

AGENDA

Utah Supreme Court Oversight Committee for the Office of Professional Conduct

Location: Webex (see calendar invite for instructions)

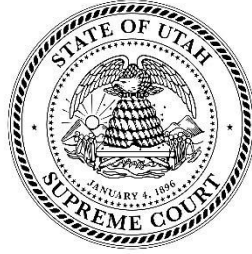
Date: April 13, 2020

Time: 4:00 to 7:00 p.m.

Action: Welcome and approval of the February 26, 2020 minutes. Tab 1: Draft meeting minutes for February 26, 2020	Judge Diana Hagen
Discussion & action: Reviewing proposed rule changes. Tab 2: Redline of proposed rules Tab 3: Clean copy of proposed rules Tab 4: Progress Report/Recommendations	Judge Diana Hagen
Discussion & action: Proposed OPC Performance Metrics. Tab 5: Proposed performance metrics	
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**

Draft Meeting Minutes

February 26, 2020

Scott M. Matheson Courthouse
Court of Appeals Conference Room
450 South State Street
Salt Lake City, UT 84111
4:00-7:00 p.m.

Judge Diana Hagen, presiding

Attendees:

Judge Diana Hagen, Chair
Magistrate Judge Brooke Wells
Margaret Plane
Roger Smith
John Baldwin, ex-officio member

Staff:

Larissa Lee
Marina Kelaidis, Recording Secretary

Excused:

Art Berger

Guests:

Billy Walker, Office of Professional Conduct
Elizabeth Wright, General Counsel, Utah State Bar

1. Welcome, introductions of each committee member, and approval of the minutes: (Judge Diana Hagen)

Judge Diana Hagen welcomed everyone to the meeting, asked each committee member to introduce themselves and the general nature of their practice, and asked for approval of the January 28, 2020 minutes.

Judge Brooke Wells moved to approve the January 28, 2020 minutes. Margaret Plane seconded the motion, and it passed unanimously.

2. Discussion & Action—Whether to replace current sanctions rules with ABA model language: (Billy Walker)

Billy Walker asked the committee to review Rule 14-605, Imposition of Sanctions. Mr. Walker reported the ABA model standards are more specific and provide more guidance for determining the appropriate level of imposed sanction based upon the factors to be considered. Mr. Walker reported the OPC would prefer for the committee to incorporate the ABA model factors into the rule to promote more consistency and fairness for imposing sanctions.

Judge Wells recommended changing the pronoun “he” in ABA model rule 4.12 to “lawyer” in order to be consistent with all other ABA rules. Larissa Lee reported the court is working to remove all gendered pronouns from the rules and replacing them with the pronoun “they.”

Billy Walker and Larissa Lee will prepare a redline version of Rule 14-605 to incorporate the OPC’s recommendations to be presented at the next committee meeting for approval.

3. Discussion & Action—Reviewing proposed rule changes: (Judge Diana Hagen)

Rule 14-102:

Judge Hagen moved to approve the proposed changes to Rule 14-102. Margaret Plane seconded the motion, and it passed unanimously.

Rule 14-103:

Margaret Plane moved to approve the proposed changes to Rule 14-103. Judge Hagen seconded the motion, and it passed unanimously.

Rule 14-105:

Judge Hagen moved to approve the proposed changes to Rule 14-105. Margaret Plane seconded the motion, and it passed unanimously.

Rule 14-107:

Judge Hagen moved to approve the proposed changes to Rule 14-107. Judge Wells seconded the motion, and it passed unanimously.

Rule 14-111:

Judge Hagen moved to approve the proposed changes to Rule-111. Judge Wells seconded the motion, and it passed unanimously.

Rule 14-202:

Judge Hagen moved to approve the proposed changes to Rule 14-202. Margaret Plane seconded the motion, and it passed unanimously.

Rule 14-207:

Margaret Plane recommended amending section (c)(4), line 10, by replacing “any amount of check may” with “a check of any amount may.”

Margaret Plane moved to approve the proposed changes to Rule 14-207 with the recommended changes to section (c)(4). Judge Hagen seconded the motion, and it passed unanimously.

Rule 14-208:

Judge Hagen moved to approve the proposed changes to Rule 14-208. Margaret Plane seconded the motion, and it passed unanimously.

Rule 14-402:

Judge Hagen moved to approve the proposed changes to Rule 14-402. Judge Wells seconded the motion, and it passed unanimously.

Rule 11-501:

John Baldwin recommended amending section (a)(2) to allow for committee members to potentially come back for future appointments. The committee agreed there is a limited pool from which committee members may be drawn from, and it may be necessary to allow past committee members to serve again. Judge Hagen recommended adding the word “consecutive” before “staggered four-year terms” to allow this proposed option. Margaret Plane recommended amending section (c)(1), line 24, by removing “not including complaints regarding OPC counsel or staff” from the end of the sentence.

Judge Hagen moved to approve the proposed changes to Rule 11-501 with the recommended changes to sections (a)(2) and (c)(1). Roger Smith seconded the motion, and it passed unanimously.

Rule 14-501:

Margaret Plane moved to approve the proposed changes to Rule 14-501. Judge Wells seconded the motion, and it passed unanimously.

Rule 14-502:

Larissa Lee proposed adding a definition of “Licensed” to include lawyers admitted to the Bar, unless provided otherwise. This proposed change would require replacing the use of “admitted” or “admitted or licensed” in all other rules with the word “licensed.”

Judge Hagen moved to approve the proposed changes to Rule 14-502 with the recommended addition of the definition of “Licensed.” Margaret Plane seconded the motion, and it passed unanimously.

Rule 14-506:

In accordance with the definition of “Licensed,” Larissa Lee recommended amending section (a), lines 3, 4, 8, and 10 by replacing “admitted” with “licensed.”

Judge Hagen moved to approve the proposed changes to Rule 14-506 with the recommended changes to section (a). Judge Wells seconded the motion, and it passed unanimously.

Rule 14-529:

Billy Walker presented the proposed changes to Rule 14-529, explaining this iteration of the rule has been modeled from Colorado’s Statute of Limitations rule. The ABA model does not have a statute of limitations for any lawyer discipline cases. The committee discussed section (c) and proposed a compromise for cases involving fraud, conversion, conviction of a serious crime, or concealment. The rule will be presented to the Supreme Court for approval as written and Larissa Lee will also present the committee’s compromise proposal section (c) for guidance from the Court.

Judge Hagen moved to approve the proposed changes to Rule 14-529. Margaret Plane seconded the motion, and it passed unanimously.

Rule 14-503 (Split into five rules)

1. Rule 14-503(a)-(c):

Ethics and Discipline Committee composition:

Judge Hagen moved to approve the proposed changes to Rule 14-503(a)-(c), Ethics and Discipline Committee (will be renumbered). Judge Wells seconded the motion, and it passed unanimously.

2. Rule 14-503(d)-(f)

Screening panel composition; responsibilities:

Judge Hagen moved to approve the proposed changes to Rule 14-503(d)-(f), Screening panel composition; responsibilities (will be renumbered). Margaret Plane seconded the motion, and it passed unanimously.

3. Former Rule 14-503(g)

Screening panel or respondent subpoena petitions:

Judge Hagen moved to approve the proposed changes to Rule 14-503(g), Screening panel or respondent subpoena petitions (will be renumbered). Margaret Plane seconded the motion, and it passed unanimously.

4. Rule 14-503(h)

Committee clerk:

Judge Hagen moved to approve the proposed changes to Rule 14-503(h), Committee clerk (will be renumbered). Roger Smith seconded the motion, and it passed unanimously.

5. Rule 14-503(i)

Disclosure, recusal, and disqualification:

Margaret Plane recommended amending section (b)(3)(A), line 18, by removing “domestic partner of such a person.” Judge Wells proposed instead ending the sentence after “third degree of relationship.”

Judge Hagen moved to approve the proposed changes to Rule 14-503(i), Disclosure, recusal, and disqualification (will be renumbered) with the recommended changes to section (b)(3)(A). Judge Wells seconded the motion, and it passed unanimously.

Rule 14-504 (Split into five rules)

1. Rule 14-504(a)

Chief disciplinary counsel and OPC counsel:

Judge Hagen moved to approve the proposed changes to Rule 14-504(a), Chief disciplinary counsel and OPC counsel (will be renumbered). Margaret Plane seconded the motion, and it passed unanimously.

2. Rule 14-504(b)-(c)

OPC prosecutorial powers and duties:

Judge Hagen moved to approve the proposed changes to Rule 14-504(b)-(c), OPC prosecutorial powers and duties (will be renumbered). Roger Smith seconded the motion, and it passed unanimously.

3. Former Rule 14-504(d)

Ethics advisory opinions:

Judge Hagen moved to approve the proposed changes to Rule 14-504(d), Ethics advisory opinions (will be renumbered). Margaret Plane seconded the motion, and it passed unanimously.

4. New Rule

OPC investigative subpoenas:

Judge Hagen moved to approve the addition of OPC investigative subpoenas as a new rule (will be renumbered). Judge Wells seconded the motion, and it passed unanimously.

5. New Rule

Retaining records:

Billy Walker recommended amending the section heading of section (b), line 10, to be changed from “Public reprimand, suspension, disbarment” to “Discipline and disability.”

Judge Hagen moved to approve the addition of Retaining records as a new rule (will be renumbered). Margaret Plane seconded the motion, and it passed unanimously

Rule 14-505:

The committee approved repealing Rule 14-505. Section (a) was moved into 14-504(d) and section (b) was replaced with 11-501(2)(B)(ii).

Judge Hagen moved to approve the proposed changes to Rule 14-505. Judge Wells seconded the motion, and it passed unanimously.

Rule 14-507:

The committee approved repealing Rule 14-507, as the language in this rule has been incorporated into Rule 14-107.

Judge Hagen moved to approve the proposed changes to Rule 14-507. Judge Wells seconded the motion, and it passed unanimously.

Rule 14-508:

The committee approved repealing Rule 14-508, as the language in this rule has been incorporated into Rule 14-107.

Judge Hagen moved to approve the proposed changes to Rule 14-508. Margaret Plane seconded the motion, and it passed unanimously.

Rule 14-510 (Split into six rules)

1. Rule 14-510(a)

Unprofessional conduct complaints:

The committee worked to amend section (c), lines 5-6, by splitting the single sentence into two sentences and clarifying the requirements of the OPC.

Judge Hagen moved to approve the proposed changes to Rule 14-510(a), Unprofessional conduct complaints (will be renumbered) with the recommended changes to section (c). Margaret Plane seconded the motion, and it passed unanimously.

The committee discussed removing or using alternative language for “probable cause” to define the standard for screening panels. This issue will be postponed for action at the next committee meeting.

2. Rule 14-510(b)

Proceedings before Committee and screening panels:

Judge Hagen moved to approve the proposed changes to Rule 14-510(b), Proceedings before Committee and screening panels (will be renumbered). Margaret Plane seconded the motion and it passed unanimously.

3. Rule 14-510(c)-(d)

Exception to screening panel determinations and recommendations:

Judge Hagen moved to approve the proposed changes to Rule 14-510(c)-(d), Exception to screening panel determinations and recommendations (will be renumbered). Margaret Plane seconded the motion and it passed unanimously.

4. Rule 14-510(g)

General Procedures:

The committee agreed to move paragraph (g), General Procedures in between paragraph (c)-(d) Exceptions to screening panel determinations and recommendations and paragraph (e) Final committee disposition (will be renumbered).

Judge Hagen moved to approve the proposed changes to Rule 14-510(g) General Procedures (will be renumbered). Roger Smith seconded the motion, and it passed unanimously.

5. Former Rule 14-510(e)

Final Committee disposition:

Roger Smith recommended amending section (b), line 13, by replacing “may” with “must.” Billy Walker recommended also adding “within 30 days” after “must” in line 13.

Judge Hagen moved to approve the proposed changes to Rule 14-510(e), Final Committee disposition (will be renumbered), with the proposed changes to section (b). Roger Smith seconded the motion, and it passed unanimously.

6. Former Rule 14-510(f)

Appealing a final Committee determination:

Larissa Lee recommended removing the cross-references in section (a).

Judge Hagen moved to approve the proposed changes to Rule 14-510(f), Appealing a final Committee determination (will be renumbered), with the proposed changes to section (a). Margaret Plane seconded the motion, and it passed unanimously.

Rule 14-511:

Judge Hagen moved to approve the proposed changes to Rule 14-511, subject to the committee’s determination on the probable cause standard. Margaret Plane seconded the motion, and it passed unanimously.

Rule 14-532:

Judge Hagen moved to approve the proposed changes to Rule 14-532. Judge Wells seconded the motion, and it passed unanimously.

Rule 14-527:

Judge Wells recommended amending section (a), line 3, by removing “disappeared” and adding “or cannot be located” after the word “died.”

Judge Hagen moved to approve the proposed changes to Rule 14-527 with the recommended changes to section (a). Judge Wells seconded the motion, and it passed unanimously.

Rule 14-528:

The committee approved repealing Rule 14-528, as it has been incorporated into Unprofessional conduct complaints, formerly Rule 14-510(a)(7).

Judge Hagen moved to approve the proposed changes to Rule 14-528. Margaret Plane seconded the motion, and it passed unanimously.

Rule 14-530:

Judge Hagen moved to approve the proposed changes to Rule 14-530. Margaret Plane seconded the motion, and it passed unanimously.

Rule 14-512:

The committee approved repealing Rule 14-512, because the committee is combining the article 5 and 6 (sanctions) rules.

Judge Hagen moved to approve the proposed changes to Rule 14-512. Margaret Plane seconded the motion, and it passed unanimously.

Rule 14-513:

Judge Hagen moved to approve the proposed changes to Rule 14-513. Judge Wells seconded the motion, and it passed unanimously.

Rule 14-514:

Judge Hagen moved to approve the proposed changes to Rule 14-514. Roger Smith seconded the motion, and it passed unanimously.

Rule 14-517:

Judge Hagen moved to approve the proposed changes to Rule 14-517, subject to the committee's determination on the probable cause standard. Margaret Plane seconded the motion, and it passed unanimously.

4. Discussion & Action—Proposed OPC Performance Metrics:

This matter was postponed and will be addressed at the next committee meeting.

5. Other Business—Schedule next meeting: (all)

The meeting adjourned at 7:00 p.m. The next meeting will be held on March 25, 2020.

Tab 2

Summary

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.
- 14-111 Practicing without license prohibited.
- 14-202 ~~Purposes of the Bar's~~ purposes.
- 14-207 Finances.
- 14-208 Special rules and regulations.
- 14-402 Definitions.

Chapter 11, Article 5

General provisions.

- 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.
- 14-506 Jurisdiction.
- 14-529 Statute of limitations.

Ethics and Discipline Committee (split 14-503)

- _____ Ethics and Discipline Committee composition. (formerly 14-503(a)-(c))
- _____ Screening panel composition; responsibilities. (formerly 14-503(d)-(f))
- _____ Screening panel or respondent subpoena petitions. (formerly 14-503(g))
- _____ Committee clerk. (formerly 14-503(h))
- _____ Disclosure, recusal, and disqualification. (formerly 14-503(i))

Office of Professional Conduct composition and responsibilities (split 14-504)

- _____ Chief disciplinary counsel and OPC counsel.
- _____ OPC prosecutorial powers and duties.
- _____ Ethics advisory opinions.
- _____ OPC investigative subpoenas.

- [Retaining records.](#)

~~14-505 Expenses.~~

• ~~—~~

- ~~14-507 Roster of lawyers and current record information.~~

- ~~14-508 Periodic assessment of lawyers.~~

14-510 Prosecution and appeals (split 14-510)

- [Unprofessional conduct complaints.](#)

- [Proceedings before Committee and screening panels.](#)

- [Exceptions to screening panel determinations and recommendations.](#)

- [General procedures](#)

- [Final Committee disposition.](#)

- [Appealing a final Committee determination.](#)

- ~~14-528 Appeal by complainant.~~

- 14-511 ~~Proceedings subsequent to finding of probable cause.~~ [Actions in district court.](#)

- ~~14-512 Sanctions.~~

- 14-532 Failure to answer charges.

- 14-527 Appointment of trustee to protect clients' interest when lawyer disappears, dies, is suspended or ~~disbarred~~ [delicensed](#), or is transferred to disability status.

- 14-530 Costs.

- 14-513 Immunity from civil suits.

- 14-514 Service.

- [14-517 Additional rules of procedure.](#)

Diversion (split 14-533)

- [Diversion referrals, authority, and responsibilities](#)

- [Circumstances warranting diversion.](#)

- [Diversion contract.](#)

- [Respondent's participation.](#)

- [Terminating diversion.](#)

- [Diversion costs.](#)

Discipline.

- 14-509 Grounds for discipline.

- 14-515 ~~Access to~~ [Accessing](#) disciplinary information.

- 14-516 ~~Dissemination of~~Disseminating disciplinary information.
- 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.
- 14-531 Noncompliance with child support order, child visitation order, subpoena or order relating to paternity, or child support proceeding.
- 14-526 Notice of disability or suspension; return of clients' property; refund of unearned fees.

Sanctions (originally article 6 rules)

- ~~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.~~Sanctions for violating duties owed to clients.
- Sanctions for violating duties owed to the public.
- Sanctions for violating duties owed to the legal system.
- Sanctions for violating duties owed as a professional.
- 14-606 Prior discipline orders.
- 14-607 Aggravation and mitigation.

Reinstatement.

- 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~~relicensure.

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.

Draft: April 1, 2020

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, t~~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 using~~ 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~~ improving 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.

Commented [LL1]: Recommendation 1.2

18 (b) **Responsibilities of the Bar.** ~~The Bar's P~~ 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;~~

Commented [LL2]: Recommendation 1.2

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

1 (b)(7) ~~to represent~~ representing the Bar before legislative, administrative, and judicial
2 bodies;

3 (b)(8) ~~to prevent~~ preventing the unauthorized practice of law;

4 (b)(9) ~~to promote~~ promoting professionalism, competence, and excellence ~~in those~~
5 ~~practicing law~~ through continuing legal education and ~~by~~ other means;

6 (b)(10) ~~to provide~~ providing a service to the public, ~~to the judicial system, and to~~
7 ~~members of the Bar~~ members;

8 (b)(11) ~~to educate~~ educating the public about the rule of law and ~~their~~ responsibilities
9 under the law; and

10 (b)(12) ~~to assist~~ assisting Bar members ~~of the Bar~~ in improving the quality and
11 efficiency of their practice.

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

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

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

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

Commented [LL3]: Recommendation 1.2

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

3 ~~(d)(4) .No suspended or disbarred lawyer or foreign legal consultant shall practice law in~~
4 ~~Utah or hold himself or herself out as one who may practice law in Utah while suspended~~
5 ~~or disbarred.(e) **Licensure Required for Licensed Paralegal Practitioners.** No person~~
6 ~~shall practice as a Licensed Paralegal Practitioners or hold him or herself out as one who~~
7 ~~is a Licensed Paralegal Practitioners unless he or she has been a licensed as a Licensed~~
8 ~~Paralegal Practitioners and is an active licensee of the Bar and in good standing. No~~
9 ~~delicensed Licensed Paralegal Practitioner shall practice law in Utah or hold him or~~
10 ~~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.

Commented [LL4]: Recommendation 1.2

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

11 (f) **Commissioner Elections of commissioners.**

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

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

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

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

22 (f)(2) The candidate from any division, and the two or three ~~or two~~ candidates from the
23 Third Division, receiving the greatest number of votes of that division ~~shall~~ will be the
24 commissioner ~~from of~~ such division. ~~For the year 1983, the candidate from the Third~~
25 ~~Division receiving the fourth greatest number of votes shall be the commissioner for a~~
26 ~~two-year term.~~ A member ~~is limited to~~may only ~~voteing~~ for commissioner candidates ~~for~~
27 ~~commissioner from the~~ in the division in which ~~his or her~~ the member's business mailing
28 address on the Bar's records is located, ~~as shown by the records of the Bar.~~ The ballots

1 ~~shall will~~ be returned to the Bar offices in accordance with its rules. There ~~shall will~~ be an
2 annual election by the resident active ~~members of the Bar~~ members for the purpose of
3 filling vacancies. The Board ~~shall will~~ fix the time for holding the annual election and
4 prescribe such rules and regulations ~~in in regard thereto not in conflict with~~ accordance
5 with this chapter. The Board ~~shall must~~ ~~in accordance with its rules, give~~ mail annual
6 election notices ~~of the annual election by mail~~ at least 90 days ~~prior to~~ before the date on
7 which ballots will be counted.

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

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

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

24 (i) Annual and special meetings notice. There ~~shall must~~ be an annual meeting of the Bar,
25 presided over by the Bar president ~~of the Bar~~, open to all members in good standing, and held at
26 such time and place as the Board may designate, for ~~the discussion of the~~ discussing Bar affairs
27 ~~of the Bar~~ and the administration of justice. Special Bar meetings ~~of the Bar~~ may be held at such
28 times and places as the Board ~~may~~ designates. Notice of all meetings ~~shall must~~ be published to

1 ~~the Bar's website given by mail to all members of the Bar~~ members not fewer than 15 days ~~prior~~
2 ~~to~~before the date of such meeting.

3 (j) **Bylaws.** The Board ~~shall have power to~~may adopt Bylaws, not ~~in~~conflicting with any of these
4 rules' terms ~~of these rules~~, concerning ~~the~~officer selection and tenure ~~of its officers~~, ~~the~~ creation
5 of sections and committees and their powers and duties, and generally for the control and
6 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.~~**

Commented [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.

Commented [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

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

Commented [LL8]: Moved over from 14-508. This is a Bar requirement, not OPC.

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

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

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

Commented [LL9]: Bar removed confusing terminology re
"resignation."

1 **Rule 14-111. Practicing without a license prohibited.**

2 (a) Action or proceedings to enforce. Exception. ~~Pursuant to Rule 14-506(a) and 15-506(a), n~~ No
3 person who is not ~~duly admitted and~~ licensed to practice law in Utah as an attorney at law or as a
4 foreign legal consultant or Licensed Paralegal Practitioner ~~nor any person whose right or license~~
5 ~~to so practice has terminated either by disbarment, suspension, delicensure, failure to pay his or~~
6 ~~her license and other fees or otherwise, shall~~ may practice or assume to act or hold himself or
7 herself out to the public as a person qualified to practice law or to carry on the calling of an
8 attorney at law in Utah or Licensed Paralegal Practitioner. Such practice, or assumption to act or
9 holding out, by any such unlicensed ~~or disbarred, suspended or delicensed~~ person ~~shall~~ will not
10 constitute a crime, but this prohibition against the practice of law by any such person ~~shall~~ will be
11 enforced by such civil action or proceedings, including writ, contempt, or injunctive proceedings,
12 as may be necessary and appropriate, which action or which proceedings the Bar will institute
13 ~~shall be instituted by the Bar~~ after Board approval ~~by the Board~~.

14 (b) Nothing in this article ~~shall~~ will prohibit a person who is unlicensed as an attorney, ~~at law or~~
15 ~~a~~ foreign legal consultant, or Licensed Paralegal Practitioner from personally representing that
16 person's own interests in a cause to which the person is a party in his or her own right and not as
17 assignee.

18

Commented [LL10]: Clarifies the Bar has jurisdiction over those who are not/have never had law license. OPC has this ability already within its rules, it's not needed in this rule.

1 **Article 2. Bylaws**

2 **Rule 14-202. Bar's ~~P~~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 l~~

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

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

11 (g) prevent the unauthorized practice of law;

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

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

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

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

18 (l) ~~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 (m) 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

Commented [LL11]: Recommendation 1.2

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.~~

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

4 (b) **Budget.** The Board ~~shall~~ must prepare an annual budget ~~which shall that be~~ 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.

8 (a)(1) OPC. The Bar's annual budget must include a budget for the OPC, including the
9 salaries of OPC counsel and staff, their expenses, and administrative costs. The budget
10 must be jointly developed by the Board and the OPC and approved by the Oversight
11 Committee. The Board must ratify the budget for the OPC approved by the Oversight
12 Committee unless the Board petitions the Supreme Court for modifications, in which case
13 the budget approved by the Supreme Court is final.

Commented [LL13]: Recommendation 2.6

Commented [LL14]: This is moved up from 14-505.

14 (b) **Section dues.**

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

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

25 (c) **Disbursements.**

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

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

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

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

15 (e) Investment of funds. The Board must direct any investment of Bar f~~Funds of the Bar~~
16 ~~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.~~

Commented [LL15]: Recommendation 1.2

11 (eb) **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 (ec) **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 (ed) **Committees.** The Board will select a chair and the members of each committee. Bar
20 Committees ~~of the Bar shall be~~ consist of:

21 (ed)(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 (ed)(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.

Draft: April 1, 2020

1
2

~~(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~~;~~.

- 1 (s) “**New admittee**” means a lawyer newly admitted to the Utah State Bar~~;~~.
- 2 (t) “**NLTP**” means the New Lawyer Training Program as set forth in Rule 14-404 and
3 Rule 14-808~~;~~.
- 4 (u) “**Presumptively approved sponsor**” means those CLE sponsors or providers who
5 qualify under the standards set forth in Rule 14-412~~;~~.
- 6 (v) “**Presumptive CLE accreditation**” means those CLE courses or activities that
7 qualify under the standards set forth in Rule 14-412~~;~~.
- 8 (w) “**Professionalism and Civility**” means conduct consistent with the tenets of the legal
9 profession by which a lawyer demonstrates civility, honesty, integrity, character, fairness,
10 competence, ethical conduct, public service, and respect for the rules of law, the courts,
11 clients, other lawyers, witnesses, and unrepresented parties~~;~~.
- 12 (x) “**OPC**” means the ~~Bar’s~~ Office of Professional Conduct~~;~~.
- 13 (y) “**OPC ethics school**” means the OPC biannual seminar on the Utah Rules of
14 Professional Conduct, which provides six CLE credit hours~~;~~.
- 15 (z) “**Supreme Court**” means the Utah Supreme Court~~;~~ ~~and~~
- 16 (aa) “**UBE Transfers**” means applicants who gain admission by transferring a uniform
17 bar exam score~~;~~.
- 18

Commented [LL16]: Recommendation 1.2

1 **Article 5. Lawyer Discipline and Disability**

2 **General provisions.**

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

4 **Intent:**

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

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

8 **Applicability:**

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

10 **Statement of the Rule:**

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

14 ~~(a)(1)(A)~~ **Composition.**

15 ~~(a)(1)(A)(i)~~ The Oversight Committee ~~shall~~ consist of five voting members.
16 Among the members, at least one ~~must be of whom is~~ a judge; one a member of
17 the public; and one a past chair or past vice-chair of the Ethics and Discipline
18 Committee. At least one of the members ~~shall~~ must have an accounting or finance
19 background.

20 ~~(a)(1)(A)(ii)~~ The ~~E~~xecutive ~~D~~irector of the Utah ~~State~~ Bar ~~shall~~ will be an ex-
21 officio, non-voting member of the Oversight Committee.

22 ~~(a)(2)(B)~~ **Appointment and member roles.** The Utah Supreme Court appoints
23 Committee members ~~shall be appointed by the Utah Supreme Court and who~~ may serve
24 up to two consecutive staggered four-year terms. The Supreme Court ~~shall~~ will select a
25 chair from among the Oversight Committee’s members. Oversight Committee members
26 ~~shall~~ serve as officers of the court and not as representatives of any client, employer, or

Commented [LL17]: The Committee would like the Court to consider allowing committee members to potentially come back in the future. There is a limited pool from which these committee members may come and it may be necessary to allow past committee member to serve again.

1 other organization or interest group. At the first meeting of the Oversight Committee in
2 any calendar year, and at every meeting at which a new ~~member of the~~ Committee
3 member first attends, each Committee member ~~shall~~must briefly disclose the general
4 nature of the member's legal or other practice.

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

7 ~~(a+)(4E)~~ (4E) Vacancies. If there is an event of a vacancy on the Oversight Committee
8 vacancy, the Supreme Court ~~shall~~will appoint a new Committee member to serve for the
9 remainder of the unexpired term.

10 ~~(a+)(5D)~~ (5D) Absences. If the event that an Oversight Committee member fails to attend
11 two consecutive Committee meetings, the chair may notify the Supreme Court of those
12 absences and may request that the Supreme Court replace that Committee member.

13 ~~(1)(E) Administrative support. The Administrative Office of the Courts shall coordinate~~
14 ~~administrative support to the Committee.~~

15 ~~(2b)~~ **Oversight committee purpose, responsibilities, and authority.**

16 ~~(b2)(1A)~~ (1A) Oversight Committee Purpose of the Committee. The Oversight
17 Committee's purpose ~~of the Committee~~ is to assist the OPC in implementing ~~the~~ reforms
18 to the attorney discipline process adopted by the Utah Supreme Court and to provide
19 oversight for the OPC.

20 ~~(b)(2)(B)~~ (2)(B) Oversight Committee responsibilities. The following comprise the Oversight
21 Committee's responsibilities:

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

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

1 ~~(b)(2)(C)(iii)~~ Conduct a needs assessment for the OPC, setting forth a three- to
2 five-year funding plan for the disciplinary process, including technology and
3 staffing needs;

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

8 ~~(b)(2)(E)(v)~~ Develop and monitor formal policies for the OPC, including
9 records retention policies;

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

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

14 ~~(b)(2)(H)~~ Monitor the OPC's workload and recommend to the Supreme Court
15 adequate OPC staffing.

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

19
20 ~~(3) Meeting schedule. The Committee shall meet as often as necessary to accomplish its~~
21 ~~purposes but at least annually.~~

22 **(c) Complaints and appeals.**

23 (c)(1) Any person may file with the Oversight Committee chair a complaint alleging
24 malfeasance regarding the chief disciplinary counsel. If necessary, the Oversight
25 Committee may enter a recommendation to the Supreme Court, which may take
26 appropriate action.

Commented [LL18]: Modeled after guardian ad litem oversight rule (CJA 4-906).

1 (c)(2) If a complaint regarding the chief disciplinary counsel is received in the OPC's
2 office, the chief disciplinary counsel must forward the complaint to the Oversight
3 Committee chair within a reasonable time, but not more than 14 days after receipt.

4 (c)(3) Any person may file with the chief disciplinary counsel a complaint alleging
5 malfeasance regarding OPC counsel or staff. The chief disciplinary counsel's decision
6 regarding the complaint is final and not subject to appeal. The chief disciplinary
7 counsel's decision may include an appropriate action taken against the person whom the
8 complaint is filed.

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

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

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

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

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

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

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Commented [LL19]: Combining articles 5 and 6 into one article (Chapter 11, Article 5).

Commented [LL20]: 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.

Commented [LL21]: Recommendation 4.1: All prior references to “formal complaint” now refer to “action.”

5 (b) “Bar” means the Utah State Bar.

6 (c) “Board Bar Commission” or “Commission” means the Board of Bar
7 Commissioners of the Utah State Bar.

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

Commented [LL22]: Recommendation 1.2

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

12 (f) “Complainant” means either (1) the person who files a 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 (g) “OPC counsel” means senior counsel and any assistant counsel employed to assist
16 senior counsel.

17 (h) “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.

Commented [LL23]: Recommendation 4.1 only one reference to “complaint.” Using term “action” to clarify when the OPC brings a lawsuit in district court.

19 (i) “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.

Commented [LL24]: Recommendation 4.1 discontinue notary requirement, but a declaration, under penalty of perjury, should be required

22 (j) “Informal complain” means any written, notarized allegation of misconduct by or
23 incapacity of a lawyer which also contains a verification attesting to the accuracy of the
24 information provided.

25 (k) “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

Commented [LL25]: 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.

Commented [LL26]: 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.

Commented [LL27]: Moved over from sanctions article

7 (k) “**Lawyer**” includes those licensed to practice law in any jurisdiction of the United
8 States, foreign legal consultants, and licensed paralegal practitioners, insofar as the
9 licensed paralegal practitioner is authorized to practice under Utah Special Practice Rule
10 14-802, unless provided otherwise.

Commented [LL28]: Includes LPPs so that we may combine Chapters 14 and 15 (only for articles 5 and 6).

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

Commented [LL29]: The committee is using “licensed” rather than “admitted” wherever possible to clarify that LPPs are included unless specifically excluded.

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

Commented [LL30]: Moved over from sanctions article.

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

19 (o) “**OPC**” means the ~~Bar’s~~ Office of Professional Conduct.

Commented [LL31]: Recommendation 1.2

20 (p) “**OPC counsel**” means chief disciplinary counsel, deputy chief disciplinary counsel,
21 and any assistant disciplinary counsel.

22 (q) “**Oversight committee**” means the committee established in Rule 11-501 to oversee
23 the OPC.

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

Commented [LL32]: Moved over from sanctions article

1 (j) ~~“Respondent”~~ means a lawyer subject to the disciplinary jurisdiction of the ~~Utah~~
2 Supreme Court against whom ~~an informal or formal~~ complaint has been filed or an action
3 has been initiated.

4 (k) ~~“Rules of Professional Conduct”~~ means the rules in Chapter 13 of the Supreme
5 Court Rules of Professional Practice ~~Utah Rules of Professional Conduct (including the~~
6 ~~accompanying comments) initially adopted by the Utah Supreme Court in 1988, as~~
7 ~~amended from time to time~~ and “Licensed Paralegal Practitioner Rules of Professional
8 Conduct” means the rules in Chapter 15, article 12 of the Supreme Court Rules of
9 Professional Practice.

10 (l) ~~“Screening panel”~~ means Committee members ~~of the Committee~~ who participate in
11 hearings and make determinations under Rule 14-503.

12 (m) ~~“senior counsel”~~ means ~~the lawyer appointed by the Board to manage the OPC; and~~

13 (n) ~~“Supreme Court”~~ means the Utah Supreme Court.
14

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~~-licensed to practice law in Utah, any lawyer
4 admitted but currently not properly licensed to practice in Utah, any formerly ~~admitted~~-licensed
5 lawyer 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~~-lawyer was licensed to practice or was practicing law at the time of the
9 alleged violation, any lawyer specially admitted by a Utah court-~~of Utah~~ for a particular
10 proceeding, and any other person not ~~admitted~~-licensed in Utah who practices law or who
11 renders or offers to render any 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 14-529. Statute of limitations.**

2 (a) Individual complaints. A complaint against a lawyer must be filed with the OPC within four

3 years of the time that the complainant discovers or reasonably should have discovered the

4 alleged misconduct.

5 (b) OPC complaints. A complaint initiated by the OPC must be initiated within five years of the

6 alleged misconduct.

7 (c) Fraud, conversion, conviction of a serious crime, and concealment. There is no statute of

8 limitations for misconduct alleging fraud, conversion, or conviction of a serious crime, or for

9 alleged misconduct the discovery of which the lawyer has concealed.

10 ~~Proceedings under this article shall be commenced within four years of the discovery of the~~

11 ~~acts allegedly constituting a violation of the Rules of Professional Conduct.~~

Commented [LL33]: OPC's proposed language in response to *Dahlquist*.

Commented [LL34]: ABA recommends no statute of limitations for all lawyer discipline cases. The committee proposes this compromise for those cases involving fraud, concealment, etc.

1 Ethics and Discipline Committee.

2 **Rule 14-503 ____.** Ethics and Discipline Committee composition.

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

Commented [LL35]: Recommendation 5.4

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

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

14 (b)(2) to determine ing that screening panels have a uniform basis for the judgments
15 rendered.

16 (b)(3) and to provide ing the screening panels with information concerning ethics and
17 judicial decisions necessary to their activities. ~~and~~

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

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

24 (d) Removal. The Committee chair may recommend removal of a Committee member by
25 notifying the Supreme Court of the recommendation of removal and reasons for the
26 recommendation. The removal is effective when the Supreme Court accepts the
27 recommendation.

Draft: April 1, 2020

1

36

1 **Rule ____.** ~~(d) Screening Ppanel composition; responsibilities, quorums.~~

2 (a) Screening panel composition. The Committee members, except for the Committee chair and
3 ~~Committee~~-vice chairs, ~~shall be~~are divided into four screening panel sections of five members
4 each, including six-four lawyers ~~of the Bar~~ and onetwo public members. Whenever a screening
5 panel is assigned a complaint involving a licensed paralegal practitioner, the Committee chair
6 may appoint up to two licensed paralegal practitioners to the screening panel as voting members,
7 with all of the responsibilities and duties of other members of the screening panel.

8 (b) Screening panel number. All screening panel hearings must have five panel members
9 present unless all parties agree to fewer than five, but not fewer than three, panel members. A
10 panel chair or vice chair and a public member must be present at each screening panel hearing.

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

18 (d) Voting. ~~Two members of the Bar plus one public member shall constitute a quorum of a~~
19 ~~screening panel. The concurrence of a~~majority vote of those members present and voting at
20 any proceeding ~~shall be~~is required for a screening panel determination. If an even number of
21 screening panel members participate in a proceeding, the chair, or vice chair if the chair is not
22 present, shallmay not vote ~~unless necessary to break a tie~~. The chair or vice chair ~~shall~~may,
23 however, fully participate in the proceeding.

24 (e) Meetings. Each screening panel ~~shall~~meets as is necessary to effectively and promptly carry
25 out its duties. The chair may convene the entire Committee ~~may be convened~~ at such other times
26 ~~by the chair~~ as necessary to effectively and promptly carry out ~~its~~the Committee's duties.

27 (e) Removal, a Alternates. ~~The Committee chair may recommend removal of a Committee~~
28 ~~member by notifying the Supreme Court of the recommendation of removal and reasons for the~~

Commented [LL36]: Recommendation 5.2

Commented [LL37]: Moved up.

1 ~~recommendation. The removal shall take effect upon the Supreme Court's acceptance of the~~
2 ~~recommendation.~~ Members of any screening panel may serve as alternate members on different
3 screening panels. The Committee chair and the Committee vice chairs may serve as alternate
4 members on all screening panels.

5 (f) **Responsibilities.**

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

13 ~~(f)(2) Except as~~ Unless otherwise provided in this article, whenever the OPC counsel may
14 be present before a screening panel during a hearing, the respondent may also be present.
15

1 **Rule ~~(g)~~ (g) Screening panel or respondent subpoena petitions.**

2 **(a) Who may request a subpoena.** ~~Any party~~The Respondent or a screening panel, for good
3 cause ~~shown~~, may petition the district court under seal ~~the district court for issuance of~~ to issue a
4 subpoena, subpoena duces tecum, or any order allowing discovery ~~prior to the filing of~~before the
5 OPC commences an action against respondent~~filing a formal complaint~~. Except for good cause
6 ~~shown~~, all petitions under this rule ~~shall~~ require a five-day written notice to the opposing party
7 ~~prior to the issuance of~~before issuing a ~~n appropriate order of~~ subpoena.

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

11 **(c) ~~(2)~~ (2) Quashing subpoena.** The Committee chair or the court wherein the subpoena
12 enforcement is being sought will hear and determine. ~~A~~any attack on an issued subpoena's ~~the~~
13 ~~validity_ of a subpoena so issued shall be heard and determined by the Committee chair or by the~~
14 ~~court wherein enforcement of the subpoena is being sought.~~ Any resulting order is not appealable
15 ~~prior to the~~before entry of a final order in the proceeding.

16 **(d) ~~(3)~~ (3) Witnesses and fees.** Subpoena fees, witness fees, and mileage ~~shall will be~~are
17 reimbursed in the amounts provided under Rule 45 of the Utah Rules of Civil Procedure.

18

1 Rule ~~(h)(1) Clerk of the Committee clerk.~~

2 (a) Confidentiality. The Committee clerk is subject to the confidentiality requirements of Rule
3 14-515.

4 (b) Responsibilities. The ~~Clerk of the Committee~~ clerk is responsible for: ~~the~~

5 (b)(1) handling the Committee's administrative affairs ~~of the Committee,~~

6 (b)(2) accepting documents filed with the eCommittee,

7 (b)(3) handling screening panel calendars,

8 (b)(4) giving notice to persons whose attendance is requested,

9 (b)(5) notifying ~~those who have filed informal complaints~~ the complainant of the times
10 and dates their matters will be heard,

11 (b)(6) notifying the complainant, the respondent, and any counsel of record of the
12 disposition of each matter, and

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

17 ~~(h)(2) OPC counsel shall within three months after the filing of an informal complaint of~~
18 ~~unprofessional or unethical conduct of a respondent, advise the party making the informal~~
19 ~~complaint concerning the initial consideration of the informal complaint, and shall~~
20 ~~promptly advise such party in writing of the subsequent disposition of the informal~~
21 ~~complaint and the reasons therefor.~~

Commented [LL38]: Recommendation 5.8

1 **Rule** ~~(i)~~ Disclosure, recusal, and disqualification.

2 (a) Application. Disclosure, recusal, and disqualification apply to Committee members'
3 participation in a screening panel hearing, exception, or other proceeding in which a
4 respondent's conduct is considered under these rules.

5 **(b) Disclosure.**

6 (b)(1) Committee members must make disclosures before or, at the latest, at the start of a
7 screening panel hearing or other hearing in which a respondent's conduct is considered.

8 (b)(2) Each Committee member must disclose to the parties any professional or personal
9 relationship or conflict of interest with a party or a party's counsel in the proceeding that
10 may affect an unbiased evaluation of the respondent.

11 (b)(3) Relationships that may affect an unbiased evaluation of the respondent include any
12 contact or association that might influence a Committee member's ability to fairly and
13 reasonably evaluate the conduct of any respondent or to assess that respondent without
14 bias or prejudice, including but not limited to:

15 (b)(3)(A) family relationships to a party or lawyer of a party in the proceeding
16 within the third degree of relationship;

17 (b)(3)(B) any business relationship between the Committee member and a party
18 or lawyer of a party in the proceedings; and

19 (b)(3)(C) any personal litigation directly or indirectly involving a party or a
20 lawyer of a party in the proceeding and the Committee member, the Committee
21 member's family or the Committee member's business.

22 (b)(4) A Committee member exhibits bias or prejudice when the Committee member is
23 predisposed to decide a cause or an issue in a way that does not leave the Committee
24 member's mind open to exercising the Committee member's duties impartially in a
25 particular case.

26 **(c) Recusal.**

1 (c)(1) As used in this rule, recusal is a voluntary act of self-disqualification by a
2 Committee member.

3 (c)(2) After making a disclosure, a Committee member may voluntarily recuse if the
4 Committee member believes the relationship with the respondent or other parties will
5 affect an unbiased evaluation of the respondent.

6 **(d) Disqualification procedures.**

7 (d)(1) A respondent may move to disqualify a screening panel Committee member if
8 such member:

9 (d)(1)(A) makes a disclosure and does not voluntarily recuse, and that member's
10 impartiality might reasonably be questioned; or

11 (d)(1)(B) does not make a disclosure, but known circumstances suggest the
12 Committee member's impartiality might reasonably be questioned.

13 (d)(2) A motion to disqualify a screening panel Committee member must be submitted to
14 the Committee clerk for review by the screening panel chair or vice chair before or
15 during the screening panel hearing.

16 (d)(3) A motion to disqualify a Committee member from an exception or other hearing or
17 review must be submitted to the Committee clerk for review by the Committee chair or
18 vice chair before any hearing on the matter.

19 **(e) Disqualification after committee service.** A former Committee member may not personally
20 represent a respondent in any proceeding as provided in these rules within one year after
21 completing the former Committee member's service. In addition to the one-year prohibition, a
22 former Committee member may not personally represent a respondent in any proceedings as
23 provided in these rules in which the former Committee member previously participated during
24 their service on the Committee.

25
26 ~~(i) **Annual report.** Senior counsel shall prepare and submit an annual report to the Supreme~~
27 ~~Court and the Board encompassing the scope and nature of the Committee work. The report shall~~

Commented [LL39]: 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 ~~be submitted on or about August 1 of each year for the preceding fiscal year and shall set forth~~
2 ~~the number of disciplinary cases investigated, the number brought before the Committee, formal~~
3 ~~complaints filed, dispositions, cases dismissed, informal ethics opinions issued, diversionary~~
4 ~~dispositions and such other information as may be helpful to the Supreme Court in~~
5 ~~comprehending the operations of the OPC as well as the efficiency and effectiveness of the~~
6 ~~disciplinary system. Such report may contain Committee recommendations for rule amendments~~
7 ~~or changes in Committee procedure. The chair and senior counsel shall annually consult with the~~
8 ~~Board and the Supreme Court regarding the level of activity and general standing of disciplinary~~
9 ~~matters and procedures.~~

10

1 Office of Professional Conduct composition and responsibilities.

2 **Rule 14-504. Chief disciplinary counsel and OPC counsel.**

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

Commented [LL40]: Recommendation 1.2

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

Commented [LL41]: The following two paragraphs are adapted from the Guardian ad litem oversight rule.

9 (b)(1) Hire and manage OPC counsel and staff to ensure quality investigations, discipline,
10 and sanctions.

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

12 (b)(3) Monitor and report to the Oversight Committee regarding the OPC's operations
13 and the efficiency and effectiveness of the disciplinary system.

14 (b)(4) Prepare and submit an annual report to the Oversight Committee and Supreme
15 Court on or about February 1 of each year for the preceding calendar year.

Commented [LL42]: 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.

16 (b)(4)(A) The report must include:

17 (b)(4)(A)(1) the number of disciplinary cases investigated,

18 (b)(4)(A)(2) the number of disciplinary cases brought before the
19 Committee,

20 (b)(4)(A)(3) actions filed,

21 (b)(4)(A)(4) dispositions, including diversionary dispositions,

22 (b)(4)(A)(5) cases dismissed,

23 (b)(4)(A)(6) informal ethics opinions issued, and

1 (b)(4)(A)(7) such other information as may be helpful to the Supreme
2 Court in understanding the OPC's operations and the efficiency and
3 effectiveness of the disciplinary system.

4 (b)(4)(B) Such report may contain recommendations for rule amendments or
5 changes in the OPC or Ethics and Discipline Committee procedure. The Oversight
6 Committee may amend the report before releasing it to the Supreme Court.

7
8 **(c) OPC counsel.**

9 (c)(1) Qualification and responsibilities. OPC counsel must be licensed to practice law in
10 Utah.

11 (c)(2) OPC counsel will be selected by the chief disciplinary counsel. An OPC counsel is
12 an at-will employee subject to dismissal by the chief disciplinary counsel with or without
13 cause.

14 **(d) Disqualification and conflicts of interest.** In addition to complying with the Rules of
15 Professional Conduct regarding successive government and private employment (Rule 1.11 of
16 the Rules of Professional Conduct), former OPC counsel may not personally represent a
17 respondent as to any complaint or action within one year after completing the former OPC
18 counsel's service. In addition to the one-year prohibition, former OPC counsel may not
19 personally represent a respondent in any complaint or action that the OPC investigated or
20 prosecuted during the term of the former OPC counsel's employment.

1 **Rule ~~(b)~~ OPC prosecutorial Ppowers and duties.**

2 (a) The ~~senior chief disciplinary~~ counsel ~~shall will~~ perform all prosecutorial functions and have
3 the following powers and duties, which may be delegated to other staff:

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

7 (a)(2) investigate all information coming to the attention of the OPC which, if true,
8 would be grounds for discipline or transfer to disability status, and investigate all facts
9 pertaining to petitions for reinstatement or ~~readmission~~ relicensure;

Formatted: Highlight

10 (a)(3) ~~choose to dismiss, decline to prosecute, refer nonfrivolous and substantial~~
11 ~~complaints to the Committee for hearing, or petition the district court for transfer to~~
12 ~~disability status;~~ for each matter not covered in Rule 14-510 brought to the attention of the
13 OPC:

14 ~~(b)(3)(A) dismiss;~~

15 ~~(b)(3)(B) decline to prosecute;~~

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

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

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

22 (a)(5) attend the Character and Fitness Committee proceedings in all cases for
23 ~~readmission~~ relicensure, and represent the OPC before the district courts, Supreme Court,
24 and any other courts including, but not limited to, any court of the United States in all
25 cases for reinstatement and ~~readmission~~ relicensure;

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

5 (a)(7) notify each jurisdiction in which a respondent is ~~admitted~~-licensed of a transfer to
6 disability status or any public discipline imposed in Utah;

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

10 (a)(9) forward a certified copy of the judgment of conviction to the disciplinary agency
11 in each jurisdiction in which a lawyer is ~~admitted~~-licensed when the lawyer is convicted
12 of a crime in Utah which reflects adversely on the lawyer's honesty, trustworthiness, or
13 fitness as a lawyer;

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

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

21 ~~(b)(11)(A) Notice to respondent. If the OPC contacts the respondent regarding an~~
22 ~~informal complaint or otherwise knows the respondent is aware of the informal~~
23 ~~complaint, the OPC must give the respondent was contacted by the OPC~~
24 ~~concerning the informal complaint, or the OPC otherwise knows that the~~
25 ~~respondent is aware of the existence of the informal complaint, the respondent~~
26 ~~shall be given prompt written notice of the expungement.~~

Commented [LL43]: Moved to new rule re retaining records.

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

6 ~~(a)(11) provide informal guidance concerning professional conduct to lawyers of the~~
7 ~~Bar requesting guidance, participate in through seminars ~~which that~~ will promote ethical~~
8 ~~conduct, formulate diversionary programs, monitor probations, and disseminate~~
9 ~~disciplinary results to the Bar and the public through the Utah Bar Journal and otherwise~~
10 ~~as appropriate, while maintaining the confidentiality of respondents subject to private~~
11 ~~discipline, and~~

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

Commented [LL44]: This was moved and modified to 14-207(a)(1).

15
16 ~~(e) **Disqualification.** In addition to complying with the Rules of Professional Conduct regarding~~
17 ~~successive government and private employment (Rule 1.11 of the Rules of Professional~~
18 ~~Conduct), a former OPC counsel shall not personally represent a lawyer following completion of~~
19 ~~the OPC counsel's service in any proceedings as provided in these rules which former OPC~~
20 ~~counsel investigated or prosecuted during his or her employment by OPC.~~

Commented [LL45]: This was moved and modified to paragraph (d) of the Chief disciplinary counsel and OPC counsel rule.

1 **Rule ~~(d)~~ Effect of ethics advisory opinions.**

2 (a) Effect of ethics advisory opinions. The OPC ~~shall~~may not prosecute a Utah lawyer
3 for conduct that ~~is in compliance~~complies with an ethics advisory opinion that has not
4 been withdrawn at the time of the conduct in question. No court is bound by an ethics
5 opinion’s interpretation of the ~~Utah~~ Rules of Professional Conduct or Licensed Paralegal
6 Practitioner Rules of Professional Conduct.

7 (b) Reviewing, modifying, or withdrawing ethics advisory opinions.

8 ~~(b)~~(1) The OPC may at any time request the Bar’s Ethics Advisory Opinion
9 Committee to review, modify, or withdraw an ethics advisory opinion and ~~if so,~~
10 any OPC investigation or prosecution is suspended pending the final outcome of
11 the request. The Ethics Advisory Opinion Committee may issue a modified
12 opinion, withdraw the opinion, or decline to take any action but ~~shall~~will report
13 its action or recommendation to the ~~Board of Bar Commissioners~~ and the
14 ~~Board~~Commission will take such final action as it deems appropriate.

15 ~~(b)~~(2) The OPC may also request the Supreme Court to review, affirm, reverse,
16 or otherwise modify an ethics advisory opinion.

Commented [LL46]: Recommendation 4.3

1 **Rule** OPC investigative subpoenas.

2 (a) Power to subpoena. The OPC may request that the Committee Chair serve on a respondent
3 or third party a subpoena to produce documents, electronically stored information, or tangible
4 things in the possession, custody, or control of that person.

5 (b) Requesting a subpoena. The 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 the
7 Bar's records. The request must describe the purpose for seeking the subpoena. Any objections
8 to the request must be filed with the chair within seven days of the subpoena request. Within
9 three business days after the time for filing an objection expires, the Committee chair will grant
10 or deny the subpoena request, without a hearing, based on the following considerations:

11 (b)(1) a weighing of the materiality and necessity of the requested documents,
12 electronically stored information, or tangible things; and

13 (b)(2) a weighing of the burden to the custodian of producing the documents,
14 electronically stored information, or tangible things.

15 (c) Serving the subpoena. If the Committee chair grants the request, the OPC may obtain a
16 signed subpoena form, but otherwise blank, from the Committee clerk. The OPC will fill out the
17 subpoena and serve it on the respondent or third party.

18 (d) Witnesses and fees. Subpoena fees, witness fees, and mileage are reimbursed in the amounts
19 provided under Rule 45 of the Utah Rules of Civil Procedure. The requesting party bears the cost
20 associated with producing documents or electronically stored information.

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

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 the OPC's application, notice to respondent, and a showing of good
5 cause, the Oversight Committee may permit the 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) Discipline and disability.** The OPC must expunge after 30 years all records or other
11 evidence of the existence of complaints that resulted in public reprimand, suspension,
12 delicensure, resignation with discipline pending, admonition, disability, and probation running
13 from the date the discipline expired.

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

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

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

Commented [LL47]: Judge Hagen (Committee chair) discussed this rule with the Supreme Court on January 22, 2020.

Commented [LL48]: Instead of disbarred

1 ~~Rule 14-505. Expenses.~~

2 ~~(a) The salaries of OPC counsel and staff, their expenses, administrative costs, and the expenses~~
3 ~~of the members of the screening panels, shall be paid by the Bar.~~

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

Commented [LL49]: Moved this language into 14-504(d).

Commented [LL50]: Replaced with 11-501(2)(B)(ii)

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

2 ~~The Bar shall collect, maintain and have ready access to current information relating to members~~
3 ~~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.~~

Commented [LL51]: This is a Bar requirement, not OPC.
We have moved this to Rule 14-107.

15

~~Rule 14-508. Periodic assessment of lawyers.~~

Commented [LL52]: This is a Bar requirement, not OPC. We have moved this to Rule 14-107.

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

~~(b) **Failure to renew annual license.** Failure to pay the annual licensing fee or provide the required annual licensing information shall result in administrative suspension. Any lawyer who practices law after failure to renew his or her license violates the Rules of Professional Conduct and may be disciplined. The executive director or his or her designee shall give notice of such removal from the rolls to such non-complying member at the designated mailing address on record at the Bar and to the state and federal courts in Utah.~~

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

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

1 Prosecution and appeals.

2 ~~Rule 14-510. Prosecution and appeals.~~

3 Rule _____ (a) Informal complaint of unprofessional conduct complaints.

4 ~~(a)(1) Filing. The OPC or Any person, the OPC, or the Committee may initiate a~~ disciplinary
5 proceeding ~~may be initiated~~ against any ~~member of the Bar member~~ lawyer by any person, OPC
6 ~~counsel or the Committee,~~ by filing with the ~~Bar~~ OPC, in writing, an ~~written informal~~ complaint
7 in ~~ordinary, plain and~~ concise language setting forth the acts or omissions claimed to constitute
8 unprofessional conduct.

Commented [LL53]: Recommendation 1.2

9 (a)(1) If an individual initiates the complaint, filing is complete when the complaint is
10 delivered to the OPC office in hard copy or electronic form, or through the OPC's
11 website at opcutah.org. Upon filing, an informal complaint shall be processed in
12 accordance with this article.

13 (a)(2) If the OPC initiates the complaint, filing is complete when the OPC delivers the
14 complaint to the lawyer in hard copy or electronic form.

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

Commented [LL54]: Recommendation 4.1 Notarization of a complaint should be discontinued, but a declaration, under penalty of perjury, should be required

26 ~~(c)(3) Initial investigation. Upon the filing of an informal~~ On receiving a complaint, the OPC
27 ~~counsel shall will~~ conduct a preliminary investigation to ascertain whether the ~~informal~~
28 complaint's allegations is are sufficiently clear ~~as to its allegations~~. If ~~it is~~ not, the OPC counsel

1 ~~shall will~~ seek additional facts from the complainant. The complainant must submit a signed
2 writing documents or writings containing any additional facts ~~shall also be submitted in writing~~
3 ~~and signed by the complainant.~~ Within three months after filing a complaint of unprofessional or
4 unethical conduct of a respondent, the OPC must advise the complainant concerning the initial
5 investigation of the complaint. After the final disposition of the complaint, the OPC must
6 promptly advise the complainant in writing of the reasons for the disposition.

Commented [LL55]: Was 14-503(h)(2)

7 ~~(d)(4) Potential Referral to Professionalism and Civility Counseling Board. The OPC~~
8 ~~counsel may~~—In connection with any conduct that comes to their attention, ~~whether by means~~
9 ~~of an informal complaint, a preliminary investigation, or any other means, OPC counsel may, at~~
10 ~~its discretion,~~—refer any matter to the Professionalism and Civility Counseling Board
11 established ~~pursuant to the~~under Rule 14-303 Supreme Court's Standing Order No. 7. Such
12 referral may be in addition to or in lieu of any further proceedings related to the subject matter of
13 the referral. Such referral should be in writing and, ~~—~~at the discretion of the OPC counsel,
14 may include any or all information included in ~~an informal~~the complaint or additional facts
15 submitted by the complainant.

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

Commented [LL56]: Recommendation 4.2 Discontinue "NOIC"

23 (e)(1) serve the respondent with a notice identifying with particularity the possible
24 violation(s) of the Rules of Professional Conduct or Licensed Paralegal Practitioner Rules
25 of Professional Conduct raised by the complaint as the OPC has preliminarily
26 determined;

27 (e)(2) attach a copy of the signed complaint; and

1 (e)(3) mail the documents ~~serve a NOIC by regular mail upon to~~ the respondent's at the
2 address as reflected in the Bar's records ~~of the Bar.~~

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

7 (f)(6) Answer to informal complaint. Within 20 days after the respondent is served ~~iee of with~~
8 the ~~complaint and notice~~ NOIC on the respondent, the respondent shall ~~must~~ file with the OPC
9 counsel a ~~signed~~ written ~~and signed~~ answer ~~setting forth in full an explanation of explaining~~ the
10 facts surrounding the ~~informal~~ complaint, together with all defenses and responses to the claims
11 of possible misconduct. For good cause ~~shown~~, the OPC ~~counsel~~ may extend the time for the
12 filing of an answer ~~by the respondent~~ not to exceed an additional 30 days. ~~Upon~~ When the answer
13 ~~having been~~ is filed or if the respondent fails to respond, the OPC ~~counsel shall will~~ refer the case
14 to a screening panel for investigation, consideration, and determination or recommendation. The
15 OPC ~~counsel shall must~~ forward a copy of the answer to the complainant.

Commented [LL57]: Recommendation 4.2 Discontinue "NOIC"

16 (g)(7) Dismissal of informal ~~Dismissing the~~ complaint.

17 (g)(1) Reasons for dismissal. The OPC ~~counsel~~ may dismiss ~~an informal a~~ complaint
18 without referral to a screening panel hearing if the OPC determines the complaint is: ~~An~~
19 informal complaint which, upon consideration of all factors, is determined by OPC
20 counsel to be

21 (g)(1)(A) frivolous, unintelligible, ~~unsupported by fact, or fails to raise~~ probable
22 cause of any unprofessional misconduct;

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23 (g)(1)(B) barred by the statute of limitations;

24 (g)(1)(C) more adequately addressed in another forum; ~~or unsupported by fact or~~
25 which does not raise probable cause of any unprofessional conduct,

26 (g)(1)(D) ~~or one in~~ which the OPC declines to prosecute, ~~may be dismissed by~~
27 OPC counsel without hearing by a screening panel.

1 (g)(2) Notification and appeal.

2 (g)(2)(A) When the OPC dismisses a complaint, it ~~OPC counsel shall~~ must:

3 (g)(2)(A)(i) notify the complainant ~~that it has dismissed the informal~~
4 ~~complaint;~~

5 (g)(2)(A)(ii) ~~and of such dismissal stating~~ the reasons ~~therefor~~
6 ~~dismissal;~~ and

7 (g)(2)(A)(iii) include a notice of the complainant's right to appeal an OPC
8 ~~decision to the Committee chair.~~

9 (g)(2)(B) The complainant may appeal ~~a~~the dismissal ~~by OPC counsel~~ by filing
10 written notice with the ~~Clerk of the~~ Committee ~~clerk~~ within 15 days after
11 ~~notification of~~ the dismissal ~~notification~~ is mailed. ~~The complainant has no other~~
12 ~~right of appeal in this chapter.~~ Upon

13 (g)(2)(C) On appeal, the Committee chair ~~shall~~will conduct a de novo review of
14 the file, either affirm the dismissal or require ~~the~~ OPC ~~counsel~~ to prepare a
15 ~~NOIC~~notice of the complaint, and set the matter for hearing by a screening panel.
16 ~~In the event of~~if the chair~~s~~ recusal~~es~~, the chair ~~shall~~will appoint the vice chair or
17 one of the screening panel chairs to review and determine the appeal.

Commented [LL58]: Recommendation 4.5. Added requirement that OPC include notice of complainant's right to appeal to the Committee chair.

Commented [LL59]: 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.")

Commented [LL60]: Recommendation 4.2 discontinue "NOIC"

1 **Rule** ~~(b)~~ **Proceedings before Committee and screening panels.**

2 ~~(a)(1)~~ **Review and investigation.** ~~In their role as~~ fact finders and investigators, screening
3 panels ~~shall~~ will review all ~~informal~~ complaints ~~the OPC referreds~~ to them ~~by OPC counsel,~~
4 including all ~~the~~ facts developed ~~by in~~ the ~~informal~~ complaint, answer, investigation, and
5 hearing, and ~~the~~ the OPC's recommendations ~~of OPC counsel.~~

6 **(b) OPC's summary.** ~~Prior to~~ Before any hearing, ~~the~~ OPC may file with the clerk and serve on
7 the respondent a summary of its investigation. If filed, the summary ~~shall~~ must identify with
8 particularity any additional violations of the Rules of Professional Conduct or Licensed Paralegal
9 Practitioner Rules of Professional Conduct as ~~subsequently~~ determined by ~~the~~ OPC after it
10 ~~serviced~~ respondent with the ~~notice of the complaint of the NOIC.~~ If ~~the~~ OPC provides ~~ed~~ to the
11 ~~summary to the~~ screening panel, ~~the~~ the OPC must also provide the summary ~~shall also be~~
12 ~~provided~~ to the respondent and ~~shall~~ the summary will serve as notice of any additional
13 violations ~~the OPC did~~ not previously charged ~~by OPC in the NOIC.~~ If ~~the~~ OPC alleges
14 additional rule violations ~~are alleged~~ in the summary, the summary ~~shall~~ must be served on the
15 respondent ~~no less than~~ at least seven days ~~prior to~~ before the hearing. In cases where a judicial
16 officer has not addressed or reported a respondent's alleged misconduct, the screening panel
17 ~~should~~ may not consider this inaction to be evidence either that misconduct has occurred or has
18 not occurred.

Commented [LL61]: Recommendation 4.2 discontinue NOIC

19 ~~(c)(2)~~ **Respondent's appearance.** ~~The screening panel must, with at least 30 days' notice,~~
20 ~~afford the respondent an opportunity to appear before the screening panel~~ Before taking any
21 action ~~is taken~~ that may result in ~~the recommendation~~ recommending of an admonition or public
22 reprimand, or ~~the~~ the OPC's filing of a ~~misconduct action in district court~~ formal complaint, the
23 screening panel ~~shall~~ must, upon at least 30 days' notice, afford the respondent an opportunity to
24 ~~appear before the screening panel.~~ Respondent and any witnesses ~~the respondent~~ called by the
25 respondent may testify, and respondent may present oral argument with respect to the ~~informal~~
26 complaint.

27 **(d) Respondent's brief.** Respondent may ~~also~~ submit a written brief to the screening panel at
28 least 10 days ~~prior to~~ before the hearing, which ~~shall~~ may not exceed 10 pages ~~in length~~ unless

1 ~~permission for enlargement is extended by~~ the panel chair or vice chair allows an extension for
2 good cause ~~shown~~. The OPC will forward A copy of the brief ~~shall be forwarded by OPC~~
3 ~~counsel to the complainant. If OPC identifies additional rule violations in the summary~~
4 ~~referenced in (b)(1), the respondent may file an additional written response addressing those~~
5 ~~alleged violations prior to the hearing.~~

Commented [LL62]: This is stated in (g) below. I'd recommend only stating it below.

6 ~~(e)(3)~~ **Complainant's appearance.** A complainant ~~shall~~ have the right to appear before the
7 screening panel personally and may testify, together with any witnesses the complainant call
8 ~~by the complainant, may testify.~~

9 ~~(f)(4)~~ **Right to hear evidence; cross-examination.** The complainant and ~~the~~ respondent ~~shall~~
10 have the right to be present during ~~the~~ presentation of ~~the~~ evidence unless excluded by the
11 screening panel chair for good cause ~~shown~~. Respondent may be represented by counsel, and
12 complainant may be represented by counsel or ~~some~~ an other representative. Either complainant
13 or respondent may request that the panel chair seek responses or pose questions to ~~from~~ the other
14 party at the hearing ~~by posing questions or areas of inquiry to be asked by the panel chair~~. Direct
15 cross-examination will ordinarily not be permitted ~~except~~ unless, upon request, ~~when~~ the panel
16 chair deems that it would materially assist the panel in its deliberations.

17 ~~(g)(5)~~ **Rule ~~V~~ violations ~~N~~not ~~C~~charged by the OPC.** During the screening panel hearing, but
18 not after, the panel may find that rule violations have occurred not previously charged by the
19 OPC ~~in the NOIC or summary memorandum have occurred~~. If so, the screening panel ~~shall~~ will
20 give ~~the~~ respondent a reasonable opportunity to respond during the hearing. The respondent may
21 address the additional charges at the hearing and also file with the Committee C clerk and serve
22 on the OPC within two business days of the hearing a written response to the new charges along
23 with supplemental materials related to the new charges. ~~Prior to~~ Before making a determination
24 or recommendation, the response and any supplemental materials ~~shall~~ must be reviewed and
25 considered by at least a quorum of the panel members present at the original hearing.

Commented [LL63]: Recommendation 4.2 discontinue NOIC

26 ~~(h)(6)~~ **Hearing Record.** The proceedings of any screening panel hearing ~~before a screening~~
27 ~~panel~~ under this ~~subsection (b)~~ rule ~~shall~~ will be recorded at an level of audio quality level that
28 permits an accurate transcription of the proceedings. The C clerk ~~shall~~ will assemble a complete

1 record of the proceedings and deliver it to the ~~chair of the~~ Committee chair upon the ~~rendering of~~
2 ~~the panel's~~ determination or recommendation to the Committee chair. The record of the
3 proceedings before the panel ~~shall must~~ be preserved for ~~not less than at least~~ one year ~~following~~
4 after delivery of the panel's determination or recommendation to the ~~chair of the~~ Committee
5 chair and for such additional period time as any further proceedings on the matter are pending or
6 might be instituted under this ~~section~~ rule.

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

11 ~~(i)(1)(b)(7)(A)~~ The preponderance of evidence ~~presented~~ does not establish that the
12 respondent ~~was~~ engaged in misconduct, in which case the screening panel will dismiss
13 the informal complaint ~~shall will be dismissed~~. A letter of caution may also be issued
14 with the dismissal. The letter ~~shall must~~ be signed by ~~OPC counsel or~~ the screening panel
15 chair or vice chair and ~~shall will~~ serve as a guide for the future conduct of the respondent.
16 The complainant ~~shall will also~~ be confidentially notified of the caution;

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

23 ~~(i)(2)(b)(7)(C)~~ The ~~informal~~ complaint ~~shall must~~ be referred to the Professionalism and
24 Civility Counseling Board established ~~pursuant to under~~ the Supreme Court's Standing
25 ~~Order No. 7~~ Rule 14-303;

26 ~~(i)(3)(b)(7)(D)~~ The ~~informal~~ complaint ~~shall must~~ be referred to the Committee chair with
27 an accompanying screening panel recommendation that the respondent be admonished;

1 (i)(4)~~(b)(7)(E)~~ The ~~informal~~-complaint ~~shall~~must be referred to the Committee chair with
2 an accompanying screening panel recommendation that the respondent receive a public
3 reprimand; ~~or~~

4 (i)(5)~~(b)(7)(F)~~ ~~The OPC must file~~A formal an action-complaint shall ~~must~~ be filed
5 ~~against in district court against~~ the respondent if the panel finds ~~there is~~-probable cause to
6 believe there are grounds for public discipline ~~and that~~ merit a discipline action~~formal~~
7 ~~complaint is merited.~~; or

8 (i)(6) ~~The OPC must file an action in district court~~ A formal complaint shall ~~must~~ also be
9 ~~filed~~ if the panel finds ~~there was~~-misconduct and the misconduct is similar to the
10 misconduct alleged in ~~a formal complaint~~an action against the respondent that has been
11 recommended by a screening panel or is pending in district court at the time of the
12 hearing.

13 (j)~~(b)(8)~~ **Aggravation and Mitigation.** The respondent and the OPC may present evidence and
14 argument as to mitigating and aggravating circumstances during the screening panel hearing, but
15 this evidence ~~shall~~will not be considered until after the panel has determined the respondent
16 engaged in misconduct.

17 (k)~~(b)(9)~~ **Multiple cases involving the same respondent.** More than one case involving the same
18 respondent may be scheduled before the same panel, but ~~if~~ in determining whether a rule has been
19 violated in one case, a screening panel ~~shall~~may not consider facts raised in other cases~~the fact it~~
20 ~~may be hearing multiple cases~~ against the same respondent.

21 (l)~~(b)(10)~~ **Recommendation of admonition or public reprimand.** A screening panel
22 recommendation that the respondent ~~should~~ be disciplined under ~~subsection-paragraph~~
23 ~~(b)(7)(D)~~(i)(3) or ~~(b)(7)(E)~~(i)(4) ~~shall~~must be in writing and ~~shall~~ state the substance and nature
24 of the ~~informal~~-complaint and defenses and the basis upon which the screening panel has
25 concluded, by a preponderance of the evidence, that the respondent ~~should~~ be admonished or
26 publicly reprimanded. The screening panel must deliver ~~A copy~~ies of the recommendation ~~shall~~
27 ~~be delivered~~ to the Committee chair, ~~and a copy served upon the~~ respondent, and the OPC.

1 **Rule (e) Exceptions to screening panel determinations and recommendations.**

2 **(a) Time to file.** Within 30 days ~~of~~ after the date of service of the screening panel's
3 determination ~~or recommendation: of the screening panel of a dismissal, dismissal with letter of~~
4 ~~caution, a referral to the Diversion Committee, a referral to the Professionalism Counseling~~
5 ~~Board, or the recommendation of an admonition, or the recommendation of a public reprimand,~~

6 (a)(1) the OPC may file ~~with the Clerk of the Committee~~ exceptions to the determination
7 or recommendation and may request a hearing, ~~and respondent will have 30 days to~~
8 ~~respond, and~~ The respondent shall then have 30 days within which to make a response,
9 ~~and the response shall include respondents exceptions, if any, to a recommendation of an~~
10 ~~admonition or reprimand.~~

11 (a)(2) Within 30 days after service of the recommendation of an admonition or public
12 ~~reprimand on respondent,~~ the respondent may file ~~with the Clerk of the Committee~~
13 exceptions to the determination or recommendation and may request a hearing, and the
14 OPC ~~shall will~~ have 30 days ~~within which to file a re~~ respond ~~sponse.~~

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

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

18 **(d) Requirements.** All exceptions ~~shall must~~ include a memorandum, not ~~to exceed~~ exceeding 20
19 pages, stating the grounds for review, the relief requested, and the bases in law or in fact for the
20 exceptions.

21 **(e) Procedure on exceptions.**

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

24 (e)(2) Hearing requested. If a request for a hearing is made, the Committee chair or a
25 screening panel chair designated by the Committee chair ~~shall will~~ serve as the
26 Exceptions Officer and hear the matter in an expeditious manner, with OPC counsel and

1 the respondent having the opportunity to be present and give an oral presentation. The
2 complainant need not appear personally.

3 (e~~d~~)(3) Transcript Request. Upon request the Committee chair ~~shall~~must extend the
4 deadlines for filing exceptions or responses ~~in order~~ to allow a party time to obtain a
5 transcript of the screening panel proceedings. The requesting party will bear ~~The costs~~ of
6 such transcript ~~shall be borne by the requesting party. The party obtaining the transcript~~
7 ~~shall and must~~ file it with the Committee ~~C~~lerk, together with an affidavit establishing
8 the transcript's chain of custody ~~of the record~~.

9 (e~~d~~)(4) Burden of proof. The party who files exceptions under ~~subsection (e)~~this rule
10 ~~shall have~~has the burden of showing that the determination or recommendation of the
11 screening panel is unsupported by substantial evidence or is arbitrary, capricious, legally
12 insufficient, or otherwise clearly erroneous.

13 (e~~d~~)(5) Record on exceptions. The proceedings of any hearing on exceptions under this
14 ~~subsection (d)~~rule shallmust be recorded at a level of audio quality that permits an
15 accurate transcription of the proceedings.

16

1 **Rule** ~~(g)~~ **General procedures.**

Commented [LL64]: Moved from 14-510(g).

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

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

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

1 **Rule _____ (e) Final Committee disposition.**

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

Commented [LL65]: Recommendation 5.9

12 **(b) Public reprimand.** If the screening panel recommends a public reprimand, the respondent
13 must, within 30 days:

14 (b)(1) accept the public reprimand,

15 (b)(2) file an exception with the Committee chair with the right to appeal the ruling on
16 the exception, or

17 (b)(3) elect a trial de novo with the district court by notifying the Committee chair.

Commented [LL66]: Recommendation 5.10

1 **Rule (f) ~~Appeal of~~ Appealing a final Committee determination.**

2 (a)(1) Within 30 days after the Committee chair services of a final, written ~~determination~~
3 ~~disposition, of the Committee chair under subsection (e),~~ the respondent or OPC may ~~file a~~
4 ~~request for review~~ appeal the disposition to the Supreme Court and ask the Court ~~by the Supreme~~
5 ~~Court seeking to reverse~~ or modification of the final ~~Committee determination-disposition~~
6 ~~of the Committee. A request for review~~ An appeal under this ~~subsection~~ rule ~~shall~~ is only be
7 available in cases where exceptions have been filed ~~under subsection (e).~~ Until the time for
8 filing an appeal expires, ~~Dissemination of disciplinary information pursuant to Rules 14-~~
9 ~~504(b)(13) or 14-516 shall~~ will be automatically stayed ~~during the period within which a request~~
10 ~~for review may be filed under this subsection.~~ If a timely ~~request for review~~ appeal is filed, the
11 stay ~~shall~~ will remain in place pending the Supreme Court's resolution ~~by the Supreme Court~~
12 unless the Court orders otherwise ~~orders.~~

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

17 (c)(3) A party requesting a transcription of the record below ~~shall~~ will bear the costs. The party
18 obtaining the transcript ~~shall~~ must file it with the appellate clerk ~~Clerk of the Court~~, together with
19 an affidavit establishing the transcript's chain of custody ~~of the record.~~

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

21 (e)(5) The party requesting review ~~shall have~~ has the burden of demonstrating that the
22 Committee action was:

23 (e)(15)(A) ~~B~~ based on a determination of fact ~~that is~~ not supported by substantial
24 evidence when viewed in light of the whole record before the Court;

25 (e)(25)(B) ~~A~~ an abuse of discretion;

26 (e)(35)(C) ~~A~~ arbitrary or capricious; or

(e)(4)(D) Contrary to [Chapter 11](#), Articles 5 and ~~Chapter 14, Article 6~~ of ~~Chapter 14~~
of the [Supreme Court](#) Rules of Professional Practice ~~of the Supreme Court~~.

1
2
3

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~~ setting forth in plain and concise language the facts upon which the
6 ~~charge of unprofessional conduct is based and the applicable provisions of the Rules of~~
7 ~~Professional Conduct.~~ The Committee chair must be given notice of the screening panel
8 recommendation and a copy of the pleadings. ~~formal complaint shall be signed by the Committee~~
9 ~~chair or, in the chair's absence, by the Committee vice chair or a screening panel chair~~
10 ~~designated by the Committee chair.~~

Commented [LL67]: Recommendation 5.11

11 (b) **Venue.** The action ~~shall~~ must be brought ~~and the trial shall be held:~~

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

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

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

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

21 (d)(1) Notice of change.

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

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

25 (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 ~~shall~~will promptly send the notice to
18 the Chief Justice of the Supreme Court, who ~~shall~~will determine whether the notice is
19 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

Commented [LL68]: Recommendation 8.4

1 in aggravation and mitigation, and ~~shall~~will ~~within five days thereafter,~~ enter an order
2 sanctioning the respondent. Upon reasonable notice to the parties, the court, at its discretion, may
3 hold the sanctions hearing immediately after the misconduct proceeding.

4 (g) **Review.** Either the OPC or respondent may file with ~~Any discipline order by the district court~~
5 ~~may be reviewed by~~ the Supreme Court ~~through~~ a petition ~~for~~to review ~~pursuant to the Utah~~
6 ~~Rules of Appellate Procedure~~the discipline order.

7

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

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

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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 14-530. 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.** ~~The OPC counsel shall~~will not be deemed to have prevailed
6 in 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 14-512. 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~~ are 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 will~~ will 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.

Commented [LL69]: This is unnecessary, especially after we combine Articles 5 and 6.

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

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

5 ~~(b) Service of other papers. Service of any other papers or notices required by this article shall~~
6 Serving documents on respondent in connection with an action must be made in accordance with
7 the Utah Rules of Civil Procedure.

8

9

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 and disability ~~actions~~ actions.

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

Commented [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~~ Either party may request a stay
16 ~~of an~~ formal action or ~~a~~ disability proceeding ~~may be stayed~~ because of substantial similarity to
17 the material allegations of a pending criminal, civil, or disciplinary action.

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,

1 ~~or~~ a lawyer employed by the Utah State Bar, ~~or a member of the Board shall be assigned by the~~
2 ~~Chair to a screening panel.~~ The ~~chair of the~~ assigned panel ~~chair shall will~~ review the ~~informal~~
3 complaint and any additional material, ~~if any,~~ that the screening panel chair asks the respondent
4 to provide.

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

8 ~~(f)(1)(A) frivolous~~ or unintelligible;

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

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

12 ~~(f)(1)(D) unsupported by fact or~~ ~~which~~ does not raise probable cause of any
13 unprofessional conduct, ~~shall be dismissed without hearing by a screening 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 within 15 days after notification of the
18 dismissal is mailed.

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

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

Draft: April 1, 2020

1

79

1 **Diversion.**

2 **Rule 14-533** . **Diversion referrals, authority, and responsibilities.**

Commented [LL71]: Recommendation 6.1

3 (a) **Referral to diversion.** In a matter involving ~~less serious misconduct as outlined in~~
4 ~~subsection rule {NEXT RULE—Circumstances warranting diversion} (e), upon receipt of an~~
5 ~~informal~~ upon receiving a complaint and before filing ~~an action-formal complaint,~~ the respondent
6 may have the option of electing to have the matter referred to diversion, the appropriateness of
7 which the OPC ~~will be determined by the chair of the Diversion Committee after consultation~~
8 ~~with OPC. The option for diversion also may be initiated by OPC or the Ethics and Discipline~~
9 ~~Committee screening panel. (b) Diversion Committee.~~

Commented [LL72]: Paragraph (c) actually defines only serious misconduct. It isn't until paragraph (d) that it elaborates on what qualifies as less serious misconduct.

Commented [LL73]: Recommendation 6.2 eliminate diversion committee

Commented [LL74]: Recommendation 6.2 eliminate diversion committee

10 ~~(b)(1) Composition. Members of the Diversion Committee shall be appointed by the Supreme~~
11 ~~Court. The committee shall consist of five members, four of whom shall be members of the Bar~~
12 ~~who have demonstrated a high standard of professional conduct, preferably with at least~~
13 ~~one Bar member having past experience on the Supreme Court Ethics and Discipline Committee,~~
14 ~~and one public member with professional training in the area of substance abuse and/or stress~~
15 ~~management. All appointments shall be for four-year terms with one of the lawyers' terms~~
16 ~~expiring each year. Committee members shall not serve more than two consecutive terms. The~~
17 ~~Supreme Court shall designate one of the Bar members as committee chair.~~

18 ~~(b)(2) Authority and responsibility.~~ The ~~Diversion Committee~~ OPC may negotiate and execute
19 diversion contracts, assign monitoring to a lawyers or licensed paralegal practitioner assistance
20 program, determine of the lawyer ~~compliance~~ with the ~~terms of~~ diversion contracts, ~~and~~
21 determine if the lawyer ~~fulfilled~~ ment or ~~any materially~~ ~~breached the of~~ diversion contracts,
22 ~~subject to review under subsection (j)(3) of this rule,~~ and adopt such policies and procedures as
23 may be appropriate to accomplish its duties under this rule. The ~~Diversion Committee~~ OPC ~~shall~~
24 ~~have~~ has authority to establish subcommittees of volunteer attorneys and other professionals for
25 the specific purpose of monitoring the compliance of any attorney under diversion and reporting
26 compliance to the OPC, ~~and the Diversion Committee on a regular basis.~~

Commented [LL75]: Recommendation 6.2 eliminate diversion committee

Commented [LL76]: Recommendation 6.2 eliminate diversion committee

Commented [LL77]: Recommendation 6.2: designating a monitor for compliance who will be responsible to report to OPC.

27 ~~(e) Notice to complainant.~~ The OPC will notify the complainant, if any, of the proposed
28 decision to refer the respondent to diversion, and the complainant may submit written comments.

1 The complainant will be notified when the complaint is diverted and when the complaint is
2 dismissed. All notices will be sent to the complainant's address of record on file with the OPC.
3 Such decision to divert or dismiss is not appealable.

4 ~~(d)~~ (d) **Effect of ~~non-participation~~ not participating in diversion.** The respondent has the right
5 to decline to participate in diversion. If the respondent chooses not to participate in diversion, the
6 matter proceeds ~~pursuant to the Rules of Lawyer Discipline and Disability~~ under these rules.

7

8

1 **Rule** Circumstances warranting diversion.

2 (a) ~~Less serious~~ **Prohibited misconduct.** Conduct ~~which may only be considered less serious~~
3 ~~misconduct warranting diversion if it does not~~ **would** result in a suspension or
4 ~~disbarment or delicensure is not considered to be less serious misconduct.~~ Conduct is not ordinarily
5 considered less serious misconduct if any of the following considerations apply:

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- 6 (a)(1) the misconduct involves the misappropriation of client funds;
- 7 (a)(2) the misconduct results in or is likely to result in substantial prejudice to a client or
8 other person, absent adequate provisions for restitution;
- 9 (a)(3) the respondent has been sanctioned in the last three years;
- 10 (a)(4) the misconduct is of the same nature as misconduct for which the respondent has
11 been sanctioned in the last three years;
- 12 (a)(5) the misconduct involves dishonesty, deceit, fraud, or misrepresentation;
- 13 (a)(6) the misconduct constitutes a substantial threat of irreparable harm to the public; a
14 felony; or a misdemeanor which reflects adversely on the respondent's honesty,
15 trustworthiness or fitness as a lawyer; or
- 16 (a)(7) the misconduct is part of a pattern of similar misconduct.

17 (b) **Factors for consideration.** ~~The Diversion Committee~~ **OPC** considers ~~the following~~ **these**
18 factors in negotiating and executing the diversion contract:

Commented [LL78]: Recommendation 6.2 eliminate diversion committee

- 19 (b)(1) whether in the OPC's opinion, the presumptive sanction that would be imposed;
20 ~~in the opinion of OPC or the Diversion Committee~~ is likely to be no more severe than a
21 public reprimand or private admonition;
- 22 (b)(2) whether participation ing in diversion is likely to improve the respondent's future
23 professional conduct and accomplish the goals of lawyer discipline;
- 24 (b)(3) whether aggravating or mitigating factors exist; and
- 25 (b)(4) whether diversion was already tried.

Commented [LL79]: Recommendation 6.2 eliminate diversion committee

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Rule _____ ~~(f)~~ Diversion contract.

~~(a)(1)~~ Contract requirements.

~~(a)(1) If the respondent agrees or elects to participate in diversion as provided by this rule, the terms of the diversion shall must be set forth in a written contract. If the contract is entered prior to a hearing of a screening panel of the Ethics and Discipline Committee pursuant to Rule 14-510(b), the The contract shall will be between the respondent and the OPC. If diversion is agreed to and entered after a screening panel of the Ethics and Discipline Committee has convened pursuant to Rule 14-510(b), the contract shall be made as part of the decision of that screening panel. OPC will memorialize the contract and decision. If diversion is agreed to and entered after a complaint has been filed pursuant to Rule 14-512, the diversion contract shall be made as part of the ruling and order of the Court.~~

~~(a)(2) Except as otherwise part of an order of a court, the Diversion Committee shall must monitor and supervise the conditions of diversion and the terms of the diversion contract. The OPC~~

Commented [LL80]: Recommendation 6.2 eliminate diversion committee

~~(a)(3) The contract shall must specify the program(s) to which the attorney will ~~shall~~ be diverted, the general purpose of the diversion, the manner in which compliance is to be monitored, and any requirement for payment of restitution or cost.~~

~~(a)(4) The respondent ~~attorney shall~~ will bear the burden of drafting and submitting the proposed diversion contract. Respondent may ~~utilize~~ use counsel to assist in the negotiation phase of diversion. Respondent may also request that the OPC draft the proposed diversion contract~~

~~(a)(5) Respondent may also ~~utilize Bar~~ use benefits programs provided by the Bar, such as a lawyer or licensed paralegal practitioner assistance program to assist in developing terms and conditions for the diversion contract appropriate to that respondent’s particular situation. Use of a lawyer ~~’s~~ or licensed paralegal practitioner assistance program to assess~~

1 appropriate conditions for diversion ~~shall~~will not conflict that entity from providing
2 services under the contract.

3 ~~(a)(6)~~ The terms of each contract ~~shall~~must be specifically tailored to the respondent's
4 individual circumstances. The contract is confidential and its terms ~~shall~~may not be
5 disclosed to anyone other than the parties to the contract.

6 ~~(b)(2)~~ **Contract terms.** All diversion contracts must contain at least ~~all the following~~:

7 ~~(b)(12)(A)~~ the signatures of respondent, ~~his~~respondent's counsel (if any), and the ~~chair~~
8 ~~of the Diversion Committee~~OPC;

9 ~~(b)(2)(B)~~ the terms and conditions of the plan for respondent and, the identity, if
10 appropriate, of any service provider, mentor, monitor and/or supervisor and that
11 individual's specific responsibilities. If respondent uses a professional or service ~~is~~
12 ~~utilized~~, and it is necessary to disclose confidential information, respondent must sign a
13 limited conditional waiver of confidentiality permitting the professional or service to
14 make the necessary disclosures ~~in order~~ for the respondent to fulfill ~~their~~his duties under
15 the contract;

16 ~~(b)(32)(C)~~ the necessary terms providing for oversight of ~~fulfillment of~~fulfilling the
17 contract terms, including provisions for those involved to report any alleged breach of the
18 contract to the OPC;

19 ~~(b)(42)(D)~~ the necessary terms providing that respondent will pay all costs incurred in
20 connection with the contract and those costs further specified ~~pursuant to~~under
21 ~~subsection~~rule (Diversion costs) and any costs associated with the complaints to be
22 deferred; and

23 ~~(b)(2)(5E)~~ a specific acknowledgement that a material violation of a contract term
24 renders the respondent's participation in diversion voidable by the ~~chair of the Diversion~~
25 ~~Committee or his designee~~OPC;

26 ~~(c)(3)~~ **Amendments.** The contract may be amended if ~~on subsequent agreement of the~~
27 respondent and the OPC agree.

Commented [LL81]: Recommendation 6.2

Commented [LL82]: Recommendation 6.2

1 ~~(f)(4) The chair of the Ethics and Discipline Committee and OPC shall be given copies of every~~
2 ~~diversion contract entered and signed by the respondent and the Diversion Committee chair.~~

3 ~~(g) Affidavit supporting diversion. A diversion contract must be supported by the respondents~~
4 ~~or the respondents lawyer's affidavit or declaration as approved by the Diversion Committee setting~~
5 ~~forth the purpose for diversion and how the specific terms of the diversion contract will address~~
6 ~~the allegations raised by the complaint. The respondent is not required to admit to the allegations~~
7 ~~in the complaint upon entering diversion. However, an admission and/or acknowledgement may~~
8 ~~be relevant and necessary as part of treatment in diversion. Such an admission shall be~~
9 ~~confidential for treatment purposes, shall not be released to any third party, and shall not be~~
10 ~~treated as an admission against interest nor used for future prosecution should diversion fail.~~

11 ~~(h)~~(d) **Status of complaint.** After a diversion contract is executed by the respondent, the
12 disciplinary complaint is deferred pending successful completion of the contract.

13

1 Rule Respondent's participation.

2 Diversion may require the respondent's participation ~~of the respondent~~ in one or more of the
3 following:

4 (a)~~(1)~~ fee arbitration;

5 (b)~~a~~(2) mediation;

6 (c)~~a~~(3) law office management assistance;

7 (d)~~a~~(4) lawyer or licensed paralegal practitioner assistance programs;

8 (e)~~a~~(5) psychological and behavioral counseling;

9 (f)~~a~~(6) monitoring;

10 (g)~~a~~(7) restitution;

11 (h)~~a~~(8) continuing legal education programs including, but not limited to, ethics school;

12 or

13 (i)~~a~~(9) any other program or corrective course of action to address the respondent's
14 conduct.

15

1 **Rule (j) Termination of diversion.**

2 **(a) (j)(1) Fulfillment of the contract.** The contract terminates when the respondent ~~has~~
3 fulfilled the contract ~~terms of the contract~~ and gives the Diversion Committee and OPC an
4 affidavit or declaration demonstrating fulfillment. Upon ~~receipt of~~ receiving this affidavit or
5 declaration, the ~~Diversion Committee and~~ OPC must acknowledge receipt and ~~request that the~~
6 ~~chair of the Ethics and Discipline Committee or his designee~~ dismiss any complaint(s) deferred
7 pending successful completion of the contract or notify the respondent that fulfillment of the
8 contract is ~~disputed~~ terminated based on an OPC claim of material breach. ~~The complainant~~
9 ~~cannot appeal the dismissal.~~ Determinations under this rule are not subject to further review and
10 are not reviewable in any proceeding. Successfully ~~completing~~ completion of the contract is a bar to any
11 further disciplinary proceedings based on the same allegations and successfully ~~completion of~~
12 diversion ~~shall~~ may not constitute a form of discipline.

13 **(b) (j)(2) Material breach.** ~~A material~~ Materially ~~breaching of~~ the contract is cause for
14 ~~terminating~~ on of the contract. After a material breach, the OPC must notify the respondent of the
15 alleged breach and intent to terminate the diversion. Thereafter, disciplinary proceedings may be
16 instituted, resumed, or reinstated.

17 ~~(j)(3) Review by the chair. The Diversion Committee may review disputes regarding the alleged~~
18 ~~material breach of any term of the contract on the request of the respondent or OPC. The request~~
19 ~~must be filed with the Diversion Committee chair within 15 days of notice to the respondent of~~
20 ~~the determination for which review is sought. The respondent is entitled to a hearing before the~~
21 ~~Diversion Committee on any alleged breach to the diversion contract. Determinations under this~~
22 ~~section are not subject to further review and are not reviewable in any proceeding.~~

Commented [LL83]: Recommendation 6.2

1 Rule ~~(*)~~ Diversion Costs.

2 ~~Upon entering diversion, r~~Respondent ~~shall~~must pay an initial fee of \$250 upon entering
3 diversion. During diversion, respondent ~~shall~~must pay a monthly fee of \$50 ~~per month~~. All such
4 fees are payable to the Bar's general fund. ~~These fees may be waived upon a hardship request,~~
5 ~~the validity or appropriateness of which shall be determined by the chair of the Diversion~~
6 ~~Committee or his designee.~~

7

1 Discipline.

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

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

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

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

8 (c) be publicly disciplined in another jurisdiction;

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

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

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

Commented [LL84]: Recommendations 4.3 & 4.4

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~~ es 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 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 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:

Commented [LL85]: 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 and Civility Counseling Board pursuant to
18 Rule 14-510 (a)(4) or (b)(6)(C-), ~~in the which~~ event ~~of such a referral~~, OPC counsel,
19 ~~members of the~~ Committee members, ~~and of any~~ screening panel members, and ~~members~~
20 ~~of the~~ 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~~ Upon the filing ~~of of an action~~ formal complaint in a discipline
24 matter or, the filing of a petition for reinstatement or relicensure, or the filing of a motion or
25 petition for interim suspension, the proceedings are public, except as provided in paragraph (d)
26 below.

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

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

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

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

16 (f) **Notice to the respondent.** Except as provided in paragraph (g), if the Committee decides to
17 provide nonpublic information requested pursuant to paragraph (e), and if the respondent has not
18 signed an express written waiver permitting the party requesting the information to obtain the
19 nonpublic information, the respondent ~~shall~~ must be notified in writing at the respondent's ~~last~~
20 ~~known designated~~ mailing address as shown by Bar records of ~~that~~ the information ~~which~~ that has
21 been requested and by whom, together with a copy of the information proposed to be released.

22 The notice ~~shall~~ must advise the respondent that the information ~~shall~~ will be released ~~at the end~~
23 ~~of~~ 21 days ~~following after the notice's~~ mailing ~~of the notice~~ unless the respondent objects to the
24 disclosure. If the respondent timely objects to the disclosure, the information ~~shall~~ must remain
25 confidential unless the requesting party obtains a court order authorizing its release.

26 (g) **Release without notice.** If a requesting party as outlined in paragraph (e) ~~(2)~~ has not obtained
27 an express written waiver from the respondent to obtain nonpublic information, and requests that

Commented [LL86]: Replaced with 11-501(2)(C)

1 the information be released without giving notice to the respondent, the requesting party ~~shall~~
2 must certify that:

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

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

6 (g)(3) ~~disclosure of~~disclosing the existence of the investigation to the respondent would
7 seriously prejudice that investigation.

8 (h) Disclosure without notice. ~~⊖~~The OPC can may disclose nonpublic information without
9 notice to the respondent if:

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

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

13 (i) ~~Duty of P~~participants' duty. OPC counsel, OPC ~~employees~~staff, the Committee, Committee
14 volunteers, Committee staff, Committee employees, special counsel appointed pursuant to Rule
15 14-517(f), and special counsel employees or assistants in a proceeding under these rules ~~shall~~
16 ~~conduct themselves so as to~~must maintain confidentiality. ~~Except as~~Unless otherwise authorized
17 ~~by other statutes or rules~~, persons receiving private records under paragraph (e) will not provide
18 access to the records to anyone else.

19

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~~ relicensures, and certified copies of judgments of conviction to the
5 disciplinary enforcement agency of every other jurisdiction in which the respondent is
6 ~~admitted~~licensed, and to the American Bar Association's National Lawyer Regulatory Database
7 ~~maintained by the American Bar Association.~~

8 (b) **Notice to the public.** The ~~executive director~~ OPC shall ~~will~~ publish ~~cause~~ notices of
9 admonition, public reprimand, suspension, disbarment, delicensure, resignation with discipline
10 pending, transfer to disability status, and petitions for reinstatement or ~~readmission~~ relicensure 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~~ relicensure to all Utah state
21 courts for licensed paralegal practitioners and both Utah state and federal courts ~~in Utah~~ for
22 lawyers.

Commented [LL87]: 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 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 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.

19 (b)(1) If an order is entered:

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

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

24 (b)(2) If an order for interim discipline is not obtained, the OPC must dismiss the interim
25 action and will process the matter as it does any other information coming to the OPC's
26 attention.

Commented [LL88]: Recommendations 7.1 and 7.3

Commented [LL89]: Recommendation 7.3 (permit OPC to request and Court to impose other types of interim orders to protect the public)

Commented [LL90]: Recommendation 7.3

Commented [LL91]: I think this may not be necessary.

- 1 (c) **Notice to clients.** A respondent ~~suspended~~subject to interim discipline pursuant to paragraph
2 (b) ~~shall~~must comply with the notice requirements in Rule 14-526 as ordered by the district
3 court.
- 4 (d) **Motion ~~for dissolution of~~to dissolve or modify interim ~~suspension~~discipline.** On ~~two~~48
5 hours~~days~~ notice to the OPC ~~counsel~~, a respondent suspended pursuant to paragraph (b) may
6 appear and move ~~for dissolution or modification of the~~to dissolve or modify the order of
7 ~~suspension~~discipline, and ~~in that event, the~~such motion ~~shall~~will be heard and determined as
8 expeditiously as ~~the ends of~~ justice requires.

9

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

Commented [LL92]: Recommendation 7.4

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 forof any felony or of anymisdemeanor ~~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 the OPC; — within 30 days after the judgment of ~~guilt~~conviction, — ~~transmit a~~
7 ~~certified 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 misdemeanorcrime ~~which that~~
10 reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer, ~~the OPC shall~~
11 must determine whether the crime warrants interim suspension. Upon a determination that the
12 crime warrants interim suspension, ~~the OPC shall~~must file a suspension ~~formal~~
13 ~~complaint~~action, accompanied by the certified copy of the judgment ~~of conviction,~~ and
14 concurrently file a motion for immediate interim suspension. ~~A~~ suspension action ~~is~~
15 ~~commenced~~commences under this rule when both the petition for interim suspension and the
16 ~~formal~~complaint are filed. The respondent may assert any jurisdictional deficiency ~~which~~
17 establishingestablishes that the interim suspension may not properly be ordered, such as ~~that~~the
18 crime is not a felony or a misdemeanor ~~which that~~does not reflect adversely on the respondent's
19 honesty, trustworthiness, or fitness as a lawyer, or that the respondent is not the individual found
20 guiltyconvicted. ~~The respondent is not entitled to an evidentiary hearing but may request an~~
21 informal hearing, solely to determine whether the finding or admission of guilt was for a felony
22 or misdemeanor that reflects adversely on the respondent's honesty, trustworthiness, or fitness to
23 practice law. If an order for interim suspension is not obtained, the OPC must dismiss the ~~formal~~
24 ~~complaint~~suspension action ~~shall and must be dismissed and OPC counsel shall~~will process the
25 matter as it does any other information coming to the OPC's attention ~~of the OPC.~~

Commented [LL93]: Recommendation 7.4

26 (c) **Imposition.** The district court ~~shall~~will place a respondent on interim suspension upon proof
27 that the respondent has been found guiltyconvicted 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 anythe pendency ~~ing~~ of any appeal.

- 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
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 a 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~~before **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 complaintmisconduct 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 ~~the~~ OPC~~-counsel~~, who ~~shall~~will then forward the proposal to the
19 district court with a recommendation favoring or opposing the proposal and a statement of the
20 basis for such recommendation. The district court ~~shall~~will either approve or reject the proposal.
21 If the district court approves the proposal and the stated form of discipline includes public
22 discipline, it ~~shall~~will enter the appropriate disciplinary order as provided in paragraph (d). If the
23 district court rejects the proposal, the proposal and conditional admission ~~shall~~will be withdrawn
24 and cannot 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;

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

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

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

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

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

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

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

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

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

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

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

Commented [LL94]: Note from OPC: Because this provision is reserved in the current LPP rule set, the mechanism for resignation for discipline pending is only provided for attorneys. Once the sections are combined, it should be made clear that it only applies to licensed lawyers unless the intent is for it to apply to LPPs as well.

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

4 (e) A respondent whose resignation is accepted must comply with Rule 14-525 and may not
5 apply for ~~readmission~~^{relicensure} until five years after the effective date of the resignation unless
6 the Supreme Court orders otherwise in ~~the~~^{its} order accepting the resignation.

7

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

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

Commented [LL95]: Recommendation 4.7

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~~ licensed 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, the 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 the OPC, within 30 days from service
20 of the notice, of any claim by the lawyer predicated ~~upon~~ the grounds set forth in
21 paragraph (d), that the imposition of the equivalent discipline or transfer in Utah would
22 be ~~unwarranted, and~~ unwarranted and stating the reasons for that claim.

Commented [LL96]: Committee/Court need to decide whether this should be deleted. Question about which jurisdiction's "equivalent" discipline should be imposed?

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

1 the equivalent discipline or transfer to be imposed in this jurisdiction, unless it clearly appears
2 ~~up~~ on the face of the record from which the discipline or transfer is predicated that:

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

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

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

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

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

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

18

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, ~~the shall~~ OPC must file a petition with the district court for
6 the immediate transfer of the lawyer to disability status for an indefinite period until further order
7 of the district court. ~~The OPC must serve a~~ A copy of the order ~~shall be served by OPC counsel~~
8 ~~up~~ on the lawyer or the lawyer's guardian or, if no guardian or legal representative has been
9 appointed, ~~up~~ on 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

1 the lawyer if the lawyer is without adequate representation. The district court may take or direct
2 whatever action it deems necessary or proper to determine whether the lawyer is so
3 incapacitated, including designating qualified experts to~~the examination~~ of the lawyer by
4 ~~qualified experts designated by the district court.~~ If, ~~upon due consideration of the matter,~~ the
5 district court concludes that the lawyer is incapacitated from continuing to practice law, it ~~shall~~
6 will enter an order transferring the lawyer to disability status for an indefinite period and until the
7 further order ~~of the district court.~~ Any pending disciplinary proceedings against the lawyer ~~shall~~
8 will be held in abeyance.

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

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

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

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

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

1 (d)(5) Learning in law; Bar Examination. The district court may also direct that the
2 lawyer establish proof of competence and learning in law, which proof may include the
3 Bar's certification by the Bar of that the lawyer has successfully completed of an
4 examination for admission to practice relicensure.

5 (d)(6) Granting petition for transfer to active status. The district court ~~shall~~will grant the
6 petition for transfer to active status ~~upon~~ a showing by clear and convincing evidence that
7 the disability has been removed.

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

Commented [LL97]: Note from OPC: The principle behind the two is the same. However, the actual examination will be different and it should be noted in the updates.

Larissa's response: could we rephrase it as an examination for relicensure? I'm not sure if this is just the original Bar exam or something else?

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

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~~delicensure
4 or 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~~delicensure, suspension, or transfer to disability status, the respondent
8 ~~shall~~may not accept any new retainer or employment as a lawyer in any new case or legal matter;
9 ~~provided, however, except~~; that during any period between the date an order is entered ~~of entry of~~
10 ~~an order~~ and its effective date, the respondent may, with the consent of the client after full
11 disclosure, wind up or complete any matters pending on the date the order is entered ~~of entry of~~
12 ~~the order~~.

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

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

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19 (b)(2) notify each client that, in the absence of co-counsel, the client should obtain a new
20 lawyer, calling attention to the urgency to seek new counsel, particularly in pending
21 litigation;

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

26 (b)(4) refund any part of any fee paid in advance that has not been earned as of the
27 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~~
3 ~~delicensure~~ or suspension and consequent disqualification to further participate as a
4 lawyer in the matter;

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

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

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

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

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1 Sanctions.

2 ~~Rule 14-601 Article 6. Standards for Imposing Lawyer Sanctions~~

3 ~~Rule 14-601. Definitions.~~

4 ~~As used in this article:~~

5 (a) ~~“complainant” means the person who files an informal complaint or the OPC when the OPC~~
6 ~~determines to open an investigation based on information it has received;~~

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

9 (c) ~~“informal complaint” means any written, notarized allegation of misconduct by or~~
10 ~~incapacity of a lawyer;~~

11 (d) ~~“injury” means harm to a client, the public, the legal system, or the profession which results~~
12 ~~from a lawyer’s misconduct. The level of injury can range from “serious” injury to “little or no”~~
13 ~~injury; a reference to “injury” alone indicates any level of injury greater than “little or no” injury;~~

14 (e) ~~“intent” means the conscious objective or purpose to accomplish a particular result;~~

15 (f) ~~“knowledge” means the conscious awareness of the nature or attendant circumstances of the~~
16 ~~conduct but without the conscious objective or purpose to accomplish a particular result;~~

17 (g) ~~“negligence” means the failure of a lawyer to heed a substantial risk that circumstances exist~~
18 ~~or that a result will follow, which failure is a deviation from the standard of care that a~~
19 ~~reasonable lawyer would exercise in the situation;~~

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

23 (i) ~~“respondent” means a lawyer subject to the disciplinary jurisdiction of the Supreme Court~~
24 ~~against whom an informal or formal complaint has been filed; and~~

25 (j) ~~“Rules of Professional Conduct” means the Utah Rules of Professional Conduct (including~~
26 ~~the accompanying comments) initially adopted by the Supreme Court in 1988, as amended from~~
27 ~~time to time.~~

Commented [LL98]: 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.~~

Commented [LL99]: 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 (e) **Public nature of lawyer discipline proceedings.** The ~~U~~ultimate disposition of lawyer
12 discipline ~~shall~~will be public in cases of ~~disbarment delicensure~~, suspension, and reprimand; and
13 nonpublic in cases of admonition.

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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
23 in 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.

Draft: April 1, 2020

1

112

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.

Commented [LL100]: Who finds/acknowledges? The Court? OPC? The disciplined lawyer?

4 (b) ~~Disbarment~~Delicensure. ~~Disbarment~~Delicensure terminates the individual's status as a
5 lawyer. A lawyer who has been ~~disbarred~~delicensed may be ~~readmitted~~relicensed as provided in
6 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 i~~n no event
10 should the time ~~period prior to~~before application for reinstatement be more than three years.

11 ~~(c)(1) A lawyer who has been suspended for six months or less may be reinstated as set~~
12 ~~forth in Rule 14-524.~~

13 ~~(c)(2) A lawyer who has been suspended for more than six months may be reinstated as~~
14 ~~set forth in Rule 14-525.~~

Commented [LL101]: Redundant of Rule 14-525

15 (d) **Interim suspension or interim discipline.** Interim suspension ~~is the~~temporary
16 suspension of a lawyer from the practice of law. Interim suspension or interim discipline may
17 be imposed as set forth in Rules 14-518 and 14-519.

18 (e) **Reprimand.** Reprimand is public discipline ~~which that~~ declares the lawyer's conduct ~~of the~~
19 ~~lawyer~~ improper, but does not limit the lawyer's right to practice law.

20 (f) **Admonition.** Admonition is nonpublic discipline ~~that which~~ declares the conduct of the
21 lawyer improper, but does not limit the lawyer's right to practice law.

22 (g) **Probation.** Probation ~~is a sanction that~~ allows a lawyer to practice law under specified
23 conditions. Probation ~~can may~~ be public or nonpublic, ~~can be~~ imposed alone or in conjunction
24 with other sanctions, and ~~can be~~ imposed as a condition of readmission or reinstatement or
25 relicensure.

Commented [LL102]: Recommendation 7.2

Commented [LL103]: Note from OPC: Should this new probation language apply to LPPs as well as attorneys? Concerns with (g)(1)(E), (g)(2)(E), and (g)(2)(K) specifically.

26 (g)(1) A respondent may be placed on probation if they can demonstrate that they:

1 (g)(1)(A) can perform legal services and the continued practice of law will not
2 cause the courts or the profession to fall into disrepute;

3 (g)(1)(B) are unlikely to harm the public during the period of rehabilitation and
4 the necessary conditions of probation can be adequately supervised;

5 (g)(1)(C) have a disability which is temporary or minor and does not require
6 treatment and transfer to disability status;

7 (g)(1)(D) have not committed acts involving dishonesty, fraud, deceit, or
8 misrepresentation; and

9 (g)(1)(E) have not committed acts warranting ~~disbarment~~ ~~delicensure~~.

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10 (g)(2) Probation may include, but is not limited to, the following conditions:

11 (g)(2)(A) no further violations of the Rules of Professional Conduct or Licensed
12 Paralegal Practitioner Rules of Professional Conduct;

13 (g)(2)(B) restitution;

14 (g)(2)(C) assessment of costs;

15 (g)(2)(D) limitation on practice;

16 (g)(2)(E) requirement that the lawyer pass the Multistate Professional
17 Responsibility Exam;

18 (g)(2)(F) requirement that the lawyer take continuing legal education courses;

19 (g)(2)(G) mental health counseling and treatment;

20 (g)(2)(H) abstinence from drugs and alcohol;

21 (g)(2)(I) medical evaluation and treatment;

22 (g)(2)(J) periodic reports to the court and the OPC; and

23 (g)(2)(K) monitoring of all or part of respondent's work by a supervising attorney.

1 (g)(3) The respondent is responsible for all costs of evaluation, treatment, and
2 supervision. Failing to pay these costs before probation terminates is a violation of
3 probation.

4 (g)(4) A respondent may terminate their probation by filing with the district court and
5 serving on the OPC an affidavit stating that the respondent has fully complied with the
6 requirements of the probation order. The OPC may file an objection and thereafter the
7 court will conduct a hearing.

8 (g)(5) Violations. If during the period of probation, the OPC receives information that
9 any probation term has been violated, the OPC may file a motion specifying the alleged
10 violation and seeking to have the probation terminated. Upon filing such motion, the
11 respondent must have the opportunity to respond and a hearing will be held, at which
12 time the court will determine whether to revoke probation.

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

15 (h)(1) Rule 14-533 governs diversion matters before the OPC files a misconduct action
16 under Rule 14-511.

17 (h)(2) For a misconduct action, the following criteria will determine the appropriateness
18 of a diversion:

19 (h)(2)(A) The misconduct does not involve the misappropriation of funds or
20 property; fraud, dishonesty, deceit or misrepresentation; or the commission of a
21 misdeemeanor adversely reflecting on the lawyer's fitness to practice law or any
22 felony;

23 (h)(2)(B) The misconduct appears to be the result of inadequate law office
24 management, chemical dependency, a physical or mental health condition,
25 negligence or lack of training, education or other similar circumstance; and

1 (h)(2)(C) There appears to be a reasonable likelihood that the successful
2 completion of a remedial program will prevent the recurrence of conduct by the
3 attorney similar to that under consideration for diversion.

4 (h)(3) In addition to the above-required criteria of (A), (B) and (C), other considerations
5 may include whether the misconduct is a one-time act or based on a chronic condition
6 and whether there is sufficient evidence connecting the chronic condition to the
7 misconduct.

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

10 (h)(5) If the lawyer completes the conditions of the Diversion, the misconduct action will
11 be dismissed with prejudice.

12 (h)(6) If the lawyer does not complete the conditions of the Diversion within the required
13 time, the lawyer will be subject to a suspension of six months and a day.

14 **(h) Resignation with discipline pending.** Resignation with discipline pending is a form of
15 public discipline ~~which that~~ allows a respondent to resign from the practice of law while either
16 an informal or formal complaint is pending against the respondent. Resignation with discipline
17 pending may be imposed as set forth in Rule 14-521.

18
19 **(i) Other sanctions and remedies.** Other sanctions and remedies which may be imposed
20 include:

21 **(i)(1)** restitution;

22 **(i)(2)** assessment of costs;

23 **(i)(3)** limitation upon practice;

24 **(i)(4)** appointment of a receiver;

25 **(i)(5)** a requirement that the lawyer take the Bar Examination or professional
26 responsibility examination; and

1 (i)(6) a requirement that the lawyer attend continuing education courses.
2 (k) **Reciprocal discipline.** Reciprocal discipline ~~is the imposition of~~ imposing a disciplinary
3 sanction on a lawyer who has been disciplined in another court, another jurisdiction, or a
4 regulatory body having disciplinary jurisdiction.

5

1 **Rule 14-604. Factors to be considered in imposing sanctions.**

2 The court should consider the following factors in imposing sanctions after a finding of lawyer
3 misconduct under rules {Sanctions for violating duties owed to the public through prior
4 discipline orders} ~~The following factors should be considered in imposing a sanction after a~~
5 ~~finding of lawyer misconduct:~~

- 6 (a) the duty violated;₂
- 7 (b) the lawyer's mental state;₂
- 8 (c) the potential or actual injury caused by the lawyer's misconduct;₂ and
- 9 (d) the existence of aggravating or mitigating factors.

10

1 **Rule 14-605. ~~Imposition of sanctions.~~ Sanctions for violating duties owed to clients.**

2 (a) Failing to preserve the client's property. The following sanctions are generally appropriate
3 when a lawyer fails to preserve client property:

4 (a)(1) Delicensure is generally appropriate when a lawyer knowingly converts client
5 property and causes injury or potential injury to a client.

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6 (a)(2) Suspension is generally appropriate when a lawyer knows or should know that the
7 lawyer is dealing improperly with client property and causes injury or potential injury to
8 a client.

9 (a)(3) Reprimand is generally appropriate when a lawyer is negligent in dealing with
10 client property and causes injury or potential injury to a client.

11 (a)(4) Admonition is generally appropriate when a lawyer is negligent in dealing with
12 client property and causes little or no actual or potential injury to a client.

13 (b) Failing to preserve the client's confidences. The following sanctions are generally
14 appropriate when a lawyer improperly reveals information related to representing a client:

15 (b)(1) Delicensure is generally appropriate when a lawyer, with the intent to benefit the
16 lawyer or another, knowingly reveals information relating to representation of a client not
17 otherwise lawfully permitted to be disclosed, and this disclosure causes injury or
18 potential injury to a client.

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19 (b)(2) Suspension is generally appropriate when a lawyer knowingly reveals information
20 relating to the representation of a client not otherwise lawfully permitted to be disclosed,
21 and this disclosure causes injury or potential injury to a client.

22 (b)(3) Reprimand is generally appropriate when a lawyer negligently reveals information
23 relating to representation of a client not otherwise lawfully permitted to be disclosed and
24 this disclosure causes injury or potential injury to a client.

25 (b)(4) Admonition is generally appropriate when a lawyer negligently reveals information
26 relating to representation of a client not otherwise lawfully permitted to be disclosed and
27 this disclosure causes little or no actual or potential injury to a client.

1 (c) **Failing to avoid conflicts of interest.** The following sanctions are generally appropriate in
2 cases involving conflicts of interest:

3 (c)(1) **Delicensure** is generally appropriate when a lawyer, without the informed consent
4 of client(s):

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5 (c)(1)(A) engages in representation of a client knowing that the lawyer's interests
6 are adverse to the client's with the intent to benefit the lawyer or another, and
7 causes serious or potentially serious injury to the client;

8 (c)(1)(B) simultaneously represents clients that the lawyer knows have adverse
9 interests with the intent to benefit the lawyer or another, and causes serious or
10 potentially serious injury to a client; or

11 (c)(1)(C) represents a client in a matter substantially related to a matter in which
12 the interests of a present or former client are materially adverse, and knowingly
13 uses information relating to the representation of a client with the intent to benefit
14 the lawyer or another, and causes serious or potentially serious injury to a client.

15 (c)(2) Suspension is generally appropriate when a lawyer knows of a conflict of interest
16 and does not fully disclose to a client the possible effect of that conflict, and causes injury
17 or potential injury to a client.

18 (c)(3) Reprimand is generally appropriate when a lawyer is negligent in determining
19 whether the representation of a client may be materially affected by the lawyer's own
20 interests, or whether the representation will adversely affect another client, and causes
21 injury or potential injury to a client.

22 (c)(4) Admonition is generally appropriate when a lawyer engages in an isolated instance
23 of negligence in determining whether the representation of a client may be materially
24 affected by the lawyer's own interests, or whether the representation will adversely affect
25 another client, and causes little or no actual or potential injury to a client.

26 (d) **Lack of diligence.** The following sanctions are generally appropriate when a lawyer fails to
27 act with reasonable diligence and promptness in representing a client:

1 (d)(1) Delicensure is generally appropriate when:

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2 (d)(1)(A) a lawyer abandons the practice and causes serious or potentially serious
3 injury to a client;

4 (d)(1)(B) a lawyer knowingly fails to perform services for a client and causes
5 serious or potentially serious injury to a client; or

6 (d)(1)(C) a lawyer engages in a pattern of neglect with respect to client matters
7 and causes serious or potentially serious injury to a client.

8 (d)(2) Suspension is generally appropriate when:

9 (d)(2)(A) a lawyer knowingly fails to perform services for a client and causes
10 injury or potential injury to a client, or

11 (d)(2)(B) a lawyer engages in a pattern of neglect and causes injury or potential
12 injury to a client.

13 (d)(3) Reprimand is generally appropriate when a lawyer is negligent and does not act
14 with reasonable diligence in representing a client, and causes injury or potential injury to
15 a client.

16 (d)(4) Admonition is generally appropriate when a lawyer is negligent and does not act
17 with reasonable diligence in representing a client, and causes little or no actual or
18 potential injury to a client.

19 (e) Lack of Competence. The following sanctions are generally appropriate when a lawyer fails
20 to provide competent representation to a client:

21 (e)(1) Delicensure is generally appropriate when a lawyer's course of conduct
22 demonstrates that the lawyer does not understand the most fundamental legal doctrines or
23 procedures, and the lawyer's conduct causes injury or potential injury to a client.

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24 (e)(2) Suspension is generally appropriate when a lawyer engages in an area of practice in
25 which the lawyer knows they are not competent, and causes injury or potential injury to a
26 client.

1 (e)(3) Reprimand is generally appropriate when a lawyer:

2 (e)(3)(A) demonstrates failure to understand relevant legal doctrines or
3 procedures and causes injury or potential injury to a client, or

4 (e)(3)(B) is negligent in determining whether the lawyer is competent to handle a
5 legal matter and causes injury or potential injury to a client.

6 (e)(4) Admonition is generally appropriate when a lawyer engages in an isolated instance
7 of negligence in determining whether the lawyer is competent to handle a legal matter,
8 and causes little or no actual or potential injury to a client.

9 (f) Lack of Candor. The following sanctions are generally appropriate in cases where a lawyer
10 engages in fraud, deceit, or misrepresentation directed toward a client:

11 (f)(1) **Delicensure** is generally appropriate when a lawyer knowingly deceives a client
12 with the intent to benefit the lawyer or another, and causes serious injury or potential
13 serious injury to a client.

14 (f)(2) Suspension is generally appropriate when a lawyer knowingly deceives a client,
15 and causes injury or potential injury to the client.

16 (f)(3) Reprimand is generally appropriate when a lawyer negligently fails to provide a
17 client with accurate or complete information, and causes injury or potential injury to the
18 client.

19 (f)(4) Admonition is generally appropriate when a lawyer engages in an isolated instance
20 of negligence in failing to provide a client with accurate or complete information, and
21 causes little or no actual or potential injury to the client.

22 ~~Absent aggravating or mitigating circumstances, upon application of the factors set out in Rule~~
23 ~~14-604, the following sanctions are generally appropriate.~~

24 ~~(a) **Disbarment.** Disbarment is generally appropriate when a lawyer:~~

25 ~~(a)(1) knowingly engages in professional misconduct as defined in Rule 8.4(a), (d), (e),~~
26 ~~or (f) of the Rules of Professional Conduct with the intent to benefit the lawyer or another~~

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1 ~~or to deceive the court, and causes serious or potentially serious injury to a party, the~~
2 ~~public, or the legal system, or causes serious or potentially serious interference with a~~
3 ~~legal proceeding; or~~

4 ~~(a)(2) engages in serious criminal conduct, a necessary element of which includes~~
5 ~~intentional interference with the administration of justice, false swearing,~~
6 ~~misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution, or~~
7 ~~importation of controlled substances; or the intentional killing of another; or an attempt~~
8 ~~or conspiracy or solicitation of another to commit any of these offenses; or~~

9 ~~(a)(3) engages in any other intentional misconduct involving dishonesty, fraud, deceit, or~~
10 ~~misrepresentation that seriously adversely reflects on the lawyer's fitness to practice law.~~

11 ~~(b) **Suspension.** Suspension is generally appropriate when a lawyer:~~

12 ~~(b)(1) knowingly engages in professional misconduct as defined in Rule 8.4(a), (d), (e),~~
13 ~~or (f) of the Rules of Professional Conduct and causes injury or potential injury to a~~
14 ~~party, the public, or the legal system, or causes interference or potential interference with~~
15 ~~a legal proceeding; or~~

16 ~~(b)(2) engages in criminal conduct that does not contain the elements listed in Rule 14-~~
17 ~~605(a)(2) but nevertheless seriously adversely reflects on the lawyer's fitness to practice~~
18 ~~law.~~

19 ~~(c) **Reprimand.** Reprimand is generally appropriate when a lawyer:~~

20 ~~(c)(1) negligently engages in professional misconduct as defined in Rule 8.4(a), (d), (e),~~
21 ~~or (f) of the Rules of Professional Conduct and causes injury to a party, the public, or the~~
22 ~~legal system, or causes interference with a legal proceeding; or~~

23 ~~(c)(2) engages in any other misconduct that involves dishonesty, fraud, deceit, or~~
24 ~~misrepresentation and that adversely reflects on the lawyer's fitness to practice law.~~

25 ~~(d) **Admonition.** Admonition is generally appropriate when a lawyer:~~

26 ~~(d)(1) negligently engages in professional misconduct as defined in Rule 8.4(a), (d), (e),~~
27 ~~or (f) of the Rules of Professional Conduct and causes little or no injury to a party, the~~

Commented [LL104]: Do we still want this when we have it in suspension?

1 ~~public, or the legal system or interference with a legal proceeding, but exposes a party,~~
2 ~~the public, or the legal system to potential injury or causes potential interference with a~~
3 ~~legal proceeding; or~~
4 ~~(d)(2) engages in any professional misconduct not otherwise identified in this rule that~~
5 ~~adversely reflects on the lawyer's fitness to practice law.~~

1 **Rule 11-({ }). Sanctions for violating duties owed to the public.**

2 **(a) Failing to maintain personal integrity.** The following sanctions are generally appropriate
3 when a lawyer commits a criminal act that reflects adversely on the lawyer’s honesty,
4 trustworthiness, or fitness as a lawyer in other respects, or in cases with conduct involving
5 dishonesty, fraud, deceit, or misrepresentation.

6 (a)(1) **Delicensure** is generally appropriate when:

7 (a)(1)(A) a lawyer engages in serious criminal conduct, a necessary element of
8 which includes intentional interference with the administration of Justice, false
9 swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the
10 sale, distribution, or importation of controlled substances; or the intentional
11 killing of another; or an attempt, conspiracy, or solicitation of another to commit
12 any of these offenses; or

13 (a)(1)(B) a lawyer engages in any other intentional conduct involving dishonesty,
14 fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer’s
15 fitness to practice.

16 (a)(2) Suspension is generally appropriate when a lawyer knowingly engages in criminal
17 conduct which does not contain the elements listed in (a)(1) and that seriously adversely
18 reflects on the lawyer’s fitness to practice.

19 (a)(3) Reprimand is generally appropriate when a lawyer negligently engages in any other
20 conduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely
21 reflects on the lawyer’s fitness to practice law.

22 (a)(4) Admonition is generally appropriate when a lawyer engages in any other conduct
23 that reflects adversely on the lawyer’s fitness to practice law.

24 **(b) Failing to maintain the public trust.** The following sanctions are generally appropriate in
25 cases involving public officials who engage in conduct that is prejudicial to the administration of
26 justice or who state or imply an ability to influence improperly a government agency or official:

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Commented [LL105]: The ABA model rules use “knowingly” here.

1 (b)(1) Delicensure is generally appropriate when a lawyer in an official or governmental
2 position knowingly misuses the position with the intent to obtain a significant benefit or
3 advantage for himself or another, or with the intent to cause serious or potentially serious
4 injury to a part or to the integrity of the legal process.

5 (b)(2) Suspension is generally appropriate when a lawyer in an official or governmental
6 position knowingly fails to follow proper procedures or rules, and causes injury or
7 potential injury to a party or to the integrity of the legal process.

8 (b)(3) Reprimand is generally appropriate when a lawyer in an official or governmental
9 position negligently fails to follow proper procedures or rules, and causes injury or
10 potential injury to a party or to the integrity of the legal process.

11 (b)(4) Admonition is generally appropriate when a lawyer in an official or governmental
12 position engages in an isolated instance of negligence in not following proper procedures
13 or rules, and causes little or no actual or potential injury to a party or to the integrity of
14 the legal process.

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1 **Rule 11-**. Sanctions for violating duties owed to the legal system.

2 (a) **False statements, fraud, and misrepresentation.** The following sanctions are generally
3 appropriate when a lawyer's conduct is prejudicial to the administration of justice or involves
4 dishonesty, fraud, deceit, or misrepresentation to a court:

5 (a)(1) **Delicensure** is generally appropriate when a lawyer, with the intent to deceive the
6 court, makes a false statement, submits a false document, or improperly withholds
7 material information, and causes serious or potentially serious injury to a party, or causes
8 a significant or potentially significant adverse effect on the legal proceeding.

9 (a)(2) **Suspension** is generally appropriate when a lawyer knows that false statements or
10 documents are being submitted to the court or that material information is improperly
11 being withheld, and takes no remedial action, and causes injury or potential injury to a
12 party to the legal proceeding, or causes an adverse or potentially adverse effect on the
13 legal proceeding.

14 (a)(3) **Reprimand** is generally appropriate when a lawyer is negligent either in
15 determining whether statements or documents are false or in taking remedial action when
16 material information is being withheld and causes injury or potential injury to a party to
17 the legal proceeding, or causes an adverse or potentially adverse effect on the legal
18 proceeding.

19 (a)(4) **Admonition** is generally appropriate when a lawyer engages in an isolated instance
20 of neglect in determining whether submitted statements or documents are false or in
21 failing to disclose material information upon learning of its falsity, and causes little or no
22 actual or potential injury to a party, or causes little or no adverse or potentially adverse
23 effect on the legal proceeding.

24 (b) **Abuse of the legal process.** The following sanctions are generally appropriate when a lawyer
25 fails to expedite litigation or bring a meritorious claim, or fails to obey any obligation under the
26 rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists:

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1 (b)(1) Delicensure is generally appropriate when a lawyer knowingly violates a court
2 order or rule with the intent to obtain a benefit for the lawyer or another, and causes
3 serious injury or potentially serious injury to a party or causes serious or potentially
4 serious interference with a legal proceeding.

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5 (b)(2) Suspension is generally appropriate when a lawyer knows that the lawyer is
6 violating a court order or rule, and causes injury or potential injury to a client or a party,
7 or causes interference or potential interference with a legal proceeding.

8 (b)(3) Reprimand is generally appropriate when a lawyer negligently fails to comply with
9 a court order or rule, and causes injury or potential injury to a client or other party, or
10 causes interference or potential interference with a legal proceeding.

11 (b)(4) Admonition is generally appropriate when a lawyer engages in an isolated instance
12 of negligence in complying with a court order or rule, and causes little or no actual or
13 potential injury to a party, or causes little or no actual or potential interference with a
14 legal proceeding.

15 **(c) Improper communications with individuals in the legal system.** The following sanctions
16 are generally appropriate when a lawyer attempts to influence a judge, juror, prospective juror, or
17 other official by means prohibited by law:

18 (c)(1) Delicensure is generally appropriate when a lawyer:

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19 (c)(1)(A) intentionally tampers with a witness and causes serious or potentially
20 serious injury to a party, or causes significant or potentially significant
21 interference with the outcome of the legal proceeding;

22 (c)(1)(B) makes an ex parte communication with a judge or juror with intent to
23 affect the outcome of the proceeding, and causes serious or potentially serious
24 injury to a party, or causes significant or potentially significant interference with
25 the outcome of the legal proceeding; or

26 (c)(1)(C) improperly communicates with someone in the legal system other than a
27 witness, judge, or juror with the intent to influence or affect the outcome of the

1 proceeding, and causes significant or potentially significant interference with the
2 outcome of the legal proceeding.

3 (c)(2) Suspension is generally appropriate when a lawyer engages in communication with
4 an individual in the legal system when the lawyer knows that such communication is
5 improper, and causes injury or potential injury to a party or causes interference or
6 potential interference with the outcome of the legal proceeding.

7 (c)(3) Reprimand is generally appropriate when a lawyer is negligent in determining
8 whether it is proper to engage in communication with an individual in the legal
9 system, and causes injury or potential injury to a party or interference or potential
10 interference with the outcome of the legal proceeding.

11 (c)(4) Admonition is generally appropriate when a lawyer engages in an isolated instance
12 of negligence in improperly communicating with an individual in the legal system, and
13 causes little or no: (A) actual or potential injury to a party, or (B) actual or potential
14 interference with the outcome of the legal proceeding.

15

1 Rule 11-({}). Sanctions for violating duties owed as a professional.

2 The following sanctions are generally appropriate in cases involving false or misleading
3 communication about the lawyer or the lawyer's services, improper communication of fields of
4 practice, improper solicitation of professional employment from a prospective client,
5 unreasonable or improper fees, unauthorized practice of law, improper withdrawal from
6 representation, or failure to report professional misconduct.

7 (a) Delicensure is generally appropriate when a lawyer knowingly engages in conduct
8 that is a violation of a duty owed as a professional with the intent to obtain a benefit for
9 the lawyer or another, and causes serious or potentially serious injury to a client, the
10 public, or the legal system.

11 (b) Suspension is generally appropriate when a lawyer knowingly engages in conduct that
12 is a violation of a duty owed as a professional and causes injury or potential injury to a
13 client, the public, or the legal system.

14 (c) Reprimand is generally appropriate when a lawyer negligently engages in conduct that
15 is a violation of a duty owed as a professional and causes injury or potential injury to a
16 client, the public, or the legal system.

17 (d) Admonition is generally appropriate when a lawyer engages in an isolated instance of
18 negligence that is a violation of a duty owed as a professional, and causes little or no
19 actual or potential injury to a client, the public, or the legal system.

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1 **Rule 14-606. Prior discipline orders.**

2 The following sanctions are generally appropriate in cases involving prior discipline.

3 (a) Delicensure is generally appropriate when a lawyer:

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4 (a)(1) intentionally or knowingly violates the terms of a prior disciplinary order
5 and such violation causes injury or potential injury to a client, the public, the legal
6 system, or the profession; or

7 (a)(2) has been suspended for the same or similar misconduct, and intentionally or
8 knowingly engages in further similar acts of misconduct that cause injury or
9 potential injury to a client, the public, the legal system, or the profession.

10 (b) Suspension is generally appropriate when a lawyer has been reprimanded for the same
11 or similar misconduct and engages in further similar acts of misconduct that cause injury
12 or potential injury to a client, the public, the legal system, or the profession.

13 (c) Reprimand is generally appropriate when a lawyer:

14 (c)(1) negligently violates the terms of a prior disciplinary order and such
15 violation causes injury or potential injury to a client, the public, the legal system,
16 or the profession; or

17 (c)(2) has received an admonition for the same or similar misconduct and engages
18 in further similar acts of misconduct that cause injury or potential injury to a
19 client, the public, the legal system, or the profession.

20 (d) An admonition is generally not an appropriate sanction when a lawyer violates the
21 terms of a prior disciplinary order or when a lawyer has engaged in the same or similar
22 misconduct in the past.

23 ~~Absent aggravating or mitigating circumstances, upon application of the factors set out in Rule~~
24 ~~14-604, the following principles generally apply in cases involving prior discipline.~~

25 ~~(a) The district court or Supreme Court may impose further sanctions upon a lawyer who~~
26 ~~violates the terms of a prior disciplinary order.~~

1 ~~(b) When a lawyer engages in misconduct similar to that for which the lawyer has~~
2 ~~previously been disciplined, the appropriate sanction will generally be one level more~~
3 ~~severe than the sanction the lawyer previously received, provided that the harm requisite~~
4 ~~for the higher sanction is present.~~

5

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;

- 1 (b)(2) absence of a dishonest or selfish motive;
- 2 (b)(3) personal or emotional problems;
- 3 (b)(4) timely good faith effort to make restitution or to rectify the consequences of the
4 misconduct involved;
- 5 (b)(5) full and free disclosure to the client or the disciplinary authority prior to the
6 discovery of any misconduct or cooperative attitude toward proceedings;
- 7 (b)(6) inexperience in the practice of law;
- 8 (b)(7) good character or reputation;
- 9 (b)(8) physical disability;
- 10 (b)(9) mental disability or impairment, including substance abuse when:
- 11 (b)(9)(A) the respondent is affected by a substance abuse or mental disability; and
- 12 (b)(9)(B) the substance abuse or mental disability causally contributed to the
13 misconduct; and
- 14 (b)(9)(C) the respondent's recovery from the substance abuse or mental disability
15 is demonstrated by a meaningful and sustained period of successful rehabilitation;
16 and
- 17 (b)(9)(D) the recovery arrested the misconduct and the recurrence of that
18 misconduct is unlikely;
- 19 (b)(10) unreasonable delay in disciplinary proceedings, provided that the respondent did
20 not substantially contribute to the delay and provided further that the respondent has
21 demonstrated prejudice resulting from the delay;
- 22 (b)(11) interim reform in circumstances not involving mental disability or impairment;
- 23 (b)(12) imposition of other penalties or sanctions;
- 24 (b)(13) remorse; and
- 25 (b)(14) remoteness of prior offenses.

1 (c) **Other circumstances.** The following circumstances should not be considered as either
2 aggravating or mitigating:

3 (c)(1) forced or compelled restitution;

4 (c)(2) withdrawal of complaint against the lawyer;

5 (c)(3) resignation prior to completion of disciplinary proceedings;

6 (c)(4) complainant's recommendation as to sanction; and

7 (c)(5) failure of injured client to complain.
8

1 Reinstatement.

2 **Rule 14-524. Reinstatement following a suspension or probation of no more than six**
3 **months ~~or less~~.**

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

12

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

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

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

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

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

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

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

1 ~~(d)(1)(B) shall request~~s that any individuals file notice of their opposition or
2 concurrence with the district court within 30 days of the date of publication: and

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

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7 ~~(d)(2)(A) the respondent is applying for reinstatement or readmission~~relicensure,
8 and

9 ~~(d)(2)(B) shall inform each complainant that~~the complainant has 30 days from
10 the mailing date ~~of mailing to raise~~ objections to or ~~to~~ support the respondent's
11 petition. ~~Notice shall be mailed to the last known address of each complainant in~~
12 ~~OPC counsel's records.~~

13 (e) **Criteria for reinstatement and ~~readmission~~relicensure.** A respondent may be reinstated or
14 ~~readmitted-relicensed~~ only if the respondent meets each of the following criteria, or, if not,
15 presents good and sufficient reason why the respondent should nevertheless be reinstated or
16 readmitted-relicensed.

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

19 (e)(2) The respondent has not engaged nor attempted to engage in the unauthorized
20 practice of law during the period of suspension or ~~disbarment-delicensure~~.

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21 (e)(3) If the respondent was suffering from a physical or mental disability or impairment
22 which was a causative factor of the respondent's misconduct, including substance abuse,
23 the disability or impairment has been removed. Where substance abuse was a causative
24 factor in the respondent's misconduct, the respondent shall may not be reinstated or
25 ~~readmitted-relicensed~~ unless the respondent:

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

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

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

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

12 (e)(4)(A) Factors considered in determining honesty, integrity, and fitness for
13 reinstatement. The court may use the following factors to decide whether the
14 lawyer seeking reinstatement possesses (lacks?) the requisite honesty, integrity,
15 and fitness to practice law:

16 (e)(4)(A)(i) lack of candor in the reinstatement process;

17 (e)(4)(A)(ii) unlawful conduct while suspended;

18 (e)(4)(A)(iii) false or misleading statements or omissions during
19 suspension or the reinstatement process;

20 (e)(4)(A)(iv) acts involving dishonesty, fraud, deceit, or misrepresentation
21 while suspended;

22 (e)(4)(A)(v) abuse of the legal process;

23 (e)(4)(A)(vi) neglecting financial responsibilities while suspended;

24 (e)(4)(A)(vii) violating court order while suspended;

25 (e)(4)(A)(viii) evidence of mental or emotional instability; and

26 (e)(4)(A)(ix) evidence of drug or alcohol dependency while suspended;

1 (e)(4)(B) Assigning weight and significance to conduct. In determining honesty,
2 integrity, and fitness to practice law, the court may use the following factors to
3 assign weight and significance to prior conduct:

4 (e)(4)(B)(i) how recent the conduct occurred,

5 (e)(4)(B)(ii) seriousness of the conduct,

6 (e)(4)(B)(iii) cumulative effect of the conduct,

7 (e)(4)(B)(iv) evidence of rehabilitation,

8 (e)(4)(B)(v) positive social contributions while suspended.

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

11 ~~(e)(6) In cases of suspensions for one~~ year or more, ~~the~~ respondent ~~lawyers shall will~~ be
12 required to pass the Multistate Professional Responsibility Examination, and respondent
13 licensed paralegal practitioners must pass the Licensed Paralegal Practitioner
14 Professional Responsibility Exam.

Commented [LL107]: I am assuming this requires them to retake the exam, if so, should we say "retake and pass...."?

15 (e)(7) In all cases of ~~disbarment delicensure,~~ the respondent ~~lawyers shall will~~ be required
16 to pass the student applicant Bar Examination and the Multistate Professional
17 Responsibility Examination, and respondent licensed paralegal practitioners must pass
18 the student applicant Licensed Paralegal Practitioner Licensing Exam.

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

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

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

26 (f)(2) ~~file a written objection in writing~~ to the petition.

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

9 (h) **Successive petitions.** Unless the district court orders ~~otherwise ordered by the district court~~,
10 no respondent ~~shall may~~ apply for reinstatement or readmission relicensure within one year
11 following an adverse judgment upon a petition for reinstatement or readmission relicensure.

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

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

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Draft: April 1, 2020

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

Commented [LL108]: This language has been fully incorporated into Rule 14-510(a)(7).

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~~ paragraphs (d) and (ff). The Active Practice of law includes any
8 ~~combination~~ of the following activities provided that such employment is available only to
9 licensed attorneys and the activities are performed in the jurisdiction in which the Applicant is
10 admitted;.

11 (b)(1) sole practitioner, or partner, shareholder, associate, or of counsel in a law firm;

12 (b)(2) an organization’s employee whose principal responsibility is to provide legal
13 advice or service;

14 (b)(3) government employee whose principal duties are to provide legal advice or
15 service;

16 (b)(4) service in the United States armed forces as a lawyer or judge;

17 (b)(5) judge of a court of general or appellate jurisdiction provided that such employment
18 requires admission to the bar for the appointment thereto and for the performance of the
19 duties thereof;

20 (b)(6) law clerk to a judge of a court of general or appellate jurisdiction; or

21 (b)(7) teaching full-time at an Approved Law School; and

22 (b)(8) the Active Practice of law ~~shall~~ does not include work that, as undertaken,
23 constitutes the unauthorized practice of law in the jurisdiction in which it was performed
24 or in the jurisdiction in which the clients receiving the unauthorized services were
25 located, nor ~~shall~~ does it include work completed in advance of any bar admission.

- 1 (c) “**Admissions Committee**” means those Utah State Bar members or others appointed by the
2 Board or president of the Bar who are charged with recommending standards and procedures for
3 admission to the Bar and with implementation of this article. The Admissions Committee is
4 responsible for supervising the work of the Bar Examiner Committee, the Test Accommodations
5 Committee, and the Character and Fitness Committee, handling requests for review as provided
6 herein and performing other work relating to ~~the admission of Applicant~~ admissions;
- 7 (d) “**Applicant**” means each person requesting admission to the Bar. For purposes of this article,
8 an Applicant is classified as a Student Applicant, a Foreign Law School Applicant, an Attorney
9 Applicant, a Motion Applicant, a Disbarred Attorney Applicant, a Foreign Legal Consultant
10 Applicant, a House Counsel Applicant, a Formerly-Admitted Applicant, a Military Lawyer
11 Applicant, or a Military Spouse Attorney Applicant.
- 12 (e) “**Approved Law School**” means a law school which is fully or provisionally approved by the
13 ABA pursuant to its Standards and Rules of Procedure for Approval of Law Schools. To qualify
14 as approved, the law school must have been fully or provisionally approved at the time of the
15 Applicant’s graduation, or at the time of the Applicant’s enrollment, provided ~~that~~ the Applicant
16 graduated within a typical and reasonable ~~period of time~~;
- 17 (f) “**Attorney Applicant**” means any person who satisfies the requirements of Rule 14-704;
- 18 (g) “**Bar**” means the Utah State Bar, including its employees, committees and the Board;
- 19 (h) “**Bar Examination**” means the Bar Examination as defined in Rules 14-710 and 14-711;
- 20 (i) “**Bar Examiner Committee**” means those Bar members or others appointed by the Board or
21 president of the Bar who are charged with grading the Bar Examination;
- 22 (j) “**Board**” means the Board of Bar Commissioners;
- 23 (k) “**Character and Fitness Committee**” means those Bar members or others appointed by the
24 Board or president of the Bar who are charged with assessing the character and fitness of
25 Applicants and making determinations thereon;
- 26 (l) “**Complete Application**” means an application that includes all fees and necessary
27 application forms, along with any required supporting documentation, character references, a

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1 criminal background check, a photo, an official certificate of law school graduation and if
2 applicable, a test accommodation request with supporting medical documentation, a certificate of
3 admission and/or good standing, and a certificate of discipline~~;~~.

4 (m) “**Confidential Information**” is defined in Rule 14-720(a)~~;~~.

5 (n) “**Deputy General Counsel for Admissions**” or “**Deputy General Counsel**” are terms used
6 interchangeably to mean the Bar’s attorney in charge of admissions or ~~her or his~~ designee~~;~~.

7 (o) “**Disbarred Attorney Applicant**” means a person who has previously been licensed to
8 practice law in Utah and who is no longer licensed to practice law because of disbarment or
9 resignation with discipline pending or their equivalent and who satisfies the requirements of Rule
10 14-708(g) and 14-717~~;~~.

11 (p) “**Executive Director**” means the executive director of the Utah State Bar or ~~her or his~~
12 designee~~;~~.

13 (q) “**First Professional Degree**” means a degree that prepares the holder for admission to the
14 practice of law (e.g. juris doctorate) by emphasizing competency skills along with theory and
15 analysis. An advanced, focused, or honorary degree in law is not recognized as a First
16 Professional Degree (e.g. master of laws or doctor of laws)~~;~~.

17 (r) “**Foreign Law School**” means any school located outside of the United States and its
18 protectorates, that is accredited by that jurisdiction’s legal accreditation body, if one exists,
19 where principles of English Common Law form the predominant basis for that country’s system
20 of jurisprudence, and whose graduates are otherwise permitted by that jurisdiction’s highest
21 court to practice law~~;~~.

22 (s) “**Foreign Legal Consultant Applicant**” means any Applicant who satisfies the requirements
23 of Rule 14-718~~;~~.

24 (t) ~~Formerly-Admitted Applicant~~ means a person who has previously been licensed to
25 practice law in Utah who is no longer licensed to practice law because of resignation without
26 discipline pending or who failed to pay licensing fees for three or more years under Rule 14-
27 107(b)(4), and who satisfies the requirements of Rule 14-717.

Commented [LL110]: Admissions Committee recommendation.

1 (tu) “**Full-time Practice**” means the Active and lawful Practice of Law for no fewer than 80
2 hours per month. Time spent on administrative or managerial duties, continuing legal education,
3 or client development and marketing does not qualify as part of the required 80 hours of legal
4 work.

5 (uv) “**General Counsel**” means the General Counsel of the Utah State Bar or ~~her or his~~
6 designee.

7 (vw) “**House Counsel Applicant**” means any Applicant who satisfies the requirements of Rule
8 14-719.

9 (wx) “**House Counsel**” means a person granted a license under Rule 14-719.

10 (xy) “**Inactive**” means an attorney’s law license is held in “inactive status” or an equivalent
11 term.

12 (yz) “**MBE**” means the Multistate Bar Examination ~~prepared by the NCBE.~~

Commented [LL111]: Admissions Committee recommendation.

13 (zaa) “**MEE**” means the Multistate Essay Examination prepared by the NCBE.

14 (abb) “**Military Lawyer Applicant**” means any Applicant who satisfies ~~the requirements of~~
15 Rule 14-804;

16 (bcc) “**Military Spouse Attorney Applicant**” means any Applicant who satisfies ~~the~~
17 ~~requirements of~~ Rule 14-805.

18 (edd) “**Motion Applicant**” means any person who satisfies the requirements of Rule 14-705.

19 (dee) “**MPRE**” means the Multistate Professional Responsibility Examination prepared by the
20 NCBE.

21 (eff) “**MPT**” means the Multistate Performance Test prepared by the NCBE.

22 (fgh) “**NCBE**” means the National Conference of Bar Examiners, an organization that develops,
23 maintains, and applies reasonable and uniform standards of bar examination education and
24 testing.

25 (ghh) “**OPC**” means the ~~Bar’s~~ Office of Professional Conduct.

Commented [LL112]: Recommendation 1.2

1 (ii) “Person” includes the plural as well as the singular and legal entities as well as natural
2 persons.

3 ~~(hjj)~~ **“Practice of Law”** means employment available only to licensed attorneys where the
4 primary duty of the position is to represent the interests of another person by informing,
5 counseling, advising, assisting, advocating for or drafting documents for that person through
6 application of the law and associated legal principles to that person’s facts and circumstances.

7 ~~“Person” includes the plural as well as the singular and legal entities as well as natural persons.~~

8 The Practice of Law constitutes more than merely working with legally-related matters.

9 ~~(hkk)~~ **“Privileged Information”** in this article includes: information subject to the attorney-
10 client privilege, attorney work product, test materials and applications of examinees.

11 correspondence and written decisions of the Board, Admissions Committee, Bar Examiner
12 Committee, Character and Fitness Committee, and Test Accommodations Committee; and the
13 identity of individuals participating in the drafting, reviewing, grading and scoring of the Bar
14 Examination.

15 ~~(hll)~~ **“Reapplication for Admission”** means that for two years after the filing of an original
16 application, an Applicant may reapply by completing a Reapplication for Admission form
17 updating any information that has changed since the prior application was filed and submitting a
18 new criminal background check.

19 ~~(hlc) “Resigned Applicant” means a person who has previously been licensed to practice law in~~
20 ~~Utah who is no longer licensed to practice law because of resignation without discipline pending~~
21 ~~or resignation under Rule 14-508(d) and who satisfies the requirements of Rule 14-717(a);~~

22 ~~(hmm)~~ **“Student Applicant”** means any person who satisfies the requirements of Rule 14-703(a)
23 who has never been admitted as an attorney in any jurisdiction.

24 ~~(hnnn)~~ **“Supreme Court”** means the Utah Supreme Court.

25 ~~(hooo)~~ **“Test Accommodations Committee”** means those Bar members or others appointed by
26 the Board or president of the Bar who are charged with the review of requests from Applicants

Commented [LL113]: Admissions Committee recommendation

Commented [LL114]: Admissions Committee recommendation.

- 1 seeking to take the Bar Examination with test accommodations and who make determinations
2 thereon~~;~~.
- 3 (~~eepp~~) “**Unapproved Law School**” means a law school that is not fully or provisionally
4 approved by the ABA. For an Unapproved Law School’s graduates to be eligible for admission,
5 the law school must be accredited in the jurisdiction where it exists, provide legal education that
6 is the substantial equivalent of the legal education provided by an Approved Law School, and not
7 be based on correspondence or internet study~~;~~.
- 8 (~~qqpp~~) “**UBE**” means the Uniform Bar Examination as prepared by the NCBE~~;~~.
- 9 (~~qqrr~~) “**Updated Application**” means that an Applicant is required to amend and update ~~her or~~
10 ~~his~~their application on an ongoing basis and correct any information that has changed since the
11 application was filed~~;~~ ~~and~~.
- 12 (~~rrss~~) “**Written Component**” means that ~~portion-part~~ of the Bar Examination that consists of
13 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~~ the Applicant:

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 in the reciprocal jurisdiction(s) where licensed for 60 of the 84
17 months immediately preceding the date ~~of the filing of the~~ application for admission is
18 filed. For ~~purposes of~~ admission purposes 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; and

25 (a)(10) is of good moral character and satisfies the requirements of Rule 14-708;

1 ~~(b) **Continuing legal education requirement.** All Applicants admitted to practice law pursuant~~
2 ~~to this rule shall must complete and certify no later than six months following the Applicant's~~
3 ~~admission that she or he has they have attended at least 15 hours of continuing legal education on~~
4 ~~Utah practice and procedure and ethics requirements.~~

Commented [LL115]: Admissions Committee recommendation.

5 ~~(b)(1) The Board may by regulation specify the number of the required 15 hours that~~
6 ~~must be in particular areas of practice, procedure, and ethics. Included in this mandatory~~
7 ~~15 hours is attendance at the Bar's OPC ethics school.~~

Commented [LL116]: Recommendation 1.2

8 ~~(e**b**) **Application Form and content of application.**~~ The Board may require additional proof of
9 any facts stated in the application. ~~In the event of the failure or the refusal of~~ If the Applicant fails
10 or refuses to furnish any information or proof, or to answer any Board inquiry ~~of the Board~~
11 pertinent to the pending application, the Board may deny the application without hearing.

12 ~~(e**c**) **Timing of application and admission.**~~ An application may be filed at any time but the
13 Applicant must be able to demonstrate that ~~she or he~~ the Applicant satisfies the requirements of
14 this rule as of the date the application is filed. Processing of the application and the character and
15 fitness investigation require a minimum of four months to complete.

16 ~~(e**c**)(1)~~ An Applicant not eligible for admission pursuant to this rule may qualify for
17 admission as an Attorney Applicant pursuant to Rule 14-704.

18 ~~(e**c**)(2)~~ Upon approval the Applicant must comply with ~~the provisions of~~ Rule 14-716
19 concerning licensing and enrollment fees.

20 ~~(e**d**) **Practice pending admission.**~~ Only persons who are active, licensed ~~members of the~~ Bar
21 members in good standing may engage in the practice of law in Utah. However, a Motion
22 Applicant with a pending Bar application may be eligible to practice for a limited period ~~upon~~
23 ~~satisfaction of~~ satisfying all of the requirements of Rule 14-809 and ~~receipt of~~ receiving a Practice
24 Pending Admission Certificate.

1 **Rule 14-712. Qualifications for admission based on UBE.**

2 (a) ~~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~~ **36** months of the **UBE's** administration ~~of the UBE~~ in which the passing score
19 was earned; ~~or~~

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~~ **has** been admitted to a U.S. state, territory,
23 or the District of Columbia and ~~has~~ **has** 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.~~

Commented [LL117]: Admissions Committee Recommendation

Commented [LL118]: Admissions Committee Recommendation.

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)(3) 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.~~

Commented [LL119]: 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~~ the Applicant:

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

1 such person is admitted to practice law. The Foreign Legal Consultant ~~She or he shall~~ may not
2 violate any provision of ~~the~~ Rule 14-802 and ~~shall~~ may not:

3 (c)(1) appear for a person other than herself or himself as attorney in any court, or before
4 any magistrate or other judicial officer, in Utah other than as permitted under Rule 14-
5 802 or upon qualified admission pro hac vice pursuant to Rule 14-806; or

6 (c)(2) render professional legal advice on the law of this state or of the United States;

7 (c)(3) be, or in any way hold herself or himself out as a ~~member of the Bar~~ member; or

8 (c)(4) carry on ~~her or his~~ a practice under, or ~~utilize~~ use in connection with such practice,
9 any name, title or designation other than the following:

10 (c)(~~54~~)(A) ~~her or his~~ the Foreign Legal Consultant's own name;

11 (c)(~~54~~)(B) the name of the law firm or other entity with which ~~she or he~~ the
12 Foreign Legal Consultant is affiliated, in each case only in conjunction with the
13 title "Foreign Legal Consultant" as set forth below;

14 (c)(~~54~~)(C) ~~her or his~~ the Foreign Legal Consultant's authorized title in the foreign
15 country ~~of her or his~~ in which the Foreign Legal Consultant is ~~admission~~ admitted to
16 practice, in each case only in conjunction with the title "Foreign Legal
17 Consultant" as set forth below; and

18 (c)(~~54~~)(D) the title "Foreign Legal Consultant," which ~~shall~~ must be used in
19 conjunction with the words "admitted to the practice of law only in [name of the
20 foreign country ~~or her or his admission~~ in which the Foreign Legal Consultant is
21 admitted to practice]."

22 (d) **Rights and obligations.** ~~Subject to the limitations set forth in paragraph (d), a~~ A person
23 licensed as a Foreign Legal Consultant ~~shall~~ will be considered a lawyer affiliated with the Bar
24 as permitted by this rule and ~~shall~~ will be entitled and subject to:

25 (d)(1) the rights and obligations set forth in the Utah Rules of Professional Conduct or
26 arising from the other conditions and requirements that apply to a ~~member of the Bar~~
27 member under rules adopted by the Supreme Court; and

1 (d)(2) attorney-client privilege, work-product privilege and similar professional
2 privileges.

3 (e) **Subject to disciplinary proceedings.** A person licensed to practice as a Foreign Legal
4 Consultant ~~shall be~~ subject to professional discipline in the same manner and to the same extent
5 as ~~members of the Bar~~ members and specifically ~~shall be~~ subject to discipline by the Supreme
6 Court as delegated by rule and ~~shall is~~ otherwise ~~be~~ governed by Chapter 13, the Utah Rules of
7 Professional Conduct; Chapter 14, Article 5, Lawyer Discipline and Disability; Article 6,
8 Standards for Imposing Lawyer Sanctions; and other applicable ~~rules adopted by the~~ Supreme
9 Court rules.

10 (f) **Requirements for licensure.** Every person licensed to practice as a Foreign Legal Consultant
11 must:

12 (f)(1) attend the OPC ethics school prior to before receiving a license to practice as a
13 Foreign Legal Consultant, ~~shall must attend the Bars OPC ethics school; and~~

Commented [LL120]: Recommendation 1.2

Commented [LL121]: Recommendation 1.2

14 (f)(2) ~~shall must~~ execute and file with the Bar, in such form and manner as the Supreme
15 Court may prescribe:

16 (f)(2)(A) ~~her or his~~ their understanding of, and commitment to observe, the Utah
17 Rules of Professional Conduct and other ~~the other rules adopted by the~~ Supreme
18 Court rules, and to the extent applicable to the legal services authorized under
19 paragraph (c) of this rule;

20 (f)(2)(B) written notice to the OPC of any change in ~~her or his~~ the Foreign Legal
21 Consultant's membership status, good standing, or authorization to practice law in
22 any jurisdiction where licensed, including the commencement of all formal
23 disciplinary proceedings and of all final disciplinary actions taken in any other
24 jurisdiction.

25 (g) **License fees.** A person licensed as a Foreign Legal Consultant ~~shall must~~ pay annual license
26 fees ~~which shall be~~ equal to the fees ~~required to be~~ paid by a ~~member of the~~ Bar member on
27 Active status.

1 (h) **Revocation of license.** ~~In the event that~~ If a ~~person~~-licensed ~~as a~~ Foreign Legal Consultant no
2 longer meets the requirements for licensure set forth in paragraph (a) or (g), ~~her or his~~ their
3 license ~~shall~~ will be revoked following the procedures set forth in Chapter 14, Article 5, Lawyer
4 Discipline and Disability; and Article 6, Standards for Imposing Lawyer Sanctions.

5 (i) **Admission to Bar.** ~~In the event that a person~~ If a licensed ~~as a~~ Foreign Legal Consultant is
6 subsequently admitted as a ~~member of the Bar~~ member under Chapter 14, Article 7, Admission
7 to the Utah State Bar, ~~the~~ the license granted to such person shall be deemed superseded by the
8 license granted to such person to practice law as a ~~member of the Bar~~ member supersedes the
9 Foreign Legal Consultant license.

10

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) “**Bar**” means the Utah State Bar;

22 (e) “**CLE**” 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) “**MCLE**” 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;

Commented [LL122]: 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~~ they have received a Practice Pending Admission
10 Certificate. Admission pro hac vice under this rule is discretionary with the court in which the
11 application for admission is made. The court may revoke. ~~A~~ admission pro hac vice ~~may be~~
12 ~~revoked by the court~~ upon its own motion or the motion of a party if, after notice and a hearing,
13 the court determines that admission pro hac vice is inappropriate. Admission pro hac vice ~~shall~~
14 must be denied or, if granted, ~~shall be~~ revoked if the court determines that the process is being
15 used to circumvent the normal requirements for the admission of attorneys to the practice of law
16 in Utah.

17 (c) Factors in determining admission and revocation. In determining whether to enter or
18 revoke the order of admission pro hac vice, the court may consider any relevant information,
19 including whether nonresident counsel:

20 (c)(1) is familiar with Utah rules of evidence and procedure, including applicable local
21 rules;

22 (c)(2) is available to opposing parties;

23 (c)(3) has particular familiarity with the legal affairs of the party relevant to the case;

24 (c)(4) complies with the rulings and orders of the court;

25 (c)(5) has caused delay or been disruptive; and

26 (c)(6) has been disciplined in any other jurisdiction within the prior ~~5~~ five years.

1 (d) Application requirements. The attorney seeking admission pro hac vice ~~shall~~must complete
2 under oath and submit to the Bar an application form available from the Utah State Bar or court
3 clerks' office. The applicant ~~shall~~must attach to the application form a Certificate of Good
4 Standing from the licensing state in which the applicant resides. The applicant ~~shall~~must
5 complete a separate application for each case in which the applicant wants to appear. The fee for
6 each application is \$250, which ~~shall~~must be paid to the Utah State Bar. Fees paid under this
7 rule shall will be used for attorney discipline investigations and proceedings. The following are
8 exempt from the fee:

9 (d)(1) attorneys who are employees of and representing the United States of America or
10 any of its departments or agencies; and

11 (d)(2) attorneys representing indigent clients on a pro bono basis.

12 (e) Application form. A copy of the application and a receipt showing fee ~~payment of the fee~~
13 ~~shall will~~ be filed in the court in which the case is pending, with a motion by a Bar ~~member of~~
14 ~~the Bar~~ to admit the applicant pro hac vice and a consent by ~~that such Bar member of the Bar~~ to
15 appear as associate counsel. Associate counsel ~~shall~~must be a resident of Utah. The application
16 form ~~shall~~must include:

17 (e)(1) the name, address, telephone number, fax number, e-mail address, bar
18 identification number(s), and state(s) of the applicant's ~~admission of the applicant;~~

19 (e)(2) the name and number of the case in which the applicant is seeking to appear as the
20 attorney of record or, if the case has not yet been filed, a description of the partis;

21 (e)(3) the name, number, and court of other cases pending or closed within the prior five
22 years in any state or federal court of Utah in which the applicant or a member of the
23 applicant's firm appears pro hac vice;

24 (e)(4) a statement whether, in any state, the applicant:

25 (e)(4)(A) is currently suspended or disbarred from the practice of law;

26 (e)(4)(B) has been disciplined within the ~~prior~~past five years; or

27 (e)(4)(C) is the subject of any pending disciplinary proceedings;

1 (e)(5) a statement that the applicant:

2 (e)(5)(A) submits to the disciplinary authority and procedures of the Bar;

3 (e)(5)(B) is familiar with the rules of procedure and evidence, including
4 applicable local rules;

5 (e)(5)(C) will be available for depositions, hearings, and conferences; and

6 (e)(5)(D) will comply with the rulings and orders of the court;

7 (e)(6) the name, address, Bar identification number, telephone number, fax number, and
8 e-mail address of the member of the Utah State Bar to serve as associate counsel;

9 (e)(7) for resident counsel only, a copy of the Practice Pending Admission Certificate;
10 and

11 (e)(8) any other information relevant to the standards for the admission of the applicant.

12 (f) Utah counsel requirements. Utah counsel associated with nonresident or resident counsel
13 seeking admission pro hac vice ~~shall~~must:

14 (f)(1) file a motion for admission of the applicant pro hac vice;

15 (f)(2) serve the motion by mail, hand-delivery or facsimile on the Utah State Bar's
16 general counsel on or before filing with the court and include a certificate of service with
17 the motion evidencing service on the Bar's general counsel and upon the opposing
18 parties, or, if represented, their counsel;

19 (f)(3) file a written consent to appear as associate counsel;

20 (f)(4) sign the first pleading filed;

21 (f)(5) continue as one of the counsel of record in the case unless another Bar member ~~of~~
22 ~~the Bar~~ is substituted as associate counsel; and

23 (f)(6) be available to opposing counsel and the court for communication regarding the
24 case and the service of papers.

- 1 (g) Utah counsel responsibilities. The court may require Utah counsel to appear at all hearings.
2 Utah counsel ~~shall have~~has the responsibility and authority to act for the client in all proceedings
3 if the nonresident attorney fails to appear or fails to respond to any ~~order of the court~~order.
- 4 (h) Complying with Utah laws. An attorney admitted pro hac vice ~~shall~~must comply with and
5 is subject to Utah statutes, rules of the Supreme Court, including the Rules of Professional
6 Conduct and Article 5, Lawyer Discipline and Disability, the rules of the court in which the
7 attorney appears, and the rules of the Code of Judicial Administration.

8

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 reimbursement ~~to~~ the Fund ~~has been made by the lawyer~~.

Commented [LL123]: Recommendation 1.2

Draft: April 1, 2020

1

165

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 ~~chairperson of the~~Fund chair may appoint
6 ~~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.

Commented [LL124]: 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~~

- 1 ~~of approving or denying~~ a claim ~~shall~~ requires the affirmative votes of ~~at least~~ a majority of the
2 Committee members and a quorum of the voting ~~members of the Board~~ members.
- 3 (h) Any proceeding ~~upon~~ a claim ~~shall will~~ not be conducted according to technical rules relating
4 to evidence, procedure, and witnesses. Any relevant evidence ~~shall~~ must be admitted if it is the
5 sort of evidence on which responsible persons are accustomed to rely ~~on~~ in the conduct of
6 serious affairs, regardless of ~~the existence of~~ any common law or statutory rule ~~which that~~
7 ~~may~~ might make improper the admission of such evidence over objection in court proceedings. The
8 claimant ~~shall have~~ has the duty to supply relevant evidence to support the claim.
- 9 (i) The Board ~~shall~~ must determine the order and manner of payment and pay those claims it
10 deems meritorious. ~~U~~ but unless the Board directs otherwise, no claim ~~should~~ will be approved
11 during ~~the pendency of a~~ pending disciplinary proceeding involving the same act or conduct as
12 alleged in the claim; ~~specifically, n~~ No determination ~~and/or~~ hearing ~~shall~~ will take place until
13 ~~such time that~~ all disciplinary proceedings ~~have, in fact, been completed~~ are complete.
- 14 (j) ~~The Board must advise B~~ both the claimant and the lawyer ~~shall be advised~~ of the status of the
15 Board's consideration of the claim and after having received the recommendation of the
16 Committee, must also ~~shall~~ be informed of the final determination.
- 17 (k) The claimant may request reconsideration within 30 days of the denial or determination of
18 the amount of the claim.

19

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 under
23 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,

1 character, fairness, competence, ethical conduct, public service, and respect for the rules of law,
2 the courts, clients, lawyers, other licensed paralegal practitioners, witnesses and unrepresented
3 parties;

4 (y) “OPC” means the ~~Bar’s~~ Office of Professional Conduct;

5 (z) Reserved;

6 (aa) “Supreme Court” means the Utah Supreme Court; ~~and~~

7 ~~(bb) Reserved~~

8

Commented [LL125]: 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 the
14 ABA pursuant to its Standards and Rules of Procedure for Approval of Law Schools. To qualify
15 as approved, the law school must have been fully or provisionally approved at the time of the
16 Applicant’s graduation, or at the time of the Applicant’s enrollment, provided ~~that~~ the Applicant
17 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

1 criminal background check, a photo, an official certificate of graduation and if applicable, a test
2 accommodation request with supporting medical documentation.

3 (k) “**Confidential Information**” is defined in Rule 15-720(a).

4 (l) “**Disbarred Lawyer**” means an individual who was once a licensed lawyer and is no longer
5 permitted to practice law.

6 (m) “**Executive Director**” means the executive director of the Utah State Bar or ~~her or his~~[their](#)
7 designee.

8 (n) “**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 (o) “**Full-time**” means providing legal services as a paralegal for no fewer than 80 hours per
13 month.

14 (p) “**General Counsel**” means the General Counsel of the Utah State Bar or ~~her or his~~[their](#)
15 designee.

16 (q) “**Licensed Paralegal Practitioner**” means a person licensed by the Utah Supreme Court to
17 provide limited legal representation in the areas of (1) temporary separation, divorce, parentage,
18 cohabitant abuse, civil stalking, and custody and support; (2) forcible entry and detainer and
19 unlawful detainer; or (3) debt collection matters in which the dollar amount in issue does not
20 exceed the statutory limit for small claims cases.

21 (r) “**LPP**” means Licensed Paralegal Practitioner.

22 (s) “**LPP Administrator**” means the Bar employee in charge of LPP licensure or ~~his or her~~[their](#)
23 designee.

24 (t) “**LPP Admissions Committee**” means those Utah State Bar members or others appointed by
25 the Board or president of the Bar who are charged with recommending standards and procedures
26 for licensure of LPPs, with implementation of this article, reviewing requests for test
27 accommodations, and assessing the qualifications of applicants.

- 1 (u) “**NALA**” means the National Association of Legal Assistants.
- 2 (v) “**NALS**” means The Association for Legal Professionals.
- 3 (w) “**NFPA**” means the National Federation of Paralegal Associations.
- 4 (x) “**National Certification**” means Certified Paralegal (CP or CLA) credential from the
5 National Association of Legal Assistants (NALA); the Professional Paralegal (PP) credential
6 from the National Association of Legal Professionals (NALS); or the Registered Paralegal (RP)
7 credential from the National Federation of Paralegal Associations (NFPA).
- 8 (y) “**OPC**” means the ~~Bar’s~~ Office of Professional Conduct.
- 9 (z) “**Paralegal**” means a person qualified through education, training, or work experience, who is
10 employed or retained by a lawyer, law office, governmental agency, or the entity in the capacity
11 or function which involves the performance, under the ultimate direction and supervision of an
12 attorney, of specifically delegated substantive legal work, which work, for the most part, requires
13 a sufficient knowledge of legal concepts that absent such assistance, the attorney would perform.
- 14 (aa) “**Paralegal Certificate**” means verification that an individual has successfully completed a
15 paralegal studies program from an Accredited Program that includes at least 15 credit hours of
16 paralegal studies. The certificate must be offered, taught, and granted by an Accredited Program.
- 17 (bb) “**Paralegal Studies**” and “**Paralegal Studies Degree**” mean course work that prepares a
18 holder to work as a paralegal.
- 19 (cc) “**Privileged Information**” in this article includes: information subject to the attorney-client
20 privilege, attorney work product, test materials and applications of examinees; correspondence
21 and written decisions of the Board and LPP Admissions Committee, and the identity of
22 individuals participating in the drafting, reviewing, grading and scoring of the LPP Licensure
23 Examination.
- 24 (dd) “**Reapplication for Licensure**” means that for two years after the filing of an original
25 application, an Applicant may reapply by completing a Reapplication for Licensure form
26 updating any information that has changed since the prior application was filed and submitting a
27 new criminal background check.

1 (ee) “**Substantive Law-Related Experience**” means the provision of legal services as a
2 Paralegal, paralegal student or law student including, but not limited to, drafting pleadings, legal
3 documents or correspondence, completing forms, preparing reports or charts, legal research, and
4 interviewing clients or witnesses. Substantive Law-Related Experience does not include routine
5 clerical or administrative duties. Substantive Law-Related Experience for licensure in landlord-
6 tenant and debt collection includes, but is not limited to, the provision of legal services as a
7 Paralegal supervised by a licensed attorney, paralegal student or law student in the areas of
8 bankruptcy, real estate, mortgage and/or banking law.

9 (ff) “**Supreme Court**” means the Utah Supreme Court.

10 (gg) “**Unapproved Law School**” means a law school that is not fully or provisionally approved
11 by the ABA.

12 (hh) “**Updated Application**” means that an Applicant is required to amend and update ~~her or his~~
13 [the Applicant’s](#) application on an ongoing basis and correct any information that has changed
14 since the application was filed.

15

Tab 3

Summary

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.
- 14-111 Practicing without license prohibited.
- 14-202 Bar's purposes.
- 14-207 Finances.
- 14-208 Special rules and regulations.
- 14-402 Definitions.

Chapter 11, Article 5

General provisions.

- 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.
- 14-506 Jurisdiction.
- 14-529 Statute of limitations.

Ethics and Discipline Committee (split 14-503)

- _____ Ethics and Discipline Committee composition. (formerly 14-503(a)-(c))
- _____ Screening panel composition; responsibilities. (formerly 14-503(d)-(f))
- _____ Screening panel or respondent subpoena petitions. (formerly 14-503(g))
- _____ Committee clerk. (formerly 14-503(h))
- _____ Disclosure, recusal, and disqualification. (formerly 14-503(i))

Office of Professional Conduct composition and responsibilities (split 14-504)

- _____ Chief disciplinary counsel and OPC counsel.
- _____ OPC prosecutorial powers and duties.
- _____ Ethics advisory opinions.
- _____ OPC investigative subpoenas.
- _____ Retaining records.

14-510 Prosecution and appeals (split 14-510)

- _____ Unprofessional conduct complaints.
- _____ Proceedings before Committee and screening panels.
- _____ Exceptions to screening panel determinations and recommendations.
- _____ General procedures
- _____ Final Committee disposition.
- _____ Appealing a final Committee determination.
- 14-511 Actions in district court.
- 14-532 Failure to answer charges.
- 14-527 Appointment of trustee to protect clients' interest when lawyer disappears, dies, is suspended or delicensed, or is transferred to disability status.
- 14-530 Costs.
- 14-513 Immunity from civil suits.
- 14-514 Service.
- 14-517 Additional rules of procedure.

Diversion (split 14-533)

- _____ Diversion referrals, authority, and responsibilities
- _____ Circumstances warranting diversion.
- _____ Diversion contract.
- _____ Respondent's participation.
- _____ Terminating diversion.
- _____ Diversion costs.

Discipline.

- 14-509 Grounds for discipline.
- 14-515 Accessing disciplinary information.
- 14-516 Disseminating disciplinary information.
- 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.

- 14-531 Noncompliance with child support order, child visitation order, subpoena or order relating to paternity, or child support proceeding.
- 14-526 Notice of disability or suspension; return of clients' property; refund of unearned fees.

Sanctions (originally article 6 rules)

- 14-602 Purpose and nature of sanctions.
- 14-603 Sanctions.
- 14-604 Factors to be considered in imposing sanctions.
- 14-605 Sanctions for violating duties owed to clients.
- _____ Sanctions for violating duties owed to the public.
- _____ Sanctions for violating duties owed to the legal system.
- _____ Sanctions for violating duties owed as a professional.
- 14-606 Prior discipline orders.
- 14-607 Aggravation and mitigation.

Reinstatement.

- 14-524 Reinstatement following a suspension of no more than six months.
- 14-525 Reinstatement following a suspension of more than six months; relicensure.

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.

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;

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;

1 (b)(9) educating the public about the rule of law and responsibilities under the law; and

2 (b)(10) assisting Bar members in improving the quality and efficiency of their practice.

3 (c) **Qualifications.** This chapter prescribes the qualifications, duties, and obligations of lawyers,
4 foreign legal consultants, and Licensed Paralegal Practitioners licensed to practice law in Utah.
5 The Supreme Court is responsible for disciplining a Bar member or Licensed Paralegal
6 Practitioner.

7 (d) **Licensure required.** No suspended or disbarred person may practice law in Utah or hold
8 themselves out as one who may practice law in Utah. A person may only practice law in Utah if
9 that person is:

10 (d)(1) a licensed lawyer and an active Bar member in good standing;

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

14 (d)(3) a foreign legal consultant licensed by the Bar; or

15 (d)(4) a Licensed Paralegal Practitioner and an active licensee of the Bar in good
16 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.

1 (b) **Board's powers.** The Board may exercise all powers necessary and proper to carry out its
2 duties and responsibilities and has all authority not specifically reserved to the Supreme Court.
3 The Court specifically reserves the authority to:

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

6 (b)(2) approve all rules and regulations for admission, licensure, professional conduct,
7 client security fund, fee arbitration, legislative activities, unauthorized practice of law,
8 and Bar Examination review and appeals; and

9 (b)(3) establish appropriate rules and regulations governing mandatory continuing legal
10 education.

11 (c) **Territorial divisions.** The First Division includes the First Judicial District; the Second
12 Division includes the Second Judicial District; the Third Division includes the Third Judicial
13 District; the Fourth Division includes the Fourth Judicial District; and the Fifth Division includes
14 the Fifth, Sixth, Seventh, and Eighth Judicial Districts.

15 (d) **Number of lawyer commissioners from each division.** Each division will have one lawyer
16 commissioner, except the Third Division will have seven lawyer commissioners. No more than
17 one lawyer commissioner from any division except from the Third Division, and no more than
18 seven lawyer commissioners from the Third Division, may serve on the Board at the same time.

19 (e) **Nomination and eligibility of lawyer commissioners.** To nominate a person for
20 commissioner for a particular division, a member's business mailing address on the Bar's records
21 must be within that division. To be eligible for the office of lawyer commissioner in a division,
22 the nominee's business mailing address on the Bar's records must be within that division.
23 Nomination to the office of commissioner must be by written petition of at least 10 Bar members
24 in good standing. Any number of candidates may be nominated on a single petition. Nominating
25 petitions will be provided to the executive director within a period fixed by the Board's rules.

26 (f) **Commissioner Elections.**

27 (f)(1) Lawyer commissioners must be elected by resident active Bar members as follows:

1 (f)(1)(A) beginning in 1983 and every third year thereafter, one member from the
2 Second Division and two members from the Third Division, but in 1983 only,
3 there will be four members elected from the Third Division;

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

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

8 (f)(2) The candidate from any division, and the two or three candidates from the Third
9 Division, receiving the greatest number of votes of that division will be the commissioner
10 of such division. A member may only vote for commissioner candidates in the division in
11 which the member's business mailing address on the Bar's records is located. The ballots
12 will be returned to the Bar offices in accordance with its rules. There will be an annual
13 election by the resident active Bar members for the purpose of filling vacancies. The
14 Board will fix the time for holding the annual election and prescribe such rules and
15 regulations in accordance with this chapter. The Board must mail annual election notices
16 at least 90 days before the date on which ballots will be counted.

17 (g) **President-elect's nomination and election.** The Board must nominate at least one active
18 lawyer in good standing to run for the office of president-elect, to be elected by the active Bar
19 members. The president and the president-elect will hold office until their successors are elected
20 and seated. A secretary, and such other assistants as the Board may require, may be selected
21 from within or without the Board to hold office at the pleasure of the Board and to be paid such
22 compensation as the Board determines.

23 (h) **Board officers and organization.** The Board is organized and authorized to conduct
24 business through its elected commissioners, and the Bar's president and president-elect. The
25 president-elect for the previous year will automatically succeed to the office of president. A
26 president and president-elect who are not elected commissioners have the authority to vote on
27 matters brought before the Board. In the event of a tie vote, the matter at hand will fail to pass.

- 1 (i) **Annual and special meetings notice.** There must be an annual meeting of the Bar, presided
2 over by the Bar president, open to all members in good standing, and held at such time and place
3 as the Board may designate, for discussing Bar affairs and the administration of justice. Special
4 Bar meetings may be held at such times and places as the Board designates. Notice of all
5 meetings must be published to the Bar's website not fewer than 15 days before the date of such
6 meeting.
- 7 (j) **Bylaws.** The Board may adopt Bylaws, not conflicting with any of these rules' terms,
8 concerning officer selection and tenure, creation of sections and committees and their powers
9 and duties, and generally for the control and regulation of the business of the Board and of the
10 Bar.

1 **Rule 14-105 Promulgating rules to regulate licensed lawyers, Licensed Paralegal**
2 **Practitioners, and judicial officers.**

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.

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:

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

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

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

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

21

1 **Rule 14-111. Practicing without a license prohibited.**

2 (a) Action or proceedings to enforce. Exception. No person who is not licensed to practice law in
3 Utah as an attorney at law or as a foreign legal consultant or Licensed Paralegal Practitioner
4 may practice or assume to act or hold himself or herself out to the public as a person qualified to
5 practice law or to carry on the calling of an attorney at law in Utah or Licensed Paralegal
6 Practitioner. Such practice, or assumption to act or holding out, by any such unlicensed person
7 will not constitute a crime, but this prohibition against the practice of law by any such person
8 will be enforced by such civil action or proceedings, including writ, contempt, or injunctive
9 proceedings, as may be necessary and appropriate, which action or which proceedings the Bar
10 will institute after Board approval.

11 (b) Nothing in this article will prohibit a person who is unlicensed as an attorney, foreign legal
12 consultant, or Licensed Paralegal Practitioner from personally representing that person's own
13 interests in a cause to which the person is a party in his or her own right and not as assignee.

14

1 **Article 2. Bylaws**

2 **Rule 14-202. Bar's purposes.**

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.

22

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.

6 (a)(1) **OPC.** The Bar's annual budget must include a budget for the OPC, including the
7 salaries of OPC counsel and staff, their expenses, and administrative costs. The budget
8 must be jointly developed by the Board and the OPC and approved by the Oversight
9 Committee. The Board must ratify the budget for the OPC approved by the Oversight
10 Committee unless the Board petitions the Supreme Court for modifications, in which case
11 the budget approved by the Supreme Court is final.

12 (b) **Section dues.**

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

17 (b)(2) The Bar must hold any funds raised by sections from membership fees as
18 separately identifiable funds of the sections, and disburse to the sections as needed, to
19 carry out the functions of the sections. Such funds may not revert to the general Bar fund
20 at the end of the budget year, but will continue to be held as a separately identifiable
21 fund.

22 (c) **Disbursements.**

23 (c)(1) Bar funds are disbursed only in accordance with the provisions of law and by these
24 Bylaws, and at the direction of the Board.

25 (c)(2) Checking accounts must be maintained with banks to be designated by the Board in
26 such amounts as the Board will determine.

27 (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 operating
5 needs, in which case a check of any amount may be signed by an Executive Committee
6 member or by the executive director. The Board designates the size of the revolving-fund
7 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.

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.

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 two years beginning July 1 through June 30.

11 (m) “**Ethics**” means standards set by the Utah Rules of Professional Conduct with which
12 a lawyer must comply to remain authorized to practice law in Utah and remain in good
13 standing.

14 (n) “**Full exam**” means all components of the Bar Examination as defined under Rule 14-
15 710.

16 (o) “**House Counsel**” means a lawyer admitted with a restricted House Counsel license
17 as defined in Rule 14-719, which is required and limits the lawyer’s practice of law to the
18 business of the lawyer’s employer.

19 (p) “**Inactive status**” or “**inactive status lawyer**” means a lawyer who has elected to be
20 on inactive status as defined under the Bar’s rules, regulations, and policies.

21 (q) “**MCLE**” means mandatory continuing legal education as defined under this article.

22 (r) “**Multi-State Compliance Reciprocity**” means Utah has established that MCLE
23 compliance in certain states (Idaho, Oregon, Washington) may be used as MCLE
24 compliance in Utah by an active lawyer whose principal practice is in one of the
25 established reciprocal states.

26 (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 Office of Professional Conduct.

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.

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

17

1 **Article 5. Lawyer Discipline and Disability**

2 **General provisions.**

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

4 **Intent:**

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

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

8 **Applicability:**

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

10 **Statement of the Rule:**

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

13 (a)(1) **Composition.**

14 (a)(1)(A) The Oversight Committee consists of five voting members. Among the
15 members, at least one must be a judge; one a member of the public; and one a past
16 chair or past vice-chair of the Ethics and Discipline Committee. At least one of
17 the members must have an accounting or finance background.

18 (a)(1)(B) The executive director of the Utah Bar will be an ex-officio, non-voting
19 member of the Oversight Committee.

20 (a)(2) **Appointment and member roles.** The Utah Supreme Court appoints Committee
21 members who may serve up to two consecutive staggered four-year terms. The Supreme
22 Court will select a chair from among the Oversight Committee’s members. Oversight
23 Committee members serve as officers of the court and not as representatives of any
24 client, employer, or other organization or interest group. At the first meeting of the
25 Oversight Committee in any calendar year, and at every meeting at which a new

1 Committee member first attends, each Committee member must briefly disclose the
2 general nature of the member's legal or other practice.

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

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

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

10 (a)(6) **Administrative support.** The Administrative Office of the Courts coordinates
11 administrative support to the Oversight Committee.

12 (b) **Oversight committee purpose, responsibilities, and authority.**

13 (b)(1) **Oversight Committee purpose.** The Oversight Committee's purpose is to assist
14 the OPC in implementing reforms to the attorney discipline process adopted by the Utah
15 Supreme Court and to provide oversight for the OPC.

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

18 (b)(2)(A) Develop and implement realistic performance metrics and conduct
19 annual evaluations of OPC and its chief disciplinary counsel;

20 (b)(2)(B) Approve the budget for the OPC and annually submit the budget by
21 May 1 to the Utah Supreme Court and Utah Bar;

22 (b)(2)(C) Conduct a needs assessment for the OPC, setting forth a three- to five-
23 year funding plan for the disciplinary process, including technology and staffing
24 needs;

1 (b)(2)(D) Annually, in conjunction with chief disciplinary counsel and the Ethics
2 and Discipline Committee chair, report to the Court regarding the operations of
3 the OPC and the general standing of disciplinary matters and procedures;

4 (b)(2)(E) Develop and monitor formal policies for the OPC, including records
5 retention policies;

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

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

10 (b)(2)(H) Monitor the OPC's workload and recommend to the Supreme Court
11 adequate OPC staffing.

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

15 (c) **Complaints and appeals.**

16 (c)(1) Any person may file with the Oversight Committee chair a complaint alleging
17 malfeasance regarding the chief disciplinary counsel. If necessary, the Oversight
18 Committee may enter a recommendation to the Supreme Court, which may take
19 appropriate action.

20 (c)(2) If a complaint regarding the chief disciplinary counsel is received in the OPC's
21 office, the chief disciplinary counsel must forward the complaint to the Oversight
22 Committee chair within a reasonable time, but not more than 14 days after receipt.

23 (c)(3) Any person may file with the chief disciplinary counsel a complaint alleging
24 malfeasance regarding OPC counsel or staff. The chief disciplinary counsel's decision
25 regarding the complaint is final and not subject to appeal. The chief disciplinary
26 counsel's decision may include an appropriate action taken against the person whom the
27 complaint is filed.

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

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

1 **Rule 14-501. Lawyer disciplinary and disability proceedings: purpose, authority, scope,**
2 **and structure.**

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

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

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

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

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

22

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.

5 (b) “**Bar**” means the Utah State Bar.

6 (c) “**Bar Commission**” or “**Commission**” means the Board of Bar Commissioners of the
7 Utah State Bar.

8 (d) “**Chief disciplinary counsel**” means the lawyer the Supreme Court appoints to
9 manage the OPC.

10 (e) “**Committee**” means the Ethics and Discipline Committee of the Supreme Court.

11 (f) “**Complainant**” means either (1) the 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.

20 (i) “**Intent**” means the conscious objective or purpose to accomplish a particular result.

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.

24 (k) “**Lawyer**” includes those licensed to practice law in any jurisdiction of the United
25 States, foreign legal consultants, and licensed paralegal practitioners, insofar as the

1 licensed paralegal practitioner is authorized to practice under Utah Special Practice Rule
2 14-802, unless provided otherwise.

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

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

7 (n) “**Notice**” means the notice the OPC sends to the respondent after a preliminary
8 investigation, which identifies the possible violation(s) of the Rules of Professional
9 Conduct or Licensed Paralegal Practitioner Rules of Professional Conduct, raised by the
10 complaint as the OPC has preliminarily determined.

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

12 (p) “**OPC counsel**” means chief disciplinary counsel, deputy chief disciplinary counsel,
13 and any assistant disciplinary counsel.

14 (q) “**Oversight committee**” means the committee established in Rule 11-501 to oversee
15 the OPC.

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

20 (s) “**Respondent**” means a lawyer subject to the disciplinary jurisdiction of the Supreme
21 Court against whom a complaint has been filed or an action has been initiated.

22 (t) “**Rules of Professional Conduct**” means the rules in Chapter 13 of the Supreme Court
23 Rules of Professional Practice and “**Licensed Paralegal Practitioner Rules of**
24 **Professional Conduct**” means the rules in Chapter 15, article 12 of the Supreme Court
25 Rules of Professional Practice.

26 (u) “**Screening panel**” means Committee members who participate in hearings and make
27 determinations under Rule 14-503.

1 (v) **“Supreme Court”** means the Utah Supreme Court.

2

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

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

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

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

20

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

2 (a) **Individual complaints.** A complaint against a lawyer must be filed with the OPC within four
3 years of the time that the complainant discovers or reasonably should have discovered the
4 alleged misconduct.

5 (b) **OPC complaints.** A complaint initiated by the OPC must be initiated within five years of the
6 alleged misconduct.

7 (c) **Fraud, conversion, conviction of a serious crime, and concealment.** There is no statute of
8 limitations for misconduct alleging fraud, conversion, or conviction of a serious crime, or for
9 alleged misconduct the discovery of which the lawyer has concealed.

10

1 **Ethics and Discipline Committee.**

2 **Rule _____. Ethics and Discipline Committee composition.**

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

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

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

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

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

16 (b)(4) making recommendations to the Supreme Court concerning appointments to and
17 removals from the screening panels and reports concerning screening panel activities and
18 the overall work of the Committee.

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

22 (d) **Removal.** The Committee chair may recommend removal of a Committee member by
23 notifying the Supreme Court of the recommendation of removal and reasons for the
24 recommendation. The removal is effective when the Supreme Court accepts the
25 recommendation.

26

1 **Rule _____. Screening panel composition; responsibilities.**

2 (a) **Screening panel composition.** The Committee members, except for the Committee chair and
3 vice chairs, are divided into four screening panel sections of five members each, including four
4 lawyers and one public member. Whenever a screening panel is assigned a complaint involving a
5 licensed paralegal practitioner, the Committee chair may appoint up to two licensed paralegal
6 practitioners to the screening panel as voting members, with all of the responsibilities and duties
7 of other members of the screening panel.

8 (b) **Screening panel number.** All screening panel hearings must have five panel members
9 present unless all parties agree to fewer than five, but not fewer than three, panel members. A
10 panel chair or vice chair and a public member must be present at each screening panel hearing.

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

17 (d) **Voting.** A majority vote of those members present and voting at any proceeding is required
18 for a screening panel determination. If an even number of screening panel members participate in
19 a proceeding, the chair, or vice chair if the chair is not present, may not vote. The chair or vice
20 chair may, however, fully participate in the proceeding.

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

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

27 (f) **Responsibilities.**

1 (f)(1) Complaints are randomly assigned to a screening panel. The screening panels
2 review, investigate, and hear all complaints charging that a lawyer engaged in unethical
3 or unprofessional conduct. Screening panels determine the action to be taken on any
4 complaint that, based on the facts of the particular case, is most consistent with the public
5 interest and the Rules of Professional Conduct or Licensed Paralegal Practitioner Rules of
6 Professional Conduct.

7 (f)(2) Unless otherwise provided in this article, whenever the OPC may be present before
8 a screening panel during a hearing, the respondent may also be present.

9 **Rule _____ Screening panel or respondent subpoena petitions.**

10 (a) **Who may request a subpoena.** The respondent or a screening panel, for good cause, may
11 petition the district court under seal to issue a subpoena, subpoena duces tecum, or any order
12 allowing discovery before the OPC commences an action against respondent. Except for good
13 cause, all petitions under this rule require a five-day written notice to the opposing party before
14 issuing a subpoena.

15 (b) **Subpoena enforcement.** A district court in the district in which the attendance or production
16 is required may, upon proper application, enforce the attendance and testimony of any witnesses
17 and the production of any documents subpoenaed.

18 (c) **Quashing subpoena.** The Committee chair or the court wherein the subpoena enforcement is
19 being sought will hear and determine any attack on an issued subpoena's validity. Any resulting
20 order is not appealable before entry of a final order in the proceeding.

21 (d) **Witnesses and fees.** Subpoena fees, witness fees, and mileage are reimbursed in the amounts
22 provided under Rule 45 of the Utah Rules of Civil Procedure.

23

1 **Rule _____ Committee clerk.**

2 (a) **Confidentiality.** The Committee clerk is subject to the confidentiality requirements of Rule
3 14-515.

4 (b) **Responsibilities.** The clerk is responsible for:

5 (b)(1) handling the Committee’s administrative affairs,

6 (b)(2) accepting documents filed with the Committee,

7 (b)(3) handling screening panel calendars,

8 (b)(4) giving notice to persons whose attendance is requested,

9 (b)(5) notifying the complainant of the times and dates their matters will be heard,

10 (b)(6) notifying the complainant, the respondent, and any counsel of record of the
11 disposition of each matter, and

12 (b)(7) otherwise performing or providing the secretarial and administrative functions of
13 the Committee and screening panels.

14

1 **Rule _____ Disclosure, recusal, and disqualification.**

2 (a) **Application.** Disclosure, recusal, and disqualification apply to Committee members'
3 participation in a screening panel hearing, exception, or other proceeding in which a
4 respondent's conduct is considered under these rules.

5 (b) **Disclosure.**

6 (b)(1) Committee members must make disclosures before or, at the latest, at the start of a
7 screening panel hearing or other hearing in which a respondent's conduct is considered.

8 (b)(2) Each Committee member must disclose to the parties any professional or personal
9 relationship or conflict of interest with a party or a party's counsel in the proceeding that
10 may affect an unbiased evaluation of the respondent.

11 (b)(3) Relationships that may affect an unbiased evaluation of the respondent include any
12 contact or association that might influence a Committee member's ability to fairly and
13 reasonably evaluate the conduct of any respondent or to assess that respondent without
14 bias or prejudice, including but not limited to:

15 (b)(3)(A) family relationships to a party or lawyer of a party in the proceeding
16 within the third degree of relationship;

17 (b)(3)(B) any business relationship between the Committee member and a party
18 or lawyer of a party in the proceedings; and

19 (b)(3)(C) any personal litigation directly or indirectly involving a party or a
20 lawyer of a party in the proceeding and the Committee member, the Committee
21 member's family or the Committee member's business.

22 (b)(4) A Committee member exhibits bias or prejudice when the Committee member is
23 predisposed to decide a cause or an issue in a way that does not leave the Committee
24 member's mind open to exercising the Committee member's duties impartially in a
25 particular case.

26 (c) **Recusal.**

1 (c)(1) As used in this rule, recusal is a voluntary act of self-disqualification by a
2 Committee member.

3 (c)(2) After making a disclosure, a Committee member may voluntarily recuse if the
4 Committee member believes the relationship with the respondent or other parties will
5 affect an unbiased evaluation of the respondent.

6 **(d) Disqualification procedures.**

7 (d)(1) A respondent may move to disqualify a screening panel Committee member if
8 such member:

9 (d)(1)(A) makes a disclosure and does not voluntarily recuse, and that member's
10 impartiality might reasonably be questioned; or

11 (d)(1)(B) does not make a disclosure, but known circumstances suggest the
12 Committee member's impartiality might reasonably be questioned.

13 (d)(2) A motion to disqualify a screening panel Committee member must be submitted to
14 the Committee clerk for review by the screening panel chair or vice chair before or
15 during the screening panel hearing.

16 (d)(3) A motion to disqualify a Committee member from an exception or other hearing or
17 review must be submitted to the Committee clerk for review by the Committee chair or
18 vice chair before any hearing on the matter.

19 **(e) Disqualification after committee service.** A former Committee member may not
20 personally represent a respondent in any proceeding as provided in these rules within one
21 year after completing the former Committee member's service. In addition to the one-
22 year prohibition, a former Committee member may not personally represent a respondent
23 in any proceedings as provided in these rules in which the former Committee member
24 previously participated during their service on the Committee.

25

1 **Office of Professional Conduct composition and responsibilities.**

2 **Rule _____. Chief disciplinary counsel and OPC counsel.**

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

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

9 (b)(1) Hire and manage OPC counsel and staff to ensure quality investigations, discipline,
10 and sanctions.

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

12 (b)(3) Monitor and report to the Oversight Committee regarding the OPC's operations
13 and the efficiency and effectiveness of the disciplinary system.

14 (b)(4) Prepare and submit an annual report to the Oversight Committee and Supreme
15 Court on or about February 1 of each year for the preceding calendar year.

16 (b)(4)(A) The report must include:

17 (b)(4)(A)(1) the number of disciplinary cases investigated,

18 (b)(4)(A)(2) the number of disciplinary cases brought before the
19 Committee,

20 (b)(4)(A)(3) actions filed,

21 (b)(4)(A)(4) dispositions, including diversionary dispositions,

22 (b)(4)(A)(5) cases dismissed,

23 (b)(4)(A)(6) informal ethics opinions issued, and

1 (b)(4)(A)(7) such other information as may be helpful to the Supreme
2 Court in understanding the OPC's operations and the efficiency and
3 effectiveness of the disciplinary system.

4 (b)(4)(B) Such report may contain recommendations for rule amendments or
5 changes in the OPC or Ethics and Discipline Committee procedure. The Oversight
6 Committee may amend the report before releasing it to the Supreme Court.

7 **(c) OPC counsel.**

8 (c)(1) Qualification and responsibilities. OPC counsel must be licensed to practice law in
9 Utah.

10 (c)(2) OPC counsel will be selected by the chief disciplinary counsel. An OPC counsel is
11 an at-will employee subject to dismissal by the chief disciplinary counsel with or without
12 cause.

13 **(d) Disqualification and conflicts of interest.** In addition to complying with the Rules of
14 Professional Conduct regarding successive government and private employment (Rule 1.11 of
15 the Rules of Professional Conduct), former OPC counsel may not personally represent a
16 respondent as to any complaint or action within one year after completing the former OPC
17 counsel's service. In addition to the one-year prohibition, former OPC counsel may not
18 personally represent a respondent in any complaint or action that the OPC investigated or
19 prosecuted during the term of the former OPC counsel's employment.

20

1 **Rule _____ OPC prosecutorial powers and duties.**

2 (a) The chief disciplinary counsel will perform all prosecutorial functions and have the following
3 powers and duties, which may be delegated to other staff:

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

7 (a)(2) investigate all information coming to the attention of the OPC which, if true, would
8 be grounds for discipline or transfer to disability status, and investigate all facts
9 pertaining to petitions for reinstatement or relicensure;

10 (a)(3) choose to dismiss, decline to prosecute, refer nonfrivolous and substantial
11 complaints to the Committee for hearing, or petition the district court for transfer to
12 disability status;

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

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

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

24 (a)(7) notify each jurisdiction in which a respondent is licensed of a transfer to disability
25 status or any public discipline imposed in Utah;

1 (a)(8) seek reciprocal discipline where appropriate when informed of any public
2 discipline imposed by another court, another jurisdiction, or a regulatory body having
3 disciplinary jurisdiction;

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

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

13 (a)(11) provide informal guidance concerning professional conduct to lawyers through
14 seminars that will promote ethical conduct, formulate diversionary programs, monitor
15 probations, and disseminate disciplinary results to the Bar and the public through the
16 Utah Bar Journal and otherwise as appropriate while maintaining the confidentiality of
17 respondents subject to private discipline.

18

1 **Rule _____ Ethics advisory opinions.**

2 (a) **Effect of ethics advisory opinions.** The OPC may not prosecute a Utah lawyer for conduct
3 that complies with an ethics advisory opinion that has not been withdrawn at the time of the
4 conduct in question. No court is bound by an ethics opinion’s interpretation of the Rules of
5 Professional Conduct or Licensed Paralegal Practitioner Rules of Professional Conduct.

6 (b) **Reviewing, modifying, or withdrawing ethics advisory opinions.**

7 (b)(1) The OPC may at any time request the Bar’s Ethics Advisory Opinion Committee to
8 review, modify, or withdraw an ethics advisory opinion and any OPC investigation or
9 prosecution is suspended pending the final outcome of the request. The Ethics Advisory
10 Opinion Committee may issue a modified opinion, withdraw the opinion, or decline to
11 take any action but will report its action or recommendation to the Bar Commission and
12 the Commission will take such final action as it deems appropriate.

13 (b)(2) The OPC may also request the Supreme Court to review, affirm, reverse, or
14 otherwise modify an ethics advisory opinion.

15

1 **Rule _____ OPC investigative subpoenas.**

2 (a) **Power to subpoena.** The OPC may request that the Committee Chair serve on a respondent
3 or third party a subpoena to produce documents, electronically stored information, or tangible
4 things in the possession, custody, or control of that person.

5 (b) **Requesting a subpoena.** The 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 the
7 Bar's records. The request must describe the purpose for seeking the subpoena. Any objections
8 to the request must be filed with the chair within seven days of the subpoena request. Within
9 three business days after the time for filing an objection expires, the Committee chair will grant
10 or deny the subpoena request, without a hearing, based on the following considerations:

11 (b)(1) a weighing of the materiality and necessity of the requested documents,
12 electronically stored information, or tangible things; and

13 (b)(2) a weighing of the burden to the custodian of producing the documents,
14 electronically stored information, or tangible things.

15 (c) **Serving the subpoena.** If the Committee chair grants the request, the OPC may obtain a
16 signed subpoena form, but otherwise blank, from the Committee clerk. The OPC will fill out the
17 subpoena and serve it on the respondent or third party.

18 (d) **Witnesses and fees.** Subpoena fees, witness fees, and mileage are reimbursed in the amounts
19 provided under Rule 45 of the Utah Rules of Civil Procedure. The requesting party bears the cost
20 associated with producing documents or electronically stored information.

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

26

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 the OPC’s application, notice to respondent, and a showing of good
5 cause, the Oversight Committee may permit the 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) **Discipline and disability.** The OPC must expunge after 30 years all records or other
11 evidence of the existence of complaints that resulted in public reprimand, suspension,
12 delicensure, resignation with discipline pending, admonition, disability, and probation running
13 from the date the discipline expired.

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

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

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

22

1 **Prosecution and appeals.**

2 **Rule _____ Unprofessional conduct complaints.**

3 (a) **Filing.** The OPC or any person may initiate a disciplinary proceeding against any lawyer by
4 filing a written complaint in concise language setting forth the acts or omissions claimed to
5 constitute unprofessional conduct.

6 (a)(1) If an individual initiates the complaint, filing is complete when the complaint is
7 delivered to the OPC office in hard copy or electronic form, or through the OPC's
8 website at opcutah.org.

9 (a)(2) If the OPC initiates the complaint, filing is complete when the OPC delivers the
10 complaint to the lawyer in hard copy or electronic form.

11 (b) **Complaint form.** The complaint need not be in any particular form or style and may be by
12 letter or other informal writing, although the OPC may provide a form to standardize the format.
13 The complaint need not recite disciplinary rules, ethical canons, or a prayer requesting specific
14 disciplinary action. The complainant must sign the complaint and include the complainant's
15 address and may list the names and addresses of other witnesses. The complaint must contain a
16 declaration under penalty of perjury as to the accuracy of the information in the complaint.
17 Complaints filed by the OPC are not required to contain a verification. A complaint's substance
18 prevails over the form.

19 (c) **Initial investigation.** On receiving a complaint, the OPC will conduct a preliminary
20 investigation to ascertain whether the complainant's allegations are sufficiently clear. If not, the
21 OPC will seek additional facts from the complainant. The complainant must submit documents
22 or writings containing any additional facts. Within three months after filing a complaint of
23 unprofessional or unethical conduct of a respondent, the OPC must advise the complainant
24 concerning the initial investigation of the complaint. After the final disposition of the complaint,
25 the OPC must promptly advise the complainant in writing of the reasons for the disposition.

26 (d) **Referral to Professionalism and Civility Counseling Board.** The OPC may—in connection
27 with any conduct that comes to their attention—refer any matter to the Professionalism and

1 Civility Counseling Board established under Rule 14-303. Such referral may be in addition to or
2 in lieu of any further proceedings related to the subject matter of the referral. Such referral
3 should be in writing and—at the discretion of the OPC—may include any or all information
4 included in the complaint or additional facts submitted by the complainant.

5 (e) **Notice to respondent.** On completing the preliminary investigation, the OPC will determine
6 whether the complaint can be resolved in the public interest, the respondent’s interest, and the
7 complainant’s interest. If the complaint cannot be resolved or if it alleges facts that, by their very
8 nature, should be brought before the screening panel, or if good cause otherwise exists to bring
9 the matter before the screening panel, the OPC must:

10 (e)(1) serve the respondent with a notice identifying with particularity the possible
11 violation(s) of the Rules of Professional Conduct or Licensed Paralegal Practitioner Rules
12 of Professional Conduct raised by the complaint as the OPC has preliminarily
13 determined;

14 (e)(2) attach a copy of the signed complaint; and

15 (e)(3) mail the documents to the respondent’s address as reflected in the Bar’s records.

16 (f) **Answer to complaint.** Within 20 days after the respondent is served with the complaint and
17 notice, the respondent must file with the OPC a signed, written answer explaining the facts
18 surrounding the complaint, together with all defenses and responses to the claims of possible
19 misconduct. For good cause, the OPC may extend the time for filing an answer not to exceed an
20 additional 30 days. When the answer is filed or if the respondent fails to respond, the OPC will
21 refer the case to a screening panel for investigation, consideration, and determination or
22 recommendation. The OPC must forward a copy of the answer to the complainant.

23 (g) **Dismissing the complaint.**

24 (g)(1) Reasons for dismissal. The OPC may dismiss a complaint without referral to a
25 screening panel hearing if the OPC determines the complaint is:

26 (g)(1)(A) frivolous, unintelligible, unsupported by fact, or fails to raise probable
27 cause of any unprofessional misconduct;

1 (g)(1)(B) barred by the statute of limitations;

2 (g)(1)(C) more adequately addressed in another forum; or

3 (g)(1)(D) one in which the OPC declines to prosecute.

4 (g)(2) Notification and appeal.

5 (g)(2)(A) When the OPC dismisses a complaint, it must:

6 (g)(2)(A)(i) notify the complainant that it has dismissed the complaint;

7 (g)(2)(A)(ii) state the reasons for dismissal; and

8 (g)(2)(A)(iii) include a notice of the complainant's right to appeal an OPC
9 decision to the Committee chair.

10 (g)(2)(B) The complainant may appeal the dismissal by filing written notice with
11 the Committee clerk within 15 days after the dismissal notification is mailed. The
12 complainant has no other right of appeal in this chapter.

13 (g)(2)(C) On appeal, the Committee chair will conduct a de novo review of the
14 file, either affirm the dismissal or require the OPC to prepare a notice of the
15 complaint, and set the matter for hearing by a screening panel. If the chair
16 recuses, the chair will appoint the vice chair or one of the screening panel chairs
17 to review and determine the appeal.

18

1 **Rule _____ Proceedings before Committee and screening panels.**

2 (a) **Review and investigation.** As fact finders and investigators, screening panels will review all
3 complaints the OPC refers to them, including all facts developed in the complaint, answer,
4 investigation, and hearing, and the OPC's recommendations.

5 (b) **OPC's summary.** Before any hearing, the OPC may file with the clerk and serve on the
6 respondent a summary of its investigation. If filed, the summary must identify with particularity
7 any additional violations of the Rules of Professional Conduct or Licensed Paralegal Practitioner
8 Rules of Professional Conduct as determined by the OPC after it served respondent with the
9 notice of the complaint. If the OPC provides the summary to the screening panel, the OPC must
10 also provide the summary to the respondent and the summary will serve as notice of any
11 additional violations the OPC did not previously charge. If the OPC alleges additional rule
12 violations in the summary, the summary must be served on the respondent at least seven days
13 before the hearing. In cases where a judicial officer has not addressed or reported a respondent's
14 alleged misconduct, the screening panel may not consider this inaction to be evidence either that
15 misconduct has occurred or has not occurred.

16 (c) **Respondent's appearance.** The screening panel must, with at least 30 days' notice, afford
17 the respondent an opportunity to appear before the screening panel before taking any action that
18 may result in recommending an admonition or public reprimand, or the OPC's filing a
19 misconduct action in district court. Respondent and any witnesses the respondent calls may
20 testify, and respondent may present oral argument with respect to the complaint.

21 (d) **Respondent's brief.** Respondent may submit a written brief to the screening panel at least 10
22 days before the hearing, which may not exceed 10 pages unless the panel chair or vice chair
23 allows an extension for good cause. The OPC will forward a copy of the brief to the
24 complainant.

25 (e) **Complainant's appearance.** A complainant has the right to appear before the screening
26 panel personally and may testify, together with any witnesses the complainant calls.

27 (f) **Right to hear evidence; cross-examination.** The complainant and respondent have the right
28 to be present during presentation of evidence unless excluded by the screening panel chair for

1 good cause. Respondent may be represented by counsel, and complainant may be represented by
2 counsel or another representative. Either complainant or respondent may request that the panel
3 chair seek responses or pose questions to the other party at the hearing. Direct cross-examination
4 will ordinarily not be permitted unless, upon request, the panel chair deems that it would
5 materially assist the panel in its deliberations.

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

15 (h) **Hearing record.** The proceedings of any screening panel hearing under this rule will be
16 recorded at an audio quality level that permits an accurate transcription of the proceedings. The
17 clerk will assemble a complete record of the proceedings and deliver it to the Committee chair
18 upon the panel's determination or recommendation to the Committee chair. The record of the
19 proceedings before the panel must be preserved for at least one year after delivery of the panel's
20 determination or recommendation to the Committee chair and for such additional time as any
21 further proceedings on the matter are pending or might be instituted under this rule.

22 (i) **Screening panel determination or recommendation.** The screening panel—after reviewing
23 all the facts developed by the complaint, answer, investigation, and hearing—will make one of
24 the following determinations or recommendations:

25 (i)(1) The preponderance of evidence does not establish that the respondent engaged in
26 misconduct, in which case the screening panel will dismiss the complaint. A letter of
27 caution may also be issued with the dismissal. The letter must be signed by the screening

1 panel chair or vice chair and will serve as a guide for the future conduct of the
2 respondent. The complainant will be confidentially notified of the caution;

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

5 (i)(3) The complaint must be referred to the Committee chair with an accompanying
6 screening panel recommendation that the respondent be admonished;

7 (i)(4) The complaint must be referred to the Committee chair with an accompanying
8 screening panel recommendation that the respondent receive a public reprimand;

9 (i)(5) The OPC must file an action in district court against the respondent if the panel
10 finds probable cause to believe there are grounds for public discipline that merit a
11 discipline action; or

12 (i)(6) The OPC must file an action in district court if the panel finds misconduct and the
13 misconduct is similar to the misconduct alleged in an action against the respondent that
14 has been recommended by a screening panel or is pending in district court at the time of
15 the hearing.

16 (j) **Aggravation and mitigation.** The respondent and the OPC may present evidence and
17 argument as to mitigating and aggravating circumstances during the screening panel hearing, but
18 this evidence will not be considered until after the panel has determined the respondent engaged
19 in misconduct.

20 (k) **Multiple cases involving the same respondent.** More than one case involving the same
21 respondent may be scheduled before the same panel, but in determining whether a rule has been
22 violated in one case, a screening panel may not consider facts raised in other cases against the
23 same respondent.

24 (l) **Recommendation of admonition or public reprimand.** A screening panel recommendation
25 that the respondent be disciplined under paragraph (i)(3) or (i)(4) must be in writing and state the
26 substance and nature of the complaint and defenses and the basis upon which the screening panel
27 has concluded, by a preponderance of the evidence, that the respondent be admonished or

1 publicly reprimanded. The screening panel must deliver copies of the recommendation to the
2 Committee chair, respondent, and the OPC.

3

1 **Rule _____ Exceptions to screening panel determinations and recommendations.**

2 (a) **Time to file.** Within 30 days of the date of service of the screening panel’s determination or
3 recommendation:

4 (a)(1) the OPC may file exceptions to the determination or recommendation and may
5 request a hearing, and respondent will have 30 days to respond, and

6 (a)(2) the respondent may file exceptions to the determination or recommendation and
7 may request a hearing, and the OPC will have 30 days to respond.

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

9 (c) **Actions.** No exception may be filed to a screening panel determination that an action will be
10 filed against a respondent under Rule 14-511.

11 (d) **Requirements.** All exceptions must include a memorandum, not exceeding 20 pages, stating
12 the grounds for review, the relief requested, and the bases in law or in fact for the exceptions.

13 (e) **Procedure on exceptions.**

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

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

21 (e)(3) Transcript Request. Upon request the Committee chair must extend the deadlines
22 for filing exceptions or responses to allow a party time to obtain a transcript of the
23 screening panel proceedings. The requesting party will bear the costs of such transcript
24 and must file it with the Committee clerk, together with an affidavit establishing the
25 transcript’s chain of custody.

1 (e)(4) Burden of proof. The party who files exceptions under this rule has the burden of
2 showing that the determination or recommendation of the screening panel is unsupported
3 by substantial evidence or is arbitrary, capricious, legally insufficient, or otherwise
4 clearly erroneous.

5 (e)(5) Record on exceptions. The proceedings of any hearing on exceptions under this
6 rule must be recorded at a level of audio quality that permits an accurate transcription of
7 the proceedings.

8

1 **Rule _____ General procedures.**

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

4 (b) **Service.** To the extent applicable, serving or filing documents under this Rule must be
5 made in accordance with Utah Rules of Civil Procedure 5(b)(1), 5(d) and 6(a).

6 (g)(3)(c) **Continuance of disciplinary proceedings.** A disciplinary proceeding may be
7 held in abeyance by the Committee chair before filing an action in district court when the
8 allegations or the complaint contain matters of substantial similarity to the material
9 allegations of pending criminal or civil litigation in which the respondent is involved.

10

1 **Rule _____ Final Committee disposition.**

2 (a) **Final, written determination.** Either upon completing the exceptions procedure under Rule
3 _____ or if no exceptions have been filed under Rule _____, the Committee chair will review
4 the screening panel’s findings and recommendations and will prepare the order to execute those
5 findings and recommendations. The Committee chair may not make changes to screening panel
6 findings and recommendations, other than changes needed for clarity. If no exception is filed, the
7 Committee chair need not issue a final, written determination for a dismissal or a dismissal with
8 a letter of caution.

9 (b) **Public reprimand.** If the screening panel recommends a public reprimand, the respondent
10 must, within 30 days:

11 (b)(1) accept the public reprimand,

12 (b)(2) file an exception with the Committee chair with the right to appeal the ruling on
13 the exception, or

14 (b)(3) elect a trial de novo with the district court by notifying the Committee chair.

15

1 **Rule _____Appealing a final Committee determination.**

2 (a) Within 30 days after the Committee chair serves a final, written disposition, the respondent or
3 OPC may appeal the disposition to the Supreme Court and ask the Court to reverse or modify the
4 final Committee disposition. An appeal under this rule is only available in cases where
5 exceptions have been filed. Until the time for filing an appeal expires, dissemination of
6 disciplinary information will be automatically stayed. If a timely appeal is filed, the stay will
7 remain in place pending the Supreme Court’s resolution unless the Court orders otherwise.

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

11 (c) A party requesting a transcript of the record below will bear the costs. The party obtaining the
12 transcript must file it with the appellate clerk, together with an affidavit establishing the
13 transcript’s chain of custody.

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

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

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

18 (e)(2) an abuse of discretion;

19 (e)(3) arbitrary or capricious; or

20 (e)(4) contrary to Chapter 11, Article 5 of the Supreme Court Rules of Professional
21 Practice.

22

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 The Committee chair must be given notice of the screening panel recommendation and a copy of
5 the pleadings.

6 (b) **Venue.** The action must be brought:

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

8 (b)(2) in the county where the respondent resides, practices law, or last practiced law in
9 Utah; provided, however, that if the respondent is not a resident of Utah and the alleged
10 offense is not committed in Utah, the action must be brought in a county designated by
11 the Chief Justice of the Supreme Court.

12 (c) **Style of proceedings.** All proceedings instituted by the OPC must be styled: “In the Matter of
13 the Discipline of (name of respondent and respondent’s Bar number), Respondent.”

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

15 (d)(1) Notice of change.

16 (d)(1)(A) The respondent or OPC may request reassignment to another district
17 court judge from the same district by filing a notice stating:

18 (d)(1)(A)(i) the name of the assigned judge,

19 (d)(1)(A)(ii) the date on which the action was filed, and

20 (d)(1)(A)(iii) that a good faith effort has been made to serve all parties.

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

22 (d)(1)(C) The party filing the notice must send a copy of the notice to the assigned
23 judge and to the presiding judge.

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

1 (d)(2) Time. Unless extended by the court for good cause, the notice must be filed within
2 30 days after the action commences or before the notice of trial setting, whichever occurs
3 first. Failure to file a timely notice precludes any change of judge under this rule.

4 (d)(3) Assignment of action. Upon filing a notice of change, the assigned judge will take
5 no further action in the case. The presiding judge will promptly determine whether the
6 notice is proper and, if so, reassign the action. If the presiding judge is also the assigned
7 judge, the clerk will promptly send the notice to the Chief Justice of the Supreme Court,
8 who will determine whether the notice is proper and, if so, reassign the action.

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

11 (e) **Actions tried to the bench; findings and conclusions.** All actions tried according to this
12 article will be tried to the bench, and the district court will enter findings of fact and conclusions
13 of law. Neither masters nor commissioners may be used.

14 (f) **Sanctions hearing.** If the district court finds misconduct, it will hold a hearing to receive
15 relevant evidence in aggravation and mitigation, and will enter an order sanctioning the
16 respondent. Upon reasonable notice to the parties, the court, at its discretion, may hold the
17 sanctions hearing immediately after the misconduct proceeding.

18 (g) **Review.** Either the OPC or respondent may file with the Supreme Court a petition to review
19 the discipline order.

20

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

3 (a) **Protective appointment of trustee.** If a lawyer has died or cannot be located, or if a
4 respondent has been suspended, delicensed, or transferred to disability status, and if there is
5 evidence that the lawyer or respondent has not complied with the provisions of Rule 14-526 and
6 no partner, executor, or other responsible party capable of conducting the lawyer's or
7 respondent's affairs is known to exist, a district judge of the judicial district in which the lawyer
8 or respondent maintained a principal office may, on the OPC's request, appoint a trustee to
9 inventory the lawyer's or respondent's files, notify the lawyer's or respondent's clients,
10 distribute the files to the clients, return unearned fees and other funds, and take any additional
11 action the judge 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 14-530. 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.** The OPC will not be deemed to have prevailed in the action
5 on 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 14-513. 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

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

2 Serving documents on respondent in connection with an action must be made in accordance with
3 the Utah Rules of Civil Procedure.

4

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 discipline
4 and disability actions.

5 (b) **Standard of proof.** A misconduct action, petition for reinstatement and relicensure, and
6 petition for transfer to and from disability status will be established by a preponderance of the
7 evidence. A motion for interim discipline under Rule 14-518 will also be established by a
8 preponderance of the evidence.

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, relicensure, or transfer from
12 disability status.

13 (d) **Related pending litigation.** Either party may request a stay of an action or disability
14 proceeding because of substantial similarity to the material allegations of a pending criminal,
15 civil, or disciplinary action.

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:

- 1 (f)(1)(A) frivolous or unintelligible;
- 2 (f)(1)(B) barred by the statute of limitations;
- 3 (f)(1)(C) being or should have been addressed in another more appropriate forum;
- 4 or
- 5 (f)(1)(D) unsupported by fact or does not raise probable cause of any
- 6 unprofessional conduct.

7 (f)(2) The screening panel chair must notify the complainant of the dismissal and the
8 reasons for dismissal.

9 (f)(3) The complainant may appeal the screening panel chair’s dismissal to the
10 Committee chair within 15 days after notification of the dismissal is mailed.

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

13 (f)(5) If the screening panel chair determines not to dismiss the complaint, or the
14 Committee chair reverses the dismissal on appeal, the Committee chair must request that
15 the Supreme Court appoint a special counsel to present the case, and if necessary, a
16 special screening panel. In all other respects, the matter will proceed in accordance with
17 this article. Special counsel must be a lawyer outside of the OPC appointed by the
18 Supreme Court to act as counsel for investigation and prosecution of the disciplinary
19 complaint. Special counsel must notify the OPC of the results of the investigation.

20

1 **Diversion.**

2 **Rule _____. Diversion referrals, authority, and responsibilities.**

3 (a) **Referral to diversion.** In a matter involving less serious misconduct as outlined in rule
4 {NEXT RULE—Circumstances warranting diversion}, upon receiving a complaint and before
5 filing an action, the respondent may have the option of electing to have the matter referred to
6 diversion, the appropriateness of which the OPC will determine.

7 (b) **Authority and responsibility.** The OPC may negotiate and execute diversion contracts,
8 assign monitoring to a lawyer or licensed paralegal practitioner assistance program, determine if
9 the lawyer complied with the diversion contract, determine if the lawyer fulfilled or materially
10 breached the diversion contract, and adopt such policies and procedures as may be appropriate to
11 accomplish its duties under this rule. The OPC has authority to establish subcommittees of
12 volunteer attorneys and other professionals for the specific purpose of monitoring the compliance
13 of any attorney under diversion and reporting compliance to the OPC.

14 (c) **Notice to complainant.** The OPC will notify the complainant, if any, of the proposed
15 decision to refer the respondent to diversion, and the complainant may submit written comments.
16 The complainant will be notified when the complaint is diverted and when the complaint is
17 dismissed. All notices will be sent to the complainant’s address of record on file with the OPC.
18 Such decision to divert or dismiss is not appealable.

19 (d) **Effect of not participating in diversion.** The respondent has the right to decline to
20 participate in diversion. If the respondent chooses not to participate in diversion, the matter
21 proceeds under these rules.

22

1 **Rule ____ Circumstances warranting diversion.**

2 (a) **Prohibited misconduct.** Conduct may only be considered less serious misconduct
3 warranting diversion if it does not result in a suspension or delicensure. Conduct is not ordinarily
4 considered less serious misconduct if any of the following considerations apply:

5 (a)(1) the misconduct involves the misappropriation of client funds;

6 (a)(2) the misconduct results in or is likely to result in substantial prejudice to a client or
7 other person, absent adequate provisions for restitution;

8 (a)(3) the respondent has been sanctioned in the last three years;

9 (a)(4) the misconduct is of the same nature as misconduct for which the respondent has
10 been sanctioned in the last three years;

11 (a)(5) the misconduct involves dishonesty, deceit, fraud, or misrepresentation;

12 (a)(6) the misconduct constitutes a substantial threat of irreparable harm to the public; a
13 felony; or a misdemeanor which reflects adversely on the respondent's honesty,
14 trustworthiness or fitness as a lawyer; or

15 (a)(7) the misconduct is part of a pattern of similar misconduct.

16 (b) **Factors for consideration.** The OPC considers these factors in negotiating and executing the
17 diversion contract:

18 (b)(1) whether in the OPC's opinion, the presumptive sanction that would be imposed is
19 likely to be no more severe than a public reprimand or private admonition;

20 (b)(2) whether participating in diversion is likely to improve the respondent's future
21 professional conduct and accomplish the goals of lawyer discipline;

22 (b)(3) whether aggravating or mitigating factors exist; and

23 (b)(4) whether diversion was already tried.
24

1 **Rule _____ Diversion contract.**

2 **(a) Contract requirements.**

3 (a)(1) If the respondent agrees or elects to participate in diversion as provided by this
4 rule, the terms of the diversion must be set forth in a written contract. The contract will
5 be between the respondent and the OPC.

6 (a)(2) The OPC must monitor and supervise the conditions of diversion and the terms of
7 the diversion contract. .

8 (a)(3) The contract must specify the program(s) to which the attorney will be diverted,
9 the general purpose of the diversion, the manner in which compliance is to be monitored,
10 and any requirement for payment of restitution or cost.

11 (a)(4) The respondent will bear the burden of drafting and submitting the proposed
12 diversion contract. Respondent may use counsel to assist in the negotiation phase of
13 diversion. Respondent may also request that the OPC draft the proposed diversion
14 contract

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

21 (a)(6) The terms of each contract must be specifically tailored to the respondent's
22 individual circumstances. The contract is confidential and its terms may not be disclosed
23 to anyone other than the parties to the contract.

24 **(b) Contract terms.** All diversion contracts must contain at least:

25 (b)(1) the signatures of respondent, respondent's counsel (if any), and the OPC;

26 (b)(2) the terms and conditions of the plan for respondent and, the identity, if appropriate,
27 of any service provider, mentor, monitor and/or supervisor and that individual's specific

1 responsibilities. If respondent uses a professional or service, and it is necessary to
2 disclose confidential information, respondent must sign a limited conditional waiver of
3 confidentiality permitting the professional or service to make the necessary disclosures
4 for the respondent to fulfill their duties under the contract;

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

8 (b)(4) the necessary terms providing that respondent will pay all costs incurred in
9 connection with the contract and those costs further specified under rule (Diversion costs)
10 and any costs associated with the complaints to be deferred; and

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

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

14 (d) **Status of complaint.** After a diversion contract is executed by the respondent, the
15 disciplinary complaint is deferred pending successful completion of the contract.

16

1 **Rule _____ Respondent's participation.**

2 Diversion may require the respondent's participation in one or more of the following:

3 (a) fee arbitration;

4 (b) mediation;

5 (c) law office management assistance;

6 (d) lawyer or licensed paralegal practitioner assistance programs;

7 (e) psychological and behavioral counseling;

8 (f) monitoring;

9 (g) restitution;

10 (h) continuing legal education programs including, but not limited to, ethics school; or

11 (i) any other program or corrective course of action to address the respondent's conduct.

12

1 **Rule _____ Terminating diversion.**

2 (a) **Fulfilling the contract.** The contract terminates when the respondent fulfills the contract
3 terms and gives the OPC an affidavit or declaration demonstrating fulfillment. Upon receiving
4 this affidavit or declaration, the OPC must acknowledge receipt and dismiss any complaint(s)
5 deferred pending successful completion of the contract or notify the respondent that fulfillment
6 of the contract is terminated based on an OPC claim of material breach. Determinations under
7 this rule are not subject to further review and are not reviewable in any proceeding. Successfully
8 completing the contract is a bar to any further disciplinary proceedings based on the same
9 allegations and successfully completing diversion may not constitute a form of discipline.

10 (b) **Material breach.** Materially breaching the contract is cause for terminating the contract.
11 After a material breach, the OPC must notify the respondent of the alleged breach and intent to
12 terminate the diversion. Thereafter, disciplinary proceedings may be instituted, resumed, or
13 reinstated.

14

1 **Rule _____ Diversion Costs.**

2 Respondent must pay an initial fee of \$250 upon entering diversion. During diversion,
3 respondent must pay a monthly fee of \$50. All such fees are payable to the Bar's general fund.

4

1 **Discipline.**

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

3 It constitutes a ground for discipline for a lawyer to:

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

6 (b) willfully violate a valid court or Committee order imposing discipline;

7 (c) be publicly disciplined in another jurisdiction;

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

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 the OPC.

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 the 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:

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

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

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

24 (d) **Protective order.** To protect the interest of a complainant, witness, third party, or
25 respondent, the district court may, on any person’s request and for good cause, issue a protective
26 order prohibiting the disclosure of specific information and direct that the proceedings be
27 conducted so as to implement the order, including requiring that the hearing be conducted in

1 such a way as to preserve the confidentiality of the information that is the subject of the
2 application.

3 **(e) Request for nonpublic information.** Nonpublic information is confidential, other than as
4 authorized for disclosure under paragraph (a), unless the request for information is approved by
5 the OPC and there is compliance with paragraphs (f) and (g) of this rule.

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

16 **(g) Release without notice.** If a requesting party as outlined in paragraph (e) has not obtained an
17 express written waiver from the respondent to obtain nonpublic information, and requests that
18 the information be released without giving notice to the respondent, the requesting party must
19 certify that:

20 (g)(1) the request will further an ongoing investigation into the respondent's misconduct;

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

22 (g)(3) disclosing the existence of the investigation to the respondent would seriously
23 prejudice that investigation.

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

26 (h)(1) disclosure furthers an ongoing OPC investigation into the respondent's
27 misconduct; and

1 (h)(2) disclosure is essential to that investigation.

2 (i) **Participants' duty.** OPC counsel, OPC staff, the Committee, Committee volunteers,
3 Committee staff, Committee employees, special counsel appointed pursuant to Rule 14-517(f),
4 and special counsel employees or assistants in a proceeding under these rules must maintain
5 confidentiality. Unless otherwise authorized, persons receiving private records under paragraph
6 (e) will not provide access to the records to anyone else.

7

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, relicensures, and
4 certified copies of judgments of conviction to the disciplinary enforcement agency of every other
5 jurisdiction in which the respondent is licensed, 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, delicensure, resignation with discipline pending, transfer to disability status, and
9 petitions for reinstatement or relicensure 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, delicensure,
13 resignation with discipline pending, transfer to or from disability status, reinstatement, or
14 relicensure to all Utah state courts for licensed paralegal practitioners and both Utah state and
15 federal courts for lawyers.

16

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.

16 (b)(1) If an order is entered:

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

19 (b)(1)(B) the OPC may file a misconduct action in the district court without
20 presenting the matter to a screening panel.

21 (b)(2) If an order for interim discipline is not obtained, the OPC must dismiss the interim
22 action and will process the matter as it does any other information coming to the OPC's
23 attention.

24 (c) **Notice to clients.** A respondent subject to interim discipline pursuant to paragraph (b) must
25 comply with the notice requirements in Rule 14-526 as ordered by the district court.

26 (d) **Motion to dissolve or modify interim discipline.** On 48 hours' notice to the OPC, a
27 respondent suspended pursuant to paragraph (b) may appear and move to dissolve or modify the

1 order of discipline, and such motion will be heard and determined as expeditiously as justice
2 requires.

3

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

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 the 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, the OPC must determine whether the
9 crime warrants interim suspension. Upon a determination that the crime warrants interim
10 suspension, the OPC must file a suspension action, accompanied by the certified copy of the
11 judgment, and concurrently file a motion for immediate interim suspension. A suspension action
12 commences under this rule when both the petition for interim suspension and the complaint are
13 filed. The respondent may assert any jurisdictional deficiency establishing that the interim
14 suspension may not properly be ordered, such as the crime is not a felony or misdemeanor that
15 reflects adversely on the respondent's honesty, trustworthiness, or fitness as a lawyer, or that the
16 respondent is not the individual found guilty. The respondent is not entitled to an evidentiary
17 hearing but may request an informal hearing, solely to determine whether the finding or
18 admission of guilt was for a felony or misdemeanor that reflects adversely on the respondent's
19 honesty, trustworthiness, or fitness to practice law. If an order for interim suspension is not
20 obtained, the OPC must dismiss the suspension action and will process the matter as it does any
21 other information coming to the OPC's attention.

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 before 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 the 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 the OPC. The OPC may, within 20 days, object to
20 the petition. If the OPC consents to the petition, the Supreme Court will review the petition and
21 enter an appropriate order. If the OPC files a timely objection, the matter will be set for hearing
22 in the district court. Within ten days after the hearing, the district court will transmit its findings
23 of fact and 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 relicensure.

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

4

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

2 (a) **Duty to notify the OPC of discipline or transfer to disability inactive status.** When
3 another court, jurisdiction, or regulatory body having disciplinary jurisdiction publicly
4 disciplines or transfers to disability inactive status a lawyer licensed to practice in Utah, such
5 lawyer must inform the OPC of the discipline or transfer within 30 days. If the OPC receives
6 notification from any source that a lawyer within the Supreme Court’s jurisdiction has been
7 publicly disciplined or transferred to disability inactive status by any other jurisdiction, the OPC
8 must obtain 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 licensed 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 the 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 the OPC, within 30 days from service
15 of 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, the 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. The 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

1 examine the lawyer. If the district court concludes that the lawyer is incapacitated from
2 continuing to practice law, it will enter an order transferring the lawyer to disability status for an
3 indefinite period and until the further order. Any pending disciplinary proceedings against the
4 lawyer will be held in abeyance.

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

6 (d)(1) Court order. No lawyer transferred to disability status may resume active status
7 except by district court order.

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

11 (d)(3) Examination. On filing a petition for transfer to active status, the district court may
12 take or direct whatever action it deems necessary or proper to determine whether the
13 disability has been removed, including directing designated qualified experts to examine
14 the lawyer. In its discretion, the district court may direct the lawyer to pay the
15 examination expense.

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

23 (d)(5) Learning in law; Bar examination. The district court may also direct that the
24 lawyer establish proof of competence and learning in law, which proof may include the
25 Bar's certification that the lawyer has successfully completed an examination for
26 relicensure.

1 (d)(6) Granting petition for transfer to active status. The district court will grant the
2 petition for transfer to active status 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 14-531. 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

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 delicensure 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 delicensure, 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 delicensed 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 delicensed 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 delicensure or

1 suspension and consequent disqualification to further participate as a lawyer in the
2 matter;

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

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

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

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

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

19

1 **Sanctions.**

2 **Rule 14-602. Purpose and nature of sanctions.**

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

8 (b) **Public nature of lawyer discipline proceedings.** The ultimate disposition of lawyer
9 discipline will be public in cases of delicensure, suspension, and reprimand; and nonpublic in
10 cases of admonition.

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

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

21 (c)(2) consideration of the appropriate weight of such factors in light of the stated goals
22 of lawyer discipline; and

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

25

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) **Delicensure.** Delicensure terminates the individual's status as a lawyer. A lawyer who has
5 been delicensed may be relicensed as provided in Rule 14-525.

6 (c) **Suspension.** Suspension removes a lawyer from the practice of law for a specified minimum
7 time, generally six months or more. In no event should the time before application for
8 reinstatement be more than three years.

9 (d) **Interim suspension or interim discipline.** Interim suspension temporarily suspends a
10 lawyer from the practice of law. Interim suspension or interim discipline may be imposed as set
11 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 reinstatement or relicensure.

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;

1 (g)(1)(D) have not committed acts involving dishonesty, fraud, deceit, or
2 misrepresentation; and

3 (g)(1)(E) have not committed acts warranting delicensure.

4 (g)(2) Probation may include, but is not limited to, the following conditions:

5 (g)(2)(A) no further violations of the Rules of Professional Conduct or Licensed
6 Paralegal Practitioner Rules of Professional Conduct;

7 (g)(2)(B) restitution;

8 (g)(2)(C) assessment of costs;

9 (g)(2)(D) limitation on practice;

10 (g)(2)(E) requirement that the lawyer pass the Multistate Professional
11 Responsibility Exam;

12 (g)(2)(F) requirement that the lawyer take continuing legal education courses;

13 (g)(2)(G) mental health counseling and treatment;

14 (g)(2)(H) abstinence from drugs and alcohol;

15 (g)(2)(I) medical evaluation and treatment;

16 (g)(2)(J) periodic reports to the court and the OPC; and

17 (g)(2)(K) monitoring of all or part of respondent's work by a supervising attorney.

18 (g)(3) The respondent is responsible for all costs of evaluation, treatment, and
19 supervision. Failing to pay these costs before probation terminates is a violation of
20 probation.

21 (g)(4) A respondent may terminate their probation by filing with the district court and
22 serving on the OPC an affidavit stating that the respondent has fully complied with the
23 requirements of the probation order. The OPC may file an objection and thereafter the
24 court will conduct a hearing.

1 (g)(5) Violations. If during the period of probation, the OPC receives information that
2 any probation term has been violated, the OPC may file a motion specifying the alleged
3 violation and seeking to have the probation terminated. Upon filing such motion, the
4 respondent must have the opportunity to respond and a hearing will be held, at which
5 time the court will determine whether to revoke probation.

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

8 (h)(1) Rule 14-533 governs diversion matters before the OPC files a misconduct action
9 under Rule 14-511.

10 (h)(2) For a misconduct action, the following criteria will determine the appropriateness
11 of a diversion:

12 (h)(2)(A) The misconduct does not involve the misappropriation of funds or
13 property; fraud, dishonesty, deceit or misrepresentation; or the commission of a
14 misdemeanor adversely reflecting on the lawyer's fitness to practice law or any
15 felony;

16 (h)(2)(B) The misconduct appears to be the result of inadequate law office
17 management, chemical dependency, a physical or mental health condition,
18 negligence or lack of training, education or other similar circumstance; and

19 (h)(2)(C) There appears to be a reasonable likelihood that the successful
20 completion of a remedial program will prevent the recurrence of conduct by the
21 attorney similar to that under consideration for diversion.

22 (h)(3) In addition to the above-required criteria of (A), (B) and (C), other considerations
23 may include whether the misconduct is a one-time act or based on a chronic condition
24 and whether there is sufficient evidence connecting the chronic condition to the
25 misconduct.

26 (h)(4) Diversión determinations must include compliance conditions to address the
27 misconduct and the time for completion.

1 (h)(5) If the lawyer completes the conditions of the Diversion, the misconduct action will
2 be dismissed with prejudice.

3 (h)(6) If the lawyer does not complete the conditions of the Diversion within the required
4 time, the lawyer will be subject to a suspension of six months and a day.

5 (i) **Resignation with discipline pending.** Resignation with discipline pending is a form of public
6 discipline that allows a respondent to resign from the practice of law while either an informal or
7 formal complaint is pending against the respondent. Resignation with discipline pending may be
8 imposed as set forth in Rule 14-521.

9 (j) **Other sanctions and remedies.** Other sanctions and remedies which may be imposed
10 include:

11 (j)(1) restitution;

12 (j)(2) assessment of costs;

13 (j)(3) limitation upon practice;

14 (j)(4) appointment of a receiver;

15 (j)(5) a requirement that the lawyer take the Bar Examination or professional
16 responsibility examination; and

17 (j)(6) a requirement that the lawyer attend continuing education courses.

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

21

1 **Rule 14-604. Factors to be considered in imposing sanctions.**

2 The court should consider the following factors in imposing sanctions after a finding of lawyer
3 misconduct under rules {Sanctions for violating duties owed to the public through prior
4 discipline orders}:

5 (a) the duty violated,

6 (b) the lawyer's mental state,

7 (c) the potential or actual injury caused by the lawyer's misconduct, and

8 (d) the existence of aggravating or mitigating factors.

9

1 **Rule 14-605. Sanctions for violating duties owed to clients.**

2 (a) **Failing to preserve the client's property.** The following sanctions are generally appropriate
3 when a lawyer fails to preserve client property:

4 (a)(1) Delicensure is generally appropriate when a lawyer knowingly converts client
5 property and causes injury or potential injury to a client.

6 (a)(2) Suspension is generally appropriate when a lawyer knows or should know that the
7 lawyer is dealing improperly with client property and causes injury or potential injury to
8 a client.

9 (a)(3) Reprimand is generally appropriate when a lawyer is negligent in dealing with
10 client property and causes injury or potential injury to a client.

11 (a)(4) Admonition is generally appropriate when a lawyer is negligent in dealing with
12 client property and causes little or no actual or potential injury to a client.

13 (b) **Failing to preserve the client's confidences.** The following sanctions are generally
14 appropriate when a lawyer improperly reveals information related to representing a client:

15 (b)(1) Delicensure is generally appropriate when a lawyer, with the intent to benefit the
16 lawyer or another, knowingly reveals information relating to representation of a client not
17 otherwise lawfully permitted to be disclosed, and this disclosure causes injury or
18 potential injury to a client.

19 (b)(2) Suspension is generally appropriate when a lawyer knowingly reveals information
20 relating to the representation of a client not otherwise lawfully permitted to be disclosed,
21 and this disclosure causes injury or potential injury to a client.

22 (b)(3) Reprimand is generally appropriate when a lawyer negligently reveals information
23 relating to representation of a client not otherwise lawfully permitted to be disclosed and
24 this disclosure causes injury or potential injury to a client.

25 (b)(4) Admonition is generally appropriate when a lawyer negligently reveals information
26 relating to representation of a client not otherwise lawfully permitted to be disclosed and
27 this disclosure causes little or no actual or potential injury to a client.

1 (c) **Failing to avoid conflicts of interest.** The following sanctions are generally appropriate in
2 cases involving conflicts of interest:

3 (c)(1) Delicensure is generally appropriate when a lawyer, without the informed consent
4 of client(s):

5 (c)(1)(A) engages in representation of a client knowing that the lawyer's interests
6 are adverse to the client's with the intent to benefit the lawyer or another, and
7 causes serious or potentially serious injury to the client;

8 (c)(1)(B) simultaneously represents clients that the lawyer knows have adverse
9 interests with the intent to benefit the lawyer or another, and causes serious or
10 potentially serious injury to a client; or

11 (c)(1)(C) represents a client in a matter substantially related to a matter in which
12 the interests of a present or former client are materially adverse, and knowingly
13 uses information relating to the representation of a client with the intent to benefit
14 the lawyer or another, and causes serious or potentially serious injury to a client.

15 (c)(2) Suspension is generally appropriate when a lawyer knows of a conflict of interest
16 and does not fully disclose to a client the possible effect of that conflict, and causes injury
17 or potential injury to a client.

18 (c)(3) Reprimand is generally appropriate when a lawyer is negligent in determining
19 whether the representation of a client may be materially affected by the lawyer's own
20 interests, or whether the representation will adversely affect another client, and causes
21 injury or potential injury to a client.

22 (c)(4) Admonition is generally appropriate when a lawyer engages in an isolated instance
23 of negligence in determining whether the representation of a client may be materially
24 affected by the lawyer's own interests, or whether the representation will adversely affect
25 another client, and causes little or no actual or potential injury to a client.

26 (d) **Lack of diligence.** The following sanctions are generally appropriate when a lawyer fails to
27 act with reasonable diligence and promptness in representing a client:

1 (d)(1) Delicensure is generally appropriate when:

2 (d)(1)(A) a lawyer abandons the practice and causes serious or potentially serious
3 injury to a client;

4 (d)(1)(B) a lawyer knowingly fails to perform services for a client and causes
5 serious or potentially serious injury to a client; or

6 (d)(1)(C) a lawyer engages in a pattern of neglect with respect to client matters
7 and causes serious or potentially serious injury to a client.

8 (d)(2) Suspension is generally appropriate when:

9 (d)(2)(A) a lawyer knowingly fails to perform services for a client and causes
10 injury or potential injury to a client, or

11 (d)(2)(B) a lawyer engages in a pattern of neglect and causes injury or potential
12 injury to a client.

13 (d)(3) Reprimand is generally appropriate when a lawyer is negligent and does not act
14 with reasonable diligence in representing a client, and causes injury or potential injury to
15 a client.

16 (d)(4) Admonition is generally appropriate when a lawyer is negligent and does not act
17 with reasonable diligence in representing a client, and causes little or no actual or
18 potential injury to a client.

19 (e) **Lack of Competence.** The following sanctions are generally appropriate when a lawyer fails
20 to provide competent representation to a client:

21 (e)(1) Delicensure is generally appropriate when a lawyer's course of conduct
22 demonstrates that the lawyer does not understand the most fundamental legal doctrines or
23 procedures, and the lawyer's conduct causes injury or potential injury to a client.

24 (e)(2) Suspension is generally appropriate when a lawyer engages in an area of practice in
25 which the lawyer knows they are not competent, and causes injury or potential injury to a
26 client.

1 (e)(3) Reprimand is generally appropriate when a lawyer:

2 (e)(3)(A) demonstrates failure to understand relevant legal doctrines or
3 procedures and causes injury or potential injury to a client, or

4 (e)(3)(B) is negligent in determining whether the lawyer is competent to handle a
5 legal matter and causes injury or potential injury to a client.

6 (e)(4) Admonition is generally appropriate when a lawyer engages in an isolated instance
7 of negligence in determining whether the lawyer is competent to handle a legal matter,
8 and causes little or no actual or potential injury to a client.

9 (f) **Lack of Candor.** The following sanctions are generally appropriate in cases where a lawyer
10 engages in fraud, deceit, or misrepresentation directed toward a client:

11 (f)(1) Delicensure is generally appropriate when a lawyer knowingly deceives a client
12 with the intent to benefit the lawyer or another, and causes serious injury or potential
13 serious injury to a client.

14 (f)(2) Suspension is generally appropriate when a lawyer knowingly deceives a client,
15 and causes injury or potential injury to the client.

16 (f)(3) Reprimand is generally appropriate when a lawyer negligently fails to provide a
17 client with accurate or complete information, and causes injury or potential injury to the
18 client.

19 (f)(4) Admonition is generally appropriate when a lawyer engages in an isolated instance
20 of negligence in failing to provide a client with accurate or complete information, and
21 causes little or no actual or potential injury to the client.

22

23

1 **Rule 11-{___}. Sanctions for violating duties owed to the public.**

2 (a) **Failing to maintain personal integrity.** The following sanctions are generally appropriate
3 when a lawyer commits a criminal act that reflects adversely on the lawyer’s honesty,
4 trustworthiness, or fitness as a lawyer in other respects, or in cases with conduct involving
5 dishonesty, fraud, deceit, or misrepresentation.

6 (a)(1) Delicensure is generally appropriate when:

7 (a)(1)(A) a lawyer engages in serious criminal conduct, a necessary element of
8 which includes intentional interference with the administration of Justice, false
9 swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the
10 sale, distribution, or importation of controlled substances; or the intentional
11 killing of another; or an attempt, conspiracy, or solicitation of another to commit
12 any of these offenses; or

13 (a)(1)(B) a lawyer engages in any other intentional conduct involving dishonesty,
14 fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer’s
15 fitness to practice.

16 (a)(2) Suspension is generally appropriate when a lawyer knowingly engages in criminal
17 conduct which does not contain the elements listed in (a)(1) and that seriously adversely
18 reflects on the lawyer’s fitness to practice.

19 (a)(3) Reprimand is generally appropriate when a lawyer negligently engages in any other
20 conduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely
21 reflects on the lawyer’s fitness to practice law.

22 (a)(4) Admonition is generally appropriate when a lawyer engages in any other conduct
23 that reflects adversely on the lawyer’s fitness to practice law.

24 (b) **Failing to maintain the public trust.** The following sanctions are generally appropriate in
25 cases involving public officials who engage in conduct that is prejudicial to the administration of
26 justice or who state or imply an ability to influence improperly a government agency or official:

1 (b)(1) Delicensure is generally appropriate when a lawyer in an official or governmental
2 position knowingly misuses the position with the intent to obtain a significant benefit or
3 advantage for himself or another, or with the intent to cause serious or potentially serious
4 injury to a part or to the integrity of the legal process.

5 (b)(2) Suspension is generally appropriate when a lawyer in an official or governmental
6 position knowingly fails to follow proper procedures or rules, and causes injury or
7 potential injury to a party or to the integrity of the legal process.

8 (b)(3) Reprimand is generally appropriate when a lawyer in an official or governmental
9 position negligently fails to follow proper procedures or rules, and causes injury or
10 potential injury to a party or to the integrity of the legal process.

11 (b)(4) Admonition is generally appropriate when a lawyer in an official or governmental
12 position engages in an isolated instance of negligence in not following proper procedures
13 or rules, and causes little or no actual or potential injury to a party or to the integrity of
14 the legal process.

15

1 **Rule 11-{____}. Sanctions for violating duties owed to the legal system.**

2 (a) **False statements, fraud, and misrepresentation.** The following sanctions are generally
3 appropriate when a lawyer’s conduct is prejudicial to the administration of justice or involves
4 dishonesty, fraud, deceit, or misrepresentation to a court:

5 (a)(1) Delicensure is generally appropriate when a lawyer, with the intent to deceive the
6 court, makes a false statement, submits a false document, or improperly withholds
7 material information, and causes serious or potentially serious injury to a party, or causes
8 a significant or potentially significant adverse effect on the legal proceeding.

9 (a)(2) Suspension is generally appropriate when a lawyer knows that false statements or
10 documents are being submitted to the court or that material information is improperly
11 being withheld, and takes no remedial action, and causes injury or potential injury to a
12 party to the legal proceeding, or causes an adverse or potentially adverse effect on the
13 legal proceeding.

14 (a)(3) Reprimand is generally appropriate when a lawyer is negligent either in
15 determining whether statements or documents are false or in taking remedial action when
16 material information is being withheld and causes injury or potential injury to a party to
17 the legal proceeding, or causes an adverse or potentially adverse effect on the legal
18 proceeding.

19 (a)(4) Admonition is generally appropriate when a lawyer engages in an isolated instance
20 of neglect in determining whether submitted statements or documents are false or in
21 failing to disclose material information upon learning of its falsity, and causes little or no
22 actual or potential injury to a party, or causes little or no adverse or potentially adverse
23 effect on the legal proceeding.

24 (b) **Abuse of the legal process.** The following sanctions are generally appropriate when a lawyer
25 fails to expedite litigation or bring a meritorious claim, or fails to obey any obligation under the
26 rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists:

1 (b)(1) Delicensure is generally appropriate when a lawyer knowingly violates a court
2 order or rule with the intent to obtain a benefit for the lawyer or another, and causes
3 serious injury or potentially serious injury to a party or causes serious or potentially
4 serious interference with a legal proceeding.

5 (b)(2) Suspension is generally appropriate when a lawyer knows that the lawyer is
6 violating a court order or rule, and causes injury or potential injury to a client or a party,
7 or causes interference or potential interference with a legal proceeding.

8 (b)(3) Reprimand is generally appropriate when a lawyer negligently fails to comply with
9 a court order or rule, and causes injury or potential injury to a client or other party, or
10 causes interference or potential interference with a legal proceeding.

11 (b)(4) Admonition is generally appropriate when a lawyer engages in an isolated instance
12 of negligence in complying with a court order or rule, and causes little or no actual or
13 potential injury to a party, or causes little or no actual or potential interference with a
14 legal proceeding.

15 (c) **Improper communications with individuals in the legal system.** The following sanctions
16 are generally appropriate when a lawyer attempts to influence a judge, juror, prospective juror, or
17 other official by means prohibited by law:

18 (c)(1) Delicensure is generally appropriate when a lawyer:

19 (c)(1)(A) intentionally tampers with a witness and causes serious or potentially
20 serious injury to a party, or causes significant or potentially significant
21 interference with the outcome of the legal proceeding;

22 (c)(1)(B) makes an ex parte communication with a judge or juror with intent to
23 affect the outcome of the proceeding, and causes serious or potentially serious
24 injury to a party, or causes significant or potentially significant interference with
25 the outcome of the legal proceeding; or

26 (c)(1)(C) improperly communicates with someone in the legal system other than a
27 witness, judge, or juror with the intent to influence or affect the outcome of the

1 proceeding, and causes significant or potentially significant interference with the
2 outcome of the legal proceeding.

3 (c)(2) Suspension is generally appropriate when a lawyer engages in communication with
4 an individual in the legal system when the lawyer knows that such communication is
5 improper, and causes injury or potential injury to a party or causes interference or
6 potential interference with the outcome of the legal proceeding.

7 (c)(3) Reprimand is generally appropriate when a lawyer is negligent in determining
8 whether it is proper to engage in communication with an individual in the legal
9 system, and causes injury or potential injury to a party or interference or potential
10 interference with the outcome of the legal proceeding.

11 (c)(4) Admonition is generally appropriate when a lawyer engages in an isolated instance
12 of negligence in improperly communicating with an individual in the legal system, and
13 causes little or no: (A) actual or potential injury to a party, or (B) actual or potential
14 interference with the outcome of the legal proceeding.

15

1 **Rule 11-{___}. Sanctions for violating duties owed as a professional.**

2 The following sanctions are generally appropriate in cases involving false or misleading
3 communication about the lawyer or the lawyer’s services, improper communication of fields of
4 practice, improper solicitation of professional employment from a prospective client,
5 unreasonable or improper fees, unauthorized practice of law, improper withdrawal from
6 representation, or failure to report professional misconduct.

7 (a) Delicensure is generally appropriate when a lawyer knowingly engages in conduct
8 that is a violation of a duty owed as a professional with the intent to obtain a benefit for
9 the lawyer or another, and causes serious or potentially serious injury to a client, the
10 public, or the legal system.

11 (b) Suspension is generally appropriate when a lawyer knowingly engages in conduct that
12 is a violation of a duty owed as a professional and causes injury or potential injury to a
13 client, the public, or the legal system.

14 (c) Reprimand is generally appropriate when a lawyer negligently engages in conduct that
15 is a violation of a duty owed as a professional and causes injury or potential injury to a
16 client, the public, or the legal system.

17 (d) Admonition is generally appropriate when a lawyer engages in an isolated instance of
18 negligence that is a violation of a duty owed as a professional, and causes little or no
19 actual or potential injury to a client, the public, or the legal system.

20

21

22

23

1 **Rule 14-606. Prior discipline orders.**

2 The following sanctions are generally appropriate in cases involving prior discipline.

3 (a) Delicensure is generally appropriate when a lawyer:

4 (a)(1) intentionally or knowingly violates the terms of a prior disciplinary order
5 and such violation causes injury or potential injury to a client, the public, the legal
6 system, or the profession; or

7 (a)(2) has been suspended for the same or similar misconduct, and intentionally or
8 knowingly engages in further similar acts of misconduct that cause injury or
9 potential injury to a client, the public, the legal system, or the profession.

10 (b) Suspension is generally appropriate when a lawyer has been reprimanded for the same
11 or similar misconduct and engages in further similar acts of misconduct that cause injury
12 or potential injury to a client, the public, the legal system, or the profession.

13 (c) Reprimand is generally appropriate when a lawyer:

14 (c)(1) negligently violates the terms of a prior disciplinary order and such
15 violation causes injury or potential injury to a client, the public, the legal system,
16 or the profession; or

17 (c)(2) has received an admonition for the same or similar misconduct and engages
18 in further similar acts of misconduct that cause injury or potential injury to a
19 client, the public, the legal system, or the profession.

20 (d) An admonition is generally not an appropriate sanction when a lawyer violates the
21 terms of a prior disciplinary order or when a lawyer has engaged in the same or similar
22 misconduct in the past.

23

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;

- 1 (b)(2) absence of a dishonest or selfish motive;
- 2 (b)(3) personal or emotional problems;
- 3 (b)(4) timely good faith effort to make restitution or to rectify the consequences of the
- 4 misconduct involved;
- 5 (b)(5) full and free disclosure to the client or the disciplinary authority prior to the
- 6 discovery of any misconduct or cooperative attitude toward proceedings;
- 7 (b)(6) inexperience in the practice of law;
- 8 (b)(7) good character or reputation;
- 9 (b)(8) physical disability;
- 10 (b)(9) mental disability or impairment, including substance abuse when:
 - 11 (b)(9)(A) the respondent is affected by a substance abuse or mental disability; and
 - 12 (b)(9)(B) the substance abuse or mental disability causally contributed to the
 - 13 misconduct; and
 - 14 (b)(9)(C) the respondent's recovery from the substance abuse or mental disability
 - 15 is demonstrated by a meaningful and sustained period of successful rehabilitation;
 - 16 and
 - 17 (b)(9)(D) the recovery arrested the misconduct and the recurrence of that
 - 18 misconduct is unlikely;
- 19 (b)(10) unreasonable delay in disciplinary proceedings, provided that the respondent did
- 20 not substantially contribute to the delay and provided further that the respondent has
- 21 demonstrated prejudice resulting from the delay;
- 22 (b)(11) interim reform in circumstances not involving mental disability or impairment;
- 23 (b)(12) imposition of other penalties or sanctions;
- 24 (b)(13) remorse; and
- 25 (b)(14) remoteness of prior offenses.

1 (c) **Other circumstances.** The following circumstances should not be considered as either
2 aggravating or mitigating:

3 (c)(1) forced or compelled restitution;

4 (c)(2) withdrawal of complaint against the lawyer;

5 (c)(3) resignation prior to completion of disciplinary proceedings;

6 (c)(4) complainant's recommendation as to sanction; and

7 (c)(5) failure of injured client to complain.

8

1 **Reinstatement.**

2 **Rule 14-524. Reinstatement following a suspension or probation of no more than six**
3 **months.**

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

12

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

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

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

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

20 (d) **Publication of notice of petition.** When a respondent files a petition for reinstatement or
21 relicensure, the OPC must:

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

23 (d)(1)(A) informs Bar members of the application for reinstatement or relicensure,
24 and

25 (d)(1)(B) requests that any individuals file notice of their opposition or
26 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 delicensure informing such complainant that:

4 (d)(2)(A) the respondent is applying for reinstatement or relicensure, and

5 (d)(2)(B) the complainant has 30 days from the mailing date to object to or
6 support the respondent's petition.

7 (e) **Criteria for reinstatement and relicensure.** A respondent may be reinstated or relicensed
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 relicensed.

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 delicensure.

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 may not be reinstated or relicensed
18 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, integrity, and fitness to practice law. In relicensure
27 cases, the respondent must appear before the Bar's Character and Fitness Committee and

1 cooperate in its investigation of the respondent. A copy of the Character and Fitness
2 Committee's report and recommendation will be provided to the OPC and forwarded to
3 the district court assigned to the petition after the respondent files a petition.

4 (e)(4)(A) Factors considered in determining honesty, integrity, and fitness for
5 reinstatement. The court may use the following factors to decide whether the
6 lawyer seeking reinstatement possesses (lacks?) the requisite honesty, integrity,
7 and fitness to practice law:

8 (e)(4)(A)(i) lack of candor in the reinstatement process;

9 (e)(4)(A)(ii) unlawful conduct while suspended;

10 (e)(4)(A)(iii) false or misleading statements or omissions during
11 suspension or the reinstatement process;

12 (e)(4)(A)(iv) acts involving dishonesty, fraud, deceit, or misrepresentation
13 while suspended;

14 (e)(4)(A)(v) abuse of the legal process;

15 (e)(4)(A)(vi) neglecting financial responsibilities while suspended;

16 (e)(4)(A)(vii) violating court order while suspended;

17 (e)(4)(A)(viii) evidence of mental or emotional instability; and

18 (e)(4)(A)(ix) evidence of drug or alcohol dependency while suspended;

19 (e)(4)(B) Assigning weight and significance to conduct. In determining honesty,
20 integrity, and fitness to practice law, the court may use the following factors to
21 assign weight and significance to prior conduct:

22 (e)(4)(B)(i) how recent the conduct occurred,

23 (e)(4)(B)(ii) seriousness of the conduct,

24 (e)(4)(B)(iii) cumulative effect of the conduct,

25 (e)(4)(B)(iv) evidence of rehabilitation,

1 (e)(4)(B)(v) positive social contributions while suspended.

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

4 (e)(6) In cases of suspensions for one year or more, respondent lawyers will be required
5 to pass the Multistate Professional Responsibility Examination, and respondent licensed
6 paralegal practitioners must pass the Licensed Paralegal Practitioner Professional
7 Responsibility Exam.

8 (e)(7) In all cases of delicensure, respondent lawyers will be required to pass the student
9 applicant Bar Examination and the Multistate Professional Responsibility Examination,
10 and respondent licensed paralegal practitioners must pass the student applicant Licensed
11 Paralegal Practitioner Licensing Exam.

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

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

17 (f)(1) advise the respondent and district court that the OPC will not object to the
18 respondent's reinstatement or relicensure; or

19 (f)(2) object in writing to the petition.

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

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

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

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

20

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 paragraphs (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

1 admission to the Bar and with implementation of this article. The Admissions Committee is
2 responsible for supervising the work of the Bar Examiner Committee, the Test Accommodations
3 Committee, and the Character and Fitness Committee, handling requests for review as provided
4 herein and performing other work relating to Applicant admissions.

5 (d) “**Applicant**” means each person requesting admission to the Bar. For purposes of this article,
6 an Applicant is classified as a Student Applicant, a Foreign Law School Applicant, an Attorney
7 Applicant, a Motion Applicant, a Disbarred Attorney Applicant, a Foreign Legal Consultant
8 Applicant, a House Counsel Applicant, a Formerly-Admitted Applicant, a Military Lawyer
9 Applicant, or a Military Spouse Attorney Applicant.

10 (e) “**Approved Law School**” means a law school which is fully or provisionally approved by the
11 ABA pursuant to its Standards and Rules of Procedure for Approval of Law Schools. To qualify
12 as approved, the law school must have been fully or provisionally approved at the time of the
13 Applicant’s graduation, or at the time of the Applicant’s enrollment, provided the Applicant
14 graduated within a typical and reasonable time.

15 (f) “**Attorney Applicant**” means any person who satisfies the requirements of Rule 14-704.

16 (g) “**Bar**” means the Utah State Bar, including its employees, committees and the Board.

17 (h) “**Bar Examination**” means the Bar Examination as defined in Rules 14-710 and 14-711.

18 (i) “**Bar Examiner Committee**” means those Bar members or others appointed by the Board or
19 president of the Bar who are charged with grading the Bar Examination.

20 (j) “**Board**” means the Board of Bar Commissioners.

21 (k) “**Character and Fitness Committee**” means those Bar members or others appointed by the
22 Board or president of the Bar who are charged with assessing the character and fitness of
23 Applicants and making determinations thereon.

24 (l) “**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 law school graduation and if

1 applicable, a test accommodation request with supporting medical documentation, a certificate of
2 admission and/or good standing, and a certificate of discipline.

3 (m) “**Confidential Information**” is defined in Rule 14-720(a).

4 (n) “**Deputy General Counsel for Admissions**” or “**Deputy General Counsel**” are terms used
5 interchangeably to mean the Bar’s attorney in charge of admissions or designee.

6 (o) “**Disbarred Attorney Applicant**” means a person who has previously been licensed to
7 practice law in Utah and who is no longer licensed to practice law because of disbarment or
8 resignation with discipline pending or their equivalent and who satisfies the requirements of Rule
9 14-708(g) and 14-717.

10 (p) “**Executive Director**” means the executive director of the Utah State Bar or designee.

11 (q) “**First Professional Degree**” means a degree that prepares the holder for admission to the
12 practice of law (e.g. juris doctorate) by emphasizing competency skills along with theory and
13 analysis. An advanced, focused, or honorary degree in law is not recognized as a First
14 Professional Degree (e.g. master of laws or doctor of laws).

15 (r) “**Foreign Law School**” means any school located outside of the United States and its
16 protectorates, that is accredited by that jurisdiction’s legal accreditation body, if one exists,
17 where principles of English Common Law form the predominant basis for that country’s system
18 of jurisprudence, and whose graduates are otherwise permitted by that jurisdiction’s highest
19 court to practice law.

20 (s) “**Foreign Legal Consultant Applicant**” means any Applicant who satisfies the requirements
21 of Rule 14-718.

22 (t) “**Formerly-Admitted Applicant**” means a person who has previously been licensed to
23 practice law in Utah who is no longer licensed to practice law because of resignation without
24 discipline pending or who failed to pay licensing fees for three or more years under Rule 14-
25 107(b)(4), and who satisfies the requirements of Rule 14-717.

26 (u) “**Full-time Practice**” means the Active and lawful Practice of Law for no fewer than 80
27 hours per month. Time spent on administrative or managerial duties, continuing legal education,

1 or client development and marketing does not qualify as part of the required 80 hours of legal
2 work.

3 (v) “**General Counsel**” means the General Counsel of the Utah State Bar or designee.

4 (w) “**House Counsel Applicant**” means any Applicant who satisfies the requirements of Rule
5 14-719.

6 (x) “**House Counsel**” means a person granted a license under Rule 14-719.

7 (y) “**Inactive**” means an attorney’s law license is held in “inactive status” or an equivalent term.

8 (z) “**MBE**” means the Multistate Bar Examination.

9 (aa) “**MEE**” means the Multistate Essay Examination prepared by the NCBE.

10 (bb) “**Military Lawyer Applicant**” means any Applicant who satisfies Rule 14-804;

11 (cc) “**Military Spouse Attorney Applicant**” means any Applicant who satisfies Rule 14-805.

12 (dd) “**Motion Applicant**” means any person who satisfies the requirements of Rule 14-705.

13 (ee) “**MPRE**” means the Multistate Professional Responsibility Examination prepared by the
14 NCBE.

15 (ff) “**MPT**” means the Multistate Performance Test prepared by the NCBE.

16 (gg) “**NCBE**” means the National Conference of Bar Examiners, an organization that develops,
17 maintains, and applies reasonable and uniform standards of bar examination education and
18 testing.

19 (hh) “**OPC**” means the Office of Professional Conduct.

20 (ii) “**Person**” includes the plural as well as the singular and legal entities as well as natural
21 persons.

22 (jj) “**Practice of Law**” means employment available only to licensed attorneys where the
23 primary duty of the position is to represent the interests of another person by informing,
24 counseling, advising, assisting, advocating for or drafting documents for that person through

1 application of the law and associated legal principles to that person’s facts and circumstances.

2 The Practice of Law constitutes more than merely working with legally-related matters.

3 (kk) “**Privileged Information**” in this article includes: information subject to the attorney-client
4 privilege, attorney work product, test materials and applications of examinees. correspondence
5 and written decisions of the Board, Admissions Committee, Bar Examiner Committee, Character
6 and Fitness Committee, and Test Accommodations Committee; and the identity of individuals
7 participating in the drafting, reviewing, grading and scoring of the Bar Examination.

8 (ll) “**Reapplication for Admission**” means that for two years after the filing of an original
9 application, an Applicant may reapply by completing a Reapplication for Admission form
10 updating any information that has changed since the prior application was filed and submitting a
11 new criminal background check.

12 (mm) “**Student Applicant**” means any person who satisfies the requirements of Rule 14-703(a)
13 who has never been admitted as an attorney in any jurisdiction.

14 (nn) “**Supreme Court**” means the Utah Supreme Court.

15 (oo) “**Test Accommodations Committee**” means those Bar members or others appointed by the
16 Board or president of the Bar who are charged with the review of requests from Applicants
17 seeking to take the Bar Examination with test accommodations and who make determinations
18 thereon.

19 (pp) “**Unapproved Law School**” means a law school that is not fully or provisionally approved
20 by the ABA. For an Unapproved Law School’s graduates to be eligible for admission, the law
21 school must be accredited in the jurisdiction where it exists, provide legal education that is the
22 substantial equivalent of the legal education provided by an Approved Law School, and not be
23 based on correspondence or internet study.

24 (qq) “**UBE**” means the Uniform Bar Examination as prepared by the NCBE.

25 (rr) “**Updated Application**” means that an Applicant is required to amend and update their
26 application on an ongoing basis and correct any information that has changed since the
27 application was filed.

- 1 (ss) “**Written Component**” means that part of the Bar Examination that consists of MEE and
- 2 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 the Applicant:

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 in the reciprocal jurisdiction(s) where licensed for 60 of the 84
17 months immediately preceding the date application for admission is filed. For admission
18 purposes, any time practicing at an office located in Utah will not be counted as time
19 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; and

25 (a)(10) is of good moral character and satisfies the requirements of Rule 14-708;

1 (b) **Application form and content.** The Board may require additional proof of any facts stated
2 in the application. If the Applicant fails or refuses to furnish any information or proof, or to
3 answer any Board inquiry pertinent to the pending application, the Board may deny the
4 application without hearing.

5 (c) **Timing of application and admission.** An application may be filed at any time but the
6 Applicant must be able to demonstrate that the Applicant satisfies the requirements of this rule as
7 of the date the application is filed. Processing of the application and the character and fitness
8 investigation require a minimum of four months to complete.

9 (c)(1) An Applicant not eligible for admission pursuant to this rule may qualify for
10 admission as an Attorney Applicant pursuant to Rule 14-704.

11 (c)(2) Upon approval the Applicant must comply with Rule 14-716 concerning licensing
12 and enrollment fees.

13 (d) **Practice pending admission.** Only persons who are active, licensed Bar members in good
14 standing may engage in the practice of law in Utah. However, a Motion Applicant with a
15 pending Bar application may be eligible to practice for a limited period on satisfying Rule 14-
16 809 and 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 36 months of the UBE's administration in which the passing score was earned; or

19 (c)(2) the UBE may be transferable for up to five years from the administration of the
20 UBE in which the passing score was earned if the Attorney Applicant can prove by clear
21 and convincing evidence they have been admitted to a U.S. state, territory, or the District
22 of Columbia and have been Actively engaged in the Full-time Practice of Law as defined
23 in Rule 14-701(b), (t) and (ff) for at least one-half of the time since the score was earned.

24

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 the Applicant:

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

1 such person is admitted to practice law. The Foreign Legal Consultant may not violate any
2 provision of Rule 14-802 and may not:

3 (c)(1) appear for a person other than herself or himself as attorney in any court, or before
4 any magistrate or other judicial officer, in Utah other than as permitted under Rule 14-
5 802 or upon qualified admission pro hac vice pursuant to Rule 14-806; or

6 (c)(2) render professional legal advice on the law of this state or of the United States;

7 (c)(3) be, or in any way hold herself or himself out as a Bar member; or

8 (c)(4) carry on a practice under, or use in connection with such practice, any name, title
9 or designation other than the following:

10 (c)(4)(A) the Foreign Legal Consultant's own name;

11 (c)(4)(B) the name of the law firm or other entity with which the Foreign Legal
12 Consultant is affiliated, in each case only in conjunction with the title "Foreign
13 Legal Consultant" as set forth below;

14 (c)(4)(C) the Foreign Legal Consultant's authorized title in the foreign country in
15 which the Foreign Legal Consultant is admitted to practice, in each case only in
16 conjunction with the title "Foreign Legal Consultant" as set forth below; and

17 (c)(4)(D) the title "Foreign Legal Consultant," which must be used in conjunction
18 with the words "admitted to the practice of law only in [name of the foreign
19 country in which the Foreign Legal Consultant is admitted to practice]."

20 (d) **Rights and obligations.** A person licensed as a Foreign Legal Consultant will be considered
21 a lawyer affiliated with the Bar as permitted by this rule and will be entitled and subject to:

22 (d)(1) the rights and obligations set forth in the Utah Rules of Professional Conduct or
23 arising from the other conditions and requirements that apply to a Bar member under
24 rules adopted by the Supreme Court; and

25 (d)(2) attorney-client privilege, work-product privilege and similar professional
26 privileges.

1 (e) **Subject to disciplinary proceedings.** A person licensed to practice as a Foreign Legal
2 Consultant is subject to professional discipline in the same manner and to the same extent as Bar
3 members and specifically is subject to discipline by the Supreme Court as delegated by rule and
4 is otherwise governed by Chapter 13, the Utah Rules of Professional Conduct; Chapter 14,
5 Article 5, Lawyer Discipline and Disability; Article 6, Standards for Imposing Lawyer Sanctions;
6 and other applicable Supreme Court rules.

7 (f) **Requirements for licensure.** Every person licensed to practice as a Foreign Legal Consultant
8 must:

9 (f)(1) attend the OPC ethics school before receiving a license to practice as a Foreign
10 Legal Consultant; and

11 (f)(2) execute and file with the Bar, in such form and manner as the Supreme Court may
12 prescribe:

13 (f)(2)(A) their understanding of, and commitment to observe, the Utah Rules of
14 Professional Conduct and other Supreme Court rules, and to the extent applicable
15 to the legal services authorized under paragraph (c) of this rule;

16 (f)(2)(B) written notice to the OPC of any change in the Foreign Legal
17 Consultant's membership status, good standing, or authorization to practice law in
18 any jurisdiction where licensed, including the commencement of all formal
19 disciplinary proceedings and of all final disciplinary actions taken in any other
20 jurisdiction.

21 (g) **License fees.** A person licensed as a Foreign Legal Consultant must pay annual license fees
22 equal to the fees paid by a Bar member on Active status.

23 (h) **Revocation of license.** If a licensed Foreign Legal Consultant no longer meets the
24 requirements for licensure set forth in paragraph (a) or (g), their license will be revoked
25 following the procedures set forth in Chapter 14, Article 5, Lawyer Discipline and Disability;
26 and Article 6, Standards for Imposing Lawyer Sanctions.

1 (i) **Admission to Bar.** If a licensed Foreign Legal Consultant is subsequently admitted as a Bar
2 member under Chapter 14, Article 7, Admission to the Utah State Bar, the license granted to
3 such person to practice law as a Bar member supersedes the Foreign Legal Consultant license.

4

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.;

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 Office of Professional Conduct;

5 (k) “**Supervising attorney,**” except as used in Rule 14-807, means an active Bar member who
6 generally supervises a volunteer attorney. The supervising attorney must:

7 (k)(1) be employed by an approved legal services organization;

8 (k)(2) assume professional responsibility as contemplated by Rule 5.1 of the Utah Rules
9 of Professional Conduct for supervising the conduct of any litigation, administrative
10 proceeding or other legal services in which the volunteer attorney participates providing,
11 however, that concurrent administrative or judicial appearance is at the discretion of the
12 supervising attorney;

13 (k)(3) assist the volunteer attorney’s legal service preparation to the extent that the
14 supervisory attorney considers it necessary; and

15 (k)(4) ensure along with the agency that the volunteer attorney has appropriate and
16 adequate training, knowledge and competency to perform the legal service permitted.

17

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 they have 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

1 clerks' office. The applicant must attach to the application form a Certificate of Good Standing
2 from the licensing state in which the applicant resides. The applicant must complete a separate
3 application for each case in which the applicant wants to appear. The fee for each application is
4 \$250, which must be paid to the Utah State Bar. Fees paid under this rule will be used for
5 attorney discipline investigations and proceedings. The following are 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 will be filed
10 in the court in which the case is pending, with a motion by a Bar member to admit the applicant
11 pro hac vice and a consent by such Bar member to appear as associate counsel. Associate
12 counsel must be a resident of Utah. The application form must include:

13 (e)(1) the name, address, telephone number, fax number, e-mail address, bar
14 identification number(s), and state(s) of the applicant's admission;

15 (e)(2) the name and number of the case in which the applicant is seeking to appear as the
16 attorney of record or, if the case has not yet been filed, a description of the partis;

17 (e)(3) the name, number, and court of other cases pending or closed within the prior five
18 years in any state or federal court of Utah in which the applicant or a member of the
19 applicant's firm appears pro hac vice;

20 (e)(4) a statement whether, in any state, the applicant:

21 (e)(4)(A) is currently suspended or disbarred from the practice of law;

22 (e)(4)(B) has been disciplined within the past five years; or

23 (e)(4)(C) is the subject of any pending disciplinary proceedings;

24 (e)(5) a statement that the applicant:

25 (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 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 is
20 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 has the responsibility and authority to act for the client in all proceedings if the
25 nonresident attorney fails to appear or fails to respond to any court order.

1 (h) **Complying with Utah laws.** An attorney admitted pro hac vice must comply with and is
2 subject to Utah statutes, rules of the Supreme Court, including the Rules of Professional Conduct
3 and Article 5, Lawyer Discipline and Disability, the rules of the court in which the attorney
4 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 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

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.

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.

1 (h) Any proceeding on a claim will not be conducted according to technical rules relating to
2 evidence, procedure, and witnesses. Any relevant evidence must be admitted if it is the sort of
3 evidence on which responsible persons are accustomed to rely in the conduct of serious affairs,
4 regardless of any common law or statutory rule that may make improper the admission of such
5 evidence over objection in court proceedings. The claimant has the duty to supply relevant
6 evidence to support the claim.

7 (i) The Board must determine the order and manner of payment and pay those claims it deems
8 meritorious. Unless the Board directs otherwise, no claim will be approved during a pending
9 disciplinary proceeding involving the same act or conduct as alleged in the claim. No
10 determination or hearing will take place until all disciplinary proceedings are complete.

11 (j) The Board must advise both the claimant and the lawyer of the status of the Board's
12 consideration of the claim and after having received the recommendation of the Committee, must
13 also be informed of the final determination.

14 (k) The claimant may request reconsideration within 30 days of the denial or determination of
15 the amount of the claim.

16

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.

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 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 under
23 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,

1 character, fairness, competence, ethical conduct, public service, and respect for the rules of law,
2 the courts, clients, lawyers, other licensed paralegal practitioners, witnesses and unrepresented
3 parties.

4 (y) “**OPC**” means the Office of Professional Conduct.

5 (z) Reserved.

6 (aa) “**Supreme Court**” means the Utah Supreme Court.

7

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 the
14 ABA pursuant to its Standards and Rules of Procedure for Approval of Law Schools. To qualify
15 as approved, the law school must have been fully or provisionally approved at the time of the
16 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

1 criminal background check, a photo, an official certificate of graduation and if applicable, a test
2 accommodation request with supporting medical documentation.

3 (k) “**Confidential Information**” is defined in Rule 15-720(a).

4 (l) “**Disbarred Lawyer**” means an individual who was once a licensed lawyer and is no longer
5 permitted to practice law.

6 (m) “**Executive Director**” means the executive director of the Utah State Bar or their designee.

7 (n) “**First Professional Degree**” means a degree that prepares the holder for admission to the
8 practice of law (e.g. juris doctorate) by emphasizing competency skills along with theory and
9 analysis. An advanced, focused, or honorary degree in law is not recognized as a First
10 Professional Degree (e.g. master of laws or doctor of laws).

11 (o) “**Full-time**” means providing legal services as a paralegal for no fewer than 80 hours per
12 month.

13 (p) “**General Counsel**” means the General Counsel of the Utah State Bar or their 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 their designee.

21 (t) “**LPP Admissions Committee**” means those Utah State Bar members or others appointed by
22 the Board or president of the Bar who are charged with recommending standards and procedures
23 for licensure of LPPs, with implementation of this article, reviewing requests for test
24 accommodations, and assessing the qualifications of applicants.

25 (u) “**NALA**” means the National Association of Legal Assistants.

26 (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 Office of Professional Conduct.

7 (z) “**Paralegal**” means a person qualified through education, training, or work experience, who is
8 employed or retained by a lawyer, law office, governmental agency, or the entity in the capacity
9 or function which involves the performance, under the ultimate direction and supervision of an
10 attorney, of specifically delegated substantive legal work, which work, for the most part, requires
11 a sufficient knowledge of legal concepts that absent such assistance, the attorney would perform.

12 (aa) “**Paralegal Certificate**” means verification that an individual has successfully completed a
13 paralegal studies program from an Accredited Program that includes at least 15 credit hours of
14 paralegal studies. The certificate must be offered, taught, and granted by an Accredited Program.

15 (bb) “**Paralegal Studies**” and “**Paralegal Studies Degree**” mean course work that prepares a
16 holder to work as a paralegal.

17 (cc) “**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 and LPP Admissions Committee, and the identity of
20 individuals participating in the drafting, reviewing, grading and scoring of the LPP Licensure
21 Examination.

22 (dd) “**Reapplication for Licensure**” means that for two years after the filing of an original
23 application, an Applicant may reapply by completing a Reapplication for Licensure form
24 updating any information that has changed since the prior application was filed and submitting a
25 new criminal background check.

26 (ee) “**Substantive Law-Related Experience**” means the provision of legal services as a
27 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 the
11 Applicant’s application on an ongoing basis and correct any information that has changed since
12 the application was filed.

13

Tab 4

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. Waiting for rule changes and then will update website to reflect new rules.
 - <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 currently, Committee would like a Spanish complaint form.
 - <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 **START HERE @ NEXT COMMITTEE MEETING**

†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 of 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 cjudges 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 5

Proposed OPC Performance Metrics

As the Committee is aware, proposed Rule 11-501(b)(2) tasks the Oversight Committee with developing and implementing realistic performance metrics for the OPC. With that in mind we have prepared the following recommended tracking metrics for OPC cases. Some explanation is helpful when considering the proposed metrics.

Under the current version of the Rules of Lawyer Discipline and Disability, cases generally come to the OPC in two ways: they arrive as non-notarized requests for assistance (“RFA”), or they initiate as notarized and verified informal complaints. If the proposed changes to the RLDD are adopted that process will be simplified and one complaint type will be used, but these metrics track cases as they are currently processed. In either case, investigations proceed according to the RLDD as the OPC determines several factors: Does the initial complaint have any merit or should it be summarily dismissed or declined? Does more investigation need to be conducted? Does the respondent need to submit a reply? Should the matter be presented to a screening panel?

Each case is different, but the OPC has attempted to create proposed metrics which capture reasonable time frames for most cases. Initially, the OPC attempted to create performance metrics based upon time periods which were solely in the OPC’s control. For example, the time between when the OPC makes a determination to dismiss a complaint and when the case is actually dismissed. Due to the complexity of the system, this approach led to overly complicated metrics with too many segments. Ultimately, the OPC determined that time periods which also capture events outside the OPC’s control (for example, the weeks it may take to locate a witness or obtain a reply from a respondent) are better metrics for generally tracking the OPC’s case processing, and are more in line with metrics the ABA’s Center for Professional Responsibility gathers for case load statistics.

