There will be an annual
10 election by the resident active Bar members for the purpose of filling vacancies. The
11 Board will fix the time for holding the annual election and prescribe such rules and
12 regulations in accordance with this chapter. The Board must mail annual election notices
13 at least 90 days before the date on which ballots will be counted.

14 (g) **President-elect's nomination and election.** The Board must nominate at least one active
15 lawyer in good standing to run for the office of president-elect, to be elected by the active Bar
16 members. The president and the president-elect will hold office until their successors are elected
17 and seated. A secretary, and such other assistants as the Board may require, may be selected
18 from within or without the Board to hold office at the pleasure of the Board and to be paid such
19 compensation as the Board determines.

20 (h) **Board officers and organization.** The Board is organized and authorized to conduct
21 business through its elected commissioners, and the Bar's president and president-elect. The
22 president-elect for the previous year will automatically succeed to the office of president. A
23 president and president-elect who are not elected commissioners have the authority to vote on
24 matters brought before the Board. In the event of a tie vote, the matter at hand will fail to pass.

25 (i) **Annual and special meetings notice.** There must be an annual meeting of the Bar, presided
26 over by the Bar president, open to all members in good standing, and held at such time and place
27 as the Board may designate, for discussing Bar affairs and the administration of justice. Special
28 Bar meetings may be held at such times and places as the Board designates. Notice of all

1 meetings must be published to the Bar's website not fewer than 15 days before the date of such
2 meeting.

3 (j) **Bylaws.** The Board may adopt Bylaws, not conflicting with any of these rules' terms,
4 concerning officer selection and tenure, creation of sections and committees and their powers
5 and duties, and generally for the control and regulation of the business of the Board and of the
6 Bar.

1 **Rule 14-105 Promulgating rules to regulate licensed lawyers, Licensed Paralegal**
2 **Practitioners, and judicial officers.**

Comment [LL4]: Recommendation 1.2

3 (a) **Formulating Rules.** The Board formulates rules governing the conduct of all persons
4 admitted or licensed to practice in Utah, including foreign legal consultants and those licensed as
5 Licensed Paralegal Practitioners, and Bar members holding judicial office. The Supreme Court
6 formulates rules governing procedures in cases involving alleged misconduct of Bar members,
7 including those holding judicial office.

Comment [LL5]: Recommendation 1.2

8 (b) **Court to approve rules and regulations.** All rules and regulations formulated by the Board
9 must be submitted to and approved by the Supreme Court.

10

1 **Rule 14-107. Duties of lawyers, foreign legal consultants, and licensed paralegal**
2 **practitioners.**

3 (a) **Roster and current record information.** The Bar must collect, maintain, and have ready
4 access to current information of **Bar members,** foreign legal consultants, and licensed paralegal
5 practitioners including:

Comment [LL6]: Moved over from 14-507.
This is a Bar requirement, not an OPC
requirement.

Comment [LL7]: Defined in Article 1 as
solely lawyers, but defined in Article 2 as both
lawyers and foreign legal consultants. It would
be preferable to have both definitions match,
one way or the other.

6 (a)(1) full name;

7 (a)(2) date of birth;

8 (a)(3) current physical addresses, and current telephone numbers for law office and
9 residence, except that full-time judges are exempt from providing residential addresses
10 and telephone numbers;

11 (a)(4) current e-mail address;

12 (a)(5) date of admission;

13 (a)(6) date of any transfer to or from inactive status;

14 (a)(7) all specialties in which certified;

15 (a)(8) other jurisdictions in which the lawyer is admitted and date of admission; and

16 (a)(9) nature, date, and place of any discipline imposed and any reinstatements.

17 (b) **Assessments.**

Comment [LL8]: Moved over from 14-508.
This is a Bar requirement, not OPC.

18 (b)(1) **Annual licensing fee.** To effectuate the Bar's purposes, every lawyer, foreign legal
19 consultant, and licensed paralegal practitioner admitted or licensed to practice in Utah
20 must pay to the Bar on or before July 1 of each year an annual license fee for each fiscal
21 year to be fixed by the Bar Commission from time to time and approved by the Supreme
22 Court. The fee must be sufficient to pay the costs of disciplinary administration and
23 enforcement. The Bar administers the funds.

24 (b)(2) **Failure to renew annual license.** Failure to pay the annual licensing fee or
25 provide the required annual licensing information will result in administrative
26 suspension. Any lawyer, foreign legal consultant, or licensed paralegal practitioner who
27 practices law after failure to renew their license violates the Rules of Professional

1 Conduct or Licensed Paralegal Practitioner Rules of Professional Conduct and may be
2 disciplined. The executive director or their designee must give notice of such removal
3 from the rolls to such noncomplying member at the designated mailing address on the
4 Bar's records and to the state and federal courts in Utah.

5 (b)(3) **Reenrollment within three years of administrative suspension.** A lawyer,
6 foreign legal consultant, or licensed paralegal practitioner who is administratively
7 suspended for failing to pay licensing fees for three years or less may apply in writing for
8 reenrollment. The request should be made to the Utah State Bar Licensing Department
9 and include payment equal to the fees the lawyer, foreign legal consultant, or licensed
10 paralegal practitioner would have been required to pay had they remained an inactive
11 member to the date of the request for reenrollment and a \$200 reinstatement fee. Upon
12 receipt, the Bar will order reenrollment and so notify the courts. Reenrollment based on
13 failure to renew does not negate any orders of discipline.

14 (b)(4) **Reenrollment after three years of administrative suspension.** A lawyer, foreign
15 legal consultant, or licensed paralegal practitioner who is administratively suspended for
16 three years or more for failing to pay license fees must comply with the admissions
17 requirements set forth in the Supreme Court Rules of Professional Practice governing
18 admission for lawyers who have been administratively suspended for nonpayment for
19 three or more years before being reinstated.

Comment [LL9]: Bar removed confusing terminology re "resignation."

1 **Article 2. Bylaws**

2 **Rule 14-202. Purposes of the Bar.**

3 The purposes of the Bar are to:

- 4 (a) advance the administration of justice according to law;
- 5 (b) aid the courts in carrying on the administration of justice;
- 6 (c) regulate the admission of persons seeking to practice law;
- 7 (d) foster and maintain integrity, learning, competence, public service, and high standards
- 8 of conduct among those practicing law;
- 9 (e) represent the Bar before the legislative, administrative, and judicial bodies;
- 10 (f) prevent the unauthorized practice of law;
- 11 (g) promote professionalism, competence, and excellence in those practicing law through
- 12 continuing legal education and other means;
- 13 (h) provide services to the public, the judicial system, and Bar members;
- 14 (i) educate the public about the rule of law and their responsibilities under the law;
- 15 (j) assist Bar members in improving the quality and efficiency of their practice;
- 16 (k) engage freely in all lawful activities and efforts, including soliciting grants and
- 17 contributions that may reasonably be expected to promote and advance these purposes;
- 18 and
- 19 (l) carry on any other business connected with or incidental to the foregoing objectives
- 20 and purposes, and to have and exercise all the powers conferred upon corporations
- 21 formed under the Utah Revised Nonprofit Corporation Act.

Comment [LL10]: Recommendation 1.2

1 **Rule 14-207. Finances.**

2 (a) **Budget.** The Board must prepare an annual budget that is published for comment before
3 final adoption. The Board must adopt the budget at its first regular meeting following the
4 reorganization meeting. No obligations may be incurred unless within the limits of the budget
5 and within the scope of the authorized objectives of the Board. The annual budget must include a
6 budget for OPC, jointly developed by the Commission and OPC and approved by the Oversight
7 Committee. The Commission must adopt the budget for OPC approved by the Oversight
8 Committee unless the Commission petitions the Supreme Court for modifications, in which case
9 the Commission must adopt the budget for OPC approved by the Supreme Court.

Comment [LL11]: Recommendation 2.6

10 (b) **Section dues.**

11 (b)(1) Bar sections may, with Board approval, charge an annual membership fee to obtain
12 the commitment of members to section activities and to provide revenue to carry out the
13 section's purposes. The amount of such membership fees will be fixed by the section
14 subject to the approval of the Board.

15 (b)(2) The Bar must hold any funds raised by sections from membership fees as
16 separately identifiable funds of the sections, and disburse to the sections as needed, to
17 carry out the functions of the sections. Such funds must not revert to the general Bar fund
18 at the end of the budget year, but will continue to be held as a separately identifiable
19 fund.

20 (c) **Disbursements.**

21 (c)(1) Bar funds are disbursed only in accordance with the provisions of law and by these
22 Bylaws, and at the direction of the Board.

23 (c)(2) Checking accounts must be maintained with banks to be designated by the Board in
24 such amounts as the Board will determine.

25 (c)(3) No check may be drawn on Bar funds except as the Board authorizes.

1 (c)(4) Checks under \$1,000 may be signed by an Executive Committee member or by the
2 executive director. Checks over \$1,000 must bear the signatures of any two Executive
3 Committee members or any one Executive Committee member and the executive
4 director, unless the funds come from the revolving-fund account for day-to-day
5 operating needs, in which case any amount of check may be signed by an Executive
6 Committee member or by the executive director. The Board designates the size of the
7 revolving-fund account annually and may revise this at any time.

8 (d) **Investing funds.** The Board must direct any investment of Bar funds.

1 **Rule 14-208. Special rules and regulations.**

2 (a) **Bar Admission.** The Board must promulgate rules for applicant Bar admission pursuant to
3 Article 1, Integration and Management, and must recommend to the Supreme Court for approval
4 rules governing qualifications and requirements for admission to the practice of law as a lawyer
5 and as a foreign legal consultant and for the examination of applicants.

Comment [LL12]: Recommendation 1.2

6 (b) **Student practice rules.** The Board may promulgate and recommend to the Supreme Court
7 for approval rules governing student practice or student court assistance programs.

8 (c) **Sections, standing committees, special committees.** To facilitate accomplishing the Bar’s
9 purposes and objectives, the Board must create appropriate sections, standing committees, and
10 special committees to which matters may be referred. The Board may call for regular or periodic
11 reports from such committees and sections at times and to such extent as the Board deems
12 appropriate.

13 (d) **Committees.** The Board will select a chair and the members of each committee. Bar
14 Committees consist of:

15 (d)(1) Standing committees, which exist until abolished by the Board. Standing
16 committee members serve in staggered, three-year terms; and

17 (d)(2) Ad hoc committees created for a specific purpose, which will terminate upon
18 completion of that purpose. Ad hoc committee membership lasts through the committee’s
19 existence.

20

1 **Article 4. Mandatory Continuing Legal Education**

2 **Rule 14-402. Definitions.**

3 As used in this article:

4 (a) “**Active emeritus**” or “**active emeritus lawyer**” means a lawyer who has been a Bar
5 member for 50 years or who is 75 years of age as of July 1 of the current year and who
6 qualifies for active emeritus status as defined under the Bar’s rules, regulations, and
7 policies;

8 (b) “**Active status**” or “**active status lawyer**” means a lawyer who has elected to be on
9 active status as defined under the Bar’s rules, regulations, and policies; state judges,
10 federal judges and magistrates, court commissioners, active senior judges, and active
11 justice court judges, both full and part time, meet CLE requirements through the
12 Administrative Office of the Courts;

13 (c) “**Admission on motion applicant or lawyer**” means a lawyer who has applied or has
14 been admitted for reciprocal admission as defined under Rule 14-705;

15 (d) “**Approved law school**” means an ABA approved law school as defined under Rule
16 14-701;

17 (e) “**Bar**” means the Utah State Bar;

18 (f) “**Bar Examination**” means the Bar Examination as defined in Rules 14-710 and 14-
19 711 and includes the UBE, regardless of where the UBE was taken;

20 (g) “**Board**” means the Utah State Board of Mandatory Continuing Legal Education as
21 set forth in Rule 14-403;

22 (h) “**Board of Bar Commissioners**” means the governing board of the Bar;

23 (i) “**Certificate of Compliance**” means a written report evidencing a lawyer’s
24 completion of accredited CLE as required and defined under Rule 14-414;

25 (j) “**CLE**” means continuing legal education;

26 (j)(1) “**Live CLE**” means a CLE program presented in a classroom setting where
27 the lawyer is in the same room as the presenter;

- 1 (j)(2) “**Live Attendance**” means in-person attendance at a Utah state courthouse
2 where a course is streamed by live audio-visual communication from another
3 Utah state courthouse or from the Law and Justice Center;
- 4 (j)(3) “**Self-Study CLE Program**” means a program presented in a suitable
5 setting where the lawyer can view approved self-study activities;
- 6 (k) “**Comity Certificate**” is a Certificate that is filed to show MCLE compliance with a
7 reciprocal jurisdiction;
- 8 (l) “**Compliance Cycle**” means the period of two years beginning July 1 through June 30;
- 9 (m) “**Ethics**” means standards set by the Utah Rules of Professional Conduct with which
10 a lawyer must comply to remain authorized to practice law in Utah and remain in good
11 standing;
- 12 (n) “**Full exam**” means all components of the Bar Examination as defined under Rule 14-
13 710;
- 14 (o) “**House Counsel**” means a lawyer admitted with a restricted House Counsel license
15 as defined in Rule 14-719, which is required and limits the lawyer’s practice of law to the
16 business of the lawyer’s employer;
- 17 (p) “**Inactive status**” or “**inactive status lawyer**” means a lawyer who has elected to be
18 on inactive status as defined under the Bar’s rules, regulations, and policies;
- 19 (q) “**MCLE**” means mandatory continuing legal education as defined under this article;
- 20 (r) “**Multi-State Compliance Reciprocity**” means Utah has established that MCLE
21 compliance in certain states (Idaho, Oregon, Washington) may be used as MCLE
22 compliance in Utah by an active lawyer whose principal practice is in one of the
23 established reciprocal states;
- 24 (s) “**New admittee**” means a lawyer newly admitted to the Utah State Bar;
- 25 (t) “**NLTP**” means the New Lawyer Training Program as set forth in Rule 14-404 and
26 Rule 14-808;

1 (u) “**Presumptively approved sponsor**” means those CLE sponsors or providers who
2 qualify under the standards set forth in Rule 14-412;

3 (v) “**Presumptive CLE accreditation**” means those CLE courses or activities that
4 qualify under the standards set forth in Rule 14-412;

5 (w) “**Professionalism and Civility**” means conduct consistent with the tenets of the legal
6 profession by which a lawyer demonstrates civility, honesty, integrity, character, fairness,
7 competence, ethical conduct, public service, and respect for the rules of law, the courts,
8 clients, other lawyers, witnesses, and unrepresented parties;

9 (x) “**OPC**” means the Office of Professional Conduct;

10 (y) “**OPC ethics school**” means the OPC biannual seminar on the Utah Rules of
11 Professional Conduct, which provides six CLE credit hours;

12 (z) “**Supreme Court**” means the Utah Supreme Court; and

13 (aa) “**UBE Transfers**” means applicants who gain admission by transferring a uniform
14 bar exam score.

15

Comment [LL13]: Recommendation 1.2

Rule 11-501. 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 Utah Supreme Court committee.

(a)(1) **Composition.**

(a)(1)(A) The Oversight Committee consists of five voting members, at least one of whom is 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 background.

(a)(1)(B) The executive director of the Utah Bar will be an ex-officio, non-voting member of the Oversight Committee.

(a)(2) **Appointment and member roles.** The Utah Supreme Court appoints Oversight Committee members who may serve up to two staggered four-year terms. The Supreme Court will select a chair from among the Oversight Committee’s members. Oversight Committee members shall 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.

(a)(3) **Meeting schedule.** The Oversight Committee will meet as often as necessary to accomplish its purposes but at least annually.

(a)(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.

(a)(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.

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

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

(b)(1) **Oversight Committee purpose.** The Oversight Committee's purpose is to assist the OPC in implementing reforms to the attorney discipline process adopted by the Utah Supreme Court and to provide oversight for the OPC.

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

(b)(2)(A) Develop and implement realistic performance metrics and conduct annual evaluations of OPC and its chief disciplinary counsel;

(b)(2)(B) Approve the budget for the OPC and annually submit the budget by May 1 to the Utah Supreme Court and Utah State Bar;

(b)(2)(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;

(b)(2)(D) Annually, in conjunction with chief disciplinary counsel and the Ethics and Discipline Committee chair, report to the Court regarding the operations of the OPC and the general standing of disciplinary matters and procedures;

(b)(2)(E) Develop and monitor formal policies for the OPC, including records retention policies;

(b)(2)(F) Recommend rules of administration and procedure to the Supreme Court;

(b)(2)(G) Recommend a chief disciplinary counsel to be appointed by the Supreme Court; and

(b)(2)(H) Monitor the OPC's workload and recommend to the Supreme Court adequate staffing of OPC counsel and staff.

(b)(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) Complaints and appeals.

(c)(1) Any person may file with the Oversight Committee chair a complaint alleging malfeasance regarding the chief disciplinary counsel, not including complaints regarding OPC counsel or staff. If necessary, the Oversight Committee may enter a recommendation to the Supreme Court, which may take appropriate action.

(c)(2) If a complaint 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.

(c)(3) Any person may file with the chief disciplinary counsel a complaint alleging malfeasance regarding OPC 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 whom the complaint is filed.

(c)(4) A complaint must be in writing, stating the name and contact information of the complainant, the nature of the complaint, and the facts on which the complaint is based.

(c)(5) Unless the appropriate action taken on a complaint is part of a formal proceeding, any action taken is confidential.

1 **Article 5. Lawyer Discipline and Disability**

2 **Rule 14-501. Lawyer disciplinary and disability proceedings: purpose, authority, scope,**
3 **and structure.**

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

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

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

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

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

23

Comment [LL14]: Combining articles 5 and 6 into one article (Chapter 11, Article 5).

Comment [LL15]: Incorporating Chapter 15, articles 5 and 6 into existing Chapter 14, articles 5 and 6. These will then be combined into one article and moved into Chapter 11, Article 5.

1 **Rule 14-502. Definitions.**

2 As used in this article:

3 (a) **Action** or **misconduct action** means a lawsuit filed by the OPC in district court
4 alleging lawyer misconduct or seeking to transfer a lawyer to disability status;

Comment [LL16]: Recommendation 4.1: All prior references to “formal complaint” now refer to “action.”

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;

Comment [LL17]: Recommendation 1.2

10 (e) **Committee** means the Ethics and Discipline Committee of the Supreme Court;

11 (f) **Complainant** means either (1) the person who files a complaint, or (2) the OPC
12 after opening an investigation;

13 (g) **Complaint** means any written allegation of lawyer misconduct or incapacity
14 containing a declaration under penalty of perjury as to the accuracy of the information
15 provided;

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

Comment [LL18]: Moved over from sanctions article

20 (i) **Intent** means the conscious objective or purpose to accomplish a particular result;

Comment [LL19]: Moved over from sanctions article

21 (j) **Knowledge** means the conscious awareness of the nature or attendant circumstances
22 of the conduct but without the conscious objective or purpose to accomplish a particular
23 result;

Comment [LL20]: Moved over from sanctions article

24 (k) **Lawyer** includes foreign legal consultants and licensed paralegal practitioners,
25 insofar as the licensed paralegal practitioner is authorized to practice under Utah Special
26 Practice Rule 14-802, unless provided otherwise.

Comment [LL21]: Includes LPPs so that we may combine Chapters 14 and 15 (only for articles 5 and 6).

1 (l) “**Negligence**” means a lawyer’s failure to heed a substantial risk that circumstances
2 exist or that a result will follow, which failure is a deviation from the standard of care that
3 a reasonable lawyer would exercise in the situation;

Comment [LL22]: Moved over from sanctions article

4 (m) “**Notice**” means the notice the OPC sends to the respondent after a preliminary
5 investigation, which identifies the possible violation(s) of the Rules of Professional Conduct or
6 Licensed Paralegal Practitioner Rules of Professional Conduct, raised by the complaint as OPC
7 has preliminarily determined;(n) “**OPC**” means the Office of Professional Conduct;

Comment [LL23]: Recommendation 1.2

8 (o) “**OPC counsel**” means chief disciplinary counsel, deputy chief counsel, and any
9 assistant disciplinary counsel;

10 (p) “**Oversight committee**” means the committee established in Rule 11-501 to oversee
11 the OPC;

12 (q) “**Potential injury**” means the harm to a client, the public, the legal system, or the
13 profession that is reasonably foreseeable at the time of the lawyer’s misconduct, and
14 which, but for some intervening factor or event, would probably have resulted from the
15 lawyer’s misconduct;

Comment [LL24]: Moved over from sanctions article

16 (r) “**Respondent**” means a lawyer subject to the disciplinary jurisdiction of the Supreme
17 Court against whom a complaint has been filed or an action has been initiated;

18 (s) “**Rules of Professional Conduct**” means the rules in Chapter 13 of the Supreme
19 Court Rules of Professional Practice and “**Licensed Paralegal Practitioner Rules of**
20 **Professional Conduct**” means the rules in Chapter 15, article 12 of the Supreme Court
21 Rules of Professional Practice;

22 (t) “**Screening panel**” means Committee members who participate in hearings and make
23 determinations under Rule 14-503; and

24 (u) “**Supreme Court**” means the Utah Supreme Court.

1 **Rule 14-503. Ethics and Discipline Committee.**

2 (a) **Composition.** The Supreme Court appoints the Committee members. The Committee
3 consists of four public members and 21 lawyers who have demonstrated a high standard of
4 professional conduct. All appointments are for a term of three years with no committee member
5 serving more than two consecutive terms unless appointed as a screening panel chair or vice
6 chair. The Supreme Court designates one lawyer member as Committee chair and four lawyer
7 members as Committee vice chairs.

Comment [LL25]: Recommendation 5.4

8 (b) **Committee chair.** The Committee chair supervises the Committee and screening panels. The
9 chair is responsible for:

- 10 (b)(1) maintaining an adequate check on the screening panels' work to ensure that
11 matters move forward expeditiously;
- 12 (b)(2) determining that screening panels have a uniform basis for the judgments rendered;
- 13 (b)(3) providing the screening panels with information concerning ethics and judicial
14 decisions necessary to their activities; and
- 15 (b)(4) making recommendations to the Supreme Court concerning appointments to and
16 removals from the screening panels and reports concerning screening panel activities and
17 the overall work of the Committee.

18 (c) **Vice chairs.** The Committee vice chairs will act if the chair is absent or resigns. In such
19 event, a vice chair will become the chair. The chair may call upon any vice chair to assist in any
20 of the Committee chair's duties.

21 **(d) Screening panels, quorums.**

Comment [LL26]: Recommendation 5.2

22 (d)(1) Screening panel composition. The Committee members, except for the Committee
23 chair and vice chairs, are divided into four screening panel sections of five members
24 each, including four lawyers and one public member. Whenever a screening panel is
25 assigned a complaint involving a licensed paralegal practitioner, the Committee chair
26 may appoint up to two licensed paralegal practitioners to the screening panel as voting
27 members, with all of the responsibilities and duties of other members of the screening
28 panel.

1 (d)(2) Screening panel number. All screening panel hearings must have five panel
2 members present unless all parties agree to fewer than five, but not fewer than three,
3 panel members. A panel chair or vice chair and a public member must be present at each
4 screening panel hearing.

5 (d)(3) Chair and vice chair. The Supreme Court will name a chair and vice chair for each
6 screening panel. The chair or, in the chair's absence chair, vice chair presides over
7 screening panel hearings. The panel chair may call upon the vice chair to assist in any of
8 the panel chair's duties. Chairs or vice chairs from other panels may conduct hearings if
9 the regular chair and vice chair are unable to attend. If the chair' is removed or resigns,
10 the vice chair will become the chair, and the Court will appoint a Committee member to
11 serve as vice chair.

12 (d)(4) Voting. A majority vote of those members present and voting at any proceeding is
13 required for a screening panel determination. If an even number of screening panel
14 members participate in a proceeding, the chair, or vice chair if the chair is not present,
15 may not vote. The chair or vice chair may, however, fully participate in the proceeding.

16 (d)(5) Meetings. Each screening panel meets as is necessary to effectively and promptly
17 carry out its duties. The chair may convene the entire Committee at such other times as
18 necessary to effectively and promptly carry out the Committee's duties.

19 (e) **Removal, alternates.** The Committee chair may recommend removal of a Committee
20 member by notifying the Supreme Court of the recommendation of removal and reasons for the
21 recommendation. The removal takes effect upon the Supreme Court's acceptance of the
22 recommendation. Members of any screening panel may serve as alternate members on different
23 screening panels. The Committee chair and the Committee vice chairs may serve as alternate
24 members on all screening panels.

25 (f) **Responsibilities.**

26 (f)(1) Complaints are randomly assigned to a screening panel. The screening panels
27 review, investigate, and hear all complaints charging that a lawyer engaged in unethical
28 or unprofessional conduct. Screening panels determine the action to be taken on any
29 complaint that, based upon the facts of the particular case, is most consistent with the

1 public interest and the Rules of Professional Conduct or Licensed Paralegal Practitioner
2 Rules of Professional Conduct.

3 (f)(2) Unless otherwise provided in this article, whenever OPC may be present before a
4 screening panel during a hearing, the respondent may also be present.

5 (f)(3) Within three months after filing a complaint of unprofessional or unethical conduct
6 of a respondent, the OPC must advise the complainant concerning the initial
7 consideration of the complaint, and will promptly advise such party in writing of the
8 subsequent disposition of the complaint and the reasons therefor.

9 (g) **Subpoenas.** The respondent or a screening panel, for good cause, may petition the district
10 court under seal to issue a subpoena, subpoena duces tecum, or any order allowing discovery
11 before the OPC commences an action against respondent. Except for good cause, all petitions
12 under this rule require a five-day written notice to the opposing party before issuing a subpoena.

13 (g)(1) Subpoena enforcement. A district court in the district in which the attendance or
14 production is required may, upon proper application, enforce the attendance and
15 testimony of any witnesses and the production of any documents subpoenaed.

16 (g)(2) Quashing subpoena. The Committee chair or the court wherein the subpoena
17 enforcement is being sought will hear and determine any attack on an issued subpoena's
18 validity. Any resulting order is not appealable before entry of a final order in the
19 proceeding.

20 (g)(3) Witnesses and fees. Subpoena fees, witness fees, and mileage are reimbursed in the
21 amounts provided under Rule 45 of the Utah Rules of Civil Procedure.

22 (h) **Committee clerk.** The clerk is subject to the confidentiality requirements of Rule 14-515.
23 The Committee clerk is responsible for:

24 (h)(1) handling the Committee's administrative affairs,

25 (h)(2) accepting documents filed with the Committee,

26 (h)(3) handling screening panel calendars,

27 (h)(4) giving notice to persons whose attendance is requested,

1 (h)(5) notifying the complainant of the times and dates their matters will be heard,

2 (h)(6) notifying the complainant, the respondent, and any counsel of record of the
3 disposition of each matter, and

4 (h)(7) otherwise performing or providing the secretarial and administrative functions of
5 the Committee and screening panels.

6 (i) **Disclosure, recusal, and disqualification.** Disclosure, recusal, and disqualification apply to
7 Committee members' participation in a screening panel hearing, exception, or other proceeding
8 in which a respondent's conduct is considered under these rules.

Comment [LL27]: Recommendation 5.8

9 (i)(1) Disclosure.

10 (i)(1)(A) Committee members must make disclosures before or, at the latest, at
11 the start of a screening panel hearing or other hearing in which a respondent's
12 conduct is considered.

13 (i)(1)(B) Each Committee member must disclose to the parties any professional or
14 personal relationship or conflict of interest with a party or a party's counsel in the
15 proceeding that may affect an unbiased evaluation of the respondent.

16 (i)(1)(C) Relationships that may affect an unbiased evaluation of the respondent
17 include any contact or association that might influence a Committee member's
18 ability to fairly and reasonably evaluate the conduct of any respondent or to assess
19 that respondent without bias or prejudice, including but not limited to:

20 (i)(1)(C)(i) family relationships to a party or lawyer of a party in the
21 proceeding, within the third degree of relationship to any of them
22 (grandparents, parents or parents-in-law, aunts or uncles, children, nieces
23 and nephews and their spouses), or domestic partner of such a person;

24 (i)(1)(C)(ii) any business relationship between the Committee member and
25 a party or lawyer of a party in the proceedings;

26 (i)(1)(C)(iii) any personal litigation directly or indirectly involving a party
27 or a lawyer of a party in the proceeding and the Committee member, the
28 Committee member's family or the Committee member's business;

1 (i)(1)(D) A Committee member exhibits bias or prejudice when the Committee
2 member is predisposed to decide a cause or an issue in a way that does not leave
3 the Committee member's mind open to exercising the Committee member's
4 duties impartially in a particular case.

5 (i)(2) Recusal.

6 (i)(2)(A) As used in this rule, recusal is a voluntary act of self-disqualification by
7 a Committee member.

8 (i)(2)(B) After making a disclosure, a Committee member may voluntarily recuse
9 if the Committee member believes the relationship with the respondent or other
10 parties will affect an unbiased evaluation of the respondent.

11 (i)(3) Disqualification procedures.

12 (i)(3)(A) A respondent may move to disqualify a screening panel Committee
13 member if such member:

14 (i)(3)(A)(i) makes a disclosure and does not voluntarily recuse, and that
15 member's impartiality might reasonably be questioned; or

16 (i)(3)(A)(ii) does not make a disclosure, but known circumstances suggest
17 the Committee member's impartiality might reasonably be questioned.

18 (i)(3)(B) A motion to disqualify a screening panel Committee member must be
19 submitted to the Committee clerk for review by the screening panel chair or vice
20 chair before or during the screening panel hearing.

21 (i)(3)(C) A motion to disqualify a Committee member from an exception or other
22 hearing or review must be submitted to the Committee clerk for review by the
23 Committee chair or vice chair before any hearing on the matter.

24 (i)(4) Disqualification after committee service. A former Committee member may not
25 personally represent a respondent in any proceeding as provided in these rules within one
26 year after completing the former Committee member's service. In addition to the one-
27 year prohibition, a former Committee member may not personally represent a respondent

1 in any proceedings as provided in these rules in which the former Committee member
2 previously participated during their service on the Committee.

3

1 **Rule 14-504. Chief disciplinary counsel and OPC counsel appointment and responsibilities.**

2 (a) **Appointment and qualifications.** The Supreme Court will appoint a lawyer admitted to
3 practice in Utah to serve as chief disciplinary counsel. Neither the chief disciplinary counsel nor
4 any full-time assistant disciplinary counsel may engage in the private practice of law for
5 payment.

Comment [LL28]: Recommendation 1.2

6 (b) **Chief disciplinary counsel responsibilities.** The chief disciplinary counsel has the following
7 responsibilities:

Comment [LL29]: The following two paragraphs are adapted from the Guardian ad litem oversight rule.

8 (b)(1) Manage OPC counsel and staff to ensure quality investigations, discipline, and
9 sanctions.

10 (b)(2) Develop the budget for Oversight Committee approval.

11 (b)(3) Monitor the services of the OPC, staff, and volunteers by regularly consulting with
12 users and observers of OPC services, including Bar members, judges, and the public and
13 by requiring the submission of appropriate written reports from OPC counsel.

14 (b)(4) Select OPC counsel and staff for employment as provided in this rule.

15 (b)(5) Supervise, evaluate, and discipline OPC counsel and staff.

16 (b)(6) Monitor and report to the Oversight Committee compliance of the OPC counsel
17 and staff with federal and state statutes, rules, and case law.

18 (b)(7) Prepare and submit an annual report to the Oversight Committee and Supreme Court in
19 January encompassing the scope and nature of the OPC's work. The report must be submitted on
20 or about February 1 of each year for the preceding calendar year and must include the number of
21 disciplinary cases investigated, the number brought before the Committee, actions filed,
22 dispositions, cases dismissed, informal ethics opinions issued, diversionary dispositions, and
23 such other information as may be helpful to the Supreme Court in understanding the OPC's
24 operations and the efficiency and effectiveness of the disciplinary system. Such report may
25 contain recommendations for rule amendments or changes in OPC or Ethics and Discipline
26 Committee procedure. The Oversight Committee may amend the report before releasing to the
27 Supreme Court. (c) **OPC counsel.**

Comment [LL30]: Moved from 14-503 (the OPC prepares this report, not the ED committee).

11-501(2)(B)(iv) outlines the Oversight Committee's responsibilities with respect to the report but not the OPC's responsibilities, this should not be deleted.

1 (c)(1) Qualification and responsibilities. OPC counsel must be admitted to practice law in
2 Utah and must demonstrate experience and interest in the applicable law and procedures.
3 {Any additional qualifications?}

4 (c)(2) Selecting OPC counsel for employment.

5 (c)(2)(A) An OPC counsel employed by the OPC is an at-will employee subject to
6 dismissal by the chief disciplinary counsel with or without cause.

7 (c)(2)(B) OPC counsel employed by the OPC will be selected by the chief
8 disciplinary counsel. Before the chief disciplinary counsel makes a selection, a
9 panel will interview applicants and make hiring recommendations to the chief
10 disciplinary counsel.

11 (c) **Disqualification and conflicts of interest.** In addition to complying with the Rules of
12 Professional Conduct regarding successive government and private employment (Rule 1.11 of
13 the Rules of Professional Conduct), former OPC counsel may not personally represent a
14 respondent in any proceeding as provided in these rules within one year after completing the
15 former OPC counsel's service. In addition to the one-year prohibition, former OPC counsel may
16 not personally represent a respondent in any proceedings as provided in these rules that former
17 OPC counsel investigated or prosecuted during their OPC employment.

18 (d) **Expenses.** The Bar, as directed by the Oversight Committee, will pay the salaries of OPC
19 counsel and staff, their expenses, administrative costs, and the expenses of screening panel
20 members

Comment [LL31]: This is moved up from 14-508.

22 (b) **Powers and duties.** The chief disciplinary counsel will perform all prosecutorial functions
23 and have the following powers and duties, which may be delegated to other staff:

Comment [LL32]: I recommend moving all of these powers to a separate rule entitled "OPC prosecutorial powers and duties."

24 (b)(1) screen all information coming to the attention of the OPC to determine whether it
25 is within the jurisdiction of the OPC in that it relates to misconduct by a lawyer or to the
26 incapacity of a lawyer;

1 (b)(2) investigate all information coming to the attention of the OPC which, if true, would
2 be grounds for discipline or transfer to disability status, and investigate all facts
3 pertaining to petitions for reinstatement or readmission;

4 (b)(3) for each matter not covered in Rule 14-510, the OPC may:

5 (b)(3)(A) dismiss;

6 (b)(3)(B) decline to prosecute;

7 (b)(3)(C) refer nonfrivolous and substantial complaints to the Committee for
8 hearing; or

9 (b)(3)(D) petition the district court for transfer to disability status;

10 (b)(4) prosecute before the screening panels, the district courts, the Supreme Court, and
11 any other courts, including but not limited to, any court of the United States all
12 disciplinary cases and proceedings for transfer to or from disability status;

13 (b)(5) attend the Character and Fitness Committee proceedings in all cases for
14 readmission, and represent the OPC before the district courts, Supreme Court, and any
15 other courts including, but not limited to, any court of the United States in all cases for
16 reinstatement and readmission;

17 (b)(6) employ or appoint and supervise staff needed for the performance of prosecutorial
18 functions and delegate such responsibilities as may be reasonably necessary to perform
19 prosecutorial functions, including supervising attorneys who provide pro bono services to
20 the Bar, by supervising the practice of respondents who have been placed on probation;

21 (b)(7) notify each jurisdiction in which a respondent is admitted of a transfer to disability
22 status or any public discipline imposed in Utah;

23 (b)(8) seek reciprocal discipline where appropriate when informed of any public
24 discipline imposed by another court, another jurisdiction, or a regulatory body having
25 disciplinary jurisdiction;

26 (b)(9) forward a certified copy of the judgment of conviction to the disciplinary agency in
27 each jurisdiction in which a lawyer is admitted when the lawyer is convicted of a crime in

1 Utah which reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a
2 lawyer;

3 (b)(10) maintain records of discipline and disability matters subject to any expungement
4 requirements and compile statistics to aid in the administration of the system, including
5 but not limited to, a log of all complaints received, investigative files, statistical
6 summaries of rules violated and dispositions, any transcripts of proceedings, and other
7 records as the Supreme Court requires to be maintained;

8 (b)(12) provide informal guidance concerning professional conduct to lawyers requesting
9 guidance, participate in seminars that will promote ethical conduct, formulate diversionary
10 programs, monitor probations, and disseminate disciplinary results to the Bar and the public
11 through the Utah Bar Journal and otherwise as appropriate, maintaining the confidentiality of
12 respondents subject to private discipline.

Comment [LL33]: Moved to new rule re retaining records.

13 **(d) Ethics advisory opinions.**

14 (d)(1) **Effect of ethics advisory opinions.** The OPC may not prosecute a Utah lawyer for
15 conduct that complies with an ethics advisory opinion that has not been withdrawn at the
16 time of the conduct in question. No court is bound by an ethics opinion’s interpretation of
17 the Rules of Professional Conduct or Licensed Paralegal Practitioner Rules of
18 Professional Conduct.

Comment [LL34]: I recommend moving this into its own rule. The OPC does not write these opinions and it doesn’t fit with the OPC’s duties and responsibilities.

19 (d)(2) **Reviewing, modifying, or withdrawing ethics advisory opinions.**

20 (d)(2)(A) The OPC may at any time request the Bar’s Ethics Advisory Opinion
21 Committee to review, modify, or withdraw an ethics advisory opinion and any
22 OPC investigation or prosecution is suspended pending the final outcome of the
23 request. The Ethics Advisory Opinion Committee may issue a modified opinion,
24 withdraw the opinion, or decline to take any action but will report its action or
25 recommendation to the Bar Commission and the Commission will take such final
26 action as it deems appropriate.

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

1 (e) **Investigative Subpoenas.** In accordance with subsection (b), OPC may request that the
2 Committee Chair serve on a respondent or third party a subpoena to produce documents,
3 electronically stored information, or tangible things in the possession, custody, or control of that
4 person.

Comment [LL35]: Recommendation 4.3

Comment [LL36]: I would recommend moving this into its own rule.

5 (e)(1) Requesting a subpoena. OPC must file a written request for a subpoena with the
6 Committee chair and mail a copy of the request to the respondent’s address according to
7 the Bar’s records. The request must describe the purpose for seeking the subpoena. Any
8 objections to the request must be filed with the chair within seven days of the subpoena
9 request. Within three business days after the time for filing an objection expires, the
10 Committee chair will grant or deny the subpoena request, without a hearing, based on the
11 following considerations:

12 (e)(1)(A) a weighing of the materiality and necessity of the requested documents,
13 electronically stored information, or tangible things; and

14 (e)(1)(B) a weighing of the burden to the custodian of producing the documents,
15 electronically stored information, or tangible things.

16 (e)(2) Serving the subpoena. If the Committee chair grants the request, OPC may obtain a
17 signed subpoena form, but otherwise blank, from the Committee clerk. OPC will fill out
18 the subpoena and serve it on the respondent or third party.

19 (e)(3) Witnesses and fees. Subpoena fees, witness fees, and mileage are reimbursed in the
20 amounts provided under Rule 45 of the Utah Rules of Civil Procedure. The requesting
21 party bears the cost associated with producing documents or electronically stored
22 information.

23 (e)(4) Quashing or enforcing a subpoena. A district court in the district in which the
24 attendance or production is being sought may, upon proper application, quash the
25 subpoena, or enforce the attendance and testimony of any witnesses and the production of
26 any documents subpoenaed as provided for in Rule 45 of the Utah Rules of Civil
27 Procedure. Any resulting order is not appealable before the entry of a final order in the
28 disciplinary proceeding.

1



Comment [LL37]: Moved this language into 14-504(d).

Comment [LL38]: Replaced with 11-501(2)(B)(ii)

1 **Rule 14-506. Jurisdiction.**

2 (a) **Persons practicing law.** The persons subject to the disciplinary jurisdiction of the Supreme
3 Court and the OPC include any lawyer admitted or licensed to practice law in Utah, any lawyer
4 admitted but currently not properly licensed to practice in Utah, any formerly admitted lawyer
5 with respect to acts committed while admitted to practice in Utah or with respect to acts
6 subsequent thereto, which amount to the practice of law or constitute a violation of any rule
7 promulgated, adopted, or approved by the Supreme Court or any other disciplinary authority
8 where the attorney was licensed to practice or was practicing law at the time of the alleged
9 violation, any lawyer specially admitted by a Utah court for a particular proceeding, and any
10 other person not admitted in Utah who practices law or who renders or offers to render any legal
11 services in Utah.

12 (b) **Incumbent and sitting judges.** Incumbent and sitting judges are subject to the OPC's
13 jurisdiction only for conduct that occurred before taking office.

14 (c) **Former judges.** A former judge who has resumed the status of a lawyer is subject to the
15 jurisdiction of the Supreme Court not only for conduct as a lawyer but also for misconduct that
16 occurred while the lawyer was a judge and would have been grounds for lawyer discipline,
17 provided that the misconduct was not the subject of a judicial disciplinary proceeding as to
18 which there has been a final determination by the Supreme Court.

19 (d) **Part-time judges.** Part-time judges, while in office, are subject to lawyer disciplinary and
20 disability proceedings for acts outside their judicial capacity.

21

1 **Rule 14-507. Roster of lawyers and current record information.**

Comment [LL39]: This is a Bar requirement, not OPC. We have moved this to Rule 14-107.

2 The Bar must collect, maintain, and have ready access to Bar members' current information
3 including:

4 (a) full name;

5 (b) date of birth;

6 (c) current physical addresses, and current telephone numbers for law office and residence,
7 except that full-time judges are exempt from providing residential addresses and telephone
8 numbers;

9 (d) current e-mail address;

10 (e) date of admission;

11 (f) date of any transfer to or from inactive status;

12 (g) all specialties in which certified;

13 (h) other jurisdictions in which the lawyer is admitted and date of admission; and

14 (i) nature, date, and place of any discipline imposed and any reinstatements.

15

1 **Rule 14-508. Periodic assessment of lawyers.**

Comment [LL40]: This is a Bar requirement, not OPC. We have moved this to Rule 14-107.

2 (a) **Annual licensing fee.** Every lawyer admitted or licensed to practice in Utah must pay to the
3 Bar on or before July 1 of each year an annual license fee for each fiscal year to be fixed by the
4 Bar Commission from time to time and approved by the Supreme Court. The fee must be
5 sufficient to pay the costs of disciplinary administration and enforcement under this article.

6 (b) **Failure to renew annual license.** Failure to pay the annual licensing fee or provide the
7 required annual licensing information will result in administrative suspension. Any lawyer who
8 practices law after failure to renew their license violates the Rules of Professional Conduct or
9 Licensed Paralegal Practitioner Rules of Professional Conduct and may be disciplined. The
10 executive director or their designee must give notice of such removal from the rolls to such
11 noncomplying member at the designated mailing address on the Bar's records and to the state
12 and federal courts in Utah.

13 (c) **Reenrollment within three years of administrative suspension.** A lawyer who is
14 administratively suspended for failure to pay licensing fees for three years or less may apply in
15 writing for reenrollment. The request should be made to the Utah State Bar Licensing
16 Department and include payment equal to the amount of fees the lawyer would have been
17 required to pay had the lawyer remained an inactive member to the date of the request for
18 reenrollment and a \$200 reinstatement fee. Upon receiving the same, the Bar will order
19 reenrollment and so notify the courts. Re-enrollment based on failure to renew does not negate
20 any orders of discipline.

21 (d) **Reenrollment after three years of administrative suspension.** A lawyer who is
22 administratively suspended for three years or more for failure to pay license fees is deemed to
23 have resigned and must comply with the admissions requirements set forth in the Supreme Court
24 Rules of Professional Practice governing admission for lawyers who have resigned.

25

1 **Rule 14-509. Grounds for discipline.**

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

3 (a) violate the Rules of Professional Conduct or Licensed Paralegal Practitioner Rules of
4 Professional Conduct;

5 (b) willfully violate a valid court order or a screening panel imposing discipline;

6 (c) be publicly disciplined in another jurisdiction;

7 (d) fail to comply with the requirements of Rule 14-526(e);

8 (e) fail to notify the OPC of public discipline in another jurisdiction in accordance with
9 Rule 14-522(a); or

10 (f) willfully fail to comply with a validly issued subpoena from the OPC or screening
11 panel, or knowingly fail to respond to a lawful demand from OPC.

Comment [LL41]: Recommendations 4.3 &
4.4

1 **Rule 14-510. Prosecution and appeals.**

2 (a) **Unprofessional conduct complaints.**

3 (a)(1) **Filing.** Any person, the OPC, or the Committee may initiate a disciplinary
4 proceeding against any lawyer by filing with the OPC a written complaint in concise
5 language setting forth the acts or omissions claimed to constitute unprofessional conduct,
6 either through the mail or through the OPC's website at opcutah.org.

7 (a)(2) **Form of complaint.** The complaint need not be in any particular form or style and
8 may be by letter or other informal writing, although the OPC may provide a form to
9 standardize the format. The complaint need not recite disciplinary rules, ethical canons,
10 or a prayer requesting specific disciplinary action. The complainant must sign the
11 complaint and include the complainant's address and may list the names and addresses of
12 other witnesses. The complaint must contain a declaration under penalty of perjury as to
13 the accuracy of the information in the complaint. In accordance with Rule 14-504(b),
14 complaints filed by OPC are not required to contain a verification. A complainant's
15 substance prevails over the form.

16 (a)(3) **Initial investigation.** On receiving a complaint, OPC will conduct a preliminary
17 investigation to ascertain whether the complainant's allegations are sufficiently clear. If not,
18 OPC will seek additional facts from the complainant. The complainant must submit a
19 signed writing containing any additional facts.

20 (a)(4) **Referral to Professionalism and Civility Counseling Board.** OPC may—in
21 connection with any conduct that comes to their attention—refer any matter to the
22 Professionalism and Civility Counseling Board established under Rule 14-303. Such
23 referral may be in addition to or in lieu of any further proceedings related to the subject
24 matter of the referral. Such referral should be in writing and—at the discretion of OPC—
25 may include any or all information included in the complaint or additional facts
26 submitted by the complainant.

27 (a)(5) **Notice to respondent.** On completing the preliminary investigation, OPC will
28 determine whether the complaint can be resolved in the public interest, the respondent's
29 interest, and the complainant's interest. If the complaint cannot be resolved or if it alleges

Comment [LL42]: I'd recommend splitting this into 7 separate rules (a), (b), (c), etc. each as its own rule.

Comment [LL43]: Recommendation 1.2

Comment [LL44]: Recommendation 4.1
Notarization of a complaint should be discontinued, but a declaration, under penalty of perjury, should be required

Comment [LL45]: Recommendation 4.2
Discontinue "NOIC"

1 facts that, by their very nature, should be brought before the screening panel, or if good
2 cause otherwise exists to bring the matter before the screening panel, OPC must:

3 (a)(5)(A) serve the respondent with a notice identifying with particularity the
4 possible violation(s) of the Rules of Professional Conduct or Licensed Paralegal
5 Practitioner Rules of Professional Conduct raised by the complaint as OPC has
6 preliminarily determined;

7 (a)(5)(B) attach a copy of the signed complaint; and

8 (a)(5)(C) mail the documents to the respondent's address as reflected in the Bar's
9 records.

10 (a)(6) **Answer to complaint.** Within 20 days after the respondent is served with the
11 **complaint and notice**, the respondent must file with OPC a signed, written answer
12 explaining the facts surrounding the complaint, together with all defenses and responses
13 to the claims of possible misconduct. For good cause, OPC may extend the time for filing
14 an answer not to exceed an additional 30 days. When the answer is filed or if the
15 respondent fails to respond, OPC will refer the case to a screening panel for investigation,
16 consideration, and determination or recommendation. OPC must forward a copy of the
17 answer to the complainant.

18 (a)(7) **Dismissing the complaint.**

19 (a)(7)(A) Reasons for dismissal. OPC may dismiss a complaint without referral to
20 a screening panel hearing if the OPC determines the complaint is:

21 (a)(7)(A)(i) frivolous, unintelligible, unsupported by fact, or fails to raise
22 probable cause of any unprofessional misconduct;

23 (a)(7)(A)(ii) barred by the statute of limitations;

24 (a)(7)(A)(iii) more adequately addressed in another forum; or

25 (a)(7)(A)(iv) one in which the OPC declines to prosecute.

26 (a)(7)(B) Notification and appeal.

27 (a)(7)(B)(i) When OPC dismisses a complaint, it **must:**

Comment [LL46]: Recommendation 4.2
Discontinue "NOIC"

1 (a)(7)(B)(i)(a) notify the complainant that it has dismissed the
2 complaint;

3 (a)(7)(B)(ii) state the reasons for dismissal;

4 (a)(7)(B)(iii) include a notice of the complainant's right to appeal
5 an OPC decision to the Committee chair.

6 (a)(7)(B)(ii) The complainant may appeal the dismissal by filing written
7 notice with the Committee clerk within 15 days after the dismissal
8 notification is mailed. The complainant has no other right of appeal in this
9 chapter.

10 (a)(7)(B)(iii) On appeal, the Committee chair will conduct a de novo
11 review of the file, either affirm the dismissal or require OPC to prepare a
12 notice of the complaint, and set the matter for hearing by a screening
13 panel. If the chair's recuses, the chair will appoint the vice chair or one of
14 the screening panel chairs to review and determine the appeal.

Comment [LL47]: Recommendation 4.5. Added requirement that OPC include notice of complainant's right to appeal to the Committee chair.

Comment [LL48]: This language is taken from 14-528 and fully incorporates 528 ("The complainant shall not have a right of appeal, except as provided in Rule 14-510(a)(7) to appeal a dismissal of a complaint.")

Comment [LL49]: Recommendation 4.2 discontinue "NOIC"

15 **(b) Proceedings before Committee and screening panels.**

16 (b)(1) Review and investigation. As fact finders and investigators, screening panels will
17 review all complaints the OPC refers to them, including all facts developed in the
18 complaint, answer, investigation, and hearing, and OPC's recommendations. Before any
19 hearing, OPC may file with the clerk and serve on the respondent a summary of its
20 investigation. If filed, the summary must identify with particularity any additional
21 violations of the Rules of Professional Conduct or Licensed Paralegal Practitioner Rules
22 of Professional Conduct as determined by OPC after it served respondent with the notice
23 of the complaint. If OPC provides the summary to the screening panel, OPC must also
24 provide the summary to the respondent and the summary will serve as notice of any
25 additional violations the OPC did not previously charge. If OPC alleges additional rule
26 violations in the summary, the summary must be served on the respondent at least seven
27 days before the hearing. In cases where a judicial officer has not addressed or reported a
28 respondent's alleged misconduct, the screening panel may not consider this inaction to be
29 evidence either that misconduct has occurred or has not occurred.

Comment [LL50]: Recommendation 4.2 discontinue NOIC

1 (b)(2) Respondent's appearance. The screening panel must, with at least 30 days' notice,
2 afford the respondent an opportunity to appear before the screening panel before taking
3 any action that may result in recommending an admonition or public reprimand, or the
4 OPC's filing a misconduct action in district court. Respondent and any witnesses the
5 respondent calls may testify, and respondent may present oral argument with respect to
6 the complaint. Respondent may also submit a written brief to the screening panel at least
7 10 days before the hearing, which may not exceed 10 pages unless the panel chair or vice
8 chair allows an extension for good cause. OPC will forward a copy of the brief to the
9 complainant. If OPC identifies additional rule violations in the summary referenced in
10 (b)(1), the respondent may file an additional written response addressing those alleged
11 violations before the hearing.

12 (b)(3) Complainant's appearance. A complainant has the right to appear before the
13 screening panel personally and may testify, together with any witnesses the complainant
14 calls.

15 (b)(4) Right to hear evidence; cross-examination. The complainant and respondent have
16 the right to be present during presentation of evidence unless excluded by the screening
17 panel chair for good cause. Respondent may be represented by counsel, and complainant
18 may be represented by counsel or another representative. Either complainant or
19 respondent may request that the panel chair seek responses or pose questions to the other
20 party at the hearing. Direct cross-examination will ordinarily not be permitted unless,
21 upon request, the panel chair deems that it would materially assist the panel in its
22 deliberations.

23 (b)(5) Rule violations not charged by OPC. During the screening panel hearing, but not
24 after, the panel may find that rule violations have occurred not previously charged by
25 OPC. If so, the screening panel will give respondent a reasonable opportunity to respond
26 during the hearing. The respondent may address the additional charges at the hearing and
27 also file with the Clerk and serve on OPC within two business days of the hearing a
28 written response to the new charges along with supplemental materials related to the new
29 charges. Before making a determination or recommendation, the response and any

1 supplemental materials must be reviewed and considered by at least a quorum of the
2 panel members present at the original hearing.

3 (b)(6) Hearing record. The proceedings of any screening panel hearing under this
4 subsection (b) will be recorded at an audio quality level that permits an accurate
5 transcription of the proceedings. The Clerk will assemble a complete record of the
6 proceedings and deliver it to the Committee chair upon the panel's determination or
7 recommendation to the Committee chair. The record of the proceedings before the panel
8 must be preserved for at least one year after delivery of the panel's determination or
9 recommendation to the Committee chair and for such additional time as any further
10 proceedings on the matter are pending or might be instituted under this section.

11 (b)(7) Screening panel determination or recommendation. The screening panel—after
12 reviewing all the facts developed by the complaint, answer, investigation, and hearing—
13 will make one of the following determinations or recommendations:

14 (b)(7)(A) The preponderance of evidence does not establish that the respondent
15 engaged in misconduct, in which case the OPC will dismiss the complaint. A
16 letter of caution may also be issued with the dismissal. The letter must be signed
17 by OPC counsel or the screening panel chair and will serve as a guide for the
18 future conduct of the respondent. The complainant will be confidentially notified
19 of the caution;

20 (b)(7)(B) The complaint must be referred to the OPC for diversion. In this case,
21 the specific material terms of the Diversion Contract agreed to by the respondent
22 will be recorded as a part of the screening panel record, along with any comments
23 by the complainant. The screening panel will have no further involvement in
24 processing the diversion. The OPC will process the diversion in accordance with
25 Rule 14-533;

26 (b)(7)(C) The complaint must be referred to the Professionalism and Civility
27 Counseling Board established under Rule 14-303;

Comment [LL51]: Recommendation 6.2

Comment [LL52]: Recommendation 6.2

1 (b)(7)(D) The complaint must be referred to the Committee chair with an
2 accompanying screening panel recommendation that the respondent be
3 admonished;

4 (b)(7)(E) The complaint must be referred to the Committee chair with an
5 accompanying screening panel recommendation that the respondent receive a
6 public reprimand;

7 (b)(7)(F) The OPC must file an action in district lawsuit the respondent if the
8 panel finds probable cause to believe there are grounds for public discipline that
9 merit a discipline action; or

10 (b)(7)(G) The OPC must file an action in district court if the panel finds
11 misconduct and the misconduct is similar to the misconduct alleged in an action
12 against the respondent that has been recommended by a screening panel or is
13 pending in district court at the time of the hearing.

14 (b)(8) Aggravation and mitigation. The respondent and OPC may present evidence and
15 argument as to mitigating and aggravating circumstances during the screening panel
16 hearing, but this evidence will not be considered until after the panel has determined the
17 respondent engaged in misconduct.

18 (b)(9) Multiple cases involving the same respondent. More than one case involving the
19 same respondent may be scheduled before the same panel, but in determining whether a
20 rule has been violated in one case, a screening panel may not consider facts raised in
21 other cases against the same respondent.

22 (b)(10) Recommendation of admonition or public reprimand. A screening panel
23 recommendation that the respondent be disciplined under subsection (b)(7)(D) or
24 (b)(7)(E) must be in writing and state the substance and nature of the complaint and
25 defenses and the basis upon which the screening panel has concluded, by a
26 preponderance of the evidence, that the respondent be admonished or publicly
27 reprimanded. The screening panel must deliver copies of the recommendation to the
28 Committee chair, respondent, and OPC.

1 **(c) Exceptions to screening panel determinations and recommendations.**

2 (c)(1) Within 30 days of the date of service of the screening panel’s determination or
3 recommendation:

4 (c)(1)(A) OPC may file exceptions to the determination or recommendation and
5 may request a hearing, and respondent will have 30 days to respond with any
6 exceptions to a recommendation of admonition or public reprimand; and

7 (c)(1)(B) the respondent may file exceptions to the determination or
8 recommendation and may request a hearing, and OPC will have 30 days to
9 respond.

10 (c)(2) The Committee chair may allow a reply to any response.

11 (c)(3) No exception may be filed to a screening panel determination that an action will be
12 filed against a respondent under Rule 14-511.

13 (c)(4) All exceptions must include a memorandum, not exceeding 20 pages, stating the
14 grounds for review, the relief requested, and the bases in law or in fact for the exceptions.

15 **(d) Procedure on exceptions.**

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

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

23 (d)(3) Transcript Request. Upon request the Committee chair must extend the deadlines
24 for filing exceptions or responses to allow a party time to obtain a transcript of the
25 screening panel proceedings. The requesting party will bear the costs of such transcript
26 and must file it with the Clerk, together with an affidavit establishing the transcript’s
27 chain of custody.

Comment [LL53]: Committee clerk?

1 (d)(4) Burden of proof. The party who files exceptions under subsection (c) has the
2 burden of showing that the determination or recommendation of the screening panel is
3 unsupported by substantial evidence or is arbitrary, capricious, legally insufficient, or
4 otherwise clearly erroneous.

5 (d)(5) Record on exceptions. The proceedings of any hearing on exceptions under this
6 subsection (d) must be recorded at a level of audio quality that permits an accurate
7 transcription of the proceedings.

8 **(e) Final Committee disposition.**

9 (e)(1) Either on completing the exceptions procedure under subsection (d) or if no
10 exceptions have been filed under subsection (c), the Committee chair will review the
11 screening panel's findings and recommendations and will prepare the order to execute
12 those findings and recommendations. The Committee chair may not make changes to
13 screening panel findings and recommendations, other than changes needed for clarity. If
14 no exception is filed, the Committee chair need not issue a final, written determination
15 for a dismissal, a dismissal with a letter of caution, or a referral to the OPC?.

Comment [LL54]: Recommendation 5.9

Comment [LL55]: Recommendation 6.2

16 (e)(2) If the screening panel recommends a public reprimand, the respondent may:

17 (e)(2)(A) accept the public reprimand,

18 (e)(2)(B) file an exception with the Committee chair with the right to appeal the
19 ruling on the exception; or

20 (e)(2)(C) elect a trial de novo with the district court.

Comment [LL56]: Recommendation 5.10

21 **(f) Appealing a final Committee determination.**

22 (f)(1) Within 30 days after the Committee chair serves a final, written determination
23 under subsection (e), the respondent or OPC may appeal the determination to the
24 Supreme Court and ask the Court to reverse or modify the final Committee
25 determination. An appeal under this subsection is only be available in cases where
26 exceptions have been filed under subsection (c). Until the time for filing an appeal
27 expires, dissemination of disciplinary information under Rules 14-504(b)(13) or 14-516

1 will be automatically stayed. If a timely appeal is filed, the stay will remain in place
2 pending the Supreme Court's resolution unless the Court orders otherwise.

3 (f)(2) An appeal under this subsection (f) will be subject to the procedures set forth in
4 Title III of the Utah Rules of Appellate Procedure. Documents submitted under this Rule
5 must conform to the requirements of Rules 27(a) and 27(b) of the Utah Rules of
6 Appellate Procedure.

7 (f)(3) A party requesting a transcript of the record below will bear the costs. The party
8 obtaining the transcript must file it with the appellate clerk, together with an affidavit
9 establishing the transcript's chain of custody.

10 (f)(4) The Supreme Court will conduct a review of the matter on the record.

11 (f)(5) The party requesting review has the burden of demonstrating that the Committee
12 action was:

13 (f)(5)(A) based on a determination of fact not supported by substantial evidence
14 when viewed in light of the whole record before the Court;

15 (f)(5)(B) an abuse of discretion;

16 (f)(5)(C) arbitrary or capricious; or

17 (f)(5)(D) contrary to Chapter 11, Article 5 of the Supreme Court Rules of
18 Professional Practice.

19 **(g) General procedures.**

20 (g)(1) Testimony. All testimony given before a screening panel or the Exceptions Officer
21 must be under oath.

22 (g)(2) Service. To the extent applicable, service or filing of documents under this Rule
23 must be made in accordance with Utah Rules of Civil Procedure 5(b)(1), 5(d) and 6(a).

24 (g)(3) Continuance of disciplinary proceedings. A disciplinary proceeding may be held in
25 abeyance by the Committee chair before filing an action in district court when the
26 allegations or the complaint contain matters of substantial similarity to the material
27 allegations of pending criminal or civil litigation in which the respondent is involved.

1 **Rule 14-511. Actions in district court.**

2 (a) **Commencing an action.** If the screening panel finds probable cause to believe there are
3 grounds for public discipline that merit filing an action, OPC will file an action in district court,
4 beginning with a complaint setting forth in plain and concise language the facts upon which the
5 charge of unprofessional conduct is based and the applicable provisions of the Rules of
6 Professional Conduct or Licensed Paralegal Practitioner Rules of Professional Conduct. The
7 Committee chair must be given notice of the screening panel recommendation and a copy of the
8 filed complaint, but may not approve the recommendation or sign the complaint.

9 (b) **Venue.** Unless the parties stipulate to a change of venue, the action must be brought and the
10 trial must be held:

11 (b)(1) in the county in which an alleged offense occurred; or

12 (b)(2) in the county where the respondent resides, practices law, or last practiced law in
13 Utah; provided, however, that if the respondent is not a resident of Utah and the alleged
14 offense is not committed in Utah, the trial will be held in a county designated by the
15 Chief Justice of the Supreme Court.

16 (c) **Style of proceedings.** All proceedings instituted by the OPC must be styled: “In the Matter of
17 the Discipline of (name of respondent and respondent’s Bar number), Respondent.”

18 (d) **Change of judge as a matter of right.**

19 (d)(1) Notice of change.

20 (d)(1)(A) The respondent or OPC may request reassignment to another district
21 court judge from the same district by filing a notice stating:

22 (d)(1)(A)(i) the name of the assigned judge,

23 (d)(1)(A)(ii) the date on which the action was filed, and

24 (d)(1)(A)(iii) that a good faith effort has been made to serve all parties.

25 (d)(1)(B) The notice may not specify any reason for the change of judge.

26 (d)(1)(C) The party filing the notice must send a copy of the notice to the assigned
27 judge and to the presiding judge.

1 (d)(1)(D) Under no circumstances will more than one change of judge be allowed
2 to each party under this rule.

3 (d)(2) Time. Unless extended by the court for good cause, the notice must be filed within
4 30 days after the action commences or before the notice of trial setting, whichever occurs
5 first. Failure to file a timely notice precludes any change of judge under this rule.

6 (d)(3) Assignment of action. Upon filing a notice of change, the assigned judge will take
7 no further action in the case. The presiding judge will promptly determine whether the
8 notice is proper and, if so, reassign the action. If the presiding judge is also the assigned
9 judge, the clerk will promptly send the notice to the Chief Justice of the Supreme Court,
10 who will determine whether the notice is proper and, if so, reassign the action.

11 (d)(4) Rule 63 and Rule 63A unaffected. This rule does not affect any rights a party may
12 have pursuant to Rule 63 or Rule 63A of the Utah Rules of Civil Procedure.

13 (e) **Actions tried to the bench; findings and conclusions.** All actions tried according to this
14 article will be tried to the bench, and the district court will enter findings of fact and conclusions
15 of law. Neither masters nor commissioners may be used.

16 (f) **Sanctions hearing.** If the district court finds misconduct, it will hold a hearing to receive
17 relevant evidence in aggravation and mitigation, and will enter an order sanctioning the
18 respondent. Upon reasonable notice to the parties, the court, at its discretion, may hold the
19 sanctions hearing immediately after the misconduct proceeding.

20 (g) **Review.** Any discipline order by the district court may be reviewed by the Supreme Court
21 through a petition for review pursuant to the Utah Rules of Appellate Procedure.

22

Comment [LL57]: Recommendation 8.4

Comment [LL58]: Do both the respondent and OPC have authority to petition the Supreme Court for review of a discipline order? If so, I recommend rewording this to say "Either the OPC or respondent may file with the Supreme Court a petition to review the discipline order."

1 **Rule 14-513. Immunity from civil suits.**

2 Participants in proceedings conducted under this article are entitled to the same protections for
3 statements made in the course of the proceedings as participants in judicial proceedings. Except
4 as provided in Utah Rules of Civil Procedure 65A and 65B, the district courts, Committee
5 members, special counsel appointed pursuant to Rule 14-517(f), supervising attorneys engaged
6 in pro bono assistance, trustees appointed pursuant to Rule 14-527, and OPC counsel and staff
7 will be immune from suit, for any conduct committed in the course of their official duties,
8 including the investigatory stage. There is no immunity from civil suit for intentional
9 misconduct.

10

Comment [LL59]: This seems unnecessary, especially after we combine Articles 5 and 6.

1 **Rule 14-514. Service.**

2 (a) **Serving a complaint or petition.** Serving a complaint or petition upon the respondent in any
3 action must be made in accordance with the Utah Rules of Civil Procedure.

4 (b) **Serving other papers.** Serving any other papers or notices required by this article must be
5 made in accordance with the Utah Rules of Civil Procedure.

6

1 **Rule 14-515. Accessing disciplinary information.**

2 (a) **Confidentiality.** Before the OPC initiates an action or issues a public reprimand under Rule
3 14-510, OPC counsel, OPC staff, the Committee, Committee volunteers, Committee staff,
4 Committee employees, special counsel appointed pursuant to Rule 14-517(f), and special counsel
5 employees or assistants, must keep the proceeding confidential, but OPC may disclose the
6 pendency, subject matter, and status of an investigation if the proceeding is based on allegations
7 disseminated through the mass media, or include either the conviction of a crime or reciprocal
8 public discipline. The proceeding is not confidential to the extent:

Comment [LL60]: Recommendation 5.7,
amendments effective Nov. 1, 2019.

- 9 (a)(1) the respondent has given an express written waiver of confidentiality;
- 10 (a)(2) there is a need to notify another person or organization—including the Bar’s
11 Lawyer’s Fund for Client Protection or Licensed Paralegal Practitioners’ Fund for Client
12 Protection—to protect the public, the administration of justice, or the legal profession;
- 13 (a)(3) the information is required in a subsequent lawyer sanctions hearing; or
- 14 (a)(4) a referral is made to the Professionalism Counseling Board pursuant to Rule 14-
15 510 (a)(4) or (b)(6)(C), in which event OPC counsel, Committee members, screening
16 panel members, and Professionalism and Civility Counseling Board members may share
17 all information between and among them with the expectation that such information will
18 in all other respects be subject to applicable confidentiality rules or exceptions.

19 (b) **Public proceedings.** On filing an action, petition for reinstatement, or motion or petition for
20 interim suspension, the proceeding is public, except as provided in paragraph (d) below.

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

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

1 (e) **Request for nonpublic information.** Nonpublic information is confidential, other than as
2 authorized for disclosure under paragraph (a), unless the request for information is approved by
3 OPC and there is compliance with paragraphs (f) and (g) of this rule.

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

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

18 (g)(1) the request will further an ongoing investigation into the respondent's misconduct;

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

20 (g)(3) disclosing the existence of the investigation to the respondent would seriously
21 prejudice that investigation.

22 (h) **Disclosure without notice.** OPC may disclose nonpublic information without notice to the
23 respondent if:

24 (h)(1) disclosure furthers an ongoing OPC investigation into the respondent's
25 misconduct; and

26 (h)(2) disclosure is essential to that investigation.

27 (i) **Participants' duty.** OPC counsel, OPC employees, the Committee, Committee volunteers,
28 Committee staff, Committee employees, special counsel appointed pursuant to Rule 14-517(f),

1 and special counsel employees or assistants in a proceeding under these rules must maintain
2 confidentiality. Unless otherwise authorized, persons receiving private records under paragraph
3 (e) will not provide access to the records to anyone else.

4

1 **Rule 14-516. Disseminating disciplinary information.**

2 (a) **Notice to disciplinary agencies.** The OPC must send notice of public discipline, resignation
3 with discipline pending, transfers to or from disability status, reinstatements, readmissions, and
4 certified copies of judgments of conviction to the disciplinary enforcement agency of every other
5 jurisdiction in which the respondent is admitted, and to the American Bar Association's National
6 Lawyer Regulatory Database.

7 (b) **Notice to the public.** The OPC will publish notices of admonition, public reprimand,
8 suspension, disbarment, resignation with discipline pending, transfer to disability status, and
9 petitions for reinstatement or readmission to:

10 (b)(1) the OPC's website, and

11 (b)(2) the Utah Bar Journal.

12 (c) **Notice to the courts.** The OPC must promptly forward notices of suspension, disbarment,
13 delicensure, resignation with discipline pending, transfer to or from disability status,
14 reinstatement, readmission, or relicensure to all Utah state courts for licensed paralegal
15 practitioners and both Utah state and federal courts for lawyers.

16

Comment [LL61]: Recommendation 3.1:
OPC should continue the current practice
of providing information about
disciplinary actions by phone, or other
means, for actions more than 10 years old.
OPC should publish on its website, the
names of attorneys who have been
publicly disciplined in the last 10 years.
The USB should continue to publish
attorney licensure status on the USB
website.

1 **Rule _____. Retaining records.**

2 (a) **No imposed discipline.** The OPC must expunge (i.e. destroy) after three years all records or
3 other evidence of the existence of complaints that the OPC dismisses or declines to prosecute.

4 (a)(1) **Exception.** On OPC’s application, notice to respondent, and a showing of good
5 cause, the Oversight Committee may permit OPC to retain such records for one
6 additional period of time not to exceed three years.

7 (a)(2) **Notice to respondent.** If the OPC contacts the respondent regarding a complaint or
8 otherwise knows the respondent is aware of a complaint, the OPC must give the
9 respondent prompt written notice that a dismissed complaint has been expunged.

10 (b) **Public reprimand, suspension, disbarment.** The OPC must expunge after 30 years all
11 records or other evidence of the existence of complaints that resulted in public reprimand,
12 suspension, or disbarment, running from the date the discipline expired.

13 (c) **Disciplinary history letters.** The OPC must expunge after three years all records of
14 disciplinary history letters, running from the date of the latter.

15 (d) **Requests for information.** The OPC must expunge after three years any other requests for
16 information, running from the date the OPC responds to the request.

17 (e) **Effect of expungement.** After a file has been expunged, any OPC response to an inquiry
18 requiring a reference to the matter must state that there is no record of such matter. The
19 respondent may answer any inquiry requiring a reference to an expunged matter by stating that
20 no complaint was made.

21

1 **Rule 14-517. Additional rules of procedure.**

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

5 (b) **Standard of proof.** A misconduct action, petition for reinstatement and readmission or
6 relicensure, and petition for transfer to and from disability status will be established by a
7 preponderance of the evidence. A motion for interim suspension under Rule 14-518 will also be
8 established by a preponderance of the evidence.

Comment [LL62]: Recommendation 7.3

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

13 (d) **Related pending litigation.** An action or disability proceeding may be stayed because of
14 substantial similarity to the material allegations of a pending criminal, civil, or disciplinary
15 action.

Comment [LL63]: Who carries this burden?

16 (e) **The complainant's actions.** Disciplinary proceedings will not be abated due to:

- 17 (e)(1) the complainant's unwillingness to prosecute a complaint;
- 18 (e)(2) settlement or compromise between the complainant and the respondent; or
- 19 (e)(3) restitution by the respondent.

20 (f) **Complaints and actions against OPC counsel, Committee members, the Bar**
21 **Commission, or lawyers employed by the Bar.** The Committee chair will assign a screening
22 panel any complaint or action filed against OPC counsel, a Committee member, a Bar
23 Commission member, or a lawyer employed by the Utah State Bar. The assigned panel chair will
24 review the complaint and any additional material that the screening panel chair asks the
25 respondent to provide.

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

- 28 (f)(1)(A) frivolous or unintelligible;

1 (f)(1)(B) barred by the statute of limitations;
2 (f)(1)(C) being or should have been addressed in another more appropriate forum;
3 or
4 (f)(1)(D) unsupported by fact or does not raise probable cause of any
5 unprofessional conduct.

6 (f)(2) The screening panel chair must notify the complainant of the dismissal and the
7 reasons for dismissal.

8 (f)(3) The complainant may appeal the screening panel chair's dismissal to the
9 Committee chair within 15 days after notification of the dismissal is mailed.

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

12 (f)(5) If the screening panel chair determines not to dismiss the complaint, or the
13 Committee chair reverses the dismissal on appeal, the Committee chair must request that
14 the Supreme Court appoint a special counsel to present the case, and if necessary, a
15 special screening panel. In all other respects, the matter will proceed in accordance with
16 this article. Special counsel must be a lawyer outside of the OPC appointed by the
17 Supreme Court to act as counsel for investigation and prosecution of the disciplinary
18 complaint. Special counsel must notify the OPC of the results of the investigation.

19

1 **Rule 14-518. Interim discipline for threat of harm.**

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

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

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

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

16 (b)(1) the district court may appoint a trustee, pursuant to Rule 14-527, to protect the
17 interests of the respondent’s clients; and

18 (b)(2) the OPC may file a misconduct action in the district court without presenting the
19 matter to a screening panel.

20 (c) **Notice to clients.** A respondent subject to interim discipline pursuant to paragraph (b) must
21 comply with the notice requirements in Rule 14-526 as ordered by the district court.

22 (d) **Motion to dissolve or modify interim discipline.** On 48 hours’ notice to the OPC, a
23 respondent suspended pursuant to paragraph (b) may appear and move to dissolve or modify the
24 order of discipline, and such motion will be heard and determined as expeditiously as justice
25 requires.

26

Comment [LL64]: Recommendations 7.1 and 7.3

Comment [LL65]: Recommendation 7.3 (permit OPC to request and Court to impose other types of interim orders to protect the public)

Comment [LL66]: Recommendation 7.3

1 **Rule 14-519. Lawyers found guilty of a crime.**

Comment [LL67]: Recommendation 7.4

2 (a) **Forwarding the judgment of guilt (after a finding or admission of guilt).** When a lawyer
3 is guilty of or has entered a plea in abeyance for any felony or misdemeanor that reflects
4 adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer, the court will forward
5 a certified copy of the judgment to OPC within 30 days after the judgment of guilt.

6 (b) **Motion for interim suspension.** On being advised that a lawyer has been found guilty of or
7 has entered a plea in abeyance for a felony or misdemeanor that reflects adversely on the
8 lawyer's honesty, trustworthiness, or fitness as a lawyer, OPC must determine whether the crime
9 warrants interim suspension. Upon a determination that the crime warrants interim suspension,
10 OPC must file a suspension action, accompanied by the certified copy of the judgment, and
11 concurrently file a motion for immediate interim suspension. A suspension action commences
12 under this rule when both the petition for interim suspension and the complaint are filed. The
13 respondent may assert any jurisdictional deficiency establishing that the interim suspension may
14 not properly be ordered, such as the crime is not a felony or misdemeanor that reflects adversely
15 on the respondent's honesty, trustworthiness, or fitness as a lawyer, or that the respondent is not
16 the individual found guilty. **The respondent is not entitled to an evidentiary hearing but may**
17 **request an informal hearing, solely to determine whether the finding or admission of guilt was**
18 **for a felony or misdemeanor that reflects adversely on the respondent's honesty, trustworthiness,**
19 **or fitness to practice law.** If an order for interim suspension is not obtained, the OPC must
20 dismiss the suspension action and will process the matter as it does any other information
21 coming to the OPC's attention.

Comment [LL68]: Recommendation 7.4

22 (c) **Imposition.** The district court will place a respondent on interim suspension upon proof that
23 the respondent has been found guilty of a felony or misdemeanor that reflects adversely on the
24 respondent's honesty, trustworthiness, or fitness as a lawyer regardless of any pending appeal.

25 (d) **Dissolving interim suspension.** Interim suspension may be dissolved as provided in Rule 14-
26 518(d).

27 (e) **Judgment of guilt as conclusive evidence.** Except as provided in paragraph (b), a certified
28 copy of the judgment constitutes conclusive evidence that the respondent committed the crime.

1 (f) **Automatic reinstatement from interim suspension upon reversal of judgment.** If a
2 respondent suspended solely under paragraph (c) demonstrates that the underlying judgment has
3 been reversed or vacated, the order for interim suspension will be vacated and the respondent
4 placed on active status. Vacating the interim suspension will not automatically terminate any
5 disciplinary proceeding then pending against the respondent, the disposition of which will be
6 determined based on the available evidence other than the judgment.

7 (g) **Notice to clients and other of interim suspension.** An interim suspension under this rule
8 constitutes a suspension of the respondent for the purpose of Rule 14-526.

9

1 **Rule 14-520. Discipline by consent.**

2 (a) **Discipline by consent prior to filing a misconduct action.** A respondent against whom a
3 complaint has been filed may, before the OPC files a misconduct action, tender a proposal for
4 discipline by consent, including a conditional admission to the complaint or portions thereof in
5 exchange for a disciplinary sanction and final disposition of the complaint. The proposal must
6 include a waiver of right to a screening panel hearing. The respondent must submit the proposal
7 to the OPC, who will forward the proposal to the Committee chair with a recommendation in
8 favor of or opposed to the proposal and a statement of the basis for such recommendation. If the
9 Committee chair approves the proposal, the sanction will be imposed as provided in this rule. If
10 the proposal is rejected by the Committee chair, the proposal and admission will be withdrawn
11 and cannot be used against the respondent in subsequent proceedings.

12 (b) **Discipline by consent after filing a misconduct action.** A respondent against whom an
13 action has been filed may tender a conditional admission to the allegations in the OPC's
14 complaint or to a particular count thereof in exchange for a stated form of discipline and final
15 disposition of the action. The proposal must be submitted to OPC, who will then forward the
16 proposal to the district court with a recommendation favoring or opposing the proposal and a
17 statement of the basis for such recommendation. The district court will either approve or reject
18 the proposal. If the district court approves the proposal and the stated form of discipline includes
19 public discipline, it will enter the appropriate disciplinary order as provided in paragraph (d). If
20 the district court rejects the proposal, the proposal and conditional admission will be withdrawn
21 and cannot be used against the respondent in subsequent proceedings.

22 (c) **Order of discipline by consent.** The final order of discipline by consent will be predicated
23 on:

24 (c)(1) the complaint and the OPC's notice to the respondent if no action has been filed;

25 (c)(2) the misconduct action, if filed;

26 (c)(3) the approved proposal for discipline by consent; and

27 (c)(4) an affidavit of consent by the respondent to be disciplined.

1 (d) **Affidavit of consent.** A respondent whose proposal for discipline by consent has been
2 approved as provided in this rule, must submit an affidavit to the Committee chair or the district
3 court as appropriate, consenting to the approved disciplinary sanction and affirming that:

4 (d)(1) the consent is freely and voluntarily entered;

5 (d)(2) the respondent is not acting under coercion or duress;

6 (d)(3) the respondent is fully aware of the implications of submitting the consent;

7 (d)(4) the respondent is aware that there is presently pending an investigation into, or
8 proceeding involving, allegations that there exist grounds for discipline, the nature of
9 which must be specifically set forth;

10 (d)(5) for purposes of disciplinary proceedings, the respondent acknowledges that the
11 material facts so alleged are true; and

12 (d)(6) the respondent submits consent because the respondent knows that if a misconduct
13 action predicated on the allegations under investigation were filed, or the pending action
14 were prosecuted, the respondent could not successfully defend against the charges upon
15 which the discipline is based.

16

17

1 **Rule 14-521. Resignation with discipline pending.**

2 (a) A respondent may resign from the Bar, prior to the adjudication of a pending complaint, only
3 with the consent of the Supreme Court and upon such terms as the Supreme Court may impose
4 for the protection of the public.

5 (b) The respondent must submit a sworn petition:

6 (b)(1) admitting for purposes of the disciplinary proceedings the facts upon which the
7 allegations of misconduct are based;

8 (b)(2) admitting that the facts constitute grounds for discipline;

9 (b)(3) stating that the respondent's resignation is freely and voluntarily tendered and that
10 it is submitted without coercion or duress;

11 (b)(4) verifying that the respondent is fully aware of the implications of submitting the
12 resignation;

13 (b)(5) acknowledging that the discipline matter, the petition, and the sanction will be
14 available to the public and that a notice of the resignation will be published in the Utah
15 Bar Journal;

16 (b)(6) agreeing to comply with these rules, including Rule 14-526(b) regarding notice to
17 clients and return of clients' property; and

18 (b)(7) agreeing to comply with other Supreme Court orders.

19 (c) A copy of the petition must be submitted to OPC. OPC may, within 20 days, object to the
20 petition. If OPC consents to the petition, the Supreme Court will review the petition and enter an
21 appropriate order. If OPC files a timely objection, the matter will be set for hearing in the district
22 court. Within ten days after the hearing, the district court will transmit its findings of fact and
23 conclusions of law to the Supreme Court to review and enter an appropriate order.

24 (d) If the Supreme Court accepts the resignation, it will enter an order specifying the effective
25 date of the resignation. The order may include additional or alternative terms and conditions
26 deemed appropriate, including conditions precedent to readmission or relicensure.

1 (e) A respondent whose resignation is accepted must comply with Rule 14-525 and may not
2 apply for readmission or relicensure until five years after the effective date of the resignation
3 unless the Supreme Court orders otherwise in its order accepting the resignation.

4

1 **Rule 14-522. Reciprocal discipline.**

2 (a) **Duty to notify OPC of discipline or transfer to disability inactive status.** When another
3 court, jurisdiction, or regulatory body having disciplinary jurisdiction publicly disciplines or
4 transfers to disability inactive status a lawyer admitted to practice in Utah, such lawyer must
5 inform the OPC of the discipline or transfer within 30 days. If the OPC receives notification
6 from any source that a lawyer within the Supreme Court’s jurisdiction has been publicly
7 disciplined or transferred to disability inactive status by any other jurisdiction, OPC must obtain
8 a certified copy of the disciplinary order.

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

- 13 (b)(1) a copy of the order from the other court, jurisdiction, or regulatory body; and
- 14 (b)(2) a notice giving the lawyer the right to inform OPC, within 30 days from service of
15 the notice, of any claim by the lawyer predicated on the grounds set forth in paragraph
16 (d), that the imposition of the equivalent discipline or transfer in Utah would be
17 unwarranted and stating the reasons for that claim.

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

21 (d) **Discipline to be imposed.** Upon the expiration of 30 days from service of the notice under
22 paragraph (b), the district court will take such action as may be appropriate to cause the
23 equivalent discipline or transfer to be imposed in this jurisdiction, unless it clearly appears on the
24 face of the record from which the discipline or transfer is predicated that:

- 25 (d)(1) the procedure was so lacking in notice or opportunity to be heard as to constitute a
26 deprivation of due process;
- 27 (d)(2) the imposition of equivalent discipline would result in grave injustice;

1 (d)(3) the misconduct warrants substantially different discipline in Utah or is not
2 misconduct in this jurisdiction; or

3 (d)(4) the reason for the original transfer to disability inactive status no longer exists.

4 If the district court determines that any of these elements exist, it will enter such other order as it
5 deems appropriate. The burden is on the lawyer seeking different discipline or transfer to
6 demonstrate that the imposition of equivalent discipline or transfer is not appropriate.

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

12

1 **Rule 14-523. Proceedings in which lawyer is declared to be incompetent or alleged to be**
2 **incapacitated.**

3 (a) **Involuntary commitment or adjudication of incompetency.** If a lawyer has been judicially
4 declared incompetent or is involuntarily committed on the grounds of incompetency, then upon
5 proper proof of the fact, OPC must file a petition with the district court for the immediate
6 transfer of the lawyer to disability status for an indefinite period until further order of the district
7 court. OPC must serve a copy of the order on the lawyer or the lawyer's guardian or, if no
8 guardian or legal representative has been appointed, on the director of the institution to which the
9 lawyer has been committed.

10 (b) **Inability to properly defend.** If a lawyer alleges in the course of a disciplinary proceeding
11 an inability to assist in the defense due to mental or physical incapacity, the district court will
12 immediately transfer the lawyer to disability status pending determination of the incapacity.

13 (b)(1) If the district court determines the claim of inability to defend is valid, the
14 disciplinary proceeding will be deferred and the lawyer retained on disability status until
15 the district court subsequently considers a petition for transfer of the lawyer to active
16 status. If the district court considering the petition for transfer to active status determines
17 the petition should be granted, the interrupted disciplinary proceedings may resume.

18 (b)(2) If the district court determines the claim of incapacity to defend to be invalid, the
19 disciplinary proceeding will resume.

20 (c) **Proceedings to determine incapacity.** Information relating to a lawyer's physical or mental
21 condition that adversely affects the lawyer's ability to practice law will be investigated, and if
22 warranted, will be the subject of formal proceedings to determine whether the lawyer must be
23 transferred to disability status. Hearings will be conducted in the same manner as disciplinary
24 proceedings, except that all of the proceedings will be confidential. The district court will
25 provide the lawyer with such notice of proceedings in the matter as it deems proper and
26 advisable and may appoint counsel to represent the lawyer if the lawyer is without adequate
27 representation. The district court may take or direct whatever action it deems necessary or proper
28 to determine whether the lawyer is so incapacitated, including designating qualified experts to
29 examine the lawyer. If the district court concludes that the lawyer is incapacitated from
30 continuing to practice law, it will enter an order transferring the lawyer to disability status for an

1 indefinite period and until the further order. Any pending disciplinary proceedings against the
2 lawyer will be held in abeyance.

3 **(d) Reinstatement from disability status.**

4 (d)(1) Court order. No lawyer transferred to disability status may resume active status
5 except by district court order.

6 (d)(2) Petition. Any lawyer transferred to disability status is entitled to petition for
7 transfer to active status once a year, or at whatever shorter intervals the district court may
8 direct in the order transferring the lawyer to disability status or any modifications thereof.

9 (d)(3) Examination. On filing a petition for transfer to active status, the district court may
10 take or direct whatever action it deems necessary or proper to determine whether the
11 disability has been removed, including directing designated qualified experts to examine
12 the lawyer. In its discretion, the district court may direct the lawyer to pay the
13 examination expense.

14 (d)(4) Waiver of privilege. When filing a petition for reinstatement to active status, the
15 lawyer will be required to disclose the name of each psychiatrist, psychologist, physician,
16 or other health care provider and hospital or other institution by whom or in which the
17 lawyer has been examined or treated related to the disability since the transfer to
18 disability status. The lawyer must furnish written consent to each listed provider to
19 divulge information and records relating to the disability if requested by the district court
20 or the district court's appointed experts.

21 (d)(5) Learning in law; Bar examination. The district court may also direct that the
22 lawyer establish proof of competence and learning in law, which proof may include the
23 Bar's certification that the lawyer has successfully completed an examination for
24 admission to practice.

25 (d)(6) Granting petition for transfer to active status. The district court will grant the
26 petition for transfer to active status on a showing by clear and convincing evidence that
27 the disability has been removed.

1 (d)(7) Judicial declaration of competence. If a lawyer transferred to disability status on
2 the basis of a judicial determination of incompetence is subsequently judicially declared
3 to be competent, the district court may dispense with further evidence that the lawyer's
4 disability has been removed and may immediately order the lawyer's reinstatement to
5 active status upon terms as are deemed proper and advisable.

6

1 **Rule 14-524. Reinstatement following a suspension of no more than six months.**

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

9

1 **Rule 14-525. Reinstatement following a suspension of more than six months; readmission**
2 **or relicensure.**

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

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

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

22 (d) **Publication of notice of petition.** When a respondent files a petition for reinstatement or
23 readmission, OPC must:

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

25 (d)(1)(A) informs Bar members of the application for reinstatement or
26 readmission, and

27 (d)(1)(B) requests that any individuals file notice of their opposition or
28 concurrence with the district court within 30 days of the date of publication; and

1 (d)(2) send a notice to the complainant's last known address according to OPC records, to
2 each complainant in the disciplinary proceeding that led to the respondent's suspension or
3 disbarment informing such complainant that:

4 (d)(2)(A) the respondent is applying for reinstatement or readmission; and

5 (d)(3) the complainant has 30 days from the date of mailing to raise objections to
6 or to support the respondent's petition.

7 (e) **Criteria for reinstatement and readmission.** A respondent may be reinstated or readmitted
8 only if the respondent meets each of the following criteria, or, if not, presents good and sufficient
9 reason why the respondent should nevertheless be reinstated or readmitted.

10 (e)(1) The respondent has fully complied with the terms and conditions of all prior
11 disciplinary orders except to the extent they are abated by the district court.

12 (e)(2) The respondent has not engaged nor attempted to engage in the unauthorized
13 practice of law during the period of suspension or disbarment.

14 (e)(3) If the respondent was suffering from a physical or mental disability or impairment
15 which was a causative factor of the respondent's misconduct, including substance abuse,
16 the disability or impairment has been removed. Where substance abuse was a causative
17 factor in the respondent's misconduct, the respondent must not be reinstated or
18 readmitted unless the respondent:

19 (e)(3)(A) has recovered from the substance abuse as demonstrated by a
20 meaningful and sustained period of successful rehabilitation;

21 (e)(3)(B) has abstained from the use of the abused substance and the unlawful use
22 of controlled substances for the preceding six months; and

23 (e)(3)(C) is likely to continue to abstain from the substance abused and the
24 unlawful use of controlled substances.

25 (e)(4) Notwithstanding the conduct for which the respondent was disciplined, the
26 respondent has the requisite honesty and integrity to practice law. In readmission cases,
27 the respondent must appear before the Bar's Character and Fitness Committee and
28 cooperate in its investigation of the respondent. A copy of the Character and Fitness

1 Committee's report and recommendation will be provided to the OPC and forwarded to
2 the district court assigned to the petition after the respondent files a petition.

3 (e)(5) The respondent has kept informed about recent developments in the law and is
4 competent to practice.

5 (e)(6) In cases of suspensions for one year or more, the respondent will be required to
6 pass the Multistate Professional Responsibility Examination.

7 (e)(7) In all cases of disbarment, the respondent will be required to pass the student
8 applicant Bar Examination and the Multistate Professional Responsibility Examination.

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

12 (f) **Review of petition.** Within 60 days of receiving a respondent's petition for reinstatement or
13 readmission, OPC must either:

14 (f)(1) advise the respondent and district court that OPC will not object to the respondent's
15 reinstatement or readmission; or

16 (f)(2) file a written objection to the petition.

17 (g) **Hearing; report.** If OPC files an objection, the district court, as soon as reasonably
18 practicable and within a target date of 90 days of the filing of the petition, will conduct a hearing
19 at which the respondent will have the burden of demonstrating by a preponderance of the
20 evidence that the respondent has met each of the criteria in paragraph (e) or, if not, that there is
21 good and sufficient reason why the respondent should nevertheless be reinstated or readmitted.
22 The district court will enter its findings and order. If OPC does not file an objection, the district
23 court will review the petition without a hearing and enter its findings and order.

24 (h) **Successive petitions.** Unless otherwise ordered by the district court, no respondent may
25 apply for reinstatement or readmission within one year following an adverse judgment on a
26 petition for reinstatement or readmission.

27 (i) **Conditions of reinstatement or readmission.** The district court may impose conditions on a
28 respondent's reinstatement or readmission if the respondent has met the burden of proof

1 justifying reinstatement or readmission, but the district court reasonably believes that further
2 precautions should be taken to ensure that the public will be protected when the respondent
3 returns to practice.

4 (j) **Reciprocal reinstatement or readmission.** If a respondent has been suspended or disbarred
5 solely because of discipline imposed by another court, another jurisdiction, or a regulatory body
6 having disciplinary jurisdiction, and if the respondent is later reinstated or readmitted by that
7 court, jurisdiction, or regulatory body, the respondent may petition for reciprocal reinstatement
8 or readmission in Utah. The respondent must file with the district court and serve on OPC a
9 petition for reciprocal reinstatement or readmission. The petition must include a certified or
10 otherwise authenticated copy of the order of reinstatement or readmission from the other court,
11 jurisdiction, or regulatory body. Within 20 days of receiving the petition, OPC may file an
12 objection based solely on substantial procedural irregularities. If the OPC objects, the district
13 court will hold a hearing and enter its findings and order. If no objection is filed, the district court
14 will enter its order based on the petition.

15

1 **Rule 14-526. Notice of disability or suspension; return of clients' property; refund of**
2 **unearned fees.**

3 (a) **Effective date of order; winding up affairs.** Each order that imposes disbarment or
4 suspension is effective 30 days after the order's date, or at such time as the order provides. Each
5 order that transfers a respondent to disability status is effective immediately, unless the order
6 otherwise provides. After the court enters any order of disbarment, suspension, or transfer to
7 disability status, the respondent may not accept any new retainer or employment as a lawyer in
8 any new case or legal matter; except that during any period between the date an order is entered
9 and its effective date, the respondent may, with the consent of the client after full disclosure,
10 wind up or complete any matters pending on the date the order is entered.

11 (b) **Notice to clients and others.** In every case in which a respondent is disbarred or suspended
12 for more than six months, the respondent must, within 20 days after the order is entered,
13 accomplish the following acts:

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

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

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

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

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

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

3 (b)(7) within ten days after the effective date of disbarment or suspension, file an
4 affidavit with OPC showing complete performance of the foregoing requirements. The
5 respondent must keep and maintain for OPC's inspection all records of the steps taken to
6 accomplish the requirements of this rule.

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

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

13 (e) **Compliance.** Substantial compliance with the provisions of paragraphs (a), (b) and (d) will
14 be a precondition for reinstatement or readmission. Willful failure to comply with paragraphs (a),
15 (b) and (d) constitute contempt of court and may be punished as such or by further disciplinary
16 action.

17

1 **Rule 14-527. Appointment of trustee to protect clients' interest when lawyer disappears,**
2 **dies, is suspended or disbarred, or is transferred to disability status.**

3 (a) **Protective appointment of trustee.** If a lawyer has disappeared or died, or if a respondent
4 has been suspended or disbarred or transferred to disability status, and if there is evidence that
5 the lawyer or respondent has not complied with the provisions of Rule 14-526 and no partner,
6 executor, or other responsible party capable of conducting the lawyer's or respondent's affairs is
7 known to exist, a district judge of the judicial district in which the lawyer or respondent
8 maintained a principal office may, on the OPC's request, appoint a trustee to inventory the
9 lawyer's or respondent's files, notify the lawyer's or respondent's clients, distribute the files to
10 the clients, return unearned fees and other funds, and take any additional action the judge
11 authorizes.

12 (b) **Confidentiality.** No attorney-client relationship exists between the client and the trustee
13 except to the extent necessary to maintain and preserve the client's confidentiality. The trustee
14 may not disclose any information contained in the files so inventoried without the consent of the
15 client to whom such files relate, except as necessary to carry out the court's order making the
16 appointment.

17 (c) **Immunity.** Any person appointed as a trustee has the immunity granted by Rule 14-513.

18

1 **Rule 14-529. Statute of limitations.**

2 Proceedings under this article must be commenced within four years of discovering the acts
3 allegedly constituting a violation of the Rules of Professional Conduct or Licensed Paralegal
4 Practitioner Rules of Professional Conduct.

5

Comment [LL70]: This language has been fully incorporated into Rule 14-510(a)(7).

1 **Rule 14-530. Costs.**

2 (a) **Assessment.** The prevailing party in a misconduct action may be awarded judgment for costs
3 in accordance with Rule 54(d) of the Utah Rules of Civil Procedure.

4 (b) **Offer of discipline by consent.** OPC will not be deemed to have prevailed in the action on
5 any count of the complaint unless the sanction imposed exceeds any sanction to which the
6 respondent conditionally consented under Rule 14-520(b) before the hearing.

7 (c) **Disability cases.** Costs will not be awarded in disability cases except pursuant to paragraph
8 (d).

9 (d) **Trusteeship.** Court-appointed trustees, including the OPC in cases in which it is appointed
10 the trustee, may collect costs for notifying the respondent's clients, including charges for
11 copying, postage, publication, and fees from money collected.

12

1 **Rule 14-531. Noncompliance with child support order, child visitation order, subpoena or**
2 **order relating to paternity or child support proceeding.**

3 (a) Upon entering an order holding a lawyer in contempt for the lawyer's noncompliance with a
4 child support order, child visitation order, or a subpoena or order relating to a paternity or child
5 support proceeding, a district court may suspend the lawyer's license to engage in the practice of
6 law consistent with applicable law and, if suspended, will also impose conditions of
7 reinstatement.

8 (b) If a district court suspends a lawyer's license to engage in the practice of law, the court will
9 provide a copy of the order to the OPC.

10

11

1 **Rule 14-532. Failure to answer charges.**

2 (a) **Failure to answer.** If having received actual notice of the charges filed, the respondent fails
3 to answer the charges within 20 days, the respondent will be deemed to have admitted the factual
4 allegations.

5 (b) **Failure to appear.** If the Committee orders the respondent to appear and the respondent,
6 having received actual notice of that order, fails to appear, the respondent will be deemed to have
7 admitted the factual allegations which were the subject of such appearance. The Committee may
8 not, absent good cause, continue or delay proceedings because of the respondent's failure to
9 appear.

10 (c) **Notice of consequences.** Any notice within the scope of paragraph (a) or (b) above must
11 expressly state the consequences, as specified above, of the respondent's failure to answer or
12 appear.

13

1 **Rule 14-533. Diversion.**
2 (a) **Referral to diversion.** In a matter involving less serious misconduct as outlined in subsection
3 (c), on receiving a complaint and before filing an action, the respondent may have the option of
4 electing to have the matter referred to diversion, the appropriateness of which the OPC will
5 determine. Diversion may require the respondent's participation in one or more of the following:

Comment [LL71]: Recommendation 6.1

Comment [LL72]: I would recommend splitting this into separate rules.

Comment [LL73]: Recommendation 6.2 eliminate diversion committee

- 6 (a)(1) fee arbitration;
- 7 (a)(2) mediation;
- 8 (a)(3) law office management assistance;
- 9 (a)(4) lawyer or licensed paralegal practitioner assistance programs;
- 10 (a)(5) psychological and behavioral counseling;
- 11 (a)(6) monitoring;
- 12 (a)(7) restitution;
- 13 (a)(8) continuing legal education programs including, but not limited to, ethics school; or
- 14 (a)(9) any other program or corrective course of action to address the respondent's
- 15 conduct.

16 (b) **Authority and responsibility.** The OPC may negotiate and execute diversion contracts,
17 assign monitoring to a lawyer or licensed paralegal practitioner assistance program, determine if
18 the lawyer complied with the diversion contract, determine if the lawyer fulfilled or materially
19 breached the diversion contract, and adopt such policies and procedures as may be appropriate to
20 accomplish its duties under this rule. The OPC has authority to establish subcommittees of
21 volunteer attorneys and other professionals for the specific purpose of monitoring the compliance
22 of any attorney under diversion and reporting compliance to OPC.

Comment [LL74]: Recommendation 6.2 eliminate diversion committee

Comment [LL75]: Recommendation 6.2 eliminate diversion committee

Comment [LL76]: Recommendation 6.2 eliminate diversion committee

Comment [LL77]: Recommendation 6.2: designating a monitor for compliance who will be responsible to report to OPC.

23 (c) **Less serious misconduct.** Conduct that would result in a suspension, disbarment, or
24 delicensure is not considered to be less serious misconduct. Conduct is not ordinarily considered
25 less serious misconduct if any of the following considerations apply:

- 26 (c)(1) the misconduct involves the misappropriation of client funds;

1 (c)(2) the misconduct results in or is likely to result in substantial prejudice to a client or
2 other person, absent adequate provisions for restitution;

3 (c)(3) the respondent has been sanctioned in the last three years;

4 (c)(4) the misconduct is of the same nature as misconduct for which the respondent has
5 been sanctioned in the last three years;

6 (c)(5) the misconduct involves dishonesty, deceit, fraud, or misrepresentation;

7 (c)(6) the misconduct constitutes a substantial threat of irreparable harm to the public; a
8 felony; or a misdemeanor which reflects adversely on the respondent's honesty,
9 trustworthiness or fitness as a lawyer; or

10 (c)(7) the misconduct is part of a pattern of similar misconduct.

11 (d) **Factors for consideration.** The OPC considers these factors in negotiating and executing the
12 diversion contract:

Comment [LL78]: Recommendation 6.2
eliminate diversion committee

13 (d)(1) whether in the OPC's opinion, the presumptive sanction that would be imposed is
14 likely to be no more severe than a public reprimand or private admonition;

Comment [LL79]: Recommendation 6.2
eliminate diversion committee

15 (d)(2) whether participating in diversion is likely to improve the respondent's future
16 professional conduct and accomplish the goals of lawyer discipline;

17 (d)(3) whether aggravating or mitigating factors exist; and

18 (d)(4) whether diversion was already tried.

19 (e) **Notice to complainant.** The OPC will notify the complainant, if any, of the proposed
20 decision to refer the respondent to diversion, and the complainant may submit written comments.
21 The complainant will be notified when the complaint is diverted and when the complaint is
22 dismissed. All notices will be sent to the complainant's address of record on file with the OPC.
23 Such decision to divert or dismiss is not appealable.

24 (f) **Diversion contract.**

25 (f)(1) If the respondent agrees or elects to participate in diversion as provided by this rule,
26 the terms of the diversion must be set forth in a written contract. The contract will be
27 between the respondent and OPC. The OPC must monitor and supervise the conditions of

Comment [LL80]: Recommendation 6.2
eliminate diversion committee

1 diversion and the terms of the diversion contract. The contract must specify the
2 program(s) to which the attorney will be diverted, the general purpose of the diversion,
3 the manner in which compliance is to be monitored, and any requirement for payment of
4 restitution or cost. The respondent will bear the burden of drafting and submitting the
5 proposed diversion contract. Respondent may use counsel to assist in the negotiation
6 phase of diversion. Respondent may also request that OPC draft the proposed diversion
7 contract. Respondent may also use benefits programs provided by the Bar, such as a
8 lawyer or licensed paralegal practitioner assistance program to assist in developing terms
9 and conditions for the diversion contract appropriate to that respondent's particular
10 situation. Use of a lawyer or licensed paralegal practitioner assistance program to assess
11 appropriate conditions for diversion will not conflict that entity from providing services
12 under the contract. The terms of each contract must be specifically tailored to the
13 respondent's individual circumstances. The contract is confidential and its terms may not
14 be disclosed to anyone other than the parties to the contract.

15 (f)(2) All diversion contracts must contain at least:

16 (f)(2)(A) the signatures of respondent, respondent's counsel (if any), and the
17 OPC;

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

25 (f)(2)(C) the necessary terms providing for oversight of fulfilling the contract
26 terms, including provisions for those involved to report any alleged breach of the
27 contract to OPC;

Comment [LL81]: Recommendation 6.2

1 (f)(2)(D) the necessary terms providing that respondent will pay all costs incurred
2 in connection with the contract and those costs further specified pursuant to
3 subsection (k) and any costs associated with the complaints to be deferred; and

4 (f)(2)(E) a specific acknowledgement that a material violation of a contract term
5 renders the respondent's participation in diversion voidable by the OPC.

Comment [LL82]: Recommendation 6.2

6 (f)(3) The contract may be amended on subsequent agreement of respondent and OPC.

7 (g) **Status of complaint.** After a diversion contract is executed by the respondent, the
8 disciplinary complaint is deferred pending successful completion of the contract.

9 (h) **Effect of non-participation in diversion.** The respondent has the right to decline to
10 participate in diversion. If the respondent chooses not to participate in diversion, the matter
11 proceeds pursuant to the Rules of Lawyer Discipline and Disability.

12 (i) **Termination of diversion.**

13 (i)(1) Fulfillment of the contract. The contract terminates when the respondent has
14 fulfilled the terms of the contract and gives the OPC an affidavit or declaration
15 demonstrating fulfillment. Upon receiving this affidavit or declaration, the OPC must
16 acknowledge receipt and dismiss any complaint(s) deferred pending successful
17 completion of the contract or notify the respondent that fulfillment of the contract is
18 disputed based on an OPC claim of material breach. The complainant cannot appeal the
19 dismissal. Successfully completing the contract is a bar to any further disciplinary
20 proceedings based on the same allegations and successfully completing diversion may
21 not constitute a form of discipline.

Comment [LL83]: Recommendation 6.2

22 (i)(2) Material breach. Materially breaching the contract is cause for terminating the
23 contract. After a material breach, OPC must notify the respondent of the alleged breach
24 and intent to terminate the diversion. Thereafter, disciplinary proceedings may be
25 instituted, resumed, or reinstated.

26 (j) **Costs.** Respondent must pay an initial fee of \$250 upon entering diversion. During diversion,
27 respondent must pay a monthly fee of \$50. All such fees are payable to the Bar's general fund.

1 **Rule 14-602. Purpose and nature of sanctions.**

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

7 **(b) Public nature of lawyer discipline proceedings.** The ultimate disposition of lawyer
8 discipline will be public in cases of disbarment, suspension, and reprimand; and nonpublic in
9 cases of admonition.

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

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

20 (d)(2) consideration of the appropriate weight of such factors in light of the stated goals
21 of lawyer discipline; and

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

24

Comment [LL84]: These definitions are incorporated into article 5, because we will be merging both articles 5 and 6 into Chapter 11, article 5.

Comment [LL85]: This no longer seems necessary.

1 **Rule 14-603. Sanctions.**

2 (a) **Scope.** A disciplinary sanction is imposed on a lawyer upon a finding or acknowledgement
3 that the lawyer has engaged in professional misconduct.

4 (b) **Disbarment or Delicensure.** Disbarment or delicensure terminates the individual's status as
5 a lawyer. A lawyer who has been disbarred or delicensed may be readmitted or relicensed as
6 provided in Rule 14-525.

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

10 (d) **Interim suspension.** Interim suspension temporarily suspends a lawyer from the practice of
11 law. Interim suspension may be imposed as set forth in Rules 14-518 and 14-519.

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

14 (f) **Admonition.** Admonition is nonpublic discipline that declares the conduct of the lawyer
15 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. Probation
17 may be public or nonpublic, imposed alone or in conjunction with other sanctions, and imposed
18 as a condition of readmission or reinstatement.

Comment [LL86]: Recommendation 7.2

19 (g)(1) A respondent may be placed on probation if they can demonstrate that they:

20 (g)(1)(A) can perform legal services and the continued practice of law will not
21 cause the courts or the profession to fall into disrepute;

22 (g)(1)(B) are unlikely to harm the public during the period of rehabilitation and
23 the necessary conditions of probation can be adequately supervised;

24 (g)(1)(C) have a disability which is temporary or minor and does not require
25 treatment and transfer to disability status;

26 (g)(1)(D) have not committed acts involving dishonesty, fraud, or deceit; and

27 (g)(1)(E) have not committed acts warranting disbarment.

1 (g)(2) Probation may include, but is not limited to, these conditions:

2 (g)(2)(A) no further violations of the Rules of Professional Conduct or Licensed
3 Paralegal Practitioner Rules of Professional Conduct;

4 (g)(2)(B) restitution;

5 (g)(2)(C) assessment of costs;

6 (g)(2)(D) limitation on practice;

7 (g)(2)(E) requirement that the lawyer pass the Multistate Professional
8 Responsibility Exam;

9 (g)(2)(F) requirement that the lawyer take continuing legal education courses;

10 (g)(2)(G) mental health counseling and treatment;

11 (g)(2)(H) abstinence from drugs and alcohol;

12 (g)(2)(I) medical evaluation and treatment;

13 (g)(2)(J) periodic reports to the court and OPC; and

14 (g)(2)(K) monitoring of all or part of respondent's work by a supervising attorney.

15 (g)(3) The respondent is responsible for all costs of evaluation, treatment, and
16 supervision. Failing to pay these costs before probation terminates is a violation of
17 probation.

18 (g)(4) A respondent may terminate their probation by filing with the district court and
19 serving on OPC an affidavit stating that the respondent has fully complied with the
20 requirements of the probation order. OPC may file an objection and thereafter the court
21 will conduct a hearing.

22 (g)(5) Violations. If during the period of probation, OPC receives information that any
23 probation term has been violated, OPC may file a motion specifying the alleged violation
24 and seeking to have the probation terminated. On filing such motion, the respondent must
25 have the opportunity to respond and a hearing will be held, at which time the court will
26 determine whether to revoke probation.

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

3 (h)(1) Rule 14-533 governs diversion matters before the OPC files a misconduct action
4 under Rule 14-511.

5 (h)(2) For a misconduct action, the following criteria will determine the appropriateness
6 of a diversion:

7 (h)(2)(A) The misconduct does not involve the misappropriation of funds or
8 property; fraud, dishonesty, deceit or misrepresentation; or the commission of a
9 misdemeanor involving moral turpitude or any felony;

10 (h)(2)(B) The misconduct appears to be the result of inadequate law office
11 management, chemical dependency, a physical or mental health condition,
12 negligence or lack of training, education or other similar circumstance; and

13 (h)(2)(C) There appears to be a reasonable likelihood that the successful
14 completion of a remedial program will prevent the recurrence of conduct by the
15 attorney similar to that under consideration for diversion.

16 (h)(3) In addition to the above-required criteria of (A), (B) and (C), other considerations
17 may include whether the misconduct is a one-time act or based on a chronic condition
18 and whether there is sufficient evidence connecting the chronic condition to the
19 misconduct.

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

22 (h)(5) If the lawyer completes the conditions of the Diversion, the misconduct action will
23 be dismissed with prejudice.

24 (h)(6) If the lawyer does not complete the conditions of the Diversion within the required
25 time, the lawyer will be subject to a suspension of six months and a day.

26 (i) **Resignation with discipline pending.** Resignation with discipline pending is a form of public
27 discipline that allows a respondent to resign from the practice of law while either an informal or
28 formal complaint is pending against the respondent. Resignation with discipline pending may be

1 imposed as set forth in Rule 14-521. (j) **Other sanctions and remedies.** Other sanctions and
2 remedies which may be imposed include:

3 (j)(1) restitution;

4 (j)(2) assessment of costs;

5 (j)(3) limitation upon practice;

6 (j)(4) appointment of a receiver;

7 (j)(5) a requirement that the lawyer take the Bar Examination or professional
8 responsibility examination; and

9 (j)(6) a requirement that the lawyer attend continuing education courses.

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

13

1 **Rule 14-604. Factors to be considered in imposing sanctions.**

2 The following factors should be considered in imposing a sanction after a finding of lawyer
3 misconduct:

4 (a) the duty violated;

5 (b) the lawyer's mental state;

6 (c) the potential or actual injury caused by the lawyer's misconduct; and

7 (d) the existence of aggravating or mitigating factors.

8

1 **Rule 14-605. Imposing sanctions.**

2 Absent aggravating or mitigating circumstances, upon applying the factors set out in Rule 14-
3 604, the following sanctions are generally appropriate.

4 (a) **Disbarment.** Disbarment is generally appropriate when a lawyer:

5 (a)(1) knowingly engages in professional misconduct as defined in Rule 8.4(a), (d), (e),
6 or (f) of the Rules of Professional Conduct or Licensed Paralegal Practitioner Rules of
7 Professional Conduct, with the intent to benefit the lawyer or another or to deceive the
8 court, and causes serious or potentially serious injury to a party, the public, or the legal
9 system, or causes serious or potentially serious interference with a legal proceeding; or

10 (a)(2) engages in serious criminal conduct, a necessary element of which includes
11 intentional interference with the administration of justice, false swearing,
12 misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution, or
13 importation of controlled substances; or the intentional killing of another; or an attempt
14 or conspiracy or solicitation of another to commit any of these offenses; or

15 (a)(3) engages in any other intentional misconduct involving dishonesty, fraud, deceit, or
16 misrepresentation that seriously adversely reflects on the lawyer's fitness to practice law.

17 (b) **Suspension.** Suspension is generally appropriate when a lawyer:

18 (b)(1) knowingly engages in professional misconduct as defined in Rule 8.4(a), (d), (e),
19 or (f) of the Rules of Professional Conduct or Licensed Paralegal Practitioner Rules of
20 Professional Conduct and causes injury or potential injury to a party, the public, or the
21 legal system, or causes interference or potential interference with a legal proceeding; or

22 (b)(2) engages in criminal conduct that does not contain the elements listed in Rule 14-
23 605(a)(2) but nevertheless seriously adversely reflects on the lawyer's fitness to practice
24 law.

25 (c) **Reprimand.** Reprimand is generally appropriate when a lawyer:

26 (c)(1) negligently engages in professional misconduct as defined in Rule 8.4(a), (d), (e),
27 or (f) of the Rules of Professional Conduct or Licensed Paralegal Practitioner Rules of

1 Professional Conduct and causes injury to a party, the public, or the legal system, or
2 causes interference with a legal proceeding; or

3 (c)(2) engages in any other misconduct that involves dishonesty, fraud, deceit, or
4 misrepresentation and that adversely reflects on the lawyer's fitness to practice law.

5 (d) **Admonition.** Admonition is generally appropriate when a lawyer:

6 (d)(1) negligently engages in professional misconduct as defined in Rule 8.4(a), (d), (e),
7 or (f) of the Rules of Professional Conduct or Licensed Paralegal Practitioner Rules of
8 Professional Conduct and causes little or no injury to a party, the public, or the legal
9 system or interference with a legal proceeding, but exposes a party, the public, or the
10 legal system to potential injury or causes potential interference with a legal proceeding;
11 or

12 (d)(2) engages in any professional misconduct not otherwise identified in this rule that
13 adversely reflects on the lawyer's fitness to practice law.

14

1 **Rule 14-606. Prior discipline orders.**

2 Absent aggravating or mitigating circumstances, upon applying the factors set out in Rule 14-
3 604, the following principles generally apply in cases involving prior discipline.

4 (a) The district court or Supreme Court may impose further sanctions upon a lawyer who violates
5 the terms of a prior disciplinary order.

6 (b) When a lawyer engages in misconduct similar to that for which the lawyer has previously
7 been disciplined, the appropriate sanction will generally be one level more severe than the
8 sanction the lawyer previously received, provided that the harm requisite for the higher sanction
9 is present.

10

1 **Rule 14-607. Aggravation and mitigation.**

2 After misconduct has been established, aggravating and mitigating circumstances may be
3 considered and weighed in deciding what sanction to impose.

4 (a) **Aggravating circumstances.** Aggravating circumstances are any considerations or factors
5 that may justify an increase in the degree of discipline to be imposed. Aggravating circumstances
6 may include:

7 (a)(1) prior record of discipline;

8 (a)(2) dishonest or selfish motive;

9 (a)(3) a pattern of misconduct;

10 (a)(4) multiple offenses;

11 (a)(5) obstruction of the disciplinary proceeding by intentionally failing to comply with
12 rules or orders of the disciplinary authority;

13 (a)(6) submission of false evidence, false statements, or other deceptive practices during
14 the disciplinary process;

15 (a)(7) refusal to acknowledge the wrongful nature of the misconduct involved, either to
16 the client or to the disciplinary authority;

17 (a)(8) vulnerability of victim;

18 (a)(9) substantial experience in the practice of law;

19 (a)(10) lack of good faith effort to make restitution or to rectify the consequences of the
20 misconduct involved; and

21 (a)(11) illegal conduct, including the use of controlled substances.

22 (b) **Mitigating circumstances.** Mitigating circumstances are any considerations or factors that
23 may justify a reduction in the degree of discipline to be imposed. Mitigating circumstances may
24 include:

25 (b)(1) absence of a prior record of discipline;

26 (b)(2) absence of a dishonest or selfish motive;

- 1 (b)(3) personal or emotional problems;
- 2 (b)(4) timely good faith effort to make restitution or to rectify the consequences of the
3 misconduct involved;
- 4 (b)(5) full and free disclosure to the client or the disciplinary authority prior to the
5 discovery of any misconduct or cooperative attitude toward proceedings;
- 6 (b)(6) inexperience in the practice of law;
- 7 (b)(7) good character or reputation;
- 8 (b)(8) physical disability;
- 9 (b)(9) mental disability or impairment, including substance abuse when:
- 10 (b)(9)(A) the respondent is affected by a substance abuse or mental disability; and
- 11 (b)(9)(B) the substance abuse or mental disability causally contributed to the
12 misconduct; and
- 13 (b)(9)(C) the respondent's recovery from the substance abuse or mental disability
14 is demonstrated by a meaningful and sustained period of successful rehabilitation;
15 and
- 16 (b)(9)(D) the recovery arrested the misconduct and the recurrence of that
17 misconduct is unlikely;
- 18 (b)(10) unreasonable delay in disciplinary proceedings, provided that the respondent did
19 not substantially contribute to the delay and provided further that the respondent has
20 demonstrated prejudice resulting from the delay;
- 21 (b)(11) interim reform in circumstances not involving mental disability or impairment;
- 22 (b)(12) imposition of other penalties or sanctions;
- 23 (b)(13) remorse; and
- 24 (b)(14) remoteness of prior offenses.

25 (c) **Other circumstances.** The following circumstances should not be considered as either
26 aggravating or mitigating:

- 1 (c)(1) forced or compelled restitution;
- 2 (c)(2) withdrawal of complaint against the lawyer;
- 3 (c)(3) resignation prior to completion of disciplinary proceedings;
- 4 (c)(4) complainant's recommendation as to sanction; and
- 5 (c)(5) failure of injured client to complain.

6

1 **Article 7. Admissions**

2 **Rule 14-701. Definitions.**

3 As used in this article:

4 (a) “**ABA**” means the American Bar Association;

5 (b) “**Active Practice**” means work performed by an attorney holding an “active” status law
6 license and having professional experience and responsibilities involving the Full-time Practice
7 of Law as defined in sections (t) and (ff). The Active Practice of law includes any of the
8 following activities provided that such employment is available only to licensed attorneys and
9 the activities are performed in the jurisdiction in which the Applicant is admitted:

10 (b)(1) sole practitioner, or partner, shareholder, associate, or of counsel in a law firm;

11 (b)(2) an organization’s employee whose principal responsibility is to provide legal
12 advice or service;

13 (b)(3) government employee whose principal duties are to provide legal advice or
14 service;

15 (b)(4) service in the United States armed forces as a lawyer or judge;

16 (b)(5) judge of a court of general or appellate jurisdiction provided that such employment
17 requires admission to the bar for the appointment thereto and for the performance of the
18 duties thereof;

19 (b)(6) law clerk to a judge of a court of general or appellate jurisdiction; or

20 (b)(7) teaching full-time at an Approved Law School; and

21 (b)(8) the Active Practice of law does not include work that, as undertaken, constitutes
22 the unauthorized practice of law in the jurisdiction in which it was performed or in the
23 jurisdiction in which the clients receiving the unauthorized services were located, nor
24 does it include work completed in advance of any bar admission.

25 (c) “**Admissions Committee**” means those Utah State Bar members or others appointed by the
26 Board or president of the Bar who are charged with recommending standards and procedures for
27 admission to the Bar and with implementation of this article. The Admissions Committee is

1 responsible for supervising the work of the Bar Examiner Committee, the Test Accommodations
2 Committee, and the Character and Fitness Committee, handling requests for review as provided
3 herein and performing other work relating to the admission of Applicants;

4 (d) “**Applicant**” means each person requesting admission to the Bar. For purposes of this article,
5 an Applicant is classified as a Student Applicant, a Foreign Law School Applicant, an Attorney
6 Applicant, a Motion Applicant, a Disbarred Attorney Applicant, a Foreign Legal Consultant
7 Applicant, or a House Counsel Applicant.

8 (e) “**Approved Law School**” means a law school which is fully or provisionally approved by the
9 ABA pursuant to its Standards and Rules of Procedure for Approval of Law Schools. To qualify
10 as approved, the law school must have been fully or provisionally approved at the time of the
11 Applicant’s graduation, or at the time of the Applicant’s enrollment, provided the Applicant
12 graduated within a typical and reasonable time;

13 (f) “**Attorney Applicant**” means any person who satisfies the requirements of Rule 14-704;

14 (g) “**Bar**” means the Utah State Bar, including its employees, committees and the Board;

15 (h) “**Bar Examination**” means the Bar Examination as defined in Rules 14-710 and 14-711;

16 (i) “**Bar Examiner Committee**” means those Bar members or others appointed by the Board or
17 president of the Bar who are charged with grading the Bar Examination;

18 (j) “**Board**” means the Board of Bar Commissioners;

19 (k) “**Character and Fitness Committee**” means those Bar members or others appointed by the
20 Board or president of the Bar who are charged with assessing the character and fitness of
21 Applicants and making determinations thereon;

22 (l) “**Complete Application**” means an application that includes all fees and necessary
23 application forms, along with any required supporting documentation, character references, a
24 criminal background check, a photo, an official certificate of law school graduation and if
25 applicable, a test accommodation request with supporting medical documentation, a certificate of
26 admission and/or good standing, and a certificate of discipline;

27 (m) “**Confidential Information**” is defined in Rule 14-720(a);

- 1 (n) “**Deputy General Counsel for Admissions**” or “**Deputy General Counsel**” are terms used
2 interchangeably to mean the Bar’s attorney in charge of admissions or their designee;
- 3 (o) “**Disbarred Attorney Applicant**” means a person who has previously been licensed to
4 practice law in Utah and who is no longer licensed to practice law because of disbarment or
5 resignation with discipline pending or their equivalent and who satisfies the requirements of Rule
6 14-708(g) and 14-717;
- 7 (p) “**Executive Director**” means the executive director of the Utah State Bar or their designee;
- 8 (q) “**First Professional Degree**” means a degree that prepares the holder for admission to the
9 practice of law (e.g. juris doctorate) by emphasizing competency skills along with theory and
10 analysis. An advanced, focused, or honorary degree in law is not recognized as a First
11 Professional Degree (e.g. master of laws or doctor of laws);
- 12 (r) “**Foreign Law School**” means any school located outside of the United States and its
13 protectorates, that is accredited by that jurisdiction’s legal accreditation body, if one exists,
14 where principles of English Common Law form the predominant basis for that country’s system
15 of jurisprudence, and whose graduates are otherwise permitted by that jurisdiction’s highest
16 court to practice law;
- 17 (s) “**Foreign Legal Consultant Applicant**” means any Applicant who satisfies the requirements
18 of Rule 14-718;
- 19 (t) “**Full-time Practice**” means the Active and lawful Practice of Law for no fewer than 80 hours
20 per month. Time spent on administrative or managerial duties, continuing legal education, or
21 client development and marketing does not qualify as part of the required 80 hours of legal work;
- 22 (u) “**General Counsel**” means the General Counsel of the Utah State Bar or their designee;
- 23 (v) “**House Counsel Applicant**” means any Applicant who satisfies the requirements of Rule
24 14-719;
- 25 (w) “**House Counsel**” means a person granted a license under Rule 14-719;
- 26 (x) “**Inactive**” means an attorney’s law license is held in “inactive status” or an equivalent term;
- 27 (y) “**MBE**” means the Multistate Bar Examination prepared by the NCBE;

- 1 (z) “**MEE**” means the Multistate Essay Examination prepared by the NCBE;
- 2 (aa) “**Motion Applicant**” means any person who satisfies the requirements of Rule 14-705;
- 3 (bb) “**MPRE**” means the Multistate Professional Responsibility Examination prepared by the
4 NCBE;
- 5 (cc) “**MPT**” means the Multistate Performance Test prepared by the NCBE;
- 6 (dd) “**NCBE**” means the National Conference of Bar Examiners, an organization that develops,
7 maintains, and applies reasonable and uniform standards of bar examination education and
8 testing;
- 9 (ee) “**OPC**” means the Office of Professional Conduct;
- 10 (ff) “**Person**” includes the plural as well as the singular and legal entities as well as natural
11 persons.
- 12 (gg) “**Practice of Law**” means employment available only to licensed attorneys where the
13 primary duty of the position is to represent the interests of another person by informing,
14 counseling, advising, assisting, advocating for or drafting documents for that person through
15 application of the law and associated legal principles to that person’s facts and circumstances.
16 “”The Practice of Law constitutes more than merely working with legally-related matters;
- 17 (hh) “**Privileged Information**” in this article includes: information subject to the attorney-client
18 privilege, attorney work product, test materials and applications of examinees; correspondence
19 and written decisions of the Board, Admissions Committee, Bar Examiner Committee, Character
20 and Fitness Committee, and Test Accommodations Committee; and the identity of individuals
21 participating in the drafting, reviewing, grading and scoring of the Bar Examination;
- 22 (ii) “**Reapplication for Admission**” means that for two years after the filing of an original
23 application, an Applicant may reapply by completing a Reapplication for Admission form
24 updating any information that has changed since the prior application was filed and submitting a
25 new criminal background check;
- 26 (jj) “**Resigned Applicant**” means a person who has previously been licensed to practice law in
27 Utah who is no longer licensed to practice law because of resignation without discipline pending
28 or resignation under Rule 14-508(d) and who satisfies the requirements of Rule 14-717(a);

Comment [LL87]: Recommendation 1.2

- 1 (kk) “**Student Applicant**” means any person who satisfies the requirements of Rule 14-703(a);
- 2 (ll) “**Supreme Court**” means the Utah Supreme Court;
- 3 (mm) “**Test Accommodations Committee**” means those Bar members or others appointed by
- 4 the Board or president of the Bar who are charged with the review of requests from Applicants
- 5 seeking to take the Bar Examination with test accommodations and who make determinations
- 6 thereon;
- 7 (nn) “**Unapproved Law School**” means a law school that is not fully or provisionally approved
- 8 by the ABA. For an Unapproved Law School’s graduates to be eligible for admission, the law
- 9 school must be accredited in the jurisdiction where it exists, provide legal education that is the
- 10 substantial equivalent of the legal education provided by an Approved Law School, and not be
- 11 based on correspondence or internet study;
- 12 (oo) “**UBE**” means the Uniform Bar Examination as prepared by the NCBE;
- 13 (pp) “**Updated Application**” means that an Applicant is required to amend and update their
- 14 application on an ongoing basis and correct any information that has changed since the
- 15 application was filed; and
- 16 (qq) “**Written Component**” means that part of the Bar Examination that consists of MEE and
- 17 MPT questions.

1 **Rule 14-705. Admission by Motion.**

2 (a) **Reciprocal admission.** An Applicant is eligible to be admitted by motion if the Applicant
3 meets all the requirements of this rule. Admission by Motion is not a right; the burden of proof is
4 on the Applicant to establish by clear and convincing evidence that she or he:

5 (a)(1) has paid the prescribed nonrefundable fee and filed the required Complete
6 Application as a Motion Applicant;

7 (a)(2) is at least 21 years old;

8 (a)(3) has been admitted by bar examination to practice law before the highest court of a
9 U.S. state, territory or the District of Columbia;

10 (a)(4) holds a First Professional Degree in law from an Approved Law School;

11 (a)(5) has successfully passed the MPRE;

12 (a)(6) has demonstrated that the U.S. state, territory or the District of Columbia that
13 licenses the Applicant reciprocally allows the admission of licensed Utah lawyers under
14 terms and conditions similar to those set forth in this rule;

15 (a)(7) has been Actively licensed and lawfully engaged in the Full-time Practice of Law
16 as defined in Rule 14-701(b), (t) and (ff) in the reciprocal jurisdiction(s) where licensed
17 for 60 of the 84 months immediately preceding the date of the filing of the application for
18 admission. For purposes of admission under this rule, any time practicing at an office
19 located in Utah will not be counted as time practicing in a reciprocal jurisdiction;

20 (a)(8) is a member in good standing in all jurisdictions where currently admitted;

21 (a)(9) has a proven record of ethical, civil, and professional behavior and has never been
22 disbarred or resigned with discipline pending, or their equivalent, in any jurisdiction and
23 is not currently subject to lawyer discipline or the subject of a pending disciplinary
24 matter;

25 (a)(10) is of good moral character and satisfies the requirements of Rule 14-708;

26 (b) **Continuing legal education requirement.** All Applicants admitted to practice law pursuant
27 to this rule must complete and certify no later than six months following the Applicant's

1 admission that they have attended at least 15 hours of continuing legal education on Utah
2 practice and procedure and ethics requirements.

3 (b)(1) The Board may by regulation specify the number of the required 15 hours that
4 must be in particular areas of practice, procedure, and ethics. Included in this mandatory
5 15 hours is attendance at the OPC ethics school.

Comment [LL88]: Recommendation 1.2

6 (c) **Form and content of application.** The Board may require additional proof of any facts
7 stated in the application. If the Applicant fails or refuses to furnish any information or proof, or
8 to answer any Board inquiry pertinent to the pending application, the Board may deny the
9 application without hearing.

10 (d) **Timing of application and admission.** An application may be filed at any time but the
11 Applicant must be able to demonstrate that she or he satisfies the requirements of this rule as of
12 the date the application is filed. Processing of the application and the character and fitness
13 investigation require a minimum of four months to complete.

14 (d)(1) An Applicant not eligible for admission pursuant to this rule may qualify for
15 admission as an Attorney Applicant pursuant to Rule 14-704.

16 (d)(2) Upon approval the Applicant must comply with Rule 14-716 concerning licensing
17 and enrollment fees.

18 (e) **Motion Applicants.** Only persons who are active, licensed Bar members in good standing
19 may engage in the practice of law in Utah. However, a Motion Applicant with a pending Bar
20 application may be eligible to practice for a limited period upon satisfying Rule 14-809 and
21 receiving a Practice Pending Admission Certificate.

1 **Rule 14-712. Qualifications for admission based on UBE.**

2 (a) **Application and admission timing.** An application may be filed at any time. Processing the
3 application and character and fitness investigation require a minimum of four months to
4 complete.

5 (b) **UBE score transferability.** An Applicant who has taken and completed the UBE in a single
6 administration in a jurisdiction other than Utah may transfer the UBE score by filing an
7 application, provided:

8 (b)(1) the Applicant meets all the requirements of Rule 14-703 or Rule 14-704;

9 (b)(2) the Applicant has not been denied by any jurisdiction on character and fitness
10 grounds;

11 (b)(3) the UBE score is 270 or above; and

12 (b)(4) the Bar receives the Applicant's UBE score no later than nine months after filing
13 the application. To transfer a UBE score, an Applicant must send a written transfer
14 request, along with the prescribed fee, to the NCBE.

15 (c) **Time limits on transferability.** Transferring the UBE score is subject to the following time
16 limits:

17 (c)(1) the UBE score is transferable for all Applicants only if the application is filed
18 within 24 months of the administration of the UBE in which the passing score was
19 earned;

20 (c)(2) the UBE may be transferable for up to five years from the administration of the
21 UBE in which the passing score was earned if the Attorney Applicant can prove by clear
22 and convincing evidence they have been admitted to a U.S. state, territory, or the District
23 of Columbia and have been Actively engaged in the Full-time Practice of Law as defined
24 in Rule 14-701(b), (t) and (ff) for at least one-half of the time since the score was earned.

25 (d) **Continuing legal education.**

26 (d)(1) Applicants who gain admission by transferring a UBE score and who have less
27 than two years of legal practice must complete the New Lawyer Training Program as
28 outlined in Rules 14-404 and 14-808.

1 (d)(2) Applicants who gain admission by transferring a UBE score and have two or more
2 years of legal practice must complete and certify no later than six months following the
3 Applicant's admission that they have attended at least 15 hours of continuing legal
4 education on Utah practice and procedure, ethics, and civility.

5 (d)(2) The Board may specify the number of the required 15 hours that must be in
6 particular areas of practice, procedure, ethics, and civility. OPC ethics school is included
7 in this mandatory 15 hours.

8

1 **Rule 14-718. Licensing of Foreign Legal Consultants.**

2 (a) **Requirements of Foreign Legal Consultants.** The burden of proof is on the Applicant to
3 establish by clear and convincing evidence that she or he:

4 (a)(1) is a member in good standing of a recognized legal profession in a foreign country,
5 the members of which are admitted to practice as attorneys or counselors at law or the
6 equivalent and are subject to effective regulation and discipline by a duly constituted
7 professional body or a public authority; and

8 (a)(2) has paid the prescribed fee and filed a Complete Application as a Foreign Legal
9 Consultant Applicant;

10 (a)(3) is of the good moral character and satisfies the requirements of Rule 14-708;

11 (a)(4) intends to practice as a legal consultant in this state and to maintain an office in this
12 state for that purpose; and

13 (a)(5) has passed the MPRE.

14 (b) **Proof required.** An Applicant must file with the Bar's Admissions Office:

15 (b)(1) a certificate from the professional body or public authority in such foreign country
16 having final jurisdiction over professional discipline, certifying as to the Applicant's
17 admission to practice and the date, and the Applicant's good standing as such attorney or
18 counselor at law or the equivalent;

19 (b)(2) a duly authenticated English translation of such certificate, if it is not in English;
20 and

21 (b)(3) such other evidence as to the Applicant's educational and professional
22 qualifications, good moral character and general fitness, and compliance with the
23 requirements of this rule as the Bar may require.

24 (c) **Scope of practice.** A person licensed to practice as a Foreign Legal Consultant under this
25 rule may render legal services in this state with respect to the law of the foreign county in which
26 such person is admitted to practice law. The Foreign Legal Consultant may not violate any
27 provision of Rule 14-802 and may not:

1 (c)(1) appear for a person other than herself or himself as attorney in any court, or before
2 any magistrate or other judicial officer, in Utah other than as permitted under Rule 14-
3 802 or upon qualified admission pro hac vice pursuant to Rule 14-806; or

4 (c)(2) render professional legal advice on the law of this state or of the United States;

5 (c)(3) be, or in any way hold herself or himself out as a Bar member; or

6 (c)(4) carry on a practice under, or use in connection with such practice, any name, title
7 or designation other than the following:

8 (c)(5)(A) the Foreign Legal Consultant's own name;

9 (c)(5)(B) the name of the law firm or other entity with which she or he is
10 affiliated, in each case only in conjunction with the title "Foreign Legal
11 Consultant" as set forth below;

12 (c)(5)(C) the Foreign Legal Consultant's authorized title in the foreign country in
13 which the Foreign Legal Consultant is admitted to practice, in each case only in
14 conjunction with the title "Foreign Legal Consultant" as set forth below; and

15 (c)(5)(D) the title "Foreign Legal Consultant," which must be used in conjunction
16 with the words "admitted to the practice of law only in [name of the foreign
17 country in which the Foreign Legal Consultant is admitted to practice]."

18 (d) **Rights and obligations.** Subject to the limitations set forth in paragraph (d), a person
19 licensed as a Foreign Legal Consultant will be considered a lawyer affiliated with the Bar as
20 permitted by this rule and will be entitled and subject to:

21 (d)(1) the rights and obligations set forth in the Utah Rules of Professional Conduct or
22 arising from the other conditions and requirements that apply to a Bar member under
23 rules adopted by the Supreme Court; and

24 (d)(2) attorney-client privilege, work-product privilege and similar professional
25 privileges.

26 (e) **Subject to disciplinary proceedings.** A person licensed to practice as a Foreign Legal
27 Consultant is subject to professional discipline in the same manner and to the same extent as Bar

1 members and specifically is subject to discipline by the Supreme Court as delegated by rule and
2 is otherwise governed by Chapter 13, the Utah Rules of Professional Conduct; Chapter 14,
3 Article 5, Lawyer Discipline and Disability; Article 6, Standards for Imposing Lawyer Sanctions;
4 and other applicable Supreme Court rules.

5 (f) **Requirements for licensure.** Every person licensed to practice as a Foreign Legal Consultant
6 must:

7 (f)(1) attend the OPC ethics school before receiving a license to practice as a Foreign
8 Legal Consultant; and

9 (f)(2) execute and file with the Bar, in such form and manner as the Supreme Court may
10 prescribe:

11 (f)(2)(A) their understanding of, and commitment to observe, the Utah Rules of
12 Professional Conduct and other Supreme Court rules, and to the extent applicable
13 to the legal services authorized under paragraph (c) of this rule;

14 (f)(2)(B) written notice to the OPC of any change in the Foreign Legal
15 Consultant's membership status, good standing, or authorization to practice law in
16 any jurisdiction where licensed, including the commencement of all formal
17 disciplinary proceedings and of all final disciplinary actions taken in any other
18 jurisdiction.

19 (g) **License fees.** A person licensed as a Foreign Legal Consultant must pay annual license fees
20 equal to the fees paid by a Bar member on Active status.

21 (h) **Revocation of license.** If a licensed Foreign Legal Consultant no longer meets the
22 requirements for licensure set forth in paragraph (a) or (g), their license will be revoked
23 following the procedures set forth in Chapter 14, Article 5, Lawyer Discipline and Disability;
24 and Article 6, Standards for Imposing Lawyer Sanctions.

25 (i) **Admission to Bar.** If a licensed Foreign Legal Consultant is subsequently admitted as a Bar
26 member under Chapter 14, Article 7, Admission to the Utah State Bar, the license granted to
27 such person to practice law as a Bar member supersedes the Foreign Legal Consultant license.

28

Comment [LL89]: Recommendation 1.2

1 **Article 8. Special Practice Rules**

2 **Rule 14-801. Definitions.**

3 As used in this article:

4 (a) “**Active status**” means a Bar licensing category as defined by Rule 14-203(a) and Rule 14-
5 802, and the Bar’s rules, regulations and policies;

6 (b) “**Approved legal services organization**” means a Utah nonprofit legal services organization
7 approved by the Bar as set forth herein. A legal services organization seeking approval must file
8 a petition with the Bar, attaching copies of its Articles of Incorporation and Bylaws, if any, and
9 certifying that it is a nonprofit organization, reciting with specificity:

10 (b)(1) the structure of the organization and whether it accepts funds from its clients;

11 (b)(2) the major sources of funds used by the organization;

12 (b)(3) the criteria used to determine potential clients’ eligibility for legal services
13 performed by the organization;

14 (b)(4) the types of legal and nonlegal service the organization performs;

15 (b)(5) the names of all Bar members employed by the organization or who regularly
16 perform legal work for the organization; and

17 (b)(6) the existence and extent of malpractice insurance that will cover the volunteer
18 attorneys, with such documentation being updated on an annual basis;

19 (c) “**Attorney applicant**” means a lawyer applicant as defined by Rule 14-701;

20 (d) “**Bar**” means the Utah State Bar;

21 (e) “**CLE**” means MCLE accredited continuing legal education;

22 (f) “**Inactive status**” means a Bar licensing category as defined by Rule 14-203(a), Rule 14-802,
23 and the Bar’s rules, regulations and policies;

24 (g) “**MCLE**” means Mandatory Continuing Legal Education as set forth in Rule 14-401 et seq.;

25 (h) “**Mentoring Completion Certification**” means the certification form in the NLTP appendix
26 of forms.

1 (i) “NLTP” means the Bar’s New Lawyer Training Program as set forth in Rule 14-808;

2 (j) “OPC” means the Office of Professional Conduct;

Comment [LL90]: Recommendation 1.2

3 (k) “Supervising attorney,” except as used in Rule 14-807, means an active Bar member who
4 generally supervises a volunteer attorney. The supervising attorney must:

5 (k)(1) be employed by an approved legal services organization;

6 (k)(2) assume professional responsibility as contemplated by Rule 5.1 of the Utah Rules
7 of Professional Conduct for supervising the conduct of any litigation, administrative
8 proceeding or other legal services in which the volunteer attorney participates providing,
9 however, that concurrent administrative or judicial appearance is at the discretion of the
10 supervising attorney;

11 (k)(3) assist the volunteer attorney’s legal service preparation to the extent that the
12 supervisory attorney considers it necessary; and

13 (k)(4) ensure along with the agency that the volunteer attorney has appropriate and
14 adequate training, knowledge and competency to perform the legal service permitted.

15

1 **Rule 14-806. Admission pro hac vice.**

2 (a) **Applicability.** An attorney who is not a Bar member but is admitted to practice law in
3 another state or in any court of the United States or territory or insular possession of the United
4 States may apply to be admitted pro hac vice in accordance with this rule before appearing as
5 counsel in any Utah court.

6 (b) **Admission is discretionary.** Nonresident counsel may be permitted to appear in a particular
7 case if the court in which the case is pending determines that admission pro hac vice will serve
8 the interests of the parties and the efficient and just administration of the case. Resident counsel
9 may be permitted only if he or she has received a Practice Pending Admission Certificate.
10 Admission pro hac vice under this rule is discretionary with the court in which the application for
11 admission is made. The court may revoke admission pro hac vice upon its own motion or the
12 motion of a party if, after notice and a hearing, the court determines that admission pro hac vice
13 is inappropriate. Admission pro hac vice must be denied or, if granted, revoked if the court
14 determines that the process is being used to circumvent the normal requirements for the
15 admission of attorneys to the practice of law in Utah.

16 (c) **Factors in determining admission and revocation.** In determining whether to enter or
17 revoke the order of admission pro hac vice, the court may consider any relevant information,
18 including whether nonresident counsel:

19 (c)(1) is familiar with Utah rules of evidence and procedure, including applicable local
20 rules;

21 (c)(2) is available to opposing parties;

22 (c)(3) has particular familiarity with the legal affairs of the party relevant to the case;

23 (c)(4) complies with the rulings and orders of the court;

24 (c)(5) has caused delay or been disruptive; and

25 (c)(6) has been disciplined in any other jurisdiction within the prior five years.

26 (d) **Application requirements.** The attorney seeking admission pro hac vice must complete
27 under oath and submit to the Bar an application form available from the Utah State Bar or court
28 clerks' office. The applicant must attach to the application form a Certificate of Good Standing

1 from the licensing state in which the applicant resides. The applicant must complete a separate
2 application for each case in which the applicant wants to appear. The fee for each application is
3 \$250, which must be paid to the Utah State Bar. Fees paid under this rule will be used for
4 attorney discipline investigations and proceedings. The following are exempt from the fee:

5 (d)(1) attorneys who are employees of and representing the United States of America or
6 any of its departments or agencies; and

7 (d)(2) attorneys representing indigent clients on a pro bono basis.

8 (e) **Application form.** A copy of the application and a receipt showing fee payment will be filed
9 in the court in which the case is pending, with a motion by a Bar member to admit the applicant
10 pro hac vice and a consent by such Bar member to appear as associate counsel. Associate
11 counsel must be a resident of Utah. The application form must include:

12 (e)(1) the name, address, telephone number, fax number, e-mail address, bar
13 identification number(s), and state(s) of the applicant's admission;

14 (e)(2) the name and number of the case in which the applicant is seeking to appear as the
15 attorney of record or, if the case has not yet been filed, a description of the partis;

16 (e)(3) the name, number, and court of other cases pending or closed within the prior five
17 years in any state or federal court of Utah in which the applicant or a member of the
18 applicant's firm appears pro hac vice;

19 (e)(4) a statement whether, in any state, the applicant:

20 (e)(4)(A) is currently suspended or disbarred from the practice of law;

21 (e)(4)(B) has been disciplined within the past five years; or

22 (e)(4)(C) is the subject of any pending disciplinary proceedings;

23 (e)(5) a statement that the applicant:

24 (e)(5)(A) submits to the disciplinary authority and procedures of the Bar;

25 (e)(5)(B) is familiar with the rules of procedure and evidence, including
26 applicable local rules;

1 (e)(5)(C) will be available for depositions, hearings, and conferences; and
2 (e)(5)(D) will comply with the rulings and orders of the court;
3 (e)(6) the name, address, Bar identification number, telephone number, fax number, and
4 e-mail address of the member of the Utah State Bar to serve as associate counsel;
5 (e)(7) for resident counsel only, a copy of the Practice Pending Admission Certificate;
6 and
7 (e)(8) any other information relevant to the standards for the admission of the applicant.

8 (f) **Utah counsel requirements.** Utah counsel associated with nonresident or resident counsel
9 seeking admission pro hac vice must:

10 (f)(1) file a motion for admission of the applicant pro hac vice;
11 (f)(2) serve the motion by mail, hand-delivery or facsimile on the Utah State Bar's
12 general counsel on or before filing with the court and include a certificate of service with
13 the motion evidencing service on the Bar's general counsel and upon the opposing
14 parties, or, if represented, their counsel;
15 (f)(3) file a written consent to appear as associate counsel;
16 (f)(4) sign the first pleading filed;
17 (f)(5) continue as one of the counsel of record in the case unless another Bar member is
18 substituted as associate counsel; and
19 (f)(6) be available to opposing counsel and the court for communication regarding the
20 case and the service of papers.

21 (g) **Utah counsel responsibilities.** The court may require Utah counsel to appear at all hearings.
22 Utah counsel has the responsibility and authority to act for the client in all proceedings if the
23 nonresident attorney fails to appear or fails to respond to any court order.

24 (h) **Complying with Utah laws.** An attorney admitted pro hac vice must comply with and is
25 subject to Utah statutes, rules of the Supreme Court, including the Rules of Professional Conduct
26 and Article 5, Lawyer Discipline and Disability, the rules of the court in which the attorney
27 appears, and the rules of the Code of Judicial Administration.

1 **Article 9. Lawyers' Fund for Client Protection**

2 **Rule 14-904. Funding.**

3 (a) The Supreme Court will provide for funding by the lawyers licensed in this state in amounts
4 adequate for the proper payment of claims and costs of administering the Fund subject to
5 paragraph (c).

6 (b) All determinations regarding funding will be within the discretion of the Board, subject to the
7 Supreme Court's approval.

8 (c) The Bar has authority to assess its members for purposes of maintaining the Fund at sufficient
9 levels to pay eligible claims in accordance with these rules. The Committee must report annually
10 to the Commission on a timely basis as to known prospective claims as well as total claims paid
11 to date so that an appropriate assessment can be made for the upcoming fiscal year. After the
12 assessment at the beginning of the fiscal year is determined, the Fund balance must be set in an
13 amount of at least \$200,000. The Bar will then report to the Supreme Court as to known
14 prospective claims as well as total claims paid to date after which the final assessment and fund
15 balance will be set with the Court's approval.

16 (d) A lawyer's failure to pay any fee assessed under paragraph (c) is cause for administrative
17 suspension from practice until payment is received.

18 (e) Any lawyer whose actions have caused payment of funds to a claimant from the Fund must
19 reimburse the Fund for all monies paid out as a result of the lawyer's conduct with interest at
20 legal rate, in addition to payment of the assessment for the procedural costs of processing the
21 claim and reasonable attorney fees incurred by the Office of Professional Conduct or any other
22 attorney or investigator engaged by the Committee to investigate and process the claim as a
23 condition of continued practice.

24 (e)(1) In lawyer discipline cases for which the Fund pays an eligible claim, the lawyer's
25 license to practice will be administratively suspended for non-payment until the lawyer
26 has reimbursed the Fund.

27

Comment [LL91]: Recommendation 1.2

1 **Rule 14-912. Processing claims.**

2 (a) Whenever it appears that a claim is not eligible for reimbursement pursuant to these rules, the
3 claimant must be advised of the reasons why the claim may not be eligible for reimbursement,
4 and that unless additional facts to support eligibility are submitted to the Committee, the claim
5 file will be closed. The Fund chair may appoint themselves or any Committee member to
6 determine the eligibility of claims.

7 (b) A certified copy of an order disciplining a lawyer for the same dishonest act or conduct
8 alleged in the claim, or a final judgment imposing civil or criminal liability therefor, is evidence
9 that a lawyer committed such dishonest act or conduct.

10 (c) The Office of Professional Conduct must be promptly notified of each and every claim.

Comment [LL92]: Recommendation 1.2

11 (d) The lawyer alleged to have engaged in dishonest conduct must be provided a copy of the
12 claim and given an opportunity to respond to the Committee in writing within 20 days of
13 receiving the claim.

14 (e) The Committee may request that testimony be presented. The lawyer or lawyer's
15 representative must be given an opportunity to be heard if they so request within 20 days of
16 receiving a notice from the Committee that the Committee will process the claim.

17 (f) The Committee may make a finding of dishonest conduct for purposes of adjudicating a
18 claim. Such a determination is not a finding of dishonest conduct for the purposes of professional
19 discipline and further, represents only a recommendation to the Board. A claim may only be
20 considered if the individual lawyer involved has been disciplined to a threshold level of a public
21 reprimand or is no longer in practice.

22 (g) The claim will be determined on the basis of all available evidence, and notice must be given
23 to the claimant and the lawyer of the final decision by the Board after a recommendation has
24 been made by the Committee. The recommendation for approving or denying a claim requires
25 the affirmative votes of a majority of the Committee members and a quorum of the voting Board
26 members.

27 (h) Any proceeding on a claim will not be conducted according to technical rules relating to
28 evidence, procedure, and witnesses. Any relevant evidence must be admitted if it is the sort of
29 evidence on which responsible persons are accustomed to rely in the conduct of serious affairs,

1 regardless of any common law or statutory rule that may make improper the admission of such
2 evidence over objection in court proceedings. The claimant has the duty to supply relevant
3 evidence to support the claim.

4 (i) The Board must determine the order and manner of payment and pay those claims it deems
5 meritorious. Unless the Board directs otherwise, no claim will be approved during a pending
6 disciplinary proceeding involving the same act or conduct as alleged in the claim. No
7 determination or hearing will take place until all disciplinary proceedings are complete.

8 (j) The Board must advise both the claimant and the lawyer of the status of the Board's
9 consideration of the claim and after having received the recommendation of the Committee, must
10 also be informed of the final determination.

11 (k) The claimant may request reconsideration within 30 days of the denial or determination of
12 the amount of the claim.

13

1 **Chapter 15. Rules Governing Licensed Paralegal Practitioners**

2 **Article 4. Mandatory Continuing Licensed Paralegal Practitioner Education**

3 **Rule 15-402. Definitions.**

4 As used in this article:

5 (a) Reserved;

6 (b) “**Accredited CLE**” means a CLE course that has been approved the Board in accordance
7 with Rule 15-410;

8 (c) “**Active status**” or “**active status “licensed paralegal practitioner**” means a licensed
9 paralegal practitioner who has elected to be on active status as defined under the Bar’s rules,
10 regulations, and policies;

11 (d) “**Approved law school**” means an ABA approved law school as defined under Rule 14-701;

12 (e) “**Approved paralegal education program**” means a program offered by an accredited
13 school as that term is defined in Rule 15-701;

14 (f) “**Bar**” means the Utah State Bar;

15 (g) Reserved;

16 (h) “**Board**” means the Utah State Board of Mandatory Continuing Legal Education as set forth
17 in Rule 14-403;

18 (i) “**Board of Bar Commissioners**” means the governing board of the Bar;

19 (j) “**Certificate of Compliance**” means a written report evidencing a licensed paralegal
20 practitioner’s completion of accredited CLE as required and defined under Rule 15-414;

21 (k) “**CLE**” means continuing legal education;

22 (k)(1) “**Live CLE**” means a CLE program presented in a classroom setting where
23 the licensed paralegal practitioner is in the same room as the presenter;

24 (k)(2) “**Live Attendance**” means in person attendance at a Utah state courthouse where a
25 course is streamed by live audio-visual communication from another Utah state
26 courthouse or from the Law and Justice Center;

- 1 (k)(3) “**Self-Study CLE Program**” means a program presented in a suitable setting
2 where the licensed paralegal practitioner can view approved self-study activities;
- 3 (l) Reserved;
- 4 (m) “**Compliance Cycle**” means the period of two years beginning July 1 through June 30;
- 5 (n) “**Ethics**” means standards set by the Utah Rules of Professional Conduct with which
6 a licensed paralegal practitioner must comply to remain authorized to certify as a licensed
7 paralegal practitioner in Utah and remain in good standing;
- 8 (o) Reserved;
- 9 (p) Reserved;
- 10 (q) “**Inactive status**” or “**inactive status licensed paralegal practitioner**” means a licensed
11 paralegal practitioner who has elected to be on inactive status as defined under the Bar’s rules,
12 regulations and policies;
- 13 (r) “**MCLE**” means mandatory continuing legal education as defined under this article;
- 14 (s) Reserved;
- 15 (t) “**New licensee**” means a licensed paralegal practitioner newly licensed by the Utah State Bar;
- 16 (u) Reserved;
- 17 (v) “**Presumptively approved sponsor**” means those CLE sponsors or providers who qualify
18 under the standards set forth in Rule 15-412;
- 19 (w) “**Presumptive CLE accreditation**” means those CLE courses or activities that qualify
20 under the standards set forth in Rule 15-412;
- 21 (x) “**Professionalism and Civility**” means conduct consistent with the tenets of the legal
22 profession by which a licensed paralegal practitioner demonstrates civility, honesty, integrity,
23 character, fairness, competence, ethical conduct, public service, and respect for the rules of law,
24 the courts, clients, lawyers, other licensed paralegal practitioners, witnesses and unrepresented
25 parties;
- 26 (y) “**OPC**” means the Office of Professional Conduct;

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1 (z) Reserved; and

2 (aa) “**Supreme Court**” means the Utah Supreme Court.

3

1 **15-701. Definitions.**

2 As used in this article:

3 (a) “**ABA**” means the American Bar Association.

4 (b) “**Accredited Program**” means a course of instruction in paralegal studies from a program
5 officially recognized as meeting the standards and requirements of a regional or national
6 accrediting organization that is approved by the U.S. Department of Education, or a paralegal
7 school or paralegal studies program that has been fully or provisionally approved by the ABA
8 Standing Committee on Paralegals.

9 (c) “**Accredited School**” means a school officially recognized as meeting the standards and
10 requirements of a regional or national accrediting organization that is approved by the U.S.
11 Department of Education.

12 (d) “**Applicant**” means each person requesting licensure as a Licensed Paralegal Practitioner.

13 (e) “**Approved Law School**” means a law school which is fully or provisionally approved by
14 the ABA pursuant to its Standards and Rules of Procedure for Approval of Law Schools. To
15 qualify as approved, the law school must have been fully or provisionally approved at the time of
16 the Applicant’s graduation, or at the time of the Applicant’s enrollment, provided the Applicant
17 graduated within a typical and reasonable time.

18 (f) “**Associate Degree**” means an undergraduate academic degree conferred by a college upon
19 completion of the curriculum required for an associate degree.

20 (g) “**Bachelor’s Degree**” means an academic degree conferred by a college or university upon
21 completion of the undergraduate curriculum.

22 (h) “**Bar**” means the Utah State Bar, including its employees, committees and the Board.

23 (i) “**Board**” means the Board of Bar Commissioners.

24 (j) “**Complete Application**” means an application that includes all fees and necessary
25 application forms, along with any required supporting documentation, character references, a
26 criminal background check, a photo, an official certificate of graduation and if applicable, a test
27 accommodation request with supporting medical documentation.

- 1 (k) “**Confidential Information**” is defined in Rule 15-720(a).
- 2 (l) “**Disbarred Lawyer**” means an individual who was once a licensed lawyer and is no longer
3 permitted to practice law.
- 4 (m) “**Executive Director**” means the executive director of the Utah State Bar or their designee.
- 5 (n) “**First Professional Degree**” means a degree that prepares the holder for admission to the
6 practice of law (e.g. juris doctorate) by emphasizing competency skills along with theory and
7 analysis. An advanced, focused, or honorary degree in law is not recognized as a First
8 Professional Degree (e.g. master of laws or doctor of laws).
- 9 (o) “**Full-time**” means providing legal services as a paralegal for no fewer than 80 hours per
10 month.
- 11 (p) “**General Counsel**” means the General Counsel of the Utah State Bar or their designee.
- 12 (q) “**Licensed Paralegal Practitioner**” means a person licensed by the Utah Supreme Court to
13 provide limited legal representation in the areas of (1) temporary separation, divorce, parentage,
14 cohabitant abuse, civil stalking, and custody and support; (2) forcible entry and detainer and
15 unlawful detainer; or (3) debt collection matters in which the dollar amount in issue does not
16 exceed the statutory limit for small claims cases.
- 17 (r) “**LPP**” means Licensed Paralegal Practitioner.
- 18 (s) “**LPP Administrator**” means the Bar employee in charge of LPP licensure or their designee.
- 19 (t) “**LPP Admissions Committee**” means those Utah State Bar members or others appointed by
20 the Board or president of the Bar who are charged with recommending standards and procedures
21 for licensure of LPPs, with implementation of this article, reviewing requests for test
22 accommodations, and assessing the qualifications of applicants.
- 23 (u) “**NALA**” means the National Association of Legal Assistants.
- 24 (v) “**NALS**” means The Association for Legal Professionals.
- 25 (w) “**NFPA**” means the National Federation of Paralegal Associations.
- 26 (x) “**National Certification**” means Certified Paralegal (CP or CLA) credential from the
27 National Association of Legal Assistants (NALA); the Professional Paralegal (PP) credential

1 from the National Association of Legal Professionals (NALS); or the Registered Paralegal (RP)
2 credential from the National Federation of Paralegal Associations (NFPA).

3 (y) “**OPC**” means the Office of Professional Conduct.

4 (z) “**Paralegal**” means a person qualified through education, training, or work experience, who
5 is employed or retained by a lawyer, law office, governmental agency, or the entity in the
6 capacity or function which involves the performance, under the ultimate direction and
7 supervision of an attorney, of specifically delegated substantive legal work, which work, for the
8 most part, requires a sufficient knowledge of legal concepts that absent such assistance, the
9 attorney would perform.

10 (aa) “**Paralegal Certificate**” means verification that an individual has successfully completed a
11 paralegal studies program from an Accredited Program that includes at least 15 credit hours of
12 paralegal studies. The certificate must be offered, taught, and granted by an Accredited Program.

13 (bb) “**Paralegal Studies**” and “**Paralegal Studies Degree**” mean course work that prepares a
14 holder to work as a paralegal.

15 (cc) “**Privileged Information**” in this article includes: information subject to the attorney-client
16 privilege, attorney work product, test materials and applications of examinees; correspondence
17 and written decisions of the Board and LPP Admissions Committee, and the identity of
18 individuals participating in the drafting, reviewing, grading and scoring of the LPP Licensure
19 Examination.

20 (dd) “**Reapplication for Licensure**” means that for two years after the filing of an original
21 application, an Applicant may reapply by completing a Reapplication for Licensure form
22 updating any information that has changed since the prior application was filed and submitting a
23 new criminal background check.

24 (ee) “**Substantive Law-Related Experience**” means the provision of legal services as a
25 Paralegal, paralegal student or law student including, but not limited to, drafting pleadings, legal
26 documents or correspondence, completing forms, preparing reports or charts, legal research, and
27 interviewing clients or witnesses. Substantive Law-Related Experience does not include routine
28 clerical or administrative duties. Substantive Law-Related Experience for licensure in landlord-

1 tenant and debt collection includes, but is not limited to, the provision of legal services as a
2 Paralegal supervised by a licensed attorney, paralegal student or law student in the areas of
3 bankruptcy, real estate, mortgage and/or banking law.

4 (ff) “**Supreme Court**” means the Utah Supreme Court.

5 (gg) “**Unapproved Law School**” means a law school that is not fully or provisionally approved
6 by the ABA.

7 (hh) “**Updated Application**” means that an Applicant is required to amend and update the
8 Applicant’s application on an ongoing basis and correct any information that has changed since
9 the application was filed.

10