

**Utah State Bar Commission
Retreat**

**Friday, August 25, 2017
Hyatt Centric, Park City**

Agenda

- 12:00 N. Lunch & Working Retreat Sessions - Arches Room
 Shelly Alcorn, Moderator**
- 5:00 p.m. Adjourn**
- 6:30 p.m. Commission Social/ Dinner & Event with Guests - Wasatch Room**

**Utah State Bar Commission
Meeting**

**Saturday, August 26, 2017
Hyatt Centric, Park City**

Agenda

- 8:00 a.m. Breakfast with Guests - Escalante Room**
- 1. 8:45 a.m. Commission Photo (Business Casual Attire)**
- 2. 9:00 a.m. Young Lawyers “Deep Dive” Discussion - Arches Room**
- 10:30 a.m. Break**
- 10:45 a.m. Young Lawyers “Deep Dive” Conclusion**
- 3. 11:10 a.m. Action items**
- 20 Mins.* 3.1 Appoint Committee Chairs and Liaisons: **John Lund (Tab 1, Page 4)**
- 15 Mins.* 3.2 Appoint Access to Justice Coordinating Committee: **Dickson Burton (Tab 2, Page 8)**
- 15 Mins.* 3.3 Appoint Bar Awards Committee: **Kate Conyers (Tab 3, Page 10)**
- 12:00 N. Working Lunch**
- 4. 12:15 p.m. Information Item**
- 15 Mins.* 4.1 ABA Delegates’ Report: **Nate Alder, Margaret Plane**
- 5. Other Business**
- 6. 12:45 p.m. Executive Session**
- 1:00 p.m. Adjourn**

Consent Agenda (Tab 4, Page 12)

- 1. Minutes of July 26, 2017 Commission Meeting (Page 13)**
- 2. 2017-2018 Committee Charges (Page 16)**
- 3. Practice Pending Admissions Housekeeping Rules (Page 35)**
- 4. Law Student Practice Rule Clarifications (Page 54)**

(Over)

Attachments (Page 62)

1. 2017 Summer Convention Press Coverage
2. *Tribune* Article about Utah Supreme Court Decision to Affirm Disbarment of Susan Rose
3. Utah Supreme Court Decision to Affirm Disbarment of Susan Rose

Calendar

September 29	Executive Committee	12:00 Noon	Utah State Bar
October 6	Commission Meeting	9:00 a.m.	Utah State Bar
October 17	Admissions Ceremony	12:00 Noon	Capitol Building
October 17-21?	Pro Bono Celebration Week		
November 7	Executive Committee	12:00 Noon	Utah State Bar
November 10	Fall Forum		Little America
November 10	UMBA Awards Banquet		Little America
November 10	University of Utah S.J. Quinney College of Law Fall Forum Event		S.J. Quinney College
November 17	Commission Meeting	9:00 a.m.	Ogden, Utah
December 1	Executive Committee	12:00 Noon	Utah State Bar
December 8	Commission Meeting	9:00 a.m.	Utah State Bar

2018

January 2 Election Notices Due

TAB
1

Committee Chair Appointments - Updated: August 22, 2017

<u>Committee</u>	<u>Current Chair(s)</u>	<u>Date Began</u>
Access to Justice		July 2017
Coordinating		July 2017
Bar Admissions	Steven T. Waterman, Co-chair Daniel A. Jensen, Co-chair	July 1997 July 2016
Bar Awards		July 2017 July 2017
Bar Examiner	Mark Astling, Co-chair Tanya N. Lewis, Co-chair	July 2016 July 2014
Bar Exam Test Accommodation	Joan M. Andrews, Chair	July 2013
Bar Journal	William D. Holyoak, Chair	July 1999
Bar Leadership Academy	Angelina Tsu, Co-chair Gabe White, Co-chair	July 2017 July 2017
Budget & Finance	Christine Arthur, CPA, Chair	July 2016
Character and Fitness	Andrew M. Morse, Co-chair Kimberly A. Neville, Co-chair	July 2012 July 2014
CLE Advisory	Jonathan Hafen, Chair	July 2011
Disaster Legal Response	Tracy Olson, Chair	July 2016
Ethics Advisory Opinion	John A. Snow, Chair	July 2011
Fee Dispute Resolution	William M. Jeffs, Chair	July 2010
Fund for Client Protection	David R. Hamilton, Chair	July 1990
Governmental Relations	Jaqualin Friend Peterson, Co-chair	July 2015 July 2017
Innovation in Law Practice	Heather White, Co-chair John H. Rees, Co-chair	July 2016 July 2016
Member Resource	Robert L. Jeffs, Chair	July 2012
New Lawyer Training	Lesley Manley, Chair	July 2015
Unauthorized Practice of Law	Maribeth LeHoux, Co-chair Alex B. Leeman, Co-chair	April 2017 July 2016
2017 Fall Forum	Hon. Juli Blanch James Blanch	
2018 Spring Convention	James Hanks	July 2017
2018 Summer Convention	Hon. Tom Lee	July 2017

2017-2018 Bar Commission Committee, Program & Liaison Assignments

John Lund, Bar President

Assignments:

1. Executive Committee
2. Budget & Finance Committee
3. Summer Convention Committee
4. Fall Forum Committee

Steven Burt

Assignments:

1. Disaster Legal Resources Committee
2. Construction Law Section*
3. Community Association Law Section*

Kate Conyers:

Assignments:

1. Government Relations
2. Pro Bono Commission*
3. Environmental Law Section*
4. Health Law Section*
5. Executive Committee

John Bradley

Assignments:

1. Davis County Bar Association
2. Weber County Bar Association
3. Government & Administrative Law Section*
4. Tooele County Bar Association

Heather Thuet

Assignments:

1. Litigation Section*
2. Hellenic Bar Association
3. Labor & Employment Section*
4. Unauthorized Practice of Law Committee
5. Franchise Law Section
6. AAA Task Force

Heather Farnsworth

Assignments:

1. Cybersecurity & Data Privacy Law Section*
2. Securities Law Section*
3. Business Law Section*
4. Limited Scope Section*

Mary Kay Griffin

Assignments:

1. Budget & Finance Committee
2. Non-profit/Charitable Law Section
3. Tax Law Section*

Cara Tangaro

Assignments:

1. Bar Journal Committee*
2. UACDL*
3. Criminal Law Section*
4. Bankruptcy Law Section*
5. Utah Prosecution Council

Liisa Hancock

Assignments:

1. Ethics Advisory Committee
2. Family Law Section*
3. Central Utah Bar Association*
4. Wasatch County Bar Association*

H. Dickson Burton, President-elect

Assignments:

1. Executive Committee
2. Budget & Finance Committee
3. Spring Convention Committee
4. Intellectual Property Section*
5. Innovation in Law Committee

Michelle Mumford

Assignments:

1. Education Law Section*
2. Admissions Committee
3. Test Accommodations Committee
4. Character & Fitness Committee
5. Bar Examiner Committee

Herm Olsen

Assignments:

1. Fee Dispute Resolution Committee
2. Box Elder Bar Association
3. Cache County Bar Association
4. Utah Association for Justice*
5. Senior Lawyers Section

Katie Woods

Assignments:

1. Eastern Utah Bar Association
2. Garfield County Bar Association
3. Sixth District Bar Association
4. Southern Utah Bar Association
5. Uintah Basin Bar Association
6. Executive Committee

Rob Rice

Assignments:

1. Judicial Council
2. Antitrust and Unfair Competition
3. SLCO Bar*

Nate Alder

Assignments:

1. Dispute Resolution Section*
2. Appellate Practice Section*
3. Constitution Law Section

Chris Warton

Assignments:

1. Member Resources Committee
2. Federal Bar Association*
3. Juvenile Law Section

Margaret Plane

Assignments:

1. Park City Bar Association*
2. Military Law Section
3. Indian Law Section

Angelina Tsu

Assignments:

1. Fund for Client Protection Committee
2. Banking & Finance*
3. International Law Section

Grace Acosta

Assignments:

1. Solo, Small Firm & Rural Practice Section*
2. Collection Law Section
3. Real Property Law Section*
4. Corporate Counsel Section*
5. Elder Law Section*

Mark Morris

Assignments:

1. CLE Advisory Committee
2. Estate Planning Law Section*
3. Communications Law Section
4. New Lawyer Training

TAB
2

CHARGE TO STANDING COMMITTEE

TO: Co-chair, Access to Justice Coordinating Committee
Co-chair, Access to Justice Coordinating Committee

FROM: John R. Lund, President

DATE: August 2017

PURPOSE OF COMMITTEE:

To provide leadership the Bar's Access to Justice Programs and ensure greater communication among the various providers of legal services to the under-served populations in the state regarding the broad spectrum of judicial, court-related, administrative, educational, market-based, and consumer-oriented issues and to discuss the means of improving the services.

SPECIFIC OBJECTIVES:

1. To coordinate the Bar's Access to Justice programs, which currently includes the Modest Means and Pro Bono Programs as well as the AAA Task Force and the Licensed Lawyer directory site;
2. To regularly gather the various legal services providers in the state to share information, discuss improvements, review the extent to which this work is being accomplished and evaluate any gaps which may still exist; and,
3. To maintain comprehensive reports of the services.

COMMISSION LIAISON:

BAR STAFF LIAISON:

Tyler Needham

TAB
3

CHARGE TO STANDING COMMITTEE

TO: Co-chair, Bar Awards Committee
Co-chair, Bar Awards Committee

FROM: John R. Lund, President

DATE: August 2017

PURPOSE OF COMMITTEE:

To propose the policies and processes through which the Bar recognizes the meritorious performance and contributions of lawyers and members of the public.

SPECIFIC OBJECTIVES:

1. To establish the process and means to be adopted by the Commission for the solicitation of nominations of lawyers and members of the public for the various Bar awards, including the notification of interested groups; policies on the number and types of nominations which will be considered by the Commission; and the timing of the selection process.
2. To draft the criteria for the Commission to consider in selecting recipients for each award;
3. To draft a formal nomination outline to be use by those nominating candidates for each award:
4. To receive nominations for the awards and present those meeting the award criteria to the Commission according to the approved deadlines, including a listing of past award winners.

COMMISSION LIAISON:

BAR STAFF LIAISON:

Christy Abad

TAB
4

**UTAH STATE BAR
BOARD OF BAR COMMISSIONERS
MINUTES**

JULY 26, 2017

SUN VALLEY, IDAHO

- In Attendance:** President Rob Rice, President-elect John Lund, Commissioners: Grace Acosta; John Bradley, Steven Burt, H. Dickson Burton, Kate Conyers, Heather Farnsworth, Mary Kay Griffin, Liisa Hancock, Michelle Mumford, Herm Olsen, Cara Tangaro, Heather Thuet, and Katie Woods.
- Ex-Officio Members:** Dean Robert Adler, Nate Alder, Julie Emery, Amy Fowler, Jaelynn Jenkins, Audrey Phillips (for Women Lawyers of Utah), Margaret Plane, Dean Gordon Smith, Jamie Sorenson (for Utah Minority Bar Association), and Angelina Tsu.
- Not in Attendance:** Ex-Officio Member: Chris Wharton
- Also in Attendance:** Executive Director John C. Baldwin, General Counsel Elizabeth A. Wright, and Supreme Court Liaison James Ishida.

Minutes: 1:15 p.m. start

1. President's Report: Rob Rice

- 1.1 Welcome and review Summer Convention schedule.**
- 1.2 Review 2017-2018 Commission Meeting schedule.**
- 1.3 Retreat Information.** John Lund reported that the annual Commission Retreat will take place on Friday, August 25th at the Canyons in Park City. The Commission Meeting will be on Saturday the 26th.
- 1.4 Report on Jackrabbit Bar Conference.** Rob Rice reported on the Jackrabbit Bar conference that took place in Santa Fe, New Mexico. New Mexico has a promising incubator program to encourage lawyers to serve small and rural communities. Rob noted that New Mexico's goal of providing legal services to underrepresented communities is similar to Utah's efforts to implement the Futures Commission recommendations.
- 1.5 Review Website.** Rob Rice showed slides of the pages of the Bar's new website design. The design is less cluttered and better organized. Rob pointed out that the new design

cost more than initially anticipated but that the expense was worth getting exactly what the Bar needed for the most functional website.

- 1.6 **Review Practice Portal.** Rob Rice presented slides showing how the new Practice Portal will look. Members will have an assortment of “cards” available on which they can link to services like e-filing, Office 365, LawyPay and Casemaker. Some cards will be free and others will have a charge associated with their use.

2. Action Items

- 2.1 **Appoint Representative to the Executive and Judicial Compensation Commission.** After a discussion of potential appointees, **Michelle Mumford moved to appoint Samuel Alba to serve as the Bar’s representative on the Executive and Judicial Compensation Committee. Cara Tangaro seconded the motion which passed unopposed.**
- 2.2 **Approve Futures Commission Report.** Rob Rice presented highlights from his report describing the Bar’s progress in implementing the recommendations of the July 29, 2015 final report of the Bar’s Futures Commission. After a discussion of the progress made, **Dickson Burton moved to approve the Futures Commission Progress Report. Kate Conyers seconded the motion which passed unopposed.**
- 2.3 **Reappoint Bryan Pattison to Utah Legal Services Board.** After discussion, **Katie Woods moved to reappoint Bryan Pattison to serve on the Utah Legal Services Board. Heather Farnsworth seconded the motion which passed unopposed.**
- 2.4 **Approve Convention Review Committee Report.** The report and recommendations were presented at the May 12, 2017 Commission Meeting for review by the Commission in anticipation of discussion and vote at this meeting. **Grace Acosta moved to approve the recommendations of the Convention Review Committee. John Lund seconded the motion which passed unopposed.**
- 2.5 **Approve Convention Reimbursement Policies.** Grace Acosta moved to approve the convention reimbursement policies. Liisa Hancock seconded the motion which passed unopposed.

Item for Action Not Listed On Agenda

Approve August 2017 Candidates for Admission to the Utah State Bar. A handout listing the Admittees was distributed. **Herm Olsen moved to approve the list of August 2017 candidates for admission to the Bar. Grace Acosta seconded the motion which passed unopposed.**

3. Commission Reorganization

- 3.1 **Welcome New Bar Commissioner.** Postponed until August meeting.

- 3.2 Appoint Ex Officio Members.** Kate Conyers moved to appoint the 2017 -2018 Ex Officio members listed below. Herm Olsen seconded the motion which passed unopposed. Past Bar President (**Rob Rice**); the Bar's Representatives to the ABA House of Delegates (**Nate Alder and Angelina Tsu**); the Bar's YLD Representative to the ABA House of Delegates (**Chris Wharton**); Utah's ABA Members' Representative to the ABA House of Delegates (**Margaret Plane**); the Utah Minority Bar Association Representative (**Jamie Sorenson**); the Women Lawyers of Utah Representative (**Diana Hagen**); the LGBT and Allied Lawyers of Utah Representative (**Amy Fowler**); the Paralegal Division Representative (**Julie Emery**); the J. Reuben Clark Law School Dean (**Gordon Smith**); the S.J. Quinney College of Law Dean (**Robert Adler**); and the Young Lawyers Division Representative (**Dani Cepernich**).
- 3.3 Appoint Executive Committee.** Michelle Mumford moved to appoint John Lund, Dickson Burton, Kate Conyers and Katie Woods as members of the Executive Committee. Grace Acosta seconded the motion which passed unopposed.
- 3.4 Adopt Resolution on Bank Signatures.** John Bradley moved to approve members of the Executive Committee as signatories on the Bar's checking account. Cara Tangaro seconded the motion which passed unopposed.
- 3.5 Sign Conflict of Interest Disclosures.** Voting Commissioners signed and submitted conflict of interest disclosures.
- 4. Recognize Retiring Commissioners.** The Commission recognized Dickson Burton's long and productive service on the Commission. His term as a Commissioner is over, but he will continue to serve on the Commission as President-Elect and then President. The Commission also recognized Rob Rice's long and valuable service as a Bar Commissioner, President-elect and President.

5. Executive Session.

The meeting adjourned at 4:30 p.m.

Consent Agenda

1. Approved Minutes from the May 12, 2017 Commission Meeting.
2. Approved Online Content and Social Media Policy.

Handouts: List of August 2017 Candidates for Bar Admission.

CHARGE TO STANDING COMMITTEE

TO: Co-chair, Access to Justice Coordinating Committee
Co-chair, Access to Justice Coordinating Committee

FROM: John R. Lund, President

DATE: August 2017

PURPOSE OF COMMITTEE:

To provide leadership the Bar's Access to Justice Programs and ensure greater communication among the various providers of legal services to the under-served populations in the state regarding the broad spectrum of judicial, court-related, administrative, educational, market-based, and consumer-oriented issues and to discuss the means of improving the services.

SPECIFIC OBJECTIVES:

1. To coordinate the Bar's Access to Justice programs, which currently includes the Modest Means and Pro Bono Programs as well as the AAA Task Force and the Licensed Lawyer directory site;
2. To regularly gather the various legal services providers in the state to share information, discuss improvements, review the extent to which this work is being accomplished and evaluate any gaps which may still exist; and,
3. To maintain comprehensive reports of the services.

COMMISSION LIAISON:***BAR STAFF LIAISON:***

Tyler Needham

CHARGE TO STANDING COMMITTEE

TO: Steven T. Waterman, Co-chair, Bar Admissions Committee
Daniel A. Jensen, Co-chair, Bar Admissions Committee

FROM: John R. Lund, President

DATE: August 2017

PURPOSE OF COMMITTEE:

To oversee the Bar admissions process for licensure by the Supreme Court and assure that: (1) each applicant has achieved a sufficient amount of scholarly education and graduated from an ABA approved law school; (2) each applicant possesses the requisite moral character and fitness to protect the public interest and engender the trust of clients, adversaries, courts and others; and (3) each applicant has the ability to identify legal issues, to engage in a reasoned analysis of those issues and to arrive at a logical solution by application of fundamental legal principles by examination which demonstrates the applicant's thorough understanding of these legal principles.

The Committee shall consist of its chairs, the chairs of all admission-related committees, the Deputy General Counsel in Charge of Admissions and any at-large members appointed by the Utah State Bar Commission. The Deans of the J. Reuben Clark Law School and S. J. Quinney College of Law shall be *ex-officio* members of the committee.

SPECIFIC OBJECTIVES:

To coordinate the participation and performance of all admission-related Committees regarding admissions process including; (1) initial contact with Bar; (2) the Bar application; (3) the Rules of Admission; (4) the investigative process; (5) the Character and Fitness review process; and, (6) the Bar Exam, preparation, administration, grading and grievances.

To hear Bar Exam Applicants' grievances.

To research and recommend improvements in the process.

The committee chair(s) shall also identify and train eventual successive chairperson(s).

COMMISSION LIAISON:

BAR STAFF LIAISON:

Joni Dickson Seko

CHARGE TO STANDING COMMITTEE

TO: Co-chair, Bar Awards Committee
Co-chair, Bar Awards Committee

FROM: John R. Lund, President

DATE: August 2017

PURPOSE OF COMMITTEE:

To propose the policies and processes through which the Bar recognizes the meritorious performance and contributions of lawyers and members of the public.

SPECIFIC OBJECTIVES:

1. To establish the process and means to be adopted by the Commission for the solicitation of nominations of lawyers and members of the public for the various Bar awards, including the notification of interested groups; policies on the number and types of nominations which will be considered by the Commission; and the timing of the selection process.
2. To draft the criteria for the Commission to consider in selecting recipients for each award;
3. To draft a formal nomination outline to be use by those nominating candidates for each award:
4. To receive nominations for the awards and present those meeting the award criteria to the Commission according to the approved deadlines, including a listing of past award winners.

COMMISSION LIAISON:

BAR STAFF LIAISON:

Christy Abad

CHARGE TO STANDING COMMITTEE

TO: Tanya Lewis, Co-chair, Bar Examiner Committee
Mark Astling, Co-chair, Bar Examiner Committee

FROM: John R. Lund, President

DATE: August 2017

PURPOSE OF COMMITTEE:

To assure that each applicant has the ability to identify legal issues, to engage in a reasoned analysis of those issues and to arrive at a logical solution by application of fundamental legal principles by examination which demonstrates the applicant's thorough understanding of these legal principles by writing and grading the essay questions.

The committee shall consist of its chair(s) and any at-large members appointed by the Utah State Bar Commission.

SPECIFIC OBJECTIVES:

To draft and grade Bar examination questions and answers in accordance with the Bar Examiners Handbook so that the Bar may appropriately assess an applicant's knowledge and competence to practice law in the state of Utah. Committee members will review examination materials prior to questions being placed on the examination. Reviewers will analyze questions and answers to insure that they are fair, clear and accurate.

Questions and model answers shall be completed and submitted for all testing areas by October 1st for the February examination and by May 1st for the July examination.

Changes requested by the Bar Examiner Review Committee shall be incorporated and submitted by February 15th for the February exam and by July 15th for the July exam.

The February exam shall be graded in March and the July exam graded in September.

The committee chair(s) shall also identify and train eventual successive chairperson(s).

COMMISSION LIAISON:

BAR STAFF LIAISON:

Joni Dickson Seko

CHARGE TO STANDING COMMITTEE

TO: Joan M. Andrews, Chair, Bar Exam Test Accommodation Committee

FROM: John R. Lund, President

DATE: August 2017

PURPOSE OF COMMITTEE:

To assure that the Bar examination fairly tests an applicant's competency, by utilizing appropriate, accurate, and clearly-worded questions, and that appropriate test accommodations are awarded as required under the Americans with Disabilities Act. And to assure that the latest technological advances in testing processes and security measures are incorporated into the Bar examination, and that testing is conducted at a safe and suitable exam site.

The committee shall consist of its chair(s) and any at-large members appointed by the Utah State Bar Commission.

SPECIFIC OBJECTIVES:

To oversee the administration of the Bar examination, including test preparation, grading, test accommodation requests, site selection, computer use, emergency-preparedness, and test security issues. The Special Accommodation Committee, a subcommittee of the Bar Exam Administration Committee, focuses on reviewing requests for test accommodations on the February and July Bar exams, investigating the applicants and their requests, and making a recommendation on whether to grant, modify, or deny an applicant's test accommodation request.

The committee chair(s) shall also identify and train eventual successive chairperson(s).

COMMISSION LIAISON:

BAR STAFF LIAISON:

Joni Dickson Seko

CHARGE TO STANDING COMMITTEE

TO: William D. Holyoak, Chair, *Utah Bar Journal* Committee

FROM: John R. Lund, President

DATE: August 2017

PURPOSE OF COMMITTEE: To publish six editions of the *Utah Bar Journal* annually.

The committee shall consist of its chair(s) and any at-large members appointed by the Utah State Bar Commission.

SPECIFIC OBJECTIVES: To provide comprehensive coverage of the legal profession and the activities of the Utah State Bar, including articles of legal importance, state bar news and information, notices from the Judiciary and Bar Section information, summaries of recent cases, legislative reports, classified advertisements, messages from the Bar President and Commissioners, and appropriate announcements of general interest. This should be performed within the adopted budget and by soliciting sufficient and appropriate advertising.

The committee chair(s) shall also identify and train eventual successive chairperson(s).

COMMISSION LIAISON:

BAR STAFF LIAISON:

Christine Critchley

CHARGE TO STANDING COMMITTEE

TO: Angelina Tsu, Co-chair, Bar Leadership Academy
Gabe White, Co-chair, Bar Leadership Academy

FROM: John R. Lund, President

DATE: August 2017

PURPOSE OF COMMITTEE:

To promote increased involvement and diversity in the Utah State Bar by recruiting, targeting, and training outstanding leaders to participate in Bar leadership, committees, and the community in general. The Academy will seek diversity in gender, race, and region within the state, recognizing that the Bar will better function to serve its members and communities when participation in Bar functions is more diverse in gender, race, and state region and by bringing in attorneys from underrepresented arenas to broaden and strengthen the Utah Bar and to increase involvement and interest from areas traditionally not actively involved in Bar service.

SPECIFIC OBJECTIVES:

Over each year, participants will meet monthly with Bar leaders and members of the legal community to learn more about the Bar and practice and cultivate leadership skills. At the end of each year, members will commit to serve the Bar as a volunteer in an active capacity for at least one on committee, project, program, meeting, service or activity, or in other areas where they will be needed. Further objectives are included in the Utah Bar Leadership Academy governance information.

COMMISSION LIAISON:

BAR STAFF LIAISON:

Christy Abad

CHARGE TO STANDING COMMITTEE

TO: Christine Arthur, Chair, Budget and Finance Committee

FROM: John R. Lund, President

DATE: August 2017

PURPOSE OF COMMITTEE:

SPECIFIC OBJECTIVES:

The committee shall consist of its chair(s) and any at-large members appointed by the Utah State Bar Commission.

The committee chair(s) shall also identify and train eventual successive chairperson(s).

BAR STAFF LIAISON: Kellie Bartz, John Baldwin

CHARGE TO STANDING COMMITTEE

TO: Kimberly A. Neville, Co-chair, Character and Fitness Committee
Andrew M. Morse, Co-chair, Character and Fitness Committee

FROM: John R. Lund, President

DATE: August 2017

PURPOSE OF COMMITTEE:

To assure that each applicant has graduated from an ABA approved law school and possesses the requisite moral character and fitness to protect the public interest and engender the trust of clients, adversaries, courts and others.

The committee shall consist of its chair(s) and any at-large members appointed by the Utah State Bar Commission.

SPECIFIC OBJECTIVES:

To meet monthly to review application files, oversee investigations, conduct hearings and either approve or deny applications for admission to the Utah State Bar.

The committee chair(s) shall also identify and train eventual successive chairperson(s).

COMMISSION LIAISON:

BAR STAFF LIAISON:

Joni Dickson Seko

CHARGE TO STANDING COMMITTEE

TO: Jonathan O. Hafen, Chair, CLE Advisory Committee

FROM: John R. Lund, President

DATE: August 2017

PURPOSE OF COMMITTEE: To provide quality continuing legal education programs to all attorneys and paralegals of Utah.

The committee shall consist of its chair(s) and any at-large members appointed by the Utah State Bar Commission.

SPECIFIC OBJECTIVES:

1. To study and report to the Bar Commission on the concept of expanding CLE self-study options to permit interactive videoconferencing as "live" CLE credit in order to accommodate rural and outlying areas as long as not more than 6 credit hours can be completed through participation at traditional "live" events.
2. To explore, in conjunction with the Bar, the implementation of the requirement that each section: (1) provide at least one CLE course per year to section members; (2) provide at least one CLE presentation every three years at a regular Bar convention; (3) consider offering at least one hour of free CLE for section members at section presentations; and (4) encourage certain sections to join together for CLE presentations.
3. To make recommendations on raising the prices of Bar-offered CLE courses and of convention courses to keep pace with the cost of conventions, and to become a modest source of revenue for the Bar.
4. To work, in conjunction with the Bar, with the S.J. Quinney and J. Reuben Clark law schools to make appropriate programs they have developed available on the Bar's website.
5. To work, in conjunction with the Bar, to invite the Bar president each year to provide a lecture on professionalism, civility and problem solving to stress the importance of meaningful problem solving and professionalism.
6. To encourage well-developed, current and informational handouts and materials by CLE presenters.
7. To develop suggested criteria for designating CLE presentations, such as: "Beginning," "Intermediate," and "Advanced" training levels, and in improving the explanations of CLE presentations in advertising so that Bar members might have a more complete idea of the substance and depth of the presentations.
8. To assist the Bar in enhancing the Bar's website to permit the solicitation of ideas and requests for CLE from Bar members and to work to enhance the breadth and mix of topics.
9. To explore the introduction of diversity training as part of Professionalism/Civility CLE programs during the next two years, but not as a mandatory component, and to report back to the Commission on the feasibility of requiring one hour of diversity training every two years as part of the Professionalism/Civility CLE component.
10. The committee chair(s) shall also identify and train eventual successive chairperson(s).

COMMISSION LIAISON:

BAR STAFF LIAISON: Director of Professional Development

CHARGE TO STANDING COMMITTEE

TO: Tracy Olson, Chair, Disaster Legal Response Committee

FROM: John R. Lund, President

DATE: August 2017

PURPOSE OF COMMITTEE: To respond and particularly to provide resources to support the delivery of legal services to those who cannot pay for them in the event of a disaster and to help the lawyers affected.

The committee shall consist of its chair(s) and any at-large members appointed by the Utah State Bar Commission.

SPECIFIC OBJECTIVES:

The committee chair(s) shall also identify and train eventual successive chairperson(s).

COMMISSION LIAISON:

BAR STAFF LIAISON:

Tyler Needham

CHARGE TO STANDING COMMITTEE

TO: John A. Snow, Chair, Ethics Advisory Opinion Committee

FROM: John R. Lund, President

DATE: August 2017

PURPOSE OF COMMITTEE: To prepare ethics advisory opinions in response to requests by members of the Bar concerning prospective conduct that is currently not in litigation and when the issue is a significant one for lawyers and the "Utah Rules of Professional Conduct" do not provide guidance.

The committee shall consist of its chair(s) and any at-large members appointed according to the rules of the committee.

SPECIFIC OBJECTIVES:

1. To meet as necessary to respond to requests and provide proposed advisory opinions to the Board of Bar Commissioners for their review; and
2. To maintain a compilation of all Bar-approved ethics advisory opinions and prepare an index of all opinions which will be published and available at the Bar office for all lawyers.
3. The committee chair(s) shall also identify and train eventual successive chairperson(s).

COMMISSION LIAISON:

BAR STAFF LIAISON:

Office of Professional Conduct

CHARGE TO STANDING COMMITTEE

TO: William M. Jeffs, Chair, Fee Dispute Resolution Committee

FROM: John R. Lund, President

DATE: August 2017

PURPOSE OF COMMITTEE: To implement Utah State Bar Fee Dispute Resolution program according to existing rules.

The committee shall consist of its chair(s) and any at-large members appointed by the Utah State Bar Commission.

SPECIFIC OBJECTIVES: To assign arbitration panels to hold arbitration hearings with appropriate notice and to provide final decisions to the parties. To finalize revisions to the arbitration rules.

The committee chair(s) shall also identify and train eventual successive chairperson(s).

COMMISSION LIAISON:

BAR STAFF LIAISON:

Christine Critchley

CHARGE TO STANDING COMMITTEE

TO: Hon. David R. Hamilton, Chair, Fund for Client Protection Committee

FROM: John R. Lund, President

DATE: August 2017

PURPOSE OF COMMITTEE: To consider claims made against the Fund for Client Protection and recommend appropriate payouts for consideration and approval by the Board of Bar Commissioners.

The committee shall consist of its chair(s) and any at-large members appointed by the Utah State Bar Commission.

SPECIFIC OBJECTIVES: To meet on an as-needed basis to review claims, and to provide written recommendations for approval by the Board of Bar Commissioners.

The committee chair(s) shall also identify and train eventual successive chairperson(s).

COMMISSION LIAISON:

BAR STAFF LIAISON:

Christine Critchley

CHARGE TO STANDING COMMITTEE

TO: Jaqualin Friend Peterson, Co-chair, Governmental Relations Committee

FROM: John R. Lund, President

DATE: August 2017

PURPOSE OF COMMITTEE: To monitor pending or proposed legislation which falls within the Bar's legislative policy and make recommendations to the Board of Bar Commissioners to support, oppose, take to no position, or to recommend other appropriate action.

The Committee shall consist of its chair(s) and representatives from the Sections of the Bar.

SPECIFIC OBJECTIVES: To meet as necessary during the year to monitor legislative activity, coordinate activities with the Bar's legislative representative and make recommendations to the Board of Bar Commissioners during regularly scheduled telephonic and other meetings during the session, and before/after the sessions, as appropriate. To develop partnerships between the Bar and the various branches of government.

The committee chair(s) shall also identify and train eventual successive chairperson(s).

COMMISSION LIAISON:

BAR STAFF LIAISON:

Lincoln Mead

CHARGE TO STANDING COMMITTEE

TO: Heather S. White, Co-chair, Innovation in Law Practice Committee,
John H. Rees, Co-chair, Innovation in Law Practice Committee,

FROM: John R. Lund, President

DATE: August 2017

PURPOSE OF COMMITTEE:

To lead the Bar and Utah practitioners in using innovation and technology to serve clients more effectively and more efficiently. While all members of the Bar are important to the work of this Committee, the committee will place emphasis on the needs of solo and small firm practitioners, new lawyers and underserved client populations.

The Committee shall consist of its chairs, appointees from Solo, Small Firm and Rural Practice Section, the Young Lawyers Division, the Paralegal Division, the New Lawyers Training Program Committee, the IT Director of the Bar, and any at-large members, including non-lawyers such as IT professionals and firm administrators, appointed by the Utah State Bar Commission.

SPECIFIC OBJECTIVES:

The committee will provide a forum for exchange and exploration of innovative approaches to providing and pricing legal services, not only through new technologies but also through fresh approaches to marketing and business structures.

The committee will provide continuing legal education on these subjects at regular intervals throughout the year but also at the major Bar conventions and meetings, presently to include the Bar's Summer and Spring Conventions and the Fall Forum.

The committee will seek out partnerships with law technology vendors and providers, both to enhance the content of the education and defray the costs and to stay abreast of market-driven innovation in the practice of law.

The committee also will coordinate its efforts and activities with other Bar sections and committees to the extent there are overlapping interests.

The committee will provide a regular and ongoing assessment of the Bar organization's uses of innovation and technology in meeting its mission.

The committee chair(s) shall also identify and train eventual successive chairperson(s).

COMMISSION LIAISON:

BAR STAFF LIAISON:

Lincoln Mead

CHARGE TO STANDING COMMITTEE

TO: Robert L. Jeffs, Chair, Member Resource Committee

FROM: John R. Lund, President

DATE: August 2017

PURPOSE OF COMMITTEE: To recommend to the Board of Bar Commissioners appropriate group benefit programs or other services for Bar members and monitor the Bar's continuous liability insurance program with carriers under a fully standard policy form and to insure a well-rated and credible insurer.

The committee shall consist of its chair(s) and any at-large members appointed by the Utah State Bar Commission.

SPECIFIC OBJECTIVES: To review and recommend to the Board of Bar Commissioners for approval traditional association benefit programs such as health, life, disability, dental and professional liability insurance as well as other programs such as discount purchasing programs, which have potential benefit to the Bar members and which could be provided with little or no cost to the Bar or with potential revenue to the Bar which is generally disclosed to the Bar membership.

The committee chair(s) shall also identify and train eventual successive chairperson(s).

COMMISSION LIAISON:

BAR STAFF LIAISON:

Richard Dibblee

CHARGE TO STANDING COMMITTEE

TO: Lesley Manley, Chair, New Lawyer Training Committee

FROM: John R. Lund, President

DATE: August 2017

PURPOSE OF COMMITTEE:

The Utah State Bar Committee on New Lawyer Training shall consist of its chair(s) and any other bar members appointed by the Utah State Bar Commission. The Committee represents the bar membership by bringing together attorneys from large and small firms, government agencies, and members of court.

SPECIFIC OBJECTIVES:

The members are responsible for recruiting and approving mentors and reviewing, evaluating, and creating policies for the NLTP. The committee also assists in the development of valuable resources for mentors and new lawyers and builds relationships with firms, agencies, and other organizations for building an effective mentoring program. The committee chair(s) shall also identify and train eventual successive chairperson(s).

COMMISSION LIAISON:

BAR STAFF LIAISON:

NLTP Administrator

CHARGE TO STANDING COMMITTEE

TO: Maribeth LeHoux, Co-chair, Unauthorized Practice of Law Committee
Alex B. Leeman, Co-chair, Unauthorized Practice of Law Committee

FROM: John R. Lund, President

DATE: August 2017

PURPOSE OF COMMITTEE: To review and investigate all complaints made regarding unauthorized practice of law (UPL) allegations. Addressing UPL complaints by means such as dismissal, drafting informal letters of caution, or pursuing more formal Cease & Desist Agreements. Recommending where appropriate and approved, the filing a civil complaint for UPL violations. As deemed appropriate, engage in special projects such as publishing a “notario” pamphlet, drafting Spanish language UPL complaints forms, etc. Reviewing the current UPL process, including guidelines and procedures and advising the Board of Bar Commissioners on recommended changes in the process, such as criminalization, prosecution by the Office of Bar Counsel, or prosecution by others, etc. As directed, work with the Utah Supreme Court’s Rules Advisory Committee.

The committee shall consist of its chair(s) and any at-large members appointed by the Utah State Bar Commission.

SPECIFIC OBJECTIVES: To meet as necessary to review and discuss, complaints and current UPL issues and make recommendations to the Board of Bar Commissioners as appropriate for formal action.

The committee chair(s) shall also identify and train eventual successive chairperson(s).

COMMISSION LIAISON:

BAR STAFF LIAISON:

Elizabeth Wright

Utah State Bar®

M E M O R A N D U M

TO: The Commission

FROM: Elizabeth A. Wright

RE: Amendments to Admissions Rule to Conform to Limited Practice Rule 14-805

DATE: July 19, 2017

On May 12, 2017, the Commission approved Rule 14-805 that allows lawyers admitted in other jurisdictions, who meet the requirements of the rule, to practice in Utah while awaiting admission to the Utah State Bar. The attached rules must be amended to make them consistent with the new practice pending admission Rule 14-805.

Attached are redlined versions of Rules 14-704, 14-705, 14-713, 14-719, and 14-806 that have been amended as a matter of housekeeping to make them consistent with the Practice Pending Admission Rule 14-805 that was approved at the May Commission Meeting. Changes to these rules are housekeeping matters that add Rule 14-805 to the rule or renumber the letter because of a change to include 14-805.

Additionally, the Admissions Committee is requesting housekeeping changes to Rules 14-701-(h) 14-701(ff). Rule 14-701(h) has been changed to remove a reference to the UBE in the definition of "Bar Examination." It is repetitive to reference the UBE and could cause confusion in the future as applicants take the UBE in different jurisdictions at different times. 14-701(ff) defines the "Practice of Law." The Admissions Committee proposes amending the definition to be consistent with the Rule 14-802 definition of the "practice of law."

Rule 14-701. Definitions.

As used in this article:

(a) "ABA" means the American Bar Association;

(b) "Active Practice" means work performed by an attorney holding an "active" status law license and having professional experience and responsibilities involving the Full-time Practice of Law as defined in sections (t) and (ff). The Active Practice of law includes any combination of the following activities provided that such employment is available only to licensed attorneys and the activities are performed in the jurisdiction in which the Applicant is admitted;

(b)(1) sole practitioner, or partner, shareholder, associate, or of counsel in a law firm;

(b)(2) an organization's employee whose principal responsibility is to provide legal advice or service;

(b)(3) government employee whose principal duties are to provide legal advice or service;

(b)(4) service in the United States armed forces as a lawyer or judge;

(b)(5) judge of a court of general or appellate jurisdiction provided that such employment requires admission to the bar for the appointment thereto and for the performance of the duties thereof;

(b)(6) law clerk to a judge of a court of general or appellate jurisdiction; or

(b)(7) teaching full-time at an Approved Law School;

(b)(8) the Active Practice of law shall not include work that, as undertaken, constitutes the unauthorized practice of law in the jurisdiction in which it was performed or in the jurisdiction in which the clients receiving the unauthorized services were located, nor shall it include work completed in advance of any bar admission.

(c) "Admissions Committee" means those Utah State Bar members or others appointed by the Board or president of the Bar who are charged with recommending standards and procedures for admission to the Bar and with implementation of this article. The Admissions Committee is responsible for supervising the work of the Bar Examiner Committee, the Test Accommodations Committee, and the Character and Fitness Committee, handling requests for review as provided herein and performing other work relating to the admission of Applicants;

(d) "Applicant" means each person requesting admission to the Bar. For purposes article, an Applicant is classified as a Student Applicant, a Foreign Law School

Applicant, an Attorney Applicant, a Motion Applicant, a Disbarred Attorney Foreign Legal Consultant Applicant, or a House Counsel Applicant.

(e) "Approved Law School" means a law school which is fully or provisionally approved by the ABA pursuant to its Standards and Rules of Procedure for Approval of Law Schools. To qualify as approved, the law school must have been fully or provisionally approved at the time of the Applicant's graduation, or at the time of the Applicant's enrollment, provided that the Applicant graduated within a typical and reasonable period of time;

(f) "Attorney Applicant" means any person who satisfies the requirements of Rule 14-704;

(g) "Bar" means the Utah State Bar, including its employees, committees and the Board;

(h) "Bar Examination" means the Bar Examination as defined in Rules 14-710 and 14-711 and includes the UBE, regardless of where the UBE was taken;

(i) "Bar Examiner Committee" means those Bar members or others appointed by the Board or president of the Bar who are charged with grading the Bar Examination;

(j) "Board" means the Board of Bar Commissioners;

(k) "Character and Fitness Committee" means those Bar members or others appointed by the Board or president of the Bar who are charged with assessing the character and fitness of Applicants and making determinations thereon;

(l) "Complete Application" means an application that includes all fees and necessary application forms, along with any required supporting documentation, character references, a criminal background check, a photo, an official certificate of law school graduation and if applicable, a test accommodation request with supporting medical documentation, a certificate of admission and/or good standing, and a certificate of discipline;

(m) "Confidential Information" is defined in Rule 14-720(a);

(n) "Deputy General Counsel for Admissions" or "Deputy General Counsel" are terms used interchangeably to mean the Bar's attorney in charge of admissions or her or his designee;

(o) "Disbarred Attorney Applicant" means a person who has previously been licensed to practice law in Utah and who is no longer licensed to practice law because of disbarment or resignation with discipline pending or their equivalent and who satisfies the requirements of Rule 14-708(g) and 14-717;

(p) "Executive Director" means the executive director of the Utah State Bar or her or his designee;

(q) "First Professional Degree" means a degree that prepares the holder for admission to the practice of law (e.g. juris doctorate) by emphasizing competency skills along with theory and analysis. An advanced, focused, or honorary degree in law is not recognized as a First Professional Degree (e.g. master of laws or doctor of laws);

(r) "Foreign Law School" means any school located outside of the United States and its protectorates, that is accredited by that jurisdiction's legal accreditation body, if one exists, where principles of English Common Law form the predominant basis for that country's system of jurisprudence, and whose graduates are otherwise permitted by that jurisdiction's highest court to practice law;

(s) "Foreign Legal Consultant Applicant" means any Applicant who satisfies the requirements of Rule 14-718;

(t) "Full-time Practice" means the Active and lawful Practice of Law for no fewer than 80 hours per month. Time spent on administrative or managerial duties, continuing legal education, or client development and marketing does not qualify as part of the required 80 hours of legal work;

(u) "General Counsel" means the General Counsel of the Utah State Bar or her or his designee;

(v) "House Counsel Applicant" means any Applicant who satisfies the requirements of Rule 14-719;

(w) "House Counsel" means a person granted a license under Rule 14-719;

(x) "Inactive" means an attorney's law license is held in "inactive status" or an equivalent term;

(y) "MBE" means the Multistate Bar Examination prepared by the NCBE;

(z) "MEE" means the Multistate Essay Examination prepared by the NCBE;

(aa) "Motion Applicant" means any person who satisfies the requirements of Rule 14-705;

(bb) "MPRE" means the Multistate Professional Responsibility Examination prepared by the NCBE;

(cc) "MPT" means the Multistate Performance Test prepared by the NCBE;

(dd) "NCBE" means the National Conference of Bar Examiners, an organization that develops, maintains, and applies reasonable and uniform standards of bar examination education and testing;

(ee) "OPC" means the Bar's Office of Professional Conduct;

(ff) "Practice of Law" means employment available only to licensed attorneys where the primary duty of the position is to represent the interests of another person by informing, counseling, advising, assisting, advocating for or drafting documents for that person through application of the law and associated legal principles to that person's facts and circumstances. ~~provide legal service representation. The Practice of Law includes such activities as furnishing legal counsel, drafting documents and pleadings, interpreting and giving advice with respect to the law, and preparing, trying or presenting cases before courts or administrative agencies. The Practice of Law is a term of art and though no broad rule can precisely define the Practice of Law, it constitutes more than merely working with legally-related matters;~~

(gg) "Privileged Information" in this article includes: information subject to the attorney-client privilege, attorney work product, test materials and applications of examinees; correspondence and written decisions of the Board, Admissions Committee, Bar Examiner Committee, Character and Fitness Committee, and Test Accommodations Committee; and the identity of individuals participating in the drafting, reviewing, grading and scoring of the Bar Examination;

(hh) "Reapplication for Admission" means that for two years after the filing of an original application, an Applicant may reapply by completing a Reapplication for Admission form updating any information that has changed since the prior application was filed and submitting a new criminal background check;

(ii) "Resigned Applicant" means a person who has previously been licensed to practice law in Utah who is no longer licensed to practice law because of resignation without discipline pending or resignation under Rule 14-508(d) and who satisfies the requirements of Rule 14-717(a).

(jj) "Student Applicant" means any person who satisfies the requirements of Rule 14-703(a);

(kk) "Supreme Court" means the Utah Supreme Court;

(ll) "Test Accommodations Committee" means those Bar members or others appointed by the Board or president of the Bar who are charged with the review of requests from Applicants seeking to take the Bar Examination with test accommodations and who make determinations thereon;

(mm) "Unapproved Law School" means a law school that is not fully or approved by the ABA. For an Unapproved Law School's graduates to be eligible for

admission, the law school must be accredited in the jurisdiction where it exists, legal education that is the substantial equivalent of the legal education provided by Approved Law School, and not be based on correspondence or internet study;

(nnmm) "UBE" means the Uniform Bar Examination as prepared by the NCBE;

(ooHH) "Updated Application" means that an Applicant is required to amend and update her or his application on an ongoing basis and correct any information that has changed since the application was filed; and

(ppEE) "Written Component" means that portion of the Bar Examination that consists of MEE and MPT questions.

Rule 14-704. Qualifications for admission of Attorney Applicants.

(a) Requirements of Attorney Applicants. The burden of proof is on the Applicant to establish by clear and convincing evidence that she or he:

(a)(1) has paid the prescribed fees and filed the required Complete Application as an Attorney Applicant in accordance with Rule 14-707;

(a)(2) is at least 21 years old;

(a)(3) has graduated with a First Professional Degree in law from an Approved Law School;

(a)(4) has been admitted to the practice of law before the highest court of a U.S. state, territory, or the District of Columbia;

(a)(5) is of good moral character and satisfies the requirements of Rule 14-708;

(a)(6) has successfully passed the MPRE and the Bar Examination;

(a)(7) is a member in good standing in all jurisdictions where currently admitted;

(a)(8) has a proven record of ethical, civil and professional behavior and has never been disbarred or resigned with discipline pending, or their equivalent, in any jurisdiction and is not currently subject to lawyer discipline or the subject of a pending disciplinary matter; and

(a)(9) complies with the provisions of Rule 14-716 concerning licensing and enrollment fees.

(b) Only persons who are active, licensed members of the Bar in good standing may engage in the practice of law in Utah. However, an Attorney Applicant with a pending Bar application may be eligible to practice for a limited period upon satisfaction of all of the requirements of Rule 14-805 and receipt of a Practice Pending Admission Certificate.

(c) Attorney Applicants from Unapproved Law Schools. An Applicant who does not meet the educational qualifications in Rule 14-704(a)(3) is qualified provided the Applicant establishes by clear and convincing evidence that she or he:

(c)(1) complies with the requirements in (a)(1) and (a)(2) and (a)(4) through (a)(9);

(c)(2) has graduated with a First Professional Degree in law from an Unapproved Law School located within a U.S. state, territory or the District of Columbia;

(c)(3) has been admitted to the practice of law before the highest court of a U.S. state, territory or the District of Columbia for no fewer than ten years, and has been Actively and lawfully engaged in the Full-time Practice of Law in one or more jurisdictions where licensed for any ten of the eleven years immediately preceding the filing of the application.

(de) Attorney Applicants from Foreign Law Schools. The burden of proof is on the Applicant to establish by clear and convincing evidence that she or he:

(de)(1) graduated from a Foreign Law School in a country where principles of English common law form the predominant basis for that country's system of jurisprudence;

(de)(2) complies with the requirements in (a)(1), (a)(2) and (a)(5) through (a)(9);

(de)(3) has been admitted to practice law in an English common law jurisdiction;

(de)(4) has been Actively and lawfully engaged in the Full-time Practice of Law in an English common law jurisdiction for no fewer than two (2) years;

(de)(5) has completed with a minimum grade of "C" or its passing equivalent no less than 24 semester hours, or a corresponding amount in quarter hours, at an Approved Law School, within 24 consecutive months. The 24 semester hours must include no less than one course each in a core or survey course of constitutional law, civil procedure, criminal procedure or criminal law, legal ethics and evidence;

(de)(6) is of good moral character and satisfies the requirements of Rule 14-708;

(de)(7) has successfully passed the MPRE and the Bar Examination; and

(de)(8) complies with the provisions of Rule 14-716 concerning licensing and enrollment fees.

(ed) Foreign Attorneys not meeting the requirements of paragraph (c). Attorneys not meeting the requirements of paragraph (c) may be eligible for admission only if they meet the requirements of paragraph (a).

Effective Date May 1, 2016

Rule 14-705. Admission by Motion.

(a) Reciprocal admission. An Applicant is eligible to be admitted by motion if the Applicant meets all the requirements of this rule. Admission by Motion is not a right; the burden of proof is on the Applicant to establish by clear and convincing evidence that she or he:

(a)(1) has paid the prescribed nonrefundable fee and filed the required Complete Application as a Motion Applicant;

(a)(2) is at least 21 years old;

(a)(3) has been admitted by bar examination to practice law before the highest court of a U.S. state, territory or the District of Columbia;

(a)(4) holds a First Professional Degree in law from an Approved Law School;

(a)(5) has successfully passed the MPRE;

(a)(6) has demonstrated that the U.S. state, territory or the District of Columbia that licenses the Applicant reciprocally allows the admission of licensed Utah lawyers under terms and conditions similar to those set forth in this rule;

(a)(7) has been Actively licensed and lawfully engaged in the Full-time Practice of Law as defined in Rule 14-701(b), (t) and (ff) in the reciprocal jurisdiction(s) where licensed for 60 of the 84 months immediately preceding the date of the filing of the application for admission. For purposes of admission under this rule, any time practicing at an office located in Utah will not be counted as time practicing in a reciprocal jurisdiction;

(a)(8) is a member in good standing in all jurisdictions where currently admitted;

(a)(9) has a proven record of ethical, civil, and professional behavior and has never been disbarred or resigned with discipline pending, or their equivalent, in any jurisdiction and is not currently subject to lawyer discipline or the subject of a pending disciplinary matter;

(a)(10) is of good moral character and satisfies the requirements of Rule 14-708;

(b) Continuing legal education requirement. All Applicants admitted to practice law pursuant to this rule shall complete and certify no later than six months following the Applicant's admission that she or he has attended at least 15 hours of continuing legal education on Utah practice and procedure and ethics requirements.

(b)(1) The Board may by regulation specify the number of the required 15 hours that must be in particular areas of practice, procedure, and ethics. Included in this mandatory 15 hours is attendance at the Bar's OPC ethics school.

(c) Form and content of application. The Board may require additional proof of any facts stated in the application. In the event of the failure or the refusal of the Applicant to furnish any information or proof, or to answer any inquiry of the Board pertinent to the pending application, the Board may deny the application without hearing.

(d) Timing of application and admission. An application may be filed at any time but the Applicant must be able to demonstrate that she or he satisfies the requirements of this rule as of the date the application is filed. Processing of the application and the character and fitness investigation require a minimum of four months to complete.

(d)(1) An Applicant not eligible for admission pursuant to this rule may qualify for admission as an Attorney Applicant pursuant to Rule 14-704.

(d)(2) Upon approval the Applicant must comply with the provisions of Rule 14-716 concerning licensing and enrollment fees.

(e) Only persons who are active, licensed members of the Bar in good standing may engage in the practice of law in Utah. However, a Motion Applicant with a pending Bar application may be eligible to practice for a limited period upon satisfaction of all of the requirements of Rule 14-805 and receipt of a Practice Pending Admission Certificate.

Effective Date May 1, 2016

Rule 14-713. MPRE.

- | (a) MPRE requirements. In conjunction with the requirements of Rule 14-716(de), an Applicant must receive a passing score on the MPRE prior to admission to the Bar. A scaled score of 86 is passing. It is the Applicant's responsibility to ensure that a passing MPRE score is reported to the Bar.
- (b) Administration of the MPRE. The MPRE is administered by the NCBE. To take the MPRE, an Applicant must file an application with and pay the prescribed fee to the NCBE.

Rule 14-719. Qualifications for admission of House Counsel Applicants.

(a) Scope of practice. An attorney admitted to the Bar as House Counsel shall limit her or his practice of law including legal representation to the business of her or his employer. However, House Counsel can provide pro bono legal services under the auspices of an approved sponsoring entity consistent with Rule 14-803 of the Utah Rules of Lawyer Discipline and Disability. House Counsel shall not:

(a)(1) Appear before a court of record or not of record as an attorney or counselor in the State of Utah except as otherwise authorized by law or rule; or

(a)(2) Offer legal services or advice to the public or hold herself or himself out as being so engaged or authorized. An attorney granted a House Counsel license is not prevented from appearing in any matter pro se, performing pro bono services under Rule 14-803, or from fulfilling the duties of a member of the active or reserve components of the armed forces or the National Guard.

(b) Requirements of House Counsel Applicants. To be recommended for admission to the Bar as House Counsel, a person must establish by clear and convincing evidence that she or he:

(b)(1) has filed a Complete Application for admission and paid the prescribed application fee;

(b)(2) is at least 21 years old;

(b)(3) graduated with a First Professional Degree in law from an Approved Law School, or from an Unapproved Law School located within a U.S. state, territory or the District of Columbia;

(b)(4) is licensed to practice law and in active status in a U.S. state, territory or the District of Columbia;

(b)(5) either (A) is a bona fide resident of the State of Utah or (B) maintains an office as the employer's house counsel within the State of Utah;

(b)(6) is employed and practices law exclusively as house counsel for a non-governmental corporation, its subsidiaries or affiliates, an association, a business, or other legal entity whose lawful business consists of activities other than the practice of law or the provision of legal services;

(b)(7) has provided an affidavit signed by both the Applicant and the employer that the Applicant is employed exclusively as house counsel and that Applicant has disclosed to the employer the limitations on House Counsel's license of practicing under this rule;

(b)(8) is of good moral character and satisfies the requirements of Rule 14-708;

(b)(9) has presented satisfactory proof both of admission to the practice of law and that she or he is a member in good standing in all jurisdictions where currently admitted;

(b)(10) has a proven record of ethical, civil and professional behavior and has never been disbarred or resigned with discipline pending, or their equivalent, in any jurisdiction, and is not currently subject to lawyer discipline or the subject of a pending disciplinary matter;

(b)(11) has received a passing MPRE score; and

(b)(12) has complied with the oath and enrollment provisions of Rule 14-716 and paid the licensing fees required for active status.

(c) Timing of application and admission. An application under this rule may be filed at any time but the Applicant must be able to demonstrate that she or he satisfies the requirements of this rule as of the date the application is filed.

(c)(1) The processing of the application and the character and fitness investigation require a minimum of four months to complete.

(c)(2) Upon approval the Applicant must comply with the provisions of Rule 14-716 concerning licensing and enrollment fees.

(c)(3) A person licensed as House Counsel shall pay annual license fees which shall be equal to the fees required to be paid by a member of the Bar on Active status.

(d) Unauthorized practice of law.

(d)(1) It is the unauthorized practice of law for an attorney not licensed in Utah to practice law in the state except as otherwise provided by law.

(d)(2) An attorney who complies with the requirements of subsection (b)(1) may provide services to an employer in Utah while the application is pending as long as the application is filed within six months of the out-of-state attorney accepting a house counsel position.

(d)(3) An attorney who provides legal advice to her or his employer but is not an active member of the Bar or licensed as House Counsel pursuant to this rule may be referred for investigation for the unauthorized practice of law.

(e) Continuing legal education requirement. House Counsel shall pay the designated filing fee and file with the MCLE Board by July 31 of each year a Certificate of Compliance from the jurisdiction where House Counsel maintains an active license establishing that she or he has completed the hours of continuing legal education required of active attorneys in the jurisdiction where House Counsel is licensed;

(f) Subject to disciplinary proceedings. A person licensed as House Counsel shall be subject to professional discipline in the same manner and to the same extent as members

of the Bar and specifically shall be subject to discipline by the Supreme Court as delegated by rule and shall otherwise be governed by Chapter 13, the Rules of Professional Conduct, Chapter 14 Article 5, Lawyer Discipline and Disability, Article 6, Standards for Imposing Lawyer Sanctions, and other applicable rules adopted by the Supreme Court, and all applicable statutory provisions.

(g) Notification of change in standing.

(g)(1) House Counsel shall execute and file with the Licensing Office a written notice of any change in that person's membership status, good standing or authorization to practice law in any jurisdiction where licensed.

(g)(2) House Counsel shall execute and file with the OPC a written notice of the commencement of all formal disciplinary proceedings and of all final disciplinary actions taken in any other jurisdiction.

(h) No Solicitation. House Counsel is not authorized by anything in this rule to hold out to the public or otherwise solicit, advertise, or represent that he or she is available to assist in representing the public in legal matters in Utah.

(i) Cessation of activity as house counsel. A House Counsel license terminates and the House Counsel shall immediately cease performing all services under this rule and shall cease holding herself or himself out as House Counsel upon:

(i)(1) termination of employment with the qualified employer as provided in subsection (b)(6);

(i)(2) termination of residence, or the maintenance of his or her office in the State of Utah as provided in subsection (b)(5);

(i)(3) failure to maintain active status in a sister state or United States territory or the District of Columbia, or to satisfy the Bar's annual licensing requirements, including compliance with mandatory continuing legal education requirements as provided for in this rule;

(i)(4) completion of any disciplinary proceeding in Utah or any other jurisdiction, which warrants suspension or termination of the House Counsel license.

(j) Reinstatement after temporary lapse in license. An attorney whose House Counsel license is terminated pursuant to subsection (i)(1), (i)(2), or (i)(3) shall be reinstated to practice law as a House Counsel if within six months from the termination the attorney is able to demonstrate to the Admissions Office that she or he has:

(j)(1) transferred to inactive status in accordance with subsection (k); or

(j)(2) employment with a qualified employer and has provided the required verification of employment pursuant to subsection (b)(7);

(j)(3) established a residence or maintains an office for the practice of law as House Counsel for the employer within the State of Utah; and

(j)(4) active status in a U.S. state, territory or the District of Columbia and has complied with the Bar's annual licensing and MCLE requirements for House Counsel.

(k) Inactive status. House Counsel who is not currently practicing may transfer to inactive status under Rule 14-203(a)(4). Doing so will prevent the lapse of the license as long as the inactive status is maintained.

(k)(1) Inactive House Counsel may return to active status upon demonstration of compliance with requirements (j)(1) through (j)(4) and payment of the necessary fees in accordance with Rule 14-203(b).

(l) Notice of change of employment. House Counsel shall notify, in writing, the Licensing Office of the termination of the employment pursuant to which the House Counsel license was issued.

(m) Full admission to the Utah State Bar. A House Counsel license will be terminated automatically once the attorney has been otherwise admitted to the practice of law in Utah as an active member of the Bar. Any person who has been issued a House Counsel license may qualify for full membership by establishing by clear and convincing evidence that she or he:

(m)(1) has applied as an Attorney Applicant or Motion Applicant by filing a Complete Application; any application must be filed in accordance with the filing deadlines set for in Rule 14-707(b);

(m)(2) has successfully passed the Bar Examination under Rule 14-704, has transferred a passing UBE score under Rule 14-712, or qualifies for admission under Rule 14-705. Time spent in Utah practicing as House Counsel or performing pro bono services does not qualify an attorney for admission under Rule 14-705; and

(m)(3) has complied with the provisions of Rule 14-716 concerning licensing and enrollment fees.

Effective Date May 1, 2016

Rule 14-806. Admission pro hac vice.

(a) An attorney who is not a member of the Bar but who is admitted to practice law in another state or in any court of the United States or territory or insular possession of the United States shall apply to be admitted pro hac vice in accordance with this rule prior to appearing as counsel in a court of record or not of record.

(b) Nonresident counsel may be permitted to appear in a particular case if the court in which the case is pending determines that admission pro hac vice will serve the interests of the parties and the efficient and just administration of the case. Resident counsel may be permitted only if he or she has received a Practice Pending Admission Certificate. Admission pro hac vice under this rule is discretionary with the court in which the application for admission is made. Admission pro hac vice may be revoked by the court upon its own motion or the motion of a party if, after notice and a hearing, the court determines that admission pro hac vice is inappropriate. Admission pro hac vice shall be denied or, if granted, shall be revoked if the court determines that the process is being used to circumvent the normal requirements for the admission of attorneys to the practice of law in Utah.

(c) In determining whether to enter or revoke the order of admission pro hac vice, the court may consider any relevant information, including whether non-resident counsel:

(c)(1) is familiar with Utah rules of evidence and procedure, including applicable local rules;

(c)(2) is available to opposing parties;

(c)(3) has particular familiarity with the legal affairs of the party relevant to the case;

(c)(4) complies with the rulings and orders of the court;

(c)(5) has caused delay or been disruptive; and

(c)(6) has been disciplined in any other jurisdiction within the prior 5 years.

(d) The attorney seeking admission pro hac vice shall complete under oath and submit to the Bar an application form available from the Utah State Bar or court clerks' office-. The applicant shall attach to the application form a Certificate of Good Standing from the licensing state in which the applicant resides. The applicant shall complete a separate application for each case in which the applicant wants to appear. The fee for each application is \$250, which shall be paid to the Utah State Bar. Fees paid under this rule shall be used for attorney discipline investigations and proceedings. The following are exempt from the fee:

(d)(1) attorneys who are employees of and representing the United States of America or any of its departments or agencies; and

(d)(2) attorneys representing indigent clients on a pro bono basis.

(e) A copy of the application and a receipt showing payment of the fee shall be filed in the court in which the case is pending, with a motion by a member of the Bar to admit the applicant pro hac vice and a consent by that member of the Bar to appear as associate counsel. Associate counsel shall be a resident of Utah. The application form shall include:

(e)(1) the name, address, telephone number, fax number, e-mail address, bar identification number(s), and state(s) of admission of the applicant;

(e)(2) the name and number of the case in which the applicant is seeking to appear as the attorney of record or, if the case has not yet been filed, a description of the parties;

(e)(3) the name, number, and court of other cases pending or closed within the prior five years in any state or federal court of Utah in which the applicant or a member of the applicant's firm appears pro hac vice;

(e)(4) a statement whether, in any state, the applicant:

(e)(4)(A) is currently suspended or disbarred from the practice of law;

(e)(4)(B) has been disciplined within the prior five years; or

(e)(4)(C) is the subject of any pending disciplinary proceedings;

(e)(5) a statement that the applicant:

(e)(5)(A) submits to the disciplinary authority and procedures of the Bar;

(e)(5)(B) is familiar with the rules of procedure and evidence, including applicable local rules;

(e)(5)(C) will be available for depositions, hearings, and conferences; and

(e)(5)(D) will comply with the rulings and orders of the court;

(e)(6) the name, address, Bar identification number, telephone number, fax number, and e-mail address of the member of the Utah State Bar to serve as associate counsel;

(e)(7) for resident counsel only, a copy of the Practice Pending Admission Certificate; and

(e)(87) any other information relevant to the standards for the admission of the applicant.

(f) Utah counsel associated with nonresident or resident counsel seeking admission pro hac vice shall:

(f)(1) file a motion for admission of the applicant pro hac vice;

(f)(2) serve the motion by mail, hand-delivery or facsimile on the Utah State Bar's general counsel on or before filing with the court and include a certificate of service with the motion evidencing service on the Bar's general counsel and upon the opposing parties, or, if represented, their counsel;

(f)(3) file a written consent to appear as associate counsel;

(f)(4) sign the first pleading filed;

(f)(5) continue as one of the counsel of record in the case unless another member of the Bar is substituted as associate counsel; and

(f)(6) be available to opposing counsel and the court for communication regarding the case and the service of papers.

(g) The court may require Utah counsel to appear at all hearings. Utah counsel shall have the responsibility and authority to act for the client in all proceedings if the nonresident attorney fails to appear or fails to respond to any order of the court.

(h) An attorney admitted pro hac vice shall comply with and is subject to Utah statutes, rules of the Supreme Court, including the Rules of Professional Conduct and Article 5, Lawyer Discipline and Disability, the rules of the court in which the attorney appears, and the rules of the Code of Judicial Administration.

Utah State Bar®

M E M O R A N D U M

TO: The Commission

FROM: Elizabeth A. Wright

RE: Proposed Changes to Admissions Rule 14-807

DATE: August 21, 2017

The Admissions Committee proposes amendments to the law school student and law school graduate assistance Rule 14-807 in order to clarify language that has been a source of confusion for students and graduates seeking to practice under the rule.

On January 11, 2016, the Court approved changes to the rule that expand the scope of work law students can perform before admission to the Bar. For instance, if the requirements of the rule are met, law students can appear in court on behalf of a client. In the year since the changes were made, the Admissions Committee has found that some students and graduates are confused about language in the rule and the Committee therefore seeks clarification.

SUMMARY OF PROPOSED CHANGES

Law school graduates practicing under the rule must receive a practice certificate from Bar so the Admissions Department knows they are working under the rule. 14-806(g)(4)

The wording has been clarified to state that law graduates who fail the bar exam cannot practice under the rule. Law school graduates are still allowed to practice for up to a year under the rule and can therefore delay applying to take the exam at the first opportunity. However, once they fail the exam or are denied by Character and Fitness, they will no longer be eligible to practice under the rule. 14-806(h)(2)(B)

The other change eliminates the unnecessary recitation of job duties that law clerks have always been allowed to perform. The list of the duties in the rule has caused confusion because graduates reading the rule have interpreted it to mean that they need to apply and be authorized by the Bar to perform tasks such as legal research or drafting a memo. Deleted 14-807(d)(4) , (d)(4)(A) and (d)(4)(B).

Rule 14-807. Law school student and law school graduate legal assistance.

(a) The purpose of this rule is to provide eligible law school students and recent law school graduates with supervised practical training in the practice of law for a limited period of time and to assist the Bar and the judiciary in discharging their responsibilities to help create a just legal system that is accessible to all.

(b) Subject to the inherent power of each judge to have direct control of the proceedings in court and the conduct of attorneys and others who appear before the judge, the courts of Utah are authorized to allow eligible law school students and recent law school graduates to participate in matters pending before them consistent with this rule.

(c) In order to be eligible to participate under this rule, an individual must be either:

(c)(1) A law school student in good standing who has completed the first year of legal studies amounting to at least two semesters, or the equivalent if the school is not on a semester basis, at an ABA approved law school and is either:

(c)(1)(A) enrolled in a law school clinic or externship and supervised by an attorney authorized to practice law in the state of Utah; or

(c)(1)(B) volunteering for, or employed by, a tax-exempt or governmental agency or a for-profit entity, and supervised by an attorney who is authorized to practice law in the state of Utah; or

~~(c)(2) A~~ Or a law school graduate who ~~has~~ is working under the supervision of an attorney authorized to practice law in the state of Utah, has graduated from an ABA approved law school, and intends to submit an application to the Bar and will be taking a regularly scheduled bar exam the Uniform Bar Examination (UBE) within one year after graduating from law school, ~~and is working under the supervision of an attorney authorized to practice law in the state of Utah.~~

(d) Subject to all applicable rules, regulations, and statutes, a law school student or law school graduate as defined under this rule may engage in the following activities, so long as the client and supervising attorney consent in writing to each activity, and the supervising attorney remains fully responsible for the manner in which the activities are conducted:

(d)(1) Negotiate for and on behalf of the client, subject to final approval thereof by the supervising attorney, or give legal advice to the client, provided that the law school student or law school graduate:

(d)(1)(A) obtains the approval of the supervising attorney regarding the legal advice to be given or plan of negotiation to be undertaken by the law school student or law school graduate; and

(d)(1)(B) performs the activities under the general supervision of the supervising attorney;

(d)(2) Appear on behalf of the client in depositions, provided that the law school student or law school graduate:

(d)(2)(A) has passed a course in evidence; and

(d)(2)(B) performs the activity under the direct supervision and in the personal presence of the supervising attorney;

(d)(3) Appear in any court or before any administrative tribunal in this state. In order to participate in any evidentiary hearing, the law school student must have passed a course in evidence, and in the case of a criminal evidentiary hearing, must have also passed a course in criminal procedure. The supervising attorney's and the client's written consent and approval, along with the law school student's certification, must be filed in the record of the case and must be brought to the attention of the judge of the court or the presiding officer of the administrative tribunal. In addition, the law school student or law school graduate must orally advise the court at the initial appearance in a case that he or she is certified to appear pursuant to this rule. A law school student or law school graduate may appear in the following matters:

(d)(3)(A) Civil Matters. In civil cases in any court, the supervising attorney is not required to be personally present in court if the person on whose behalf an appearance is being made consents to the supervising attorney's absence.

(d)(3)(B) Felony or Class A Misdemeanor Criminal Matters on Behalf of the Prosecuting Authority. In any felony or Class A misdemeanor prosecution matter in any court, the supervising attorney must be personally present throughout the proceedings.

(d)(3)(C) Infraction or Class B or Class C Misdemeanor Criminal Matters on Behalf of the Prosecuting Authority. In any infraction or Class B or Class C misdemeanor matter in any court with the written approval of the supervising

attorney, the supervising attorney is not required to be personally present in court; however, the supervising attorney must be personally present during any Class B or Class C misdemeanor trial.

(d)(3)(D) Felony or Class A Misdemeanor Criminal Defense Matters. In any felony or Class A misdemeanor criminal defense matter in any court, the supervising attorney must be personally present throughout the proceedings.

(d)(3)(E) Infraction or Class B or Class C Misdemeanor Criminal Defense Matters. In any infraction or Class B or Class C misdemeanor criminal defense matter in any court, the supervising attorney is not required to be personally present in court, so long as the person on whose behalf an appearance is being made consents to the supervising attorney's absence; however, the supervising attorney must be personally present during any Class B or Class C misdemeanor trial.

(d)(3)(F) Appellate Oral Argument. In any appellate oral argument, the supervising attorney must be personally present and the court must give specific approval for the law school student's or law school graduate's participation in that case.

(d)(3)(G) Notwithstanding the terms of (d)(3), the court may at any time and in any proceeding require the supervising attorney to be personally present for such period and under such circumstances as the court may direct.

(d)(4) ~~Perform the following activities under the general supervision of the supervising attorney, but outside his or her personal presence:~~

~~(d)(4)(A) Prepare pleadings and other documents to be filed in any matter in which the law school student or law school graduate is eligible to appear, provided such pleadings or documents are reviewed and signed by the supervising attorney;~~

~~(d)(4)(B) Prepare briefs and other documents to be filed in appellate courts of this state, provided such documents are reviewed and signed by the supervising attorney;~~

~~(d)(4)(C) Provide assistance to indigent inmates of correctional institutions or other persons who request such assistance in preparing applications and supporting documents for post-conviction relief, except when the assignment of counsel in the matter is required by any constitutional provision, statute, or rule of this Court; if there is an attorney of record in the matter, all such assistance must be supervised by the attorney of record, and all documents submitted to the court on behalf of such a client must be reviewed and signed by the attorney of record and the supervising attorney;~~ and

~~(d)(5)(4)(D) Perform other appropriate legal services, but only after prior consultation with the supervising attorney.~~

(e) For any student participating under this rule, the law school's dean, or his or her designee, must certify to the supervising attorney that the law school student is in good standing, has completed the first year of law school studies, and, in the case of a clinic or externship, that the law school student is enrolled in a law school clinic or externship. The law school's dean or designee must also certify to the supervising attorney that the student has passed an evidence

course if the law school student will be participating in depositions or evidentiary hearings, and also a criminal procedure course if the law school student will be participating in criminal evidentiary hearings.

(f) The supervising attorney is responsible for ensuring that the conduct of the law school student or law school graduate complies with this rule, which includes verifying the participant's eligibility.

(g) Before participating under this rule, a law school graduate must:

(g)(1) provide the Bar's admissions office with the name of his or her supervising attorney;

(g)(2) provide the Bar's admissions office with a signed and dated authorization to release information to the supervising attorney regarding the law school graduate's Bar applicant status; ~~and~~

(g)(3) provide the Bar's admissions office with a signed and dated letter from the supervising attorney stating that he or she has read this rule and agrees to comply with its conditions; and

(g)(4) receive a Graduate Practice Certificate from the Bar.

(h) A law school student's or law school graduate's eligibility to provide services under this rule terminates upon the earlier occurrence of:

(h)(1) in the case of a law school student, cessation of law school enrollment unless by reason of graduation ~~in the case of a law school student;~~ or

(h)(2) in the case of a law school graduate:

(h)(2)(A) the expiration of one year from the law school graduate's date of graduation~~failure to submit a timely application for admission to the Bar under (c)(2); or~~

(h)(2)(B) the Bar's admissions office's or its character and fitness committee's ~~decision to not permit the law school graduate to take a regularly scheduled bar examination under (c)(2)~~not to approve the law school graduate's application; or

(h)(2)(C) notification of the law school graduate's failure to obtain a minimum passing score on ~~successfully pass the UBE as defined in Rule 14-711(d). bar examination under (c)(2); or~~

(h)(2)(D) ~~the law school graduate's failure to be admitted to practice within six months of taking and passing the bar examination under (c)(2).~~

ATTACHMENTS

FOR IMMEDIATE RELEASE

July 21, 2017

Contact: JOHN BALDWIN

Executive Director, Utah State Bar

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Ruth Bader Ginsburg Headlines the Utah State Bar 2017 Summer Convention

Salt Lake City, UT -- United States Supreme Court Associate Justice Ruth Bader Ginsburg will headline the program of notable legal scholars and educators at the Utah State Bar's Annual Summer Convention July 26-29 in *Sun Valley*. *Registered attorneys and members of the press are invited to attend.*

Other keynote addresses will be given by Professor Eugene Volokh of the UCLA School of Law, speaking on the First Amendment; Bryan Stevenson, Founder and Executive Director of the Equal Justice Initiative of Montgomery Alabama; Deanell R. Tacha, former Dean of the Pepperdine Law School and Judge on the 10th U.S. Circuit Court of Appeals; and Utah Lt. Governor Spencer Cox.

Other events at the annual convention include:

- Judge of the Year Awards will be presented by the Bar to Utah Court of Appeals Judges J. Frederic Voros, Jr. and Stephen L. Roth;
- The Lawyer of the Year Award will be presented by the Bar to attorney Paul M. Simmons;
- The Section of the Year Award will be presented by the Bar to the Limited Scope Section
- The Distinguished Service Award will be presented by the Bar to Utah Supreme Court Justice Christine M. Durham, and the award will become named after her as the Christine M. Durham Distinguished Service Award.
- Robert O. Rice will pass the gavel as President of the Utah State Bar to John R. Lund. John is an attorney at the Salt Lake City law firm of Parsons Behle and Latimer.
- H. Dickson Burton will be sworn-in as President-elect. Dickson is an attorney at the Salt Lake Law firm of Trask Britt.

- Mark Morris will be sworn-in as a Third District Bar Commissioner. Mark is an attorney at the Salt Lake office of the firm of Snell and Wilmer.
- Key panel discussions will include a presentation by the founders of the Refugee Justice League; discussions on cybersecurity; current issues in the exercise of religion and media law; and whistle-blower actions.
- The S.J. Quinney College of Law and the Brigham Young University Law School will be holding reunions.
- The convention provides opportunities for Utah lawyers to receive required legal education and training in professionalism and civility.
- Lawyers will also receive reports on the federal judiciary from Chief Judge David Nuffer of the U. S. District Court for the District of Utah and on the state judiciary from Utah Supreme Court Chief Justice Matthew Durrant.

The Annual Summer Convention is co-chaired by U.S. District Court Judge Robert Shelby and attorney Amy Sorenson.

The Utah State bar is a non-profit Utah corporation which licenses lawyers and provides legal education and public service programs under the authority of the Utah Supreme Court. Membership now totals 12,500. For more information, follow us on Twitter and Instagram (LIST), like us on Facebook at (LIST or visit (LIST URL).

The Salt Lake Tribune

(<http://www.sltrib.com>)

Justice Ruth Bader Ginsburg — aka the Notorious R.B.G. — tells Utah attorneys, ‘Do something outside of yourself’

By Jessica Miller | The Salt Lake Tribune
Published: July 30, 2017 10:17AM
Updated: July 28, 2017 11:06PM

Sun Valley, Idaho • As U.S. Supreme Court Justice Ruth Bader Ginsburg reflected on her life Friday during a speech at the Utah State Bar convention, she had this advice for young lawyers: “Do something outside of yourself. Something that will make a difference.”

The jurist spoke to a packed room of Utah lawyers and their families, sharing details about her life ranging from why she chose law school, to her role in changing laws that discriminate against women, to her rise to Supreme Court justice — and even about her pop culture status as the “Notorious R.B.G.”

“I’m 84 years old,” she said when asked about the moniker. “And everyone wants to take their picture with me.”

In a conversation moderated by retired federal Judge Deanell Reece Tacha, Ginsburg offered plenty of other advice for her audience of legal advocates.

She told them to work toward something that will make the world better — and not just make money. She said parenting often has a lot to do with luck and noted that, while her daughter grew up well-behaved, her son was what she called “lively.”

Ginsburg also shared wisdom that she received from her mother-in-law on her wedding day for a happy marriage: “Every now and then, it helps to be a little deaf.”

“So that was the advice I followed through marriage of 56 years,” she said, “and to this day with



(Rick Egan | The Salt Lake Tribune) U.S. Supreme Court Justice Ruth Bader Ginsburg address the l at the Sun Valley Inn, Friday, July 28, 2017.

my colleagues."

And that "Notorious R.B.G." nickname?

"Of course" she knows where the name originated, she said, adding that she had "something very important in common" with the famous rapper Notorious B.I.G.: "We were both born and bred in Brooklyn, New York."

Ginsburg has been a justice on the U.S. Supreme Court since August 1993 after she was picked by President Bill Clinton — a nomination, she said, that was the highlight of her career.

Regarded as one of the most liberal justices on the high court, she has a penchant for producing scathing dissents as counterpoints to her more conservative colleagues.

She is also well-known for her legal work on cases challenging gender equality issues and championing women's rights. On Friday, she reflected on several of the cases in which she has been involved, noting that she initially had planned to enter a "safe profession as a woman" and be a history teacher.

"I want to say how lucky I was to be born when I was and to be a lawyer," she said. "I didn't say anything that women haven't said since Abigail Adams [the wife of second President John Adams]. But society wasn't ready to listen until the late '60s."

Ginsburg also noted that while many of the laws that discriminated against women were changed years ago, there is still work to do — and "unconscious bias" to overcome.

She recalled a recent study in which researchers noted every time a justice interrupted another — and found that male justices interrupted female justices approximately three times as often as they interrupt one another.

"I hadn't even been conscious of that, and neither were my male colleagues," Ginsburg said. "But I think next term, it may be different."

Ginsburg's comments were well-received by Utah's lawyers, who rose when she entered the Sun Valley ballroom and gave her a standing ovation after her hourlong comments.

Utah State Bar President Robert Rice estimated that more than 1,000 people attended Ginsburg's session — the highest number they've seen at a summer convention in a decade.

Rice noted that as he looked around the packed room, he saw lawyers who had brought their young daughters to see what an icon like Ginsburg had to say.

"That's a big reason why she's such an attraction and is so well-respected by Utah lawyers," Rice said. "They see her as a role model of not only what young women may be in the legal profession but what lawyers should be and what judges should be."

The convention extends through the weekend. Rice said the location of the gathering — which is a means for Utah attorneys to obtain required continuing legal education credits in ethics, professionalism and civility — rotates. They've been coming to Sun Valley for years, he said, with the idea that lawyers would spend time relaxing and networking, rather than rushing back to the office to finish work.

Ginsburg is the second U.S. Supreme Court justice to address Utah lawyers in recent years. In 2015, Justice Anthony Kennedy spoke at the convention and discussed the 800th anniversary of the Magna Carta — a precursor and foundation of future documents like the Bill of Rights and U.S. Constitution.

jmillersltrib.com

The 'Notorious RBG' discusses women's rights and pop culture

By Rebecca Boone

Associated Press

Published: July 29, 2017 1:20 p.m.

Updated: July 29, 2017 1:25 p.m.

SUN VALLEY, Idaho — U.S. Supreme Court Justice Ruth Bader Ginsburg talked about the evolution of the women's rights movement, what it's like to be interrupted on the bench and life as a pop culture icon during a presentation Friday to a group of lawyers and judges in Sun Valley, Idaho.

Ginsburg was at the resort town to be interviewed by Pepperdine Law School Dean Deanell Tacha as part of the annual Utah State Bar convention. But she deftly sidestepped questions on some of the gender discrimination issues facing the courts today.

Instead, she focused on the legal strategies she used early in her career to help chip away at explicit gender-based discrimination that was then enshrined in state and federal law. Ginsburg helped launch the American Civil Liberties Union's Women's Rights Project in 1971.

"Everyone knew that racism is an odious thing," Ginsburg said of the late 1960s and 1970s. "But when I started out in this business, I had a persuasion job to do, because most men — men on the bench — thought that discriminations based on gender worked benignly in women's favor."

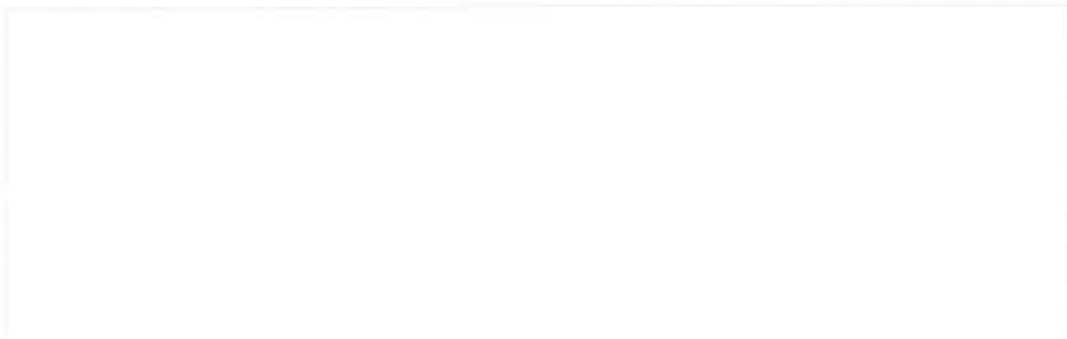
Progress was made by finding test cases that demonstrated how gender-based laws hurt men as well as women, she said.

Two cases marked a legal sea change in the women's rights movement, Ginsburg said. One was a man who sued over a tax code that offered a credit only to women or widowed or divorced men who took care of children or elderly family members. He was married and also the primary caregiver for his elderly mother.

The other was a case out of Idaho, from a woman named Sally Reeds. Reeds was fighting to have the right to be the executor of her deceased son's estate. At the time, Idaho state law dictated that men should be chosen as executors over women when possible.

"Those would be the two turning point cases," Ginsburg said.

Institutional discrimination pushed Ginsburg into her legal career. She and her late husband, Martin Ginsburg, were planning to go to Harvard University for graduate school. At the time, the Harvard School of Business didn't accept women, which left the law school as her only option.



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"Today, the discriminations are more subtle," Ginsburg said, with unconscious bias forming much of the problem.

Ginsburg laughed about the wave of popularity she is experiencing. During the past several years, she has become a pop culture icon, her likeness emblazoned on T-shirts, tote bags and accessories.

"I'm 84 years old, and everyone wants to take a picture with me," she said. "But I like the way it started."

A second-year law student at New York University was upset about a 2013 Supreme Court decision that struck down part of the landmark Voting Rights Act of 1965. The student created an online post citing Ginsburg's dissent to the ruling, and dubbed her the "Notorious RBG," playing off the name and reputation of famous rapper the Notorious B.I.G.

Other Ginsburg fans repeated the new moniker, and soon her likeness was emblazoned on a variety of products.

Ginsburg has survived colon cancer as well as a bout with the often-deadly pancreatic cancer. She credits her workouts with her physical trainer, Bryant Johnson, for keeping her fit and energetic enough for the bench.

The Salt Lake Tribune

(<http://www.sltrib.com>)

Michelle Quist Mumford: The notorious Utah Bar

By Michelle Quist Mumford

The Salt Lake Tribune

Published: July 26, 2017

07:15PM

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07:15PM

There's nothing better than a room full of lawyers. Other than maybe multiple rooms full of lawyers.

OK, none of these options is great. But the opportunity to hear Supreme Court Justice Ruth Bader Ginsburg — known to her fans as “The Notorious RBG” — is worth it, and she'll be addressing Utah lawyers at their convention this week in Sun Valley, Idaho.



(Francisco Kjolseth | The Salt Lake Tribune) Tribune staff. Michelle Quist.

The first time I learned the Utah Bar sometimes meets in Idaho I was astonished at the disconnect of the organization taking its money and resources to another state. What I didn't realize was that the group holds conventions in the fall and spring in Salt Lake and St. George, respectively. The purpose of convening in Sun Valley is to encourage members to bring families and enjoy a vacation together without sneaking home for the night.

Ginsburg is a highlight of this year's convention, but the Bar has organized the entire convention to encourage and educate Utah's lawyers to continue to practice law well and look for opportunities to serve. Indeed, the Utah Bar over the last few

years, under the direction of past Presidents Angelina Tsu and Robert Rice, as well as current President John Lund, has immeasurably improved the practice of law in Utah. The Bar has increased diversity efforts, innovated the practice of law and increased access to legal services to low and middle-income families throughout Utah.

For two years now the Bar's elected Board of Commissioners has included a majority of female commissioners, which has made a difference in the appointment of lawyers to judicial nominating commissions as well as the goals and priorities of the bar itself.

Bar members have founded the Utah Center for Legal Inclusion to help motivate and train up a pipeline of diverse students prepared and able to attend law school. The Utah Minority Bar Association has continued its mission of increasing diversity and addressing issues that impact diverse populations within the legal community. The Bar has added an education course to the young lawyers' required curriculum to train them to recognize and avoid implicit bias. And most impressive, at the end of this year the Utah Court of Appeals will have a majority of female judges for the first time in Utah's history.

As far as innovations in the practice of law, the Bar has studied and educated lawyers on more ways to offer flat-fee services, which provide services for a specific action or time period in return for a flat fee. The Bar has also advocated for and assisted new non-profit law firms that provide services for low costs by setting moderate, flat salaries for lawyers.

Most significant, the Utah court approved a new licensed paralegal practitioner position, which allows paralegals to file certain documents in court in the areas of family law, residential eviction and debt collection. A licensed paralegal practitioner does not have to work under the supervision of an attorney but can foster relationships with attorneys to benefit attorneys and paralegals and reduce costs for clients.

Finally, to increase access to services, the Bar has multiple programs serving the poor, including Tuesday Night Bar, the Modest Means referral service and Wills for Heroes. The Bar also created a new online database called Licensed Lawyers where a client can get online and tick off characteristics she's looking for, including whether the attorney works in a small firm or large firm, what city the attorney

services, what the attorney's rates are and how many years the attorney has worked in each field. The Bar has put great resources into building this database, recruiting attorneys to opt in and advertising its availability to the public.

Attorneys often get a bad rap. And that's mostly because attorneys are hired to fight, and fighting is rarely comfortable. But 272 young men and women took the bar exam just this week, so it's clear the profession is still in need.

I've learned over the past two years as a Bar Commissioner for the Third District that most lawyers are just trying to do a good job, to be honest and to make a difference. The Bar's efforts to increase diversity, innovate the field and serve poor and middle class Utahns make me proud to be a Utah lawyer, even though I may not be practicing at the moment.

Michelle Quist Mumford is a recovering attorney, just grateful that the Bar still lets her hang around.

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Utah Supreme Court upholds disbarment order against lawyer who filed barrage of ‘bizarre’ motions



By Pamela Manson • 16 hours ago

For years, Utah attorney Susan Rose received warnings about the number and quality of the motions she was filing in her cases.

One judge made note of Rose’s “constant stream of motions, corrections to motions, amendments to motions, refileing of motions ... and further briefings of motions after oral arguments.”

Judges commenting on her briefs used terms that included “bizarre,” “inscrutable,” “frivolous,” “legally meritless,” “wholly superfluous,” “unresponsive, immaterial, and redundant” and “not based in reality.”

On Tuesday, nearly a decade after formal disciplinary proceedings began, the Utah Supreme Court affirmed an order disbarring Rose for violating professional conduct rules.

In a 5-0 opinion, the justices rejected the Sandy lawyer's challenges to the attorney discipline system and said that "we add our voice to the chorus of courts who have found Rose's briefing to be 'bizarre.' "

Rose, who was admitted to the Utah State Bar in 1999, could not be reached Thursday for comment.

Enforcement of the disbarment order had been stayed during an appeal and, as of Thursday, Rose was still listed in Utah State Bar records as an active attorney.

The disciplinary proceedings stem from complaints on how Rose handled two unrelated cases, one of them a federal suit by former employees of the Montezuma Creek Clinic in San Juan County who claimed they had been wrongfully fired and the other involving a petition for grandparent visitation filed in state court.

The Utah State Bar received two informal complaints, in 2001 and 2005, about the deluge of motions Rose was filing and the quality of her work. Rose asked to postpone the investigation to accommodate concerns about her health and both cases were delayed until 2007, according to court documents.

In December 2007, the Bar's Office of Professional Conduct (OPC) filed a formal complaint in 3rd District Court alleging a dozen violations of rules concerning competence, conflict of interest and the merit of claims, among other areas.

Court documents say Rose filed numerous motions seeking dismissal of the complaint, extensions of deadlines, a change of venue and disqualification of judges assigned to hear the matter. She also alleged the OPC's action against her was unconstitutional and invoked her Fifth Amendment right against self-incrimination, claiming she did not have to produce requested documents.

After a default judgment was entered against Rose in July 2010, she continued to file motion after motion to delay a sanctions hearing, the Supreme Court said in its opinion. The proceeding was finally scheduled for February 2012 but delayed again when Rose said her father was dying and that she was "mentally and emotionally incapable of functioning for the hearing," court documents say.

Rose continued to file motions asking for dismissal of the case and contending the District Court did not have authority over attorney discipline proceedings. Her motions were denied and a sanctions hearing was held in August 2015.

At the beginning of the hearing, Rose told 3rd District Judge Royal Hansen that she denied the allegations but believed any defense she raised would be futile, according to court documents.

"I think it's fair to say I know how this will go, I know how the end result will be, and I'm done," Rose said.

She left the hearing and did not return. In November 2015, Hansen issued his findings that Rose had violated professional rules and an order disbarring her. Rose appealed the order to the Utah Supreme Court; by then, the case record had exceeded 28,000 pages.

Writing for the court, Justice John Pearce said there is no doubt Rose believes she did not violate the rules. However, she launched a “broadside attack” on the attorney discipline system, rather than explicitly arguing that she did not commit the underlying violations or explicitly claiming that Hansen had applied the wrong sanction, he said.

“While we recognize that disbarment is the most serious sanction a court may impose on an attorney for professional conduct violations, we acknowledge that Rose did not challenge the substance of the district court’s sanction, opting instead to level constitutional challenges to the entire attorney discipline system,” Pearce wrote. “Rose’s arguments are inadequately briefed, and to the extent we can decipher them, they are without merit.”

Joining in the opinion were Chief Justice Matthew Durrant, Associate Chief Justice Thomas Lee, Justice Christine Durham and Utah Court of Appeals Judge Jill Pohlman. Pohlman sat in on the case in place of Justice Deno Himonas, who recused himself because he had handled the case as a 3rd District judge for a few years before he was appointed to the Supreme Court.

Editor’s note: Jennifer Napier-Pearce, the wife of state Supreme Court Justice John Pearce, is the editor of The Salt Lake Tribune.

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IN THE
SUPREME COURT OF THE STATE OF UTAH

SUSAN ROSE,
Appellant,

v.

OFFICE OF PROFESSIONAL CONDUCT,
Appellee.

No. 20151037
Filed August 15, 2017

On Direct Appeal

Third District, Salt Lake
The Honorable Royal I. Hansen
No. 070917445

Attorneys:

Susan Rose, pro se, Sandy, for appellant
Adam C. Bevis, Billy Walker, Salt Lake City, for appellee

JUSTICE PEARCE authored the opinion of the Court, in which
CHIEF JUSTICE DURRANT, ASSOCIATE CHIEF JUSTICE LEE,
JUSTICE DURHAM, and JUDGE POHLMAN joined.

Having been recused, JUSTICE HIMONAS does not participate herein;
COURT OF APPEALS JUDGE JILL N. POHLMAN sat.

JUSTICE PEARCE, opinion of the Court:

INTRODUCTION

¶1 The district court disbarred Susan Rose for violations of Utah's Rules of Professional Conduct in cases Rose handled in both federal and state courts. Her disbarment came after the district court struck her answer and entered default judgment against her. The disbarment did not come suddenly, or by surprise. Over the course of several years, Rose had received multiple warnings from multiple tribunals. These tribunals called her motion practice "bizarre,"

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“inscrutable,” “dilatory,” “frivolous,” “legally meritless,” “wholly superfluous,” “utter[ly] incomprehensibl[e],” “unresponsive, immaterial, and redundant,” and “not based in reality.”

¶2 After receiving and investigating referrals concerning Rose’s conduct, the Office of Professional Conduct brought an action in the Third District Court. Nearly eight years later, the district court struck Rose’s answer and entered default judgment, concluding that Rose had abused the discovery and litigation process. By entering default judgment, the court accepted as true the allegations that Rose had violated a number of the Rules of Professional Conduct.

¶3 At her subsequent sanctions hearing, Rose refused to defend herself. She told the district court, “I think it’s fair to say I know how this will go, I know how the end result will be, and I’m done.” And in the end, Rose was disbarred.

¶4 Rose does not explicitly argue on appeal that the district court should not have entered default judgment, that her conduct did not violate the rules, or that disbarment was too harsh a sanction.¹ Instead, she claims that Utah’s process is unconstitutional in a number of ways. She contests this court’s jurisdiction and argues that the Supremacy Clause and principles of *res judicata* prevent Utah from disciplining her. She also brings a number of constitutional claims, arguing that Utah’s attorney discipline proceedings violated her due process and equal protection rights under the United States Constitution. She ultimately petitions this court to dismiss this case entirely because “Utah’s system is an inquisition” that violates her due process and equal protection rights and is therefore “void.”

¶5 We affirm the order of the district court but note that this is an unusual case. The district court entered a default judgment against Rose, and Rose chose not to defend herself at the sanctions hearing. Rose has not directly challenged the decision to enter

¹ There can be no doubt that Rose believes that the district court should not have entered default, that she did not violate the rules of professional conduct, and that disbarment was not an appropriate sanction. But Rose does not aim fire directly at those contentions, preferring instead to attack this court’s jurisdiction and to assert that Utah’s attorney discipline process is unconstitutional.

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default or the appropriateness of disbarment as a sanction. This requires us to start from the factual premise that Rose committed the violations of which she was accused. We are only left to sort through Rose's challenges to the attorney discipline system.

BACKGROUND

¶6 Susan Rose was admitted to the Utah State Bar in 1997. In 2001 and 2005, the Utah Bar received two informal complaints against Rose in two separate cases—one in federal court and the other in state court.

I. The Federal Court Case

¶7 In 1999, Rose represented a group of plaintiffs in an action before the Navajo Tribal Court. The Tribal Court granted Rose's clients relief. Rose later tried to enforce the Tribal Court's order against San Juan County and several non-tribal member defendants in federal district court. Her case was assigned to Judge Dale Kimball.

¶8 While representing her clients in federal court, Rose filed several pleadings and motions that the court found to be frivolous. After Judge Kimball granted a motion to dismiss against certain defendants based on sovereign immunity and then dismissed the case as to several other defendants for lack of jurisdiction, Rose filed a notice of appeal in the Tenth Circuit Court of Appeals. She also moved to disqualify Judge Kimball.

¶9 In Rose's motion to disqualify Judge Kimball, Rose emphasized Judge Kimball's apparent religious affiliation. Rose complained that "being a member of said Church and an acknowledged social leader in Utah, [if he] would have ruled to enforce the civil rights of the Navajo Court plaintiffs, Judge Kimball may have been subjected to great social and political pressures." Rose claimed that ruling in her clients' favor would have caused Judge Kimball "political and social embarrassment."

¶10 The judge did not agree, and he told her so. He explained that Rose and her clients would "not find a judge *more* sympathetic to their claims, *more* willing to apply the law impartially, or *more* patient with [Rose's] blundering-but-probably-well-meaning efforts." (Emphases in original.) Judge Kimball nevertheless recused himself because he believed that her clients "ha[d] lost faith in th[e] court's ability to treat them impartially."

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¶11 Judge Kimball’s opinion and recusal order describe Rose’s conduct before his court and her competence as an attorney:

- The court had been “tolerating [Rose’s] repeated and time-consuming calls to chambers with procedural questions and also tolerating Plaintiffs’ often incomprehensible pleadings and memoranda.”
- “Defendants have repeatedly—‘and justifiably’—requested . . . that the court dismiss Plaintiffs’ Complaint based on . . . its utter incomprehensibility and its failure to identify which claims are alleged against which Defendants. This court, however, . . . has chosen . . . to endure Plaintiffs’ inscrutable Complaint.”
- “Plaintiffs [filed a] constant stream of motions, corrections to motions, amendments to motions, re-filing of motions after the responsive memorandum had been filed by the Defendants, and further briefing of motions after oral arguments.”
- “[T]he court has clearly demonstrated its frustrations with Plaintiffs and their counsel for their failure to understand the law or to follow the Federal Rules of Civil Procedure, the local rules, and the Rules of Professional Conduct.”
- “Plaintiffs also cast various aspersions regarding this court’s alleged statements during oral arguments, without any citations to transcripts to demonstrate that such statements were actually made and the context in which they are made. To the extent that there exists any kernel of truth in any of the various statements that Plaintiffs allege that the court made, the statements, not surprisingly, have been taken entirely out of context and/or mischaracterized”
- “[I]t was apparent in various memoranda and oral arguments throughout this litigation that Plaintiffs and their counsel do not appear to understand the concepts of [the prior] Orders or the reach of the Orders, as they have repeatedly mischaracterized

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and/or misrepresented various statements in the Order.”

- “Only in this case would one find (1) Plaintiffs’ counsel attempting to represent a Defendant in the same case; (2) a Defendant who opposes his dismissal from the case; and (3) Plaintiffs claiming that the court’s bias against *Plaintiffs* is reflected in the court’s purported interference with a *Defendant’s* filing of a responsive pleading.”

(Emphases in original.) Judge Kimball remarked that, in short, it was “clear that [Rose’s] perception is not based in reality.”

¶12 The case was reassigned to Judge Bruce Jenkins. Judge Jenkins dismissed several claims against the remaining defendants. Rose in turn filed motion after motion, amendments to motions, objections to rulings, and motions for reconsideration. Judge Jenkins ultimately dismissed all claims against the remaining defendants for a lack of any factual basis for any claim.

¶13 Over the next three years, Rose continued to deluge the court with her motion practice. Finally, in 2005, Judge Jenkins issued a 172-page memorandum decision clarifying his 2002 pretrial hearing ruling.

¶14 Judge Jenkins’s order also commented on Rose’s conduct before his court and her competence as an attorney:

- “[G]leaning the elements of a particular antitrust law violation from the dense thicket of the plaintiffs’ pleadings, original and amended, proves a daunting and largely fruitless task.”
- “[I]t becomes apparent that many of plaintiffs’ theories of liability had already failed as a matter of law—one because the statute in question simply does not afford Plaintiffs a private civil remedy, the others because they are legally meritless.”
- “[Plaintiffs’] claims may properly be dismissed as frivolous . . . because they are based upon an indisputably meritless legal theory, or are footed upon conclusory assertions rather than specific facts.”

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- “From the commencement of this litigation, plaintiffs’ counsel has taken a dramatically different approach to pleading . . . claims, at times shuffling each plaintiff’s factual allegations and legal assertions together as one would a deck of playing cards, sacrificing narrative sequence in favor of argumentative characterizations and conclusory assertions.”

¶15 Even after the district court had entered its final judgment and exhaustively explained the basis for its decision, Rose continued to file motions in the federal district court. She also filed a pleading in the Tenth Circuit asking it to recuse Judge Jenkins. Judge Jenkins responded to Rose in an order stating that the motions before him were “wholly superfluous.” Judge Jenkins pronounced “enough is enough” and refused to entertain any further motions in the case until the Tenth Circuit had decided Rose’s motion to recuse.

¶16 At various points before that, Rose had moved the federal district court to recuse Judge Jenkins. Judge Jenkins denied each of Rose’s five motions to recuse him. He denied her motions “for lack of the requisite factual grounds that would cause an objective observer reasonably to question the court’s impartiality.” He reminded Rose that each of her clients’ claims had been dismissed years earlier as “frivolous.” He further mused that “[t]he underlying purpose of the plaintiffs’ recusal motions may be discerned in the particular relief . . . sought: disqualification of the *entire bench* of the District Court of Utah” for a judge with a “more favorable view of the Plaintiffs’ theories of jurisdiction and liability.” (Emphasis in original.)

¶17 Rose appealed Judge Jenkins’s decision to the Tenth Circuit, and Judge Jenkins issued another order that “no further motions may be filed in this case” pending a mandate from the Tenth Circuit. The Tenth Circuit dismissed Rose’s appeal as “frivolous.” But Rose continued to file motions. In 2007, Judge Jenkins issued an opinion stating, “[a]t some point, litigation must come to an end, and judgments must become final. For plaintiffs . . . , this case has indisputably reached that point.”

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II. The State Court Case

¶18 Rose represented a mother in Utah State Court after the mother's child's grandparents filed a petition for visitation. The case was assigned to Seventh District Court Judge Lyle R. Anderson.

¶19 Rose questioned whether the Navajo Nation Tribunal or the Utah State Court had jurisdiction to hear the case and eventually moved to stay the State Court proceedings. Judge Anderson set a hearing on Rose's motion to stay for February 2005. On the morning of the hearing, Rose claimed she could not attend the hearing because a Navajo Tribal Court Order provided that anyone appearing in the State Court action would be subject to confinement for a year or a \$5,000 fine. She also objected to all proceedings in the case until the issue of jurisdiction could be determined. Even so, Judge Anderson heard testimony from the witnesses who had appeared that day and issued an order two days later.

¶20 Like Judge Kimball and Judge Jenkins, Judge Anderson commented on Rose's conduct before the court and her competence as an attorney:

As an initial matter, the court notes that the quality of the pleadings filed in the case on behalf of the Mother suggest that [Rose] is only marginally competent, if that, to practice law in Utah. The clerk is directed to make copies of all pleadings filed by counsel in this case and submit them with a copy of this order to the Office of Disciplinary Counsel of the State of Utah.

¶21 Judge Anderson explained that Rose's claim that she was forbidden to appear in the State Court action was "entirely self imposed" because *her* client sought and obtained the order forbidding appearances in the State Case. He set another hearing in the case. On the date of that hearing, Rose filed a motion to disqualify Judge Anderson. Judge Anderson referred the motion to Judge Scott Johansen for review. A few days later, Judge Johansen issued an order:

- Rose's motion to disqualify Judge Anderson was untimely except as to "an undated threat to refer Judge Anderson to the 'Judicial Misconduct Committee.'"
- Rose's allegations against Judge Anderson "fell woefully short of the standard."

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- “The interjection of these other issues is so bizarre as to raise serious questions of compliance with Rule 11 URCP [R]espondent’s counsel is directed to appear and show cause why the inclusion of the requests and issues wholly irrelevant to a Rule 63 Motion, failure to sign the affidavit, filing an untimely motion, objecting to a reviewing judge who is clearly authorized by the rule, and alleging facts well below the legal standard for disqualification, do not constitute a violation of Rule 11.”

¶22 Rose objected to the proceedings, and the court sanctioned her. It ordered Rose to pay attorney fees and submit a report regarding the standard for judicial disqualification.² Rose then filed a suit against the grandparents in federal court, which was dismissed for lack of jurisdiction. After that case was dismissed, Rose attempted to appeal to the Tenth Circuit, and that appeal was also dismissed for lack of jurisdiction. Rose also filed a writ of certiorari before this court in 2005. Grandparents eventually dismissed their claims.

III. OPC’s Prosecution

¶23 In the midst of the aforementioned litigation, the Utah Bar received an informal bar complaint against Rose for her conduct in the Federal Case and another for her conduct in the State Case.³ In February 2004, the Office of Professional Conduct (OPC) served a Notice of Informal Complaint on Rose for allegations arising from the Federal Case, and in June 2005 it served a similar notice for allegations arising from the State Case. Immediately after receiving the first notice, Rose asked to postpone the investigation to accommodate concerns about her health. Both cases were delayed until 2007.

¶24 In September 2007, a three-member screening panel of the Utah Supreme Court’s Ethics and Discipline Committee heard both

² As of the date of OPC’s screening panel on this case, Rose still had not complied with the sanctions order.

³ It is not apparent from the record who referred Rose’s conduct in the Federal Case to OPC.

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cases. The panel decided probable cause existed that Rose had violated the Utah Rules of Professional Conduct and recommended that a formal complaint be filed. In December 2007, OPC filed a Complaint in district court alleging twelve violations of seven rules.⁴ The case was assigned to Judge Robert Faust in the Third District Court.

¶25 To illustrate how the case proceeded, OPC's Complaint against Rose comprises pages 1-25 in a 28,000+ page appellate record; Rose's answer does not appear until page 2,507. Her answer was filed more than a year after OPC filed the Complaint. In the interim, Rose moved for various extensions of time, for a more definite statement, for dismissal, for change of venue, to file an over-length brief, to stay proceedings, to strike various portions of the Complaint before responding, to strike the Complaint itself, and to disqualify Judge Faust—among other things.

¶26 Rose filed many of these motions in lieu of answering despite court orders fixing a deadline for Rose to answer the Complaint. For example, the court ordered Rose to answer the Complaint within ten days on May 21, 2008. When Rose failed to comply, on July 29 the court cautioned Rose that if she did not answer OPC's Complaint, "default could be entered." On August 14, the court again ordered Rose to answer within ten days or suffer entry of default judgment. The court repeated its order on September 19, giving Rose until September 29 to answer. Rose filed a motion to disqualify Judge Faust, who recused himself so as to not cause further delay.

¶27 The case was reassigned to Judge Vernice Trease. At a hearing before Judge Trease on December 4, the court ordered Rose to respond to the Complaint by January 26, 2009. Rose failed to appear at a hearing in the matter on January 16. She also failed to meet the court's January 26 deadline. On January 27, OPC filed a motion for entry of default judgment citing Rose's refusal to obey court orders and respond to the Complaint.

⁴ Rule 1.1 Competence; Rule 1.7 Conflict of Interest with Current Clients; Rule 3.1 Meritorious Claims and Contentions; Rule 3.2 Expediting Litigation; Rule 4.2(a) Communicating with Persons Represented by Counsel; Rule 8.2 Judicial Officials; and Rule 8.4 (a), (d) Misconduct.

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¶28 In February, Rose submitted a document titled "Respondent's Forced Answer as Ordered by the District Court . . . Issued from the Bench as Outside the Court's Jurisdiction to Order." In her "Forced Answer," Rose refused to recognize the court's jurisdiction over her attorney discipline case. She called the entire case "*void ab initio*," argued that answering the Complaint would immediately harm her clients, and claimed that the court's order requiring her to answer the Complaint "constitutes duress."

¶29 Rose's motion practice continued. Over the next year, she moved for extensions of time, to stay the proceedings, and to strike various parts of the Complaint. Rose eventually filed a document titled "Compliance with the Court's January 29 and February 2 Orders." There she claimed OPC's action against her was unconstitutional. Rose invoked her Fifth Amendment right against self-incrimination and claimed she did not have to produce documents in discovery because they were "irrelevant and production does not apply." She repeated the following answer verbatim in response to almost all of OPC's requests for admission:

This attorney lacks the resources and time and money to go through the [requested] document page by page and word by word to ascertain if this document is true and correct as a copy, therefore this attorney does not know if it is, and *therefore denies*.

Certified copies of all orders are available to the Bar from the 7th District Court, and federal court sources. This admission has nothing to do with the category of charges in the Bar complaint, and is irrelevant to this prosecution. If the Bar wishes to show the relevance to the charges in the Bar's complaint, this attorney may wish to supplement this answer.

I also state that I fear anything I say, as to this admission request will be used against me to also be used to subject me to an unknown punitive or criminal prosecution, of an unspecified nature, and therefore I claim my 5th [sic] United States Constitution's 5th Amendment protection against self incrimination, to remain silent as to this admission.

(Emphasis in original).

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¶30 Rose also refused to respond to OPC's interrogatories asking her to identify any lay or expert witnesses she intended to call, to describe any mitigating circumstances she believed existed, to disclose her fee arrangements with plaintiffs in the underlying cases, or to describe interactions with her clients. Rose responded by claiming that most of the interrogatories OPC propounded were "irrelevant, immaterial" or called for privileged attorney work product. She also attempted to invoke her Fifth Amendment right to remain silent for fear of future "punitive or criminal prosecution, of an unspecified nature."

¶31 And in response to OPC's requests for production of documents, Rose again continued her practice of pleading the fifth and claiming that OPC's requests were irrelevant.

¶32 OPC moved the district court to strike Rose's answer and enter default judgment. OPC reasoned, "it appears that Ms. Rose will continue to delay and obstruct this case going to trial on the merits." It claimed, "Rose has asserted privileges that do not apply and made arguments upon which this Court has already ruled." OPC argued that under Utah Rule of Civil Procedure 37(b)(2)(C),⁵ the court should strike Rose's answer as a sanction for frustrating the judicial process, because "failure to respond to discovery impedes trial on the merits and makes it impossible to ascertain whether the allegations of the answer have any factual merit." At a hearing on OPC's motion, Rose told the court, "I do not believe . . . I have been incompetent, immoral, fraudulent or in any other respect deleterious in my representation. . . . I've given my very best. And if I had to do it all over again, despite the Bar's prosecution, I would do it. I would do it again."

¶33 In July 2010, the district court granted OPC's motion to strike Rose's answer and entered default judgment. Judge Trease's order echoed the observations Judges Kimball, Jenkins, Anderson, and Johansen had made about Rose's practice style:

⁵ The current rule permits the district court to "dismiss all or part of the action, strike all or part of the pleadings, or render judgment by default on all or part of the action" under subsection (b)(4), not (b)(2)(C), of Utah Rule of Civil Procedure 37.

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- “Generally, throughout the proceedings in this court, Respondent’s motions have been repetitive and often barely comprehensible as to the court rules and law on which she relies. Respondent’s persistent submissions have unnecessarily stalled the proceedings since December 12, 2007.”
- “Respondent has filed numerous motions to dismiss for lack of subject matter jurisdiction. . . . Each time, the court ruled that it had jurisdiction; each time none of the facts or circumstances changed. Respondent continues to fail to understand that OPC may bring an action in this court for Respondent’s conduct in a federal district court matter.”
- “The court has accommodated Respondent throughout the duration of these proceedings. It has granted Respondent numerous extensions to file her Answer. Respondent has filed countless motions to stay, motions for summary judgment, and motions to dismiss over the past two years, most of which are redundant, repetitive and frankly can be viewed as nothing less than attempts to stall the progression of this case and frustrate the judicial process.”
- “After her first failure to respond, Respondent should have understood the court’s order to compel. Nonetheless, Respondent’s February 12 response is the same in that it is unresponsive, immaterial, and redundant.”
- “OPC is unable to move forward without the evidentiary basis of Respondent’s denials from her Answer. In presenting the same arguments she knows the court has already rejected, it is hard to view Respondent’s conduct as anything but persistent dilatory tactics.”
- “Based on the Respondent’s conduct in this matter, this case cannot proceed to trial on the merits.”
- “The court finds on the part of the Respondent willfulness, bad faith, and persistent dilatory tactics

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in her continuing failure to comply with the court's order and for her failure to provide sufficient discovery responses. . . . The court sanctions Respondent under rule 37(b)(2)(C) by striking Respondent's Answer and declaring a default judgment."

IV. The Long and Winding Road
to a Sanctions Hearing

¶34 Rose continued to file motion after motion, delaying the second half of the attorney discipline process—the sanctions hearing. A sanctions hearing was finally scheduled for February 2012—about four years after OPC had filed its initial Complaint. Rose, however, failed to appear. Instead, she filed an "Emergency Motion to Reschedule Sanctions Hearing," because her father was dying and she felt "mentally and emotionally absolutely incapable of functioning for the hearing." Based upon the language in her request, OPC's 2009 motion to put Rose on disability status, and "another incident . . . less than a year ago, when Ms. Rose was hospitalized," Judge Trease placed Rose's bar membership on disability status and ordered that the sanctions hearing be rescheduled to a later date. Judge Trease reasoned that this course of action was warranted because Rose's language suggested she was incapable of defending herself. Rose was taken off disability status the next year at her request.

¶35 In 2013, the second phase of the attorney discipline process commenced and the case was transferred to Judge Constandinos Himonas.⁶ Rose immediately began moving the court to dismiss for lack of due process, to set aside the default judgment, to dismiss for forum non conveniens, for a restraining order against all OPC prosecutions of anyone practicing in federal court, for sanctions against OPC, and for a permanent injunction, among others.

¶36 A sanctions hearing was scheduled for March 12 and 13, 2014. On the first day of the hearing, Rose moved to disqualify both opposing counsel and Judge Himonas. Judge Paul Parker considered Rose's Rule 63 motion to disqualify Judge Himonas. Judge Parker

⁶ Because of his involvement with this case while serving on the district court, Justice Himonas does not participate in this matter.

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denied Rose's motion because she argued that Judge Himonas was "legally incorrect in his decisions concerning jurisdiction, evidence[,] and other matters" and not, as the rule requires, that he was biased, prejudiced, or conflicted in any way. The sanctions hearing proceeded and lasted two days. The hearing was continued until April 7 after a delay to determine the outcome of Rose's motion to disqualify. The court heard evidence and continued the hearing to April 10.

¶37 On April 10, Rose appeared with counsel and filed an "Emergency Motion to Suspend Sanction Hearing." She presented the court with a novel though unavailing argument: that Judge Trease's entry of default judgment was only "implied" and, therefore, the sanctions hearing was both premature and a violation of her due process rights. Through counsel, Rose argued:

Since the Court has apparently never indicated that it has actually determined . . . that Ms. Rose has actually violated any of the provisions of the Code of Professional Conduct, it does not appear that the Court even in its own mind has found her guilty of anything yet.

Judge Himonas refused to grant Rose's "Emergency Motion" for an indefinite suspension of the proceedings; instead, "out of an abundance of caution," he continued the hearing "to allow briefing on the[] legal issues" Rose presented. He warned that the scope of the briefing should be confined to issues that had not already been addressed: "[T]here is no opening here for issues that have been raised and rejected." A hearing on Rose's motion was scheduled to take place June 18. But Rose's counsel filed a number of requests for extension, and Rose also filed a number of other motions.

¶38 The court heard argument in December 2014, and issued a Memorandum Decision in February 2015. In his decision, Judge Himonas explained that the court had subject matter jurisdiction over the attorney discipline proceedings. After Judge Himonas was confirmed a member of this court, the case was transferred to Judge Royal Hansen.

¶39 In response to Judge Himonas's memorandum decision, OPC moved to reset the sanctions hearing. It argued

[t]he Sanctions Hearing . . . was continued mid-hearing when Ms. Rose filed an 'emergency' motion to

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dismiss. . . . There is nothing pending before the Court on an emergency basis and the matter should be immediately reset to conclude the Sanctions Hearing so that the parties and the Court are not prejudiced by further delay in the case.

¶40 Rose opposed OPC’s request, rearguing—this time to Judge Hansen—that no default entry had ever been entered. She further moved to dismiss the matter. Judge Hansen denied these motions and scheduled a two-day sanctions hearing for August 17 and 18, 2015, giving “each party six hours to present their case.”

V. The Sanctions Hearing

¶41 On the morning of the first day of trial, Rose entered her appearance, then told Judge Hansen:

I feel like there have been enough due process issues, equal protection issues, violation of uniform operation of laws, open court provisions, on and on and on. And then the particular problems with entering the default, plus the fact that the default memorandum stated a certain relief and the proposed order tried to go beyond that . . . and so . . . I’ve reached the end of my road. . . . because I don’t know how to say I mitigate these charges, because, unbelievably, I still do not understand those charges. I deny them—and—but I cannot prove my innocence. I don’t know how to prove innocence. . . . And—and we haven’t had a trial on the default judgment first. But it’s a technical issue, . . . and I think what I’m going to do right now is—it took seven—seven and a half years to get some very fine explanatory orders from the Court, explaining to me . . . why and where and what for. But at this point, I believe any defense I might try to raise would be futile. And if I’m—if I’m not admitting to a claim, I don’t know how to say—unmitigate it, you know? I—I don’t know how that works. . . . I’m just taking a default on it. . . . So I’ll leave here. . . . My defenses are with the appellate court. . . . I think it’s fair to say I know how this will go, I know how the end result will be, and I’m done.

Rose then left the hearing and did not return.

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¶42 In November, Judge Hansen issued his findings of fact, conclusions of law, and order disbaring Rose. He explained that Rose chose to leave after he invited her to stay multiple times and “indicated that if she chose to leave, the hearing would go forward without her participation.” He also explained that “[a]s a result of the Default, the Court must accept all of the allegations in the Complaint as true,” while also noting, “however, that evidence in support of these allegations was presented at the Sanctions Hearing.”

¶43 Although unnecessary because of the earlier default judgment, Judge Hansen concluded that Rose had violated the following Rules of Professional Conduct: Rule 1.1 Competence; Rule 1.7 Conflict of Interest with Current Clients; Rule 3.1 Meritorious Claims and Contentions; Rule 3.2 Expediting Litigation; Rule 4.2(a) Communicating with Persons Represented by Counsel; Rule 8.2 Judicial Officials; and Rule 8.4 Misconduct. Judge Hansen also drafted an order that recited the evidence presented that demonstrated Rose had violated the Rules of Professional Conduct.

¶44 For example, Judge Hansen concluded that Rose had violated rule 1.1, competence—mandating that “[a] lawyer shall provide competent representation to a client,” UTAH R. PROF’L CONDUCT 1.1—in the Federal Case when she “filed numerous pleadings and claims . . . that were not supported by the facts or law, and which contained inaccurate information.” She violated the same rule in the State Case when she “filed numerous pleadings which were only marginally competent; failed to comply with the Rules of Civil Procedure; and failed to apply the appropriate law to the facts in her case.”

¶45 The court held that Rose violated rule 1.7, conflicts of interest with current clients—mandating that “a lawyer shall not represent a client if the representation involves a concurrent conflict of interest,” *id.* 1.7(a),—in the Federal Case when she “communicated with and attempted to represent a Defendant in the litigation whose interests were directly adverse to those of [her] clients, the Plaintiffs.”

¶46 Judge Hansen also concluded that Rose had violated rule 3.1, meritorious claims and contentions—mandating that “[a] lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good-faith argument for an

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extension, modification or reversal of existing law.” *Id.* 3.1. Rose violated this rule in the Federal Case when she “filed numerous claims, pleadings and appeals that were not supported by the facts and law, and which were not supported by a good faith argument to extend, modify or reverse the existing laws.” She violated the same rule in the State Case when she “filed numerous claims, pleadings and appeals that were not supported by the facts and law, and nor did the filings contain any good faith arguments for any changes to existing law.”

¶47 Judge Hansen further determined that Rose had violated rule 3.2, expediting litigation—mandating that “[a] lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.” *Id.* 3.2. She violated this rule in the Federal Case when she “filed a constant stream of motions, corrections to motions, amendments to motions, filed corrected or amended motions after the opposing parties had filed their response, filed lawsuits on other courts, and filed appeals which had no basis.” She had also “failed to understand the law or follow the Rules of Civil Procedure, the local rules, and the Rules of Professional Conduct.” Judge Hansen determined that “[t]hese unnecessary filings and actions served only to delay the proceedings.” Rose violated the same rule in the State Case for the same reasons.

¶48 Rose had further violated rule 4.2(a), communication with persons represented by counsel—mandating that “a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer.” *Id.* 4.2(a). Judge Hansen determined that Rose had violated this rule in the Federal Case when she “communicated with a represented person who she named as a Defendant in the same case, and knew to be represented by counsel.”

¶49 Judge Hansen next concluded that Rose had violated rule 8.2, judicial officials—mandating that “[a] lawyer shall not make a public statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge.” *Id.* 8.2(a). Rose violated this law in the Federal Case when she filed “a motion to recuse a judicial official and in the memoranda supporting the motion, . . . made disparaging remarks about the judge’s integrity and qualifications with reckless disregard as to the truth or falsity of those statements.”

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¶50 Rose had also violated rule 8.4(d)—providing that it is misconduct for a lawyer to “engage in conduct that is prejudicial to the administration of justice,” *id.* 8.4(d)—in the Federal Case when she “filed numerous frivolous pleadings and claims” and “continued to file frivolous pleadings even after being warned and sanctioned. . . . caus[ing] significant delays and expense.” And Rose violated the same rule in the State Case for the same reasons as in the Federal Case.

¶51 Judge Hansen finally determined that Rose had violated Rule 8.4(a)—providing that it is misconduct for a lawyer to “violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another,” *id.* 8.4(a)—in both the Federal Case and the State Case “[a]s described herein.”⁷

VI. Choosing the Appropriate Sanction

¶52 In determining the appropriate sanction for Rose’s violations in the Federal Case and in the State Case, the court considered a number of factors: (1) the duties Rose violated; (2) her mental state; (3) the potential or actual injury caused by her misconduct; and (4) aggravating or mitigating factors.

¶53 The court found that Rose violated duties she owed to her clients “by continuing to pursue matters that had no hope for a positive outcome and by failing to give her clients an honest interpretation of the facts and law.” She breached her duties to

⁷ We have expressed that “we are troubled by the practice of sanctioning attorneys for violating rule 8.4(a) based solely on their violations of other rules” because “it seems that the rule amounts to no more than a ‘piling on.’” *In re Discipline of Brussow*, 2012 UT 53, ¶ 1 n.1, 286 P.3d 1246. And as note 1a of this rule explains, “A violation of paragraph (a) based solely on the lawyer’s violation of another Rule of Professional Conduct shall not be charged as a separate violation.” But as we explain above, Rose does not expressly challenge the district court’s conclusion nor the proportionality of the sanction she received. Because we do not believe that the rule 8.4(a) violation was material to the district court’s decision to disbar Rose, we raise the issue only to emphasize our continued discomfort with this application of the rule.

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opposing counsel “by consistently misstating the facts and filing frivolous motions that only served to delay the inevitable outcome of the cases.” She also breached her duties to the legal system “by not complying with Court orders” or “respecting the Courts when they rule against her, and by filing numerous motions to disqualify based solely on the fact that the Courts did not agree with her position.” Finally, Rose breached her duties to the public “by her flagrant disregard for the legal process” and the “relentless pursuit of her own agenda without regard for court rulings and without respect for the other side, weak[ening] the public trust of attorneys and in the judicial system.” The court found that Rose had “knowingly and intentionally” violated these rules.

¶54 The district court also found that her conduct had caused “real or potential injury” to the parties in the underlying cases and to the legal system. The “immeasurable waste of resources” that multiple court systems and their staffs and opposing counsel and their staffs spent dealing with her “constant barrage of motions and cases” directly injured those parties. The district court opined that Rose’s conduct poorly reflected on the “public’s perception of how attorneys should behave.” And her “unfounded disparaging remarks about judicial officers further has the potential of damaging their reputation and the legal system itself.” The court stated that parties and opposing counsel had presented evidence of the personal and economic losses Rose’s misconduct imposed upon them.

¶55 Because Rose left the first hearing and did not appear at the second hearing, she presented no evidence of mitigating factors. Judge Hansen, nevertheless, concluded that some mitigating factors were apparent on the record: Rose’s relative inexperience and lack of supervision and mentorship at the time she violated the rules. “However,” Judge Hansen wrote, “the Court does not give great weight to these factors because Ms. Rose persisted in her misconduct for several years, even after multiple judges in different courts admonished her that her conduct did not comply with the Utah Rules of Professional Conduct.” Judge Hansen noted that ten years had passed since Rose had been notified that there was an informal complaint against her but that she had persisted in “the same type of misconduct and activities” that had given rise to the complaint.

¶56 Conversely, the district court found evidence of the following aggravating factors: (1) dishonest or selfish motive; (2) pattern of misconduct; (3) multiple offenses; (4) obstruction of the disciplinary proceeding by intentionally failing to comply with rules

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or orders of the disciplinary authority; (5) submission of false evidence, false statements, or other deceptive practices during the disciplinary process; (6) refusal to acknowledge the wrongful nature of the misconduct involved, either to the client or to the disciplinary authority; and (7) lack of good faith effort to make restitution or to rectify the consequences of the misconduct involved.

¶57 For example, Rose had been sanctioned by the state district court, the United States District Court, and the Tenth Circuit Court of Appeals, and had been enjoined from filing further actions in either of the federal courts unless she complied with strict conditions. But, as the district court noted, she continued on with her “continuous and extensive” “extreme litigious conduct.” Furthermore, the district court commented that Rose seemed to be motivated by factors outside of her clients’ best interests in refusing to accept court orders when courts ruled against her. The district court noted that “her actions had very little to do with obtaining relief for her clients and [were] more about winning at all costs and obtaining her share of any monetary award.” Rose “repeatedly stated that she is the real victim in this case,” which the court believed was evidence that “she does not appreciate the wrongful nature of her conduct.” The court opined that Rose’s refusal to pay any of her sanctions to opposing parties evidenced her lack of good faith effort to make restitution.

¶58 The district court determined that regardless of whether the presumptive sanction was disbarment or suspension, due to “minimal mitigating factors and compelling aggravating factors,” disbarment was ultimately the appropriate sanction.

¶59 Rose appeals the district court’s order. We have jurisdiction under the Utah Constitution. UTAH CONST. art. VIII, § 4; *see also* Utah Code § 78A-3-102(c).

STANDARD OF REVIEW

¶60 Our state constitution gives this court “plenary authority to govern the practice of law. This authority is derived both from our inherent power and—since 1985—explicit and exclusive constitutional power.” *Injured Workers Ass’n of Utah v. State*, 2016 UT 21, ¶ 14, 374 P.3d 14; UTAH CONST. art. VIII, § 4 (“The Supreme Court by rule shall govern the practice of law, including . . . discipline of persons admitted to practice law.”); *see Barnard v. Utah State Bar*, 804 P.2d 526, 528 (Utah 1991) (“[T]he authority of this Court to regulate the admission and discipline of attorneys existed as an inherent

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power of the judiciary from the beginning.”); *In re Burton*, 246 P. 188, 199 (Utah 1926) (“[This court’s] power to deal with its own officers, including attorneys, is inherent, continuing, and plenary, and exists independently of statute . . .”).

¶61 “Given our ‘constitutional mandate[,] ‘the unique nature of disciplinary actions and our knowledge of the nature of the practice of law,’” we apply a somewhat modified standard of review.” *In re Discipline of Bates*, 2017 UT 11, ¶ 17, 391 P.3d 1039 (alteration in original) (quoting *In re Discipline of Babilis*, 951 P.2d 207, 213 (Utah 1997). “While we will ‘ordinarily presume findings of fact to be correct and will not overturn them unless they are arbitrary, capricious, or plainly in error,’ we accord them less deference in matters of attorney discipline.” *Id.* (citation omitted). “We maintain the discretion to draw different inferences from the facts than those made by the district court,” even though that will not always be the case. *Id.* “Additionally, given our unique position regarding attorney discipline, we ‘make an independent determination as to’ the correctness of the level of discipline actually imposed, ‘although we always give serious consideration to the findings and [rulings] of the [district court].’” *Id.* (alterations in original) (citations omitted).⁸

⁸ This case presents a wrinkle on our statement that “we ‘make an independent determination as to’ the correctness of the level of discipline actually imposed.” *In re Discipline of Bates*, 2017 UT 11, ¶ 17, 391 P.3d 1039 (citation omitted). Here, Rose has not explicitly asked us to determine whether the district court erred in finding that disbarment was the appropriate sanction. Our oft-repeated statement that we make an independent determination could be read as a declaration that we will *sua sponte* consider the appropriateness of a sanction. But it is not. We make an “independent determination” by affording no deference to the district court’s decision. We do not make a determination independent of a request supported by an adequately briefed argument.

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ANALYSIS⁹

I. Rose's Briefing is Wholly Inadequate

¶62 Though Rose's arguments are barely articulable, legally unsupported, factually unsupported, and fail to provide citations to the 28,000-page record, we nevertheless do our best to respond to what she appears to have given us: jurisdictional complaints referencing the Supremacy Clause and principles of *res judicata*, and claims of federal due process and equal protection violations.

¶63 We note at the outset that Rose does not explicitly base an argument on the claim that she did not commit the underlying violations the district court found she committed by entering default.¹⁰ Nor does she explicitly claim that the sanctioning court applied the wrong sanction to her professional conduct violations. Instead, Rose launches a broadside attack of Utah's attorney discipline system.

¶64 We also want to make plain that while we will do our best to respond to the substance of Rose's claims, her arguments are inadequately briefed. We recently clarified our briefing requirements in *Bank of America v. Adamson*, 2017 UT 2, 391 P.3d 196. There we quoted Utah Rule of Appellate Procedure 24(a)(9), requiring an appellant's brief to "contain the contentions and reasons of the appellant with respect to the issue presented . . . with citations to the authorities, statutes, and parts of the record relied on." *Id.* ¶ 11 (alteration in original). While we reiterated that "[a]n issue is inadequately briefed if the argument 'merely contains bald citations to authority [without] development of that authority and reasoned

⁹ Neither Rose nor the Office of Professional Conduct relies upon an older version of the code or argues that citing an older version of either the Utah Code or any other law would make a difference to our resolution of this appeal. We thus cite the current version of the law.

¹⁰ To be clear, it is abundantly apparent that Rose believes that her conduct in the Federal and State Cases was beyond reproach. Rose does not, however, attempt to argue how the district court erred in concluding that her conduct violated the Rules of Professional Conduct. Nor does she explicitly argue that the district court erred in striking her answer.

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analysis based on that authority,” we also explained that “inadequate briefing [was no longer] an absolute bar to review of an argument on appeal.” *Id.* (first and second alterations in original) (citations omitted). That is because

there is a spectrum of how adequately an argument may be briefed. On one end, an issue may be argued in only one sentence without any citations to legal authority or to the record. On the other, there may be dozens of pages of argument including volumes of authority and citations to the record regarding a single issue. Defining the exact point at which a brief becomes adequate is not possible, nor is it advisable, as each issue is different and may require different amounts of analysis and argument.

Id. We concluded by adopting *State v. Nielsen*’s language respecting an appellant’s duty to marshal the evidence: “We clarify that there is not a bright-line rule determining when a brief is inadequate. Rather, [a party] who fails to adequately brief an issue ‘will almost certainly fail to carry its burden of persuasion on appeal.’” *Id.* ¶ 12 (quoting *State v. Nielsen*, 2014 UT 10, ¶ 42, 326 P.3d 645). We continued, “from here on our analysis will be focused on the ultimate question of whether the appellant has established a [sufficient argument for ruling in its favor]—and not on whether there is a technical deficiency in [briefing] meriting a default.” *Id.* (alterations in original) (citation omitted).

¶65 We, however, provided some guidance to parties wishing to improve their chances of meeting that burden of persuasion. We emphasized “the importance of a party’s thoughtful analysis of prior precedent and its application to the record.” *Id.* ¶ 13. We also instructed that a “party must cite the legal authority on which [an] argument is based and then provide reasoned analysis of how that authority should apply in the particular case, including citations to the record.” *Id.* And we cautioned that a party who “fails to devote adequate attention to an issue [will] almost certainly . . . fail to meet its burden of persuasion.” *Id.* How much attention is adequate will vary issue by issue and case by case. *2010-1 RADC/CADC Venture, LLC v. Dos Lagos, LLC*, 2017 UT 29, ¶ 30, --- P.3d --- (“Of course, it is not the size of an argument that matters. Some parties adequately brief an argument in a well-crafted paragraph. Others manage to inadequately brief an argument in fifty pages.”). But at the very least, an argument should clearly identify the contention, cite

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supporting authority, distinguish contrary authority, cite pertinent facts in the record (and provide citations to the record so opposing counsel and the reviewing court can find them), analyze the facts through the lens of the cited law, and explain what the result should be. This is the floor upon which any argument should stand.

¶66 Against this backdrop, we will do our best to articulate and then respond to Rose’s contentions. But our efforts should not be interpreted as an acknowledgement that Rose has adequately briefed any of the arguments she has raised. She has not. As we sort through Rose’s arguments, we add our voice to the chorus of courts who have found Rose’s briefing to be “bizarre” and “utter[ly] incomprehensibl[e].” In other words, Rose’s briefing falls well below the standard we expect from those who practice before this court. And though she raises many claims, she has not met her burden of persuasion in arguing any of them.

II. The Utah District and Utah Supreme Courts Have
Jurisdiction to Consider Whether Rose’s Conduct in
Both State *and* Federal Court Violated Utah’s Rules
of Professional Conduct

¶67 Rose’s main contention is that we do not have jurisdiction over this case for a number of reasons. Of jurisdiction, Chief Justice John Marshall wrote that “[w]e have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given.” *Cohens v. Virginia*, 19 U.S. 264, 404 (1821). Thus, where we have jurisdiction we cannot give it up, no matter how “gladly [we would] avoid” it. *Id.*

¶68 Rose contests our ability to address her actions in the Federal Case because, she claims, the Supremacy Clause prohibits us from exercising jurisdiction over discipline arising from her conduct in federal and Navajo courts. Rose specifically claims that, under the Supremacy Clause, “there is no legal basis for Utah Courts to have any jurisdiction to base a disbarment upon questions of law prohibited to Utah Courts to address, here, defining the contours of Navajo Nation Courts’ jurisdiction over non Indians.” She further argues that OPC and district court judges “have not produced any law supporting this Court having jurisdiction to define Indian Nation jurisdiction . . . particularly given . . . [the] Supremacy clause to which this State agreed to abide by in exchange for statehood, as did all the original colonies also.” Thus, Rose seems to believe that because she practiced in federal and Navajo courts, the State of Utah

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has no business basing sanctions upon violations of the Utah Rules of Professional Conduct that are alleged to have occurred there. She calls our jurisdiction in this case an invasion of “US and [Navajo Nation] sovereignty.”

¶69 “There is no doubt that the district court ha[s] subject-matter jurisdiction over . . . disciplinary action[s] . . .” *In re Discipline of Oliver*, 2011 UT 29, ¶ 9, 254 P.3d 181. “A court has subject matter jurisdiction if the case is one of the type of cases the court has been empowered to entertain by the constitution or statute from which the court derives its authority.” *See id.* ¶ 8. Utah’s constitution gives the Utah Supreme Court absolute authority to regulate the practice of law for those licensed here. *See supra* ¶¶ 60–61. And we have said that “[t]he district courts of this state have unquestioned authority to adjudicate matters of attorney discipline.” *Oliver*, 2011 UT 29, ¶ 9; UTAH CODE § 78A–5–102(3) (“The district court has jurisdiction over matters of lawyer discipline consistent with the rules of the Supreme Court.”). Thus, the district court had jurisdiction to hear Rose’s attorney discipline case, and we have jurisdiction to consider her appeal from it.

¶70 Rose appears to contend, without citing any supporting law, that the Supremacy Clause divests our jurisdiction over discipline cases when the actions giving rise to the discipline occur in federal or tribal court. Rather than cite cases, Rose provides an analogy. Rose explains that while Utah courts have jurisdiction to hear divorce cases, they do not have jurisdiction to hear Alaskan divorce cases. But this analogy misses the point. The question of whether we have jurisdiction over Rose’s discipline case is different from whether we would have had jurisdiction to hear the underlying case. We do not have jurisdiction to hear an Alaskan divorce case; we do, however, have jurisdiction over a Utah attorney who commits a breach of the rules of professional conduct while practicing in Alaska. Our Rules of Professional Conduct provide that a “lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer’s conduct occurs.” UTAH R. PROF’L CONDUCT 8.5(a).

¶71 And Utah is not alone in this. Our rule is based upon the ABA Model Rules of Professional Conduct, rule 8.5(a), which reads

A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer’s conduct occurs. . . . A lawyer may be subject to the disciplinary authority of

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both this jurisdiction and another jurisdiction for the same conduct.

As of 2016, twenty-two states had adopted this rule verbatim; and twenty-seven jurisdictions, including the District of Columbia, had adopted a modified version of this rule. AM. BAR ASS'N., VARIATIONS OF THE MODEL ABA RULES OF PROFESSIONAL CONDUCT, Rule 8.5 (Aug. 15, 2016), https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/mrpc_8_5.authcheckdam.pdf.

¶72 Although we have not addressed an argument like the one Rose appears to make, Colorado has rejected a similar argument. See *People v. Rozan*, 277 P.3d 942, 948 n.12, 949 (Colo. O.P.D.J. 2011). In *Rozan*, an attorney—Steven Rozan—was licensed to practice law in both Texas and Colorado. *Id.* at 946. Rozan and his practice were housed in Texas, but his client resided in a federal penitentiary in Colorado called ADMAX. *Id.* at 945. The Presiding Disciplinary Judge (PDJ) of the Colorado Supreme Court and the Hearing Board prosecuted Rozan for knowingly taking his clients funds for his personal use. *Id.* at 946. Rozan contested Colorado's jurisdiction, reasoning that Colorado lacked jurisdiction both (1) for acts that took place in Texas and (2) for actions taken while representing a client who resides in a federal enclave—like ADMAX. *Id.* at 946–48. In determining that it did have jurisdiction, the PDJ cited Colorado's Rule of Professional Conduct 8.5(a), which provides—like our own rule 8.5—that “[a] lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs.” *Id.* at 947 (alteration in original). The Colorado court concluded that the “regulation of attorney conduct is a matter of state sovereignty.” *Id.* at 949. It further concluded that Rozan “is licensed to practice law in Colorado and this proceeding concerns his practice of law. As such, the fact that [he] practiced from an office in Texas does not divest the Colorado Supreme Court, the PDJ, or the Hearing Board of jurisdiction over this matter.” *Id.* at 947. Thus, the Colorado Supreme Court determined that it had jurisdiction to discipline Rozan for his conduct no matter where it may have occurred. *Id.* at 949; see also *In re Winstead*, 69 A.3d 390, 396 (D.C. 2013) (holding that attorney licensed in D.C. but practicing in other jurisdictions “is subject to the disciplinary authority of [the D.C.] jurisdiction, regardless of where [her] conduct occurs.” (second alteration in original) (citing D.C. R. PROF'L CONDUCT 8.5(a)); *In re Juarez*, 24 P.3d 1040, 1067 (Wash. 2001) (noting that an attorney who practices exclusively in federal court is

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required to adhere to the state rules promulgated by the jurisdictions in which they are licensed).

¶73 We have jurisdiction to hear and determine attorney discipline cases even for conduct occurring in federal court. Rose's jurisdictional arguments, in addition to being inadequately briefed, are unavailing.¹¹

III. Neither Article III of the United States Constitution Nor Principles of *Res Judicata* Bar Our Consideration of Rose's Conduct in this Case

¶74 Rose also appears to contend that because the federal court and Navajo Nation Court did not sanction her, neither should this court. Rose argues that this case is opposing counsels' attempt to get a second bite at the apple after their sanctions motions were denied. Rose contends that when opposing counsel in the federal court action did not convince a court to sanction her, they referred the matter to OPC. Rose wraps what is in essence a *res judicata* question in a jurisdictional cloak and argues that Utah has no "federal question jurisdiction" to revisit issues litigated in Navajo and United States Courts. But her legal argument in support spans a lonely sentence: "Of course ruling for this Appellant means giving claim and issue preclusion to retrying Navajo and Federal Court orders in state courts." This sentence hardly qualifies as adequate briefing.

¶75 Usually when an appellant argues claim or issue preclusion—or both, as Rose seems to—we anticipate an analysis of the elements of one or both of *res judicata*'s "two distinct doctrines." *Snyder v. Murray City Corp.*, 2003 UT 13, ¶ 33, 73 P.3d 325.

Claim preclusion involves the same parties or their privies and the same cause of action. It "'precludes the relitigation of all issues that could have been litigated as well as those that were, in fact, litigated in the prior action.'" In contrast, issue preclusion, also known as collateral estoppel, "arises from a different cause of action and prevents parties or their privies from

¹¹ Even if we were to credit Rose's Supremacy Clause argument, nothing she raises would have prevented Utah's courts from exercising jurisdiction over the allegations arising from Rose's State Court case.

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relitigating facts and issues in the second suit that were fully litigated in the first suit.” In effect, once a party has had his or her day in court and lost, he or she does not get a second chance to prevail on the same issues.

Buckner v. Kennard, 2004 UT 78, ¶ 12, 99 P.3d 842 (citations omitted).

¶76 Rose does not even attempt to explain how either issue or claim preclusion applies in her case. Rose does point us to instances in the record where requests for sanctions and fees in the Federal Case were denied for various reasons. But she does not describe the substance of those decisions, explain the basis for the request for those sanctions, articulate why resolution of the sanctions motion would preclude a subsequent OPC action based upon the same conduct (if it is the same conduct—Rose doesn’t tell us), or cite any authority for the proposition that *res judicata* would adhere in this circumstance.¹²

¶77 And Rose has failed to argue whether there is a difference between a court’s ability to sanction an attorney for bad behavior under any other number of rules and a state’s responsibility to oversee the practice of law by those practicing within its jurisdiction. Although there may be an interesting *res judicata* question lurking in Rose’s briefing, she has made absolutely no effort to develop that question, either factually or legally. Rose has failed to meet her burden of persuasion that either Article III of the United States Constitution or the principles of *res judicata* prevent this court from sanctioning her for conduct she engaged in before the federal courts.¹³

¹² It is also worth noting that Rose has been sanctioned more than once. The Tenth Circuit sanctioned Rose “for filing a frivolous and vexatious appeal” when Rose sued the state of Utah in federal court for holding disciplinary hearings in this matter. *Rose v. Utah*, 399 F. App’x 430, 439 (10th Cir. 2010). It sanctioned her \$5,000 and awarded opposing counsel “double costs, pursuant to Rule 38.” *Id.*; see FED. R. APP. P. 38. The federal district court later also enjoined Rose from filing any future lawsuit before it “on her own behalf.”

¹³ Again, even if we credited this argument, it would not apply to the sanctions arising out of Rose’s State Court actions.

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IV. Rose Has Not Shown that She Was
Denied Equal Protection Under the Law

¶78 Rose argues that under the 1984 Amendment to article VIII, section 4 of the Utah Constitution, lawyers are treated differently than non-lawyers with respect to their property interests in their professional licenses. Rose first contends that, under the Fourteenth amendment, all lawyers are entitled to Fifth Amendment Due Process rights, which protect “the dignity of the office the lawyer holds.” She next explains that because “lawyer discipline has no three-branch control or oversight or limitations... the 1984 Amendment deprives all Utah Lawyers as a class of Equal Protection afforded all other Utah citizens as to their property rights, here, in professional licenses.” She finally declares that “[w]ithout U.S. Constitutionally comports delegation of authority to the [Utah Supreme Court], the entire system is void for lack of Due Process and Equal Protection under the U.S. Constitution.”

¶79 The 1984 Amendment states that “[t]he Supreme Court by rule shall govern the practice of law, including admission to practice law and the conduct and discipline of persons admitted to practice law.” UTAH CONST. art. VIII, § 4. This provision effectively removes the power to oversee the practice of law and attorney discipline from the legislative and executive branches. *See, e.g., Injured Workers Ass’n of Utah v. State*, 2016 UT 21, ¶ 26, 374 P.3d 14 (“Although the constitution permits legislative oversight of the supreme court’s rules of procedure and evidence, there is no such limitation on the supreme court’s authority to govern the practice of law.”); *In re Discipline of Harding*, 2004 UT 100, ¶ 18, 104 P.3d 1220 (“[A]ttorney discipline proceedings, being the exclusive province of this court, are conducted under the rules and directions we give.”); *Barnard v. Sutliff*, 846 P.2d 1229, 1237 (Utah 1992) (“[O]nly this court has the rule-making power over the practice of law and the procedures of the Bar.”). Rose complains that this provision—in some way that she fails to articulate—violates principles of equal protection.

¶80 At the risk of sounding pedantic, a federal equal protection argument should at the very least reference the text of the Equal Protection Clause of the United States Constitution, as well as the case law interpreting that clause. *See supra* ¶ 65. Rose references neither. The Equal Protection Clause reads

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of

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life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. CONST. amend. XIV, § 1. “[S]tate laws must ‘treat similarly situated people alike unless a reasonable basis exists for treating them differently.’” *State v. Lafferty*, 2001 UT 19, ¶ 70, 20 P.3d 342 (citation omitted). “[W]e must determine what classifications are created by the statute, whether they are treated disparately, and whether the disparate treatment serves a reasonable government objective.” *State v. Merrill*, 2005 UT 34, ¶ 31, 114 P.3d 585. “The general rule is that legislation is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest.” *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985). And the United States Supreme Court

ha[s] treated as presumptively invidious those classifications that disadvantage a “suspect class,” or that impinge upon the exercise of a “fundamental right.” With respect to such classifications, it is appropriate to enforce the mandate of equal protection by requiring the State to demonstrate that its classification has been precisely tailored to serve a compelling governmental interest.

Plyler v. Doe, 457 U.S. 202, 216-17 (1982) (citations omitted). But “[w]here no suspect classification or violation of a fundamental right is involved, a difference in treatment ‘need be only rationally related to a valid public purpose’ to withstand equal protection scrutiny.” *State v. Holm*, 2006 UT 31, ¶ 99, 137 P.3d 726 (citation omitted).

¶81 Rose fails to explain her equal protection argument and simply asserts that “[t]here is no governmental interest in removing the three branch safeguards on lawyers’ interests, over say medical doctors, or dentists, or others dealing with the most personal aspects of Utah citizens.” It should go without saying that merely identifying classes is not enough to demonstrate an equal protection violation. Rose has failed to explain what level of scrutiny should apply, or why, assuming rational basis review, there is no rational basis for treating attorney licensing differently than that of other professions. Rose makes no effort to articulate her argument other than to assert that attorneys are treated differently than other professionals and declare an equal protection violation.

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¶82 In short, Rose does not develop an equal protection argument that we can respond to. Rose has, thus, failed to meet her burden of persuasion that her equal protection rights were violated by our constitutional provision delegating attorney discipline authority to our court.

V. Rose Has Not Shown that the Lawyer Discipline Rules Violated Her Due Process Rights

¶83 Rose further argues that Utah's "lawyer discipline rules" violate due process under the Fifth and Fourteenth Amendments of the United States Constitution.

¶84 We have recognized that attorneys are entitled to due process when faced with professional discipline. In *In re Discipline of Schwenke*, we stated that "suspension and disbarment proceedings call for adherence to minimum requirements of procedural due process, including notice of a hearing and notice that the attorney's license has been restricted or withdrawn." 849 P.2d 573, 576 (Utah 1993). In *Long v. Ethics and Discipline Committee*, we stated that an attorney is entitled to "receive adequate notice of the charges 'and an opportunity to be heard in a meaningful way.' But the level of due process required depends on the context of the proceeding. . . . '[D]ue process is flexible and calls for the procedural protections that the given situation demands.'" 2011 UT 32, ¶ 29, 256 P.3d 206 (citations omitted). And "[i]n the context of informal attorney discipline, we have stated that the procedures listed in the [Rules of Lawyer Discipline and Disability] are sufficient to afford due process." *Id.*¹⁴

¹⁴ In *In re Discipline of Harding*, we explained that due process is satisfied at the screening panel proceeding because the Rules of Lawyer Discipline and Disability provide that the attorney has "prior notice of the charges, notice of the hearing, a right to be present at the hearing, and to be represented by counsel at the hearing"; "the right to appear and present testimony, offer witnesses on [one's] own behalf, and present an oral argument with respect to the complaint"; the ability to receive the screening "panel's findings and conclusions"; and the opportunity to seek review from the Committee Chair. 2004 UT 100, ¶ 20, 104 P.3d 1220. Because the lawyer discipline rules provide an attorney with all of the above enumerated procedural mechanisms, we determined that "[t]hese (continued . . .)

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¶85 Rose, however, recites factors recognized by federal courts, claiming “[t]hese standards are followed by all United States Courts that have their own lawyer discipline panels”:

- 1) an adversarial system including pre-trial investigation of the charges;
- 2) linking facts with claims such that there is adequate advance notice to the lawyer to be able to understand the charges and respond;
- 3) a declaration of the type of discipline prosecutors seek prior to the lawyer being called upon to answer them;
- 4) a heightened “clear and convincing standard” of evidence to support the charges, and to support the discipline meted out; and
- 5) rules and impartial triers to enforce the rules.

But Rose fails to measure our system against any of these factors and explain why she believes Utah’s system lacks these protections, or why, to the extent Utah’s system does lack one or more of them, the omission violated her constitutional rights. In other words, it is not clear what due process Rose believes she was not afforded. Nor does Rose argue that, even if she believes more process would have been preferable, failure to provide that additional process rises to the level of a violation of her constitutional rights.

¶86 Rose does mention three rules: rules 14-501, -517, and -506 of the Utah Rules of Lawyer Discipline and Disability. But rule 14-501 is the only rule that makes even a brief cameo appearance in one of Rose’s arguments. The others don’t appear until her conclusion, wherein Rose summarily states that rules -501 and -517 “combined with Rule 14-506 allowing trial judges to be subject to the Prosecutor, deprives all Utah lawyers of impartial triers” of fact. But rule 14-506 *removes*—not subjects—currently sitting judges from the jurisdiction of OPC: “Incumbent and sitting judges are subject to the jurisdiction

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measures are adequate, given the nature of lawyer discipline proceedings, to ensure due process to a lawyer accused of misconduct.” *Id.* ¶ 21.

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of OPC *only for conduct that occurred prior to the taking of office.*" *Id.* R. 14-506(b) (emphases added). If indeed Rose meant to express that sitting judges are subject to OPC's jurisdiction for things they do as judges, then she was mistaken.

¶87 Ultimately, Rose's flaw is—as we mention above—her total failure to analyze any of the rules she mentions in light of the standards she insists apply. Instead, she states in conclusory fashion that "Utah's system is an inquisition" and "Utah's system is void for lack of . . . Due Process and Equal Protection." Rose needed to explain what additional process she believed she was entitled to and why failure to afford her that process violated her due process rights.¹⁵

VI. Rose Also Fails to Show that
OPC Engaged in Misconduct

¶88 Rose also argues that the judgment against her is void because OPC prosecutors violated her due process rights in two ways: first, the composition of the screening panel was unconstitutional; and second, the prosecutors should not have pressed her case because she believed she was acting in conformity with the rules of another jurisdiction under rule 8.5 of the Rules of Professional Conduct.

¶89 Rose first complains that the composition of her screening panel violated her due process rights. A due process argument should at some point reference the Due Process Clause, cite applicable due process jurisprudence, and perform some sort of due

¹⁵ Rose also contends that this court has failed in its "duty to stop any lower court processes lacking jurisdiction, and/or involving prosecutorial misconduct of Rules violations depriving lawyers of Due Process and equal protection [sic]." To the extent Rose is arguing that when issues are brought before us and are properly briefed, and a party meets her burden of establishing that a constitutional or jurisdictional violation exists, that we have a duty to correct the error, we agree. But the only example Rose gives is an unsupported allegation that this court and OPC favor attorneys at larger firms. She provides no analysis to support this bald assertion. It goes without saying that one cannot meet one's burden of proof by making unsubstantiated allegations.

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process analysis considering the facts of the present case. *See supra* ¶ 65. Rose skips these steps.

¶90 Rose does raise an issue with respect to the composition of screening panels: “So if the Prosecutors are acting outside any UT SCT, as here, by dividing the Screening Panels in half, by defining a ‘Screening panel’ the same as a ‘quorum,’ eliminating ‘*quorum of a screening panel*.’” This fragment fails to argue anything; it only suggests the topic of her complaint. The Supreme Court Rules on Lawyer Discipline and Disability provide that committee members “shall be divided into four screening panel sections of six members of the Bar and two public members.” UTAH R. BAR LWYR. DISC. AND DISAB. Rule 14-503(d). They further provide that “[t]wo members of the Bar plus one public member shall constitute a quorum of a screening panel. The concurrence of a majority of those members present and voting at any proceeding shall be required for a screening panel determination.” *Id.* We believe Rose meant to complain that because her panel was comprised of a quorum of three and not a full panel of eight, the composition of her panel violated her due process rights. But we cannot argue Rose’s case for her.

¶91 Perhaps more importantly, Rose does not explain how having a quorum instead of a full panel would have voided the judgment against her. In *Ciardi v. Office of Professional Conduct*, an attorney made a similar argument: that defects in the screening panel process deprived the district court of jurisdiction. 2016 UT 36, ¶ 12, 379 P.3d 1287. We refused then to address the merits of his contention because it was inadequately briefed, contained no citation to the record demonstrating preservation in the district court, and did not cite the record below. *Id.* Like the appellant in *Ciardi*, Rose has given us no authority or argument to support the contention that screening panel defects are jurisdictional. And as we did in *Ciardi*, we decline to do that work for Rose.

¶92 Rose also contends that the OPC prosecutor violated her due process rights “knowingly [and] willfully” when he “made the decision to prosecute the case and retry or displace federal and US-[Navajo Nation] Contracted triers.” Rose attempts to bolster this argument by quoting rule 8.5(b)(2) of our Rules of Professional Conduct:

A lawyer shall not be subject to discipline if the lawyer’s conduct conforms to the rules of a jurisdiction

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in which the lawyer reasonably believes the
predominant effect of the lawyer's conduct will occur.

Rose, however, does not explain how a decision to prosecute her conduct violated this rule or how a violation of this rule offended due process. She fails to explain which rules she believed she was acting in conformance with or to point to a place in the record where she engaged in actions that arguably violated our rules but conformed to those of the jurisdiction where she practiced. A proper argument is altogether unmade.

¶93 Rose has, therefore, not demonstrated how “Prosecutors became policy makers,” how this court “became complicit in this matter,” or how the above considerations violated her due process rights under the United States Constitution.

VII. Rose Has Failed to Show that Our Lawyer Discipline Process Is Void for Various Other Reasons

¶94 Rose finally argues that OPC disobeyed the district court's rule 7 order and failed to disclose the records showing “how or why the initial screening panel did what they did.”

¶95 Rule 7 of Utah's Rules of Civil Procedure—we assume, the “Rule 7” Rose intended to reference—is comprised of parts (a)–(q). Its title is “Rule 7. Pleadings allowed; Motions, Memoranda, Hearings, Orders.” It governs motion practice in civil cases in the State of Utah. Rose fails to guide us to a place in the record where the district court issued an order under “Rule 7” directing OPC to act one way or another. Claiming that opposing counsel violated a “Rule 7” order without explaining more does little to tell this court what the alleged problem is.

¶96 The closest thing we can find in the record concerning Rule 7 is the district court's memorandum decision and order granting OPC's motion to strike Rose's answer and entering default judgment against her, concurrently denying Rose's motion to strike OPC's motion to strike and dismiss the case as a sanction against OPC for violations of “Rule 7” and other rules.¹⁶ That order does not support

¹⁶ This highlights why counsel should adhere to our rule requiring references to the record. Had Rose complied with Utah Rule of Appellate Procedure 24, we could have at least known which
(continued . . .)

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Rose’s argument that OPC violated a court order concerning a “Rule 7.” Years later—as OPC clarifies—the district court, under Judge Hansen, explained to Rose that “the issuance of an order under Rule 7 of the Utah Rules of Civil Procedure merely formalizes a court’s ruling and allows the parties to seek appellate review of that ruling.” The court further invited Rose to submit “her own proposed order so that she [can] pursue appellate review.” We will not scour the record more than we have—and we have—in order to understand the nature of Rose’s complaint. We merely note that Rose has not pointed to any district court order directed at OPC that she then argues OPC did not comply with.

¶97 Likewise, Rose fails to explain which documents she believes OPC failed to supply, how this failure harmed her, or what evidence she anticipates the documents would provide. OPC replies that it “produced all documents and materials which are required by the [Rules of Lawyer Discipline and Disability].” OPC further claims that Rose was “provided all materials that were before the screening panel in the two underlying cases. If she believed something [more] was relevant to the district court case she could have produced/required that in discovery, but she elected not to participate in discovery.” Rose does not contest this.

¶98 Without more than these unsupported assertions and conclusory claims—not to mention the various aspersions cast on this court and Utah’s legal system—Rose has not met her burden of persuasion showing that—as she claims—“dismissal of the case entirely is all that is left.”

VIII. Rose’s December 2010 Petition for Extraordinary
Relief Was Both Frivolous and Interposed for Delay

¶99 Between 2008–2010, Rose filed a number of Petitions for Extraordinary Relief in this court, attempting to stop the district court proceedings. In 2011, Justice Jill N. Parrish issued the following Order:

This matter is before the Court on Petition for
Extraordinary Relief. Petitioner [Rose] has filed three

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order—of all the orders in the 28,000+ page record—she claims lies at the heart of this argument.

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prior petitions pursuant to rule 19 of the Rules of Appellate Procedure and one prior petition pursuant to rule 5 of the Rules of Appellate Procedure. In response to those requests for discretionary appellate review, this Court has declined to interrupt the pending disciplinary proceedings. This Court again denies the request for relief prior to entry of the final judgment below. Petitioner is entitled to file a direct appeal after the final judgment. Prior to the timely filing of a direct appeal of right, the Court will not entertain another request for discretionary appellate review. With respect to this petition, the sole issue remaining to be decided is the [OPC's] request for sanctions. Resolution of that issue will be deferred. If a timely direct appeal is filed after entry of judgment in the disciplinary proceedings, the issue of sanctions will be consolidated with the appeal for decision after plenary review.

Justice Parrish's order was consolidated into the present appeal on November 22, 2016.

¶100 OPC now renews its request for sanctions against Rose for filing frivolous petitions for extraordinary relief under rule 33 of the Utah Rules of Appellate Procedure. Rule 33(b) states that a brief is frivolous if it "is not grounded in fact, not warranted by existing law, or not based on a good faith argument to extend, modify, or reverse existing law." UTAH R. APP. P. 33(b). And a brief "interposed for the purpose of delay" is one filed for "any improper purpose," including to "gain time that will benefit only the party filing the appeal." *Id.*

¶101 OPC argues that Rose's December 2010 petition was "frivolous, as the Court had already denied her previous attempts to seek discretionary appellate review, and she should not have filed additional attempts to seek review until the entry of a final judgment from which she could seek an appeal." We agree that Rose's December 2010 filing was frivolous, and we also conclude it was filed for the "improper purpose" of gaining time that would "benefit only the party filing the appeal." UTAH R. APP. P. 33(b); *see Brigham City v. Mantua Town*, 754 P.2d 1230, 1237 (Utah Ct. App. 1988) ("We find the appeal to be both frivolous and interposed for delay and hold that Brigham City is entitled to recover an award of reasonable attorney fees and double costs on appeal."). We therefore remand to the district court for the limited purpose of determining the appropriate

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award of attorney fees to be granted to OPC in connection with the December 2010 petition.

¶102 Rose further complains that Justice Thomas R. Lee of the Utah Supreme Court “participated with the prosecutors in harming [her]” when he denied a stay of her disbarment pending review of her appeal. That is the sum total of her argument. We will note, in case others find themselves in the same position, that if Rose believed her stay was improperly denied, she would have been better served to articulate a reason why rather than to baselessly and personally attack a justice for signing an order on behalf of the court.

¶103 Given the volume of motions filed and the various requests for action embedded in other pleadings, we take this opportunity to deny all other motions and requests related to this case.¹⁷

CONCLUSION

¶104 Rose failed to competently contest the order of the district court disbarring her as a sanction for violating various rules of professional conduct. While we recognize that disbarment is the most serious sanction a court may impose on an attorney for professional conduct violations, we acknowledge that Rose did not challenge the substance of the district court’s sanction, opting instead to level constitutional challenges to the entire attorney discipline system. Rose’s arguments are inadequately briefed, and to

¹⁷ For example, we deny “Appellant’s #1 Rule 10(A) Verified Motion for Summary Disposition For Lack of This Court’s Subject Matter Jurisdiction – No Tolling Statutes of Limitation Rule 8.5 Violations and Rule 11 and 33 Motion for Sanctions.” Rose filed this motion after we held oral argument in this matter. Her motion largely rehashes the jurisdictional arguments discussed herein and augments them with an incomprehensible contention that the statute of limitations has run on the claims against her. Rose posits that the limitations period ended on May 1, 2008, for claims arising out of the Federal Case and on April 18, 2009, for the State Case. OPC filed the Complaint in December 2007. This denial also includes “Appellants #2 Rule 10(A) Verified Motion for Summary Disposition for Lack of this Court’s Subject Matter Jurisdiction – And Due Process – Article VIII Sec 4 1985 Revision Violates Utahs [sic] Enabling Act Prohibitions” filed four months after the case was argued.

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the extent we can decipher them, they are without merit. We affirm the district court's order.
