

# Utah State Bar Commission

**Friday, December 4, 2015**  
**Utah Law & Justice Center**  
**Salt Lake City, Utah**

## Agenda

### **1. 9:00 a.m. President's Report: Angelina Tsu**

- 10 Mins.* 1.1 Report on Fall Forum and UMBA Dinner
- 05 mins.* 1.2 Update on Financial Administrator Position
- 10 Mins.* 1.3 OPC Committee Report Follow Up: **(Tab 1)**

### **2. 9:25 a.m. Action Items**

- 20 mins.* 2.1 2018 Summer Convention Site Selection: Dickson Burton **(Tab 2)**
- 15 mins.* 2.2 Law Student Practice Rule: Carl Hernandez, Nancy Sylvester **(Tab 3)**
- 10 mins.* 2.3 Technology CLE Series: John Lund, Dickson Burton **(Tab 4)**
- 15 Mins.* 2.4 Approve Leadership Academy Funding: Liisa Hancock
- 10 Mins.* 2.5 Approve Scholarship Fund and Fundraising Gala: Heather Farnsworth

### **3. 10:35 a.m. Discussion Items**

- 10 Mins.* 3.1 LLLT Task Force Report: Tim Shea **(Tab 5)**
- 10 Mins.* 3.2 AAA Task Force Report: Rob Rice
- 10 Mins.* 3.3 Futures Commission Follow Up

### **4. 11:05 a.m. Executive Session and Break for Lunch**

- 10 Mins.* 4.1 Admissions Issues
- 50 Mins.* 4.2 Legislative Issues and Lobbyist Contract
- 15 Mins.* 4.3 Overhead Allocation/Efficiency
- 15 Mins.* 4.4 Utah Bar Foundation Funding for Access to Justice
- 10 Mins.* 4.5 Request for *Amicus* Brief on Ethics Issues

### **1:00 p.m. Adjourn**

### **Consent Agenda (Tab 6)**

(Approved without discussion by policy if no objection is raised)

1. Approve minutes of October 30<sup>th</sup>, 2015 Commission Meeting

### **Attachments (Tab 7)**

1. October Financial Statement
2. In the Matter of Susan Rose: Findings of Fact, Conclusions of Law and Disbarment
3. Blomquist Hale Quarterly Report
4. Judicial Council Agenda

**(OVER)**

## Calendar

<b>January 2</b>	President-elect Election Notices Due		
<b>January 15</b>	Executive Committee	12:00 Noon	Ray Quinney & Nebeker
<b>January 22</b>	Commission Meeting	9:00 a.m.	Law & Justice Center
<b>February 1</b>	Commission Election - Petitions, Statements, Photos Due		
<b>February 2</b>	Conference Call Re: Legislature	4:00 p.m.	
<b>February 4-10</b>	ABA Mid-Year Meeting/NABE/NCBP		San Diego, CA
<b>February 9</b>	Conference Call Re: Legislature	4:00 p.m.	
<b>February 16</b>	Conference Call Re: Legislature	4:00 p.m.	
<b>February 17</b>	Breakfast with Lawyer Legislators and Bar Day at the Legislature	7:30 a.m.	State Office Building Auditorium
<b>February 23</b>	Conference Call Re: Legislature	4:00 p.m.	
<b>February 23-24</b>	Bar Examination	8:00 a.m.	Law & Justice Center
<b>March 1</b>	Conference Call Re: Legislature	4:00 p.m.	
<b>March 4</b>	Executive Committee	12:00 Noon	Ray Quinney & Nebeker
<b>March 10</b>	SUBA Luncheon	12:00 Noon	St. George, Utah
<b>March 10</b>	Commission Meeting	1:00 p.m.	St. George, Utah
<b>March 10-12</b>	Spring Convention		St. George, Utah
<b>March 20</b>	Election Email Message Due		
<b>March 30-April 2</b>	Western States Bar Conference		Paradise Point, San Diego, CA
<b>April 1</b>	Election-Online Balloting Begins		
<b>April 8</b>	Executive Committee	12:00 Noon	Ray Quinney & Nebeker
<b>April 15</b>	Commission Meeting	9:00 a.m.	J. Reuben Clark Law School, Provo
<b>April 15</b>	Election-Online Balloting Ends		
<b>April 16</b>	Election-Ballots Counted		
<b>April 19-21</b>	ABA Day in Washington		Washington, D.C.
<b>May ?</b>	Northwestern States Bar Conference		TBD
<b>May 25(?)</b>	Admission Ceremony	12:00 Noon	United States District Court
<b>June ?</b>	Jackrabbit Bar Conference		TBD
<b>June 28</b>	Executive Committee	12:00 Noon	Ray Quinney & Nebeker
<b>July 6</b>	Commission Meeting	1:00 p.m.	Lowe's Coronado, San Diego, CA
<b>July 6-9</b>	Summer Convention		Lowe's Coronado, San Diego, CA

## **VISION OF THE UTAH STATE BAR**

A just legal system that is understood, valued, and accessible to all.

## **MISSION OF THE UTAH STATE BAR**

Lawyers serving the public and legal profession with excellence,  
civility, and integrity.

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## **UTAH STATE BAR STATEMENT ON DIVERSITY AND INCLUSION**

*The Bar values engaging all persons fully, including persons of different ages, disabilities, economic status, ethnicities, genders, geographic regions, national origins, sexual orientations, practice settings and areas, and races and religions. Inclusion is critical to the success of the Bar, the legal profession and the judicial system.*

*The Bar shall strive to:*

- 1. Increase members' awareness of implicit and explicit biases and their impact on people, the workplace, and the profession;*
- 2. Make Bar services and activities open, available, and accessible to all members;*
- 3. Support the efforts of all members in reaching their highest professional potential;*
- 4. Reach out to all members to welcome them to Bar activities, committees, and sections; and*
- 5. Promote a culture that values all members of the legal profession and the judicial system.*

## Utah State Bar Commission Policies and Procedures

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### (g) Diversity Requirements.

Providers of continuing education programs sponsored or co-sponsored by the Bar are asked to ensure that program presenters reasonably reflect the diversity of firms, geography and gender within the Bar membership. CLE program proposals may not inappropriately promote individual law firms. If the CLE Administrator is of the opinion that a program violates this prohibition, the matter shall be referred to the Executive Director for decision and any appropriate recommendation to the program provider.



## UTAH STATE BAR AWARDS

<u>AWARD</u>	<u>CHOSEN</u>	<u>PRESENTED</u>
1. Dorathy Merrill Brothers Award Advancement of Women in the Law	January/February	Spring Convention
2. Raymond S. Uno Award Advancement of Minorities in the Law	January/February	Spring Convention
3. Pro Bono Lawyer of the Year	April	Law Day
4. Distinguished Judge of the Year	June	Summer Convention
5. Distinguished Lawyer of the Year	June	Summer Convention
6. Distinguished Section of the Year	June	Summer Convention
7. Distinguished Committee of the Year	June	Summer Convention
8. Outstanding Pro Bono Service	September	Fall Forum
9. Distinguished Community Member	September	Fall Forum
10. Professionalism Award	September	Fall Forum
11. Outstanding Mentor	September	Fall Forum
12. Heart & Hands Award	October	Utah Philanthropy Day
13. Distinguished Service Award		As Needed
14. Special Service Award		As Needed
15. Lifetime Service Award		On Occasion

### Points From Charlotte Miller's Bar Commission Leadership Workshop (August 23, 2014)

1. Remember why you joined the Commission – what are your goals?
2. Remember your goals are probably the same and/or similar to your colleagues on the Commission, even if you think you come from a different perspective than everybody else.
3. Being on the Commission is a privilege not a chore. Develop a mindset of “I *get* to do X” instead of “I *have* to do X.”
4. Attend all Commissions meetings; study the materials beforehand. Focus 100% of your attention while there. Do not text, or do other work during Commission meetings. Be engaged. Listen carefully. Offer thoughtful comments that are in the best interest of the Bar. Follow through. Make a difference.
5. Your time on the Commission is short, especially ex-officio members. Make the most of it.
6. Remember your role: Bar staff can handle the day –to-day operations of the Bar. Your job is big picture and oversight.
7. Charlotte encouraged the Commissioners to think about what consensus means to each of them and how they should not try to undermine a decision after it is made.
8. If you do not like someone you have to work with, use strategies to get to know the person that will enable you to better work with the person or even begin to like her or him. Charlotte gave an example of making a point to speak every day with a co-worker she thought was difficult.
9. Encourage and mentor others along in Bar leadership. Remember your Bar story, which probably included an invitation from a Bar leader to help.
10. Talk often about the Bar's Vision and Mission statement, to focus your work in a way that is consistent with those statements.
11. Charlotte conducted exercises that encouraged Commissioners to think about the decision making process. Groups were given scenarios with different difficult decisions to make and asked to reach decisions while considering the following factors:
  - a. What facts do they need? Data is very important to good decision making
  - b. What should the process be?
  - c. What unwritten Bar traditions impact the final decision?
  - d. How does the culture of the Bar impact the decision?
  - e. What items in Bar governance materials are relevant to the process?

## **Two most important responsibilities of a Bar Commissioner**

Represent the interests of the attorneys we represent; voice for division

Bar activities and initiatives be consistent with the Bar's purpose and mission.

Help fulfill vision by devoting time and intellect

Contribute ideas and work

Serve lawyers of Utah

Help accomplish goals of the commission

Represent my division and my liaison groups

Make the Bar meaningful to lawyers

Speak honestly

Contribute with ideas and feedback

Fiduciary

Forward thinking visionary

Communicate with Bar members

Have programs that assist all attorneys and advance the profession

Protect core functions

Promote access to justice and diversity

Know concerns of membership

Speak for membership

Take action on members' needs

Be conservative with bar dues

Attend the meetings

Use sound judgment

Serve community

Represent the unrepresented

Access to Justice

Work together to assist sections of the Bar

Support Rule of Law and integrity of legal system

Listen and participate

**TAB**  
**1**

**REPORT OF THE BAR COMMISSION COMMITTEE**  
**REVIEWING THE OFFICE OF PROFESSIONAL CONDUCT**

**September 22, 2015**

The Bar Commission appointed a Committee having the following members to address and review the Bar's Office of Professional Conduct ("OPC"): Lawrence E. Stevens, Steven R. Burt (public member), Herm Olsen, Susanne Gustin, Timothy M. Shea, Thomas W. Seiler, and Bruce A. Maak.

**INTRODUCTION**

The Bar Commission previously created a Committee like ours, which addressed OPC and submitted a report to the Bar Commission dated October 8, 2009.

Our Committee (sometimes the "OPC Committee") did its work between January, 2015 and the date of this Report. The Committee viewed its function as conducting a relatively complete investigation of the OPC's interactions with others in the disciplinary process, its internal functioning, its performance, and its supervision. The OPC is a primary, if not the primary, participant in the administration of attorney discipline in Utah. The Supreme Court prescribes the disciplinary process and is the ultimate decisionmaker in disciplinary matters. The Court has promulgated Rules of Professional Conduct (Ch. 13, Supreme Court Rules of Professional Practice, which prescribe the rules which if broken by attorneys can give rise to discipline), the Rules of Lawyer Discipline and Disability (Ch. 14, Article 5 of Supreme Court Rules of Professional Practice, which prescribe the procedural rules governing the disciplinary process), and the Standards for Imposing Lawyer Sanctions (Rule 14, Article 6 of Supreme Court Rules of Professional Practice, which prescribes the sanctions appropriate for violations of the Rules of Professional Conduct). To place in context OPC's role and performance as a part of the process, a general summary of the disciplinary process follows.

The disciplinary process is initiated by OPC's receipt of an informal complaint from a party or a request for assistance referred by the Consumer Affairs Program. OPC itself can initiate a complaint. OPC conducts an investigation of the complaint to make a preliminary determination of its merit. OPC can dismiss the complaint or proceed further by initiating a Notice of Informal Complaint (NOIC) to the respondent attorney. After the NOIC, a further investigation occurs through which the complainant and respondent supply information to OPC, among other things. At the conclusion of that investigation, OPC conducts an internal meeting to determine whether to dismiss the complaint or present the case to a disciplinary screening panel for decision.

Screening panels are drawn from the membership of the Utah Supreme Court's Ethics and Discipline Committee ("Discipline Committee"), which consists of 35 lay and lawyer members appointed by the Court. The screening panels sit in panels consisting of members of that Discipline Committee. The Discipline Committee has a chair and two vice-chairs who supervise the Discipline Committee and the screening panels.

If OPC determines to present a case at a screening panel hearing, OPC performs two

functions: (i) the secretarial and administrative functions of setting up hearings, coordinating with screening panels, and collecting information and submitting it in usable form with some analysis to the screening panel, complainant, and respondent and (ii) the function of prosecutor. The screening panel can dismiss the complaint, dismiss it with a cautionary note, or impose sanctions of private admonition or public reprimand. OPC prepares the formal writings embodying the screening panel's decision and informs the parties of the outcome. The screening panel in the case of more serious violations can refer the matter to District Court for adjudication. In the latter case, OPC initiates the case and acts as prosecutor in the action. Both OPC and the respondent attorney can appeal to the Chair of the Discipline Committee any determination of the screening panel other than a reference to District Court. An appeal lies from the Chair's decision to the Utah Supreme Court. Likewise, at the conclusion of a formal proceeding before the District Court, an appeal lies to the Utah Supreme Court.

Less serious complaints are sometimes resolved through consensual "diversions" through which the respondent attorney takes action to resolve the disciplinary issue in conjunction with the Diversion Committee. Diversions can be initiated by the respondent attorney, OPC, or a screening panel.

As the foregoing thumbnail sketch of the process makes clear, OPC is a central player in the process, involved at virtually every stage, and is the single party with whom all participants in the process deal. Its role is central and critical to the disciplinary process.

In performing its work, the OPC Committee generally addressed (i) OPC's internal operations, (ii) OPC's interactions with the various other participants in the disciplinary process (Consumer Affairs Program Director, the Diversion Committee, respondents' counsel, and the Discipline Committee), (iii) OPC's performance, (iv) OPC's relationship with the Bar and public, and (v) OPC's supervision. In the sections that follow, the OPC Committee will outline the results of its investigation, the observations of parties who interact with OPC, and various criticisms, suggestions, and compliments. Following those separate subjects, the OPC Committee will offer its view of OPC's performance and the OPC Committee's more important suggestions as to how the disciplinary process, and OPC's role in it, might be improved.

## **I. OPC'S INTERNAL OPERATIONS AND OBSERVATIONS OF OPC STAFF ATTORNEYS.**

### **A. OPC's Staff and Internal Operations.**

The OPC Committee interviewed OPC's Senior Counsel, Billy Walker, on two occasions, and the results of those interviews are interspersed in the various sections of this report as the positions and policies of OPC. The OPC Committee also interviewed all of the staff attorneys employed by OPC -- Todd Wahlquist, Sharadee Fleming, Barbara Townsend, Diane Akiyama, and Adam Bevis. The responsibilities of those attorneys are generally as follows:

Barbara Townsend: Handling reciprocal cases, screening panel hearings, trusteeships, and District Court cases

Diane Akiyama: Intake, NSF matters, reinstatements and readmissions, and screening panel hearings

Adam Bevis: Intake, screening panel hearings, and appeals

Sharadee Fleming: Intake, NSF matters, reinstatements and readmissions, and matters referred by Consumer Assistance Program

Todd Wahlquist: District Court cases, interim suspensions, and appeals

Billy Walker: Interim suspensions, District Court cases, and appeals

The comments of these individual attorneys in the parts that follow were generally uniform. Where not uniform, we have so indicated.

**Office Supervision/Management.** OPC staff attorneys uniformly indicated that they were appropriately managed and supervised. They expressed no criticisms or suggestions as to how management and their supervision could be improved.

**Compensation.** All staff attorneys indicated a general satisfaction with their level of compensation.

**Staffing Issues.** The approximate case load of the OPC staff attorneys is approximately 100-200, which varies depending on the attorney's subject matter responsibility. The staff attorneys expressed no serious concerns about the level of attorney staffing. One attorney indicated that the addition of another staff attorney might be beneficial. Most staff attorneys indicated that the addition of an accountant/investigator to the staff would be beneficial. Another staff attorney indicated that no additional staff, legal or non-legal, was necessary.

**Timeliness of Complaint Processing.** When asked about how long it should ideally take to process a disciplinary complaint, all staff attorneys indicated that each case is unique but all were willing to give us rough estimates of what might be achievable. In the absence of a stay (which might exist if parallel civil or criminal proceedings were moving ahead), the staff attorneys indicated an "average" case could be processed from a complaint being opened at OPC until a screening panel hearing in six to twelve months. The staff attorneys indicated that the time lapse from filing of a formal complaint in District Court until resolution is largely outside of OPC's control, which appears to be an accurate statement. The timeliness of OPC's case processing is addressed in greater detail below in Section III.A.

**What Could be Done to Improve the System?** In response to this general inquiry, OPC staff attorneys had surprisingly few suggestions. As noted, one felt that the addition of another staff attorney would be beneficial, and most felt that the addition of an accountant/investigator would be beneficial. All expressed hope that the new data tracking program currently being implemented by OPC will facilitate better case control, ability to accurately report on case management, statistics, and to access important information. Staff attorneys indicated that easier

access to attorneys' bank accounts without the necessity of a subpoena would be helpful in speeding the process of disciplinary complaints involving bank accounts.

**B. OPC's New Data System/Tracking Disciplinary Cases.**

1. **JustWare:** The Office of Professional Conduct, as well as the rest of the Utah State Bar Staff, received JustWare as a new computer system starting in November 2014. When the Committee spoke with Todd Wahlquist in December 2014, it was his hope that by July of 2015, OPC staff would be completely up to speed with JustWare. JustWare should allow for OPC to track its cases better. Historically, OPC did not have a computerized tracking system. Rather, the OPC staff manually tracked cases. There were apparently times when cases were not moved through the system in an expeditious manner. Historically, OPC has not tracked cases based on:

- a) The Firm the investigated attorney practices with;
- b) The area of law the investigated attorney practiced in;
- c) The clients or types of clients that the investigated attorney represented.

The tracking was done by attorney, only. It is hoped that the adoption of JustWare will allow for additional categories of tracking to be included. It is not known if that has happened.

2. **JustWare Overview:** JustWare is an integrated case, calendar, report, and document management system that is used to automate and track the operations of the Office of Professional Conduct. The software is created and maintained by Journal Technologies subsidiary New Dawn, located in Logan, Utah. Justware was selected due to its ability to replicate existing OPC processes, its ability to be quickly modified to meet new requirements, its custom automated workflow and assignment tools, and its wide adoption by other attorney disciplinary agencies such as the Colorado Attorney Regulation Counsel.

3. **JustWare Environment:** The tool is server based with both software and staff access being provided by a local virtual server. The system and access to it is restricted to OPC staff, the IT administrator, and to New Dawn tech support as needed. The system pulls current attorney business address information from the Bars member database system to ensure that the case file contact information is in synch with both the Bar and the Courts. This data pull is a one way communication. The system is also integrated with a Microsoft Exchange server to provide task, calendar, and logged email communications which can be pushed out to mobile devices without requiring direct access to the application.

User accounts are password protected and are changed every 45 days. Password complexity rules are enforced requiring a minimum of 8 characters and a combination of letters, letter case, numbers and symbols.

The system goes through two backups per day with an encrypted master backup being stored remotely.



4. **JustWare Use:** The system operates off of a combined set of business rules and predefined workflows. As cases are created, resources and party information are assigned to the case which can create staff tasking, trigger staff reminders, or produce reports. Each user is presented with a screen that provides all case information that is related to them. Should a staff person or attorney need to go beyond that, cases and case information is located through the use of an integrated master search engine.

Documents are attached to case files by either uploading or by an integrated document scanner at a staff person's desk. Each modification to a case is logged as is communications sent from the system.

As staff and attorneys work through a case, they provide information through a drop down menu system to ensure that entries are consistent across all cases. This allows for more reliable statistical information and reporting.

5. **JustWare Training:** OPC staff receives regular reviews of JustWare operation from senior OPC staff. JustWare also provides annual training in Logan that will begin this year for OPC.

6. **Status.** JustWare has not been utilized by OPC long enough to enable our Committee to evaluate its efficiency or effects. This should be addressed in the future after OPC has more experience with the system.

## II. **OPC'S INTERACTIONS WITH OTHER PARTICIPANTS IN THE DISCIPLINARY PROCESS.**

### A. **Consumer Affairs Program.**

**Director's Observations.** Jeanine Timothy is the Director of the Bar's Consumer Assistance Program ("CAP"). She does not have any suggestions or complaints about the OPC. She does not know everything about how the office is structured and how cases flow through the different staff who handle the cases. However, she feels that the staff and attorneys in OPC are helpful when she asks for help. If she has general questions about an ethical issue, the attorneys make themselves available to her and she is able to discuss any questions she has with them. When she has a question about a particular case with either a CAP file or with a Disciplinary Process Information Office (DPIO) file, the OPC staff are very helpful to respond. Ms. Timothy provided the two following examples:

Example 1: Within the past two months, Ms. Timothy received a "Request for Assistance" from a consumer who was complaining about a district attorney. After the attorney heard a Request for Assistance had been received from this particular consumer, the attorney called and spoke with Sharadee Fleming, an attorney with the OPC. The attorney claimed the consumer had made threats against the attorney and that he was dangerous. Ms. Timothy called the attorney to follow up with additional questions. Ultimately, Ms. Timothy met with the consumer and addressed his concerns about the attorney. The consumer was grateful to be able to

express himself and felt that it was helpful just to “be heard.” It was very helpful to Ms. Timothy to be able to discuss the consumer's concerns with Ms. Fleming.

Example 2: Recently, Billy Walker and Todd Wahlquist went to Ms. Timothy's office to discuss a possible change in the “Request for Assistance” intake process. The discussion was thorough and comfortable. Ms. Timothy appreciated their professional and open manner the three of them we were able to fully discuss all aspects of the issue and craft a satisfying solution.

### **How CAP gets Involved.**

a. The “Requests for Assistance” and letters received from consumers are initially screened by the OPC. All matters which pertain to an attorney who is a repeat ethics offender are maintained by the OPC, as are those claims that appear to be ethical violations by the attorney. The remainder of the “Requests for Assistance” letters are forwarded to CAP.

b. Referrals to CAP come from many different offices and individuals. They include the following: Judges, District and Juvenile Court clerks, law librarians, County Recorder staff, attorneys, consumers who have had prior interaction with CAP, and Utah State Bar website information.

c. How CAP cases come to Ms. Timothy are contained in her monthly and fiscal reports. The information for the fiscal year from July 1, 2014, until almost June 30, 2015, is as follows:

CAP files opened with Request for Assistance Form received from consumer .....	25%
CAP files opened with other written correspondence from consumer .....	14%
CAP files opened with phone call from consumer .....	58%
CAP files opened with email from consumer .....	2%

d. The number of CAP files opened during the past few years:

2012 – 707 files  
2013 – 682 files  
2014 – 815 files  
2015 to date – 418 files

**Appropriateness of CAP Cases.** Ms. Timothy believes that the cases she handles are appropriate for CAP.

### Ways CAP Assists Consumers.

a. Often, Ms. Timothy contacts the attorney involved in the matter to explain the client's concerns. She asks the attorney to contact his or her client to resolve those concerns.

b. Referral of consumer to Utah State Bar programs such as Fee Dispute Resolution, Tuesday Night Bar, Modest Means, Lawyers Helping Lawyers, and Find a Utah Attorney located on the website.

c. Referral to public programs which include the Third District Court Family Law Clinic, the court's online document prep program, and free legal help offered at the senior centers throughout the state.

CAP does not overlap with diversion.

### **B. OPC's Interactions with the Diversion Committee.**

Rule 14-533 of the Rules Governing the Utah State Bar creates a mechanism through which an attorney charged with less serious misconduct may resolve a claim of misconduct through remedial activity rather than the usual disciplinary process. The reference for diversion may be initiated by a respondent attorney, OPC, or a screening panel. The decision whether to permit diversion lies with the Chair of the Diversion Committee after consultation with OPC.

1. **The Diversion Committee.** Perri Babalis is the Chair of the Diversion Committee, which consists of five people, four of whom are attorneys and one of whom is a public member with professional training in the area of substance abuse and/or stress management. Currently, this public member is a licensed social worker.

2. **Referrals to the Diversion Committee.** The OPC Committee interviewed Perri Babalis, who as noted is the Chair of the Diversion Committee. She indicates that during the past two years, the Diversion Committee has received 4-5 diversion references from OPC, one from a respondent attorney, and none from screening panels. Two of these references were not accepted by the Diversion Committee as being too serious for diversion. She recalls no references during the past two years from a screening panel.

Ms. Babalis indicates that the OPC submits diversions to the Diversion Committee by sending the entire disciplinary file to the Chair of the Diversion Committee. This submission does not include any analysis beyond the contents of the file. OPC is now sending the file digitally, which Ms. Babalis believes is a better approach.

According to Ms. Babalis, staff OPC attorneys seem to have authority to send cases to diversion on their own accord; Ms. Babalis does not need to wait for approval from a senior person, such as Billy Walker, to proceed with a diversion. She also indicates that in her dealings with them, OPC attorneys are very helpful, responsive to questions, and easy to contact.

### **3. Suggestions Concerning the Diversion Program.**

Ms. Babalis suggests that OPC could better organize the disciplinary files before sending them to the Diversion Committee. She also suggests that, if appropriate, more cases should be referred for diversion.

#### **C. OPC's Interactions with Respondent Counsel.**

The OPC Committee interviewed several attorneys who frequently represent respondents in disciplinary proceedings involving OPC. After those interviews, the OPC Committee interviewed Billy Walker, Senior Counsel of OPC, and asked that he address the areas of concern expressed by those counsel. What follows is an outline of the observations of those respondents' counsel and the responses thereto of OPC through Billy Walker:

1. **OPC Staff Attorneys.** Respondents' counsel generally observed that OPC staff attorneys are courteous and professional in their dealings, subject to the comments below. Some observed that most OPC attorneys lack "real life" experience as practicing attorneys and would be benefitted by the perspective acquired through such experience.

2. **Communication Issues.** Some respondents' counsel indicated it was difficult to reach OPC attorneys, who won't give out their email address or direct phone number. Billy Walker responded that the direct telephone lines of all OPC staff attorneys are on the Bar website and in the Legal Eagle. The OPC Committee has confirmed the accuracy of this statement. Mr. Walker indicated that OPC often gives out only the OPC "staff" email address because it is OPC's preference that incoming emails be addressed to such staff whose job it is to track and ensure timely responses to those emails. OPC has no prohibition of disclosing individual staff attorney email addresses and such disclosure often occurs, although for the reasons just stated, the preferred email address is the OPC general staff email address.

3. **OPC Staff Attorneys' Authority.** Some respondents' counsel indicated that OPC staff attorneys cannot answer questions or make agreements and have no authority to do hardly anything without obtaining Billy Walker's approval. Billy Walker indicated that except with respect to the settlement of a case, staff attorneys have authority to communicate OPC's position and make decisions without prior approval from or communication with Mr. Walker. He states that OPC has a weekly staff meeting and that each staff attorney is generally aware of what is going on with cases being handled by all of the attorneys. He states that the policy of OPC is that only settlement decisions require consultation with OPC staff and Mr. Walker before a response is given.

4. **Stipulations.** Some respondents' counsel indicated that OPC generally won't stipulate to anything, including facts, admissibility of documents, etc. They state that this is completely foreign to the criminal and civil judicial system and is inappropriate. Billy Walker's response was that stipulations are rarely requested and that his office has no policy against stipulations. He states that OPC generally does not stipulate to facts at the screening panel level because screening panels have independent investigative authority and OPC should

not invade the screening panel's responsibility. In formal proceedings at the District Court level, Mr. Walker indicates that his office stipulates when appropriate to facts, procedures, etc.

5. **Negotiation of Settlements.** Some respondents' counsel indicated that OPC is unwilling to negotiate deals or compromises in disciplinary proceedings when they reasonably should. Billy Walker indicated that the last OPC audit addressed this issue. He stated that in the last two years, OPC prior to screening panel hearings by settlement stipulation resolved about one-third of the disciplinary proceedings. He states that OPC has no policy against negotiating settlement arrangements other than that OPC should be fully and adequately informed about the case before entering into a settlement. He states that at the District Court level, OPC's policy is not to stipulate to any deal without respondent having filed an Answer. He estimates that about one-third of the formal cases pending filed in the District Court are settled by stipulation. He reiterated that OPC's policy is that there are no settlements or deals without the authority of Billy Walker and the remaining staff as a group citing as a reason the importance of uniformity in OPC decision-making in this regard. A review of OPC's last Annual Report dated August 2014 indicates that of the 47 cases closed with orders of discipline, 16 were resolved by stipulation.

6. **OPC's Role at Screening Panels.** Some respondents' counsel indicated that OPC typically does not give sufficient analysis of the case at the screening panel level. Mr. Walker responded that the screening panel Memoranda submitted by his office to the respondent and screening panels set forth then-known facts, documents, a brief analysis, and OPC's recommendation. He states that OPC does not advocate for any particular findings or sanction because the screening panel has an ongoing fact-finding role that OPC does not wish to invade and that the investigation performed by OPC generally does not result in sworn testimony, whereas testimony before the screening panel is sworn. He states that the approach taken by OPC at the screening panel level is a product of (i) its dual role of acting as secretary to the Ethics Committee and acting as prosecutor and (ii) the scheme established by the Rules of Lawyer Discipline and Disability, which gives the screening panels continuing investigative authority and contemplates less than a completely adversarial hearing.

7. **Continuances.** Some respondents' counsel indicated that, while continuances as a professional courtesy are routine in a civil and criminal context, OPC is unreasonable in not granting continuances of screening panel hearings and other proceedings. Mr. Walker indicates that the policy of OPC is to grant continuances if reasonable to do so. He states that in the absence of very good reason, OPC does not favor continuances that are close in time to the screening panel hearing, particularly if materials have been distributed to screening panel members and it is too late to schedule other matters to be heard by that screening panel. He states that if a request for continuance is received promptly after the notice of hearing (which is sent out about 30 days before the hearing), it will generally be allowed. He states that the convenience of screening panels and the efficiency of the scheduling process should be considered in the decision-making process. He also states that the Chair of the Ethics Committee or her designee can overrule OPC's declining to grant a continuance.

8. **Service on Respondents' Counsel.** Some respondents' counsel indicated

that OPC refuses to serve papers pertaining to the disciplinary process on respondents' counsel, rather than directly on respondents. Mr. Walker indicates that this is not the policy of his office, and he does not believe it to be true.

9. **Untimely Delivery of Facts/Documents.** Some respondents' counsel indicated that it is disturbingly common for OPC to bring to the attention of a screening panel and respondent materials bearing upon a disciplinary proceeding at the last minute, which results in surprise and an inability fairly to address the information. Mr. Walker indicates that his office never holds back information to surprise respondents but that sometimes complainants bring facts and documents to OPC's attention late in the game, which results in a tardy disclosure to respondents. He noted that under the disciplinary rules, the screening panels have a continuing obligation and duty to investigate and raise issues which sometimes results in issues and facts coming to light later than would be ideal. He notes that *Johnson v. Office of Professional Conduct*, 2014 UT 57, recently decided by the Supreme Court, may ameliorate this problem by deciding that unless disciplinary rule violations are charged prior to the disciplinary hearing, the screening panel cannot properly find violations of those rules.

10. **Scope of Screening Panel Decision-Making.** Some of respondents' counsel indicated their view that any disciplinary sanction more severe than a private admonition should be decided by a District Court, not a screening panel. This is not a criticism of OPC, since OPC is administering the rules as they are presently written. We include this observation here because it is food for thought.

11. **OPC Committee's Observations.** We have attempted fairly to present the positions of respondents' counsel and OPC above. Some of the complaints of respondents' counsel can be resolved by the rules themselves, which contemplate an informal, less than totally adversarial hearing, and which grant the screening panels unusual investigative responsibilities in this context and place on OPC divergent responsibilities of acting as secretary to the Ethics Committee and prosecutor. Other differences of opinion may be attributable to the different roles of respondents' counsel, who defend respondents, and OPC, which prosecutes respondents. Those roles inherently entail different perspectives. Not all of the divergent views are resolvable, however, on these grounds. In some cases the differences in views are not resolvable -- one or the other side is wrong.

12. **Policy Manual.** The OPC Committee learned that OPC has a Policy Manual and requested a copy of the most current version. A copy is included as Ex. A.

**D. OPC's Interactions with the Discipline Committee.**

The OPC Committee interviewed the Chair of the Discipline Committee, along with two screening panel members -- one a panel Chair and the other not a panel Chair. The Discipline Committee members, in response to the OPC Committee's questions, addressed the following general subject matters:

**Secretarial Functions.** OPC serves a dual role as secretary to the Discipline Committee

and its own separate prosecutorial function. Here, we address its role as secretary. The Discipline Committee members expressed general satisfaction with OPC's performance of its secretarial function. OPC personnel were easy to contact, timely in their responses, and professional in their dealings. The Discipline Committee had no suggestions for improvement in this general area.

**Investigations.** OPC performs an investigative function in advance of screening panel hearings. The Discipline Committee expressed that OPC generally does a good job of its investigations but that in some cases the investigations could be more detailed and in greater depth. The Discipline Committee expressed that this was probably a function of inadequate staffing to facilitate the level of uniform detailed, deep investigation that would be ideal. The Discipline Committee members indicated that the OPC would be benefitted by the employment of an investigator if funds were available for that purpose.

**Screening Panel Hearings.** In advance of the screening panel hearings, OPC prepares a screening panel Memorandum which is circulated to the respondent and panel members in advance of the hearing. This function entails both secretarial and prosecutorial functions -- the Memorandum sets forth the pertinent documents, facts, and potential ethical Rule violations and also makes recommendations as to suggested or possible outcomes of the screening panel hearing depending upon the screening panel's findings. The screening panel Memorandum is essentially the only written material supplied to the screening panel to assist it in its decision making function. The Discipline Committee members indicated that the OPC generally does a good job of laying out the facts and facilitating access to the documents and facts in the screening panel Memorandum. One criticism advanced by a Discipline Committee member as a "nitpicking suggestion" was that OPC should attempt to beef up its analysis section of the screening panel Memorandum to include more legal analysis and, when appropriate, applicable caselaw. The Discipline Committee members expressed that OPC should attempt to circulate the screening panel Memorandum at least one week and preferably two weeks in advance of the screening panel hearing. In a followup interview, Billy Walker indicated that OPC's policy is to get the screening panel Memoranda to the screening panel two weeks before and not later than one week before the screening panel hearing. The screening panel Memorandum is now circulated electronically unless parties request delivery of a hard copy. The policy now is to supply all written materials except the screening panel Memorandum to the panel with a calendar notice 30 days in advance of the hearing and the screening panel Memorandum between one and two weeks before the screening panel hearing.

Some but not all of the Discipline Committee members expressed the view that OPC should ask more questions and be more "active" at the screening panel hearing. They reason that because OPC is very familiar with the case and acts as prosecutor, a higher level of participation is indicated. In a followup interview, Billy Walker expressed OPC's position in this regard. He stated that the screening panel has an independent investigative role along with a duty to investigate and find facts and that the applicable Rules of Lawyer Discipline and Disability are intended to create an administrative hearing that is not too adversarial (for example, respondents have no right of cross examination). For these reasons, OPC has chosen to strike the balance as it has. Mr. Walker indicates that the screening panel Memorandum advances OPC's analysis and

recommendation but does not ask for a specific outcome. The Rules of Lawyer Discipline and Disability do not contemplate a criminal trial-like hearing before the screening panel, and those Rules do not prescribe any specific role for OPC that is at odds either with what OPC now does or a role that is more strongly prosecutorial.

**Timeliness of Disciplinary Resolutions.** The Discipline Committee members indicated that during the startup of OPC's new database system (addressed above in Section I.B), OPC slowed down in moving cases through the system and that there were delays in processing complaints. The time consumed in OPC's processing disciplinary complaints is addressed in greater detail in Section III.A.

**Staffing Issues.** The Discipline Committee members expressed concern at the turnover of 3± staff members in the recent past at OPC, all but one of whom were non-attorneys. Our Committee did not interview non-attorney staff members. The attorney staff members that were interviewed expressed uniform satisfaction with their employment arrangement. See Section I.A above.

**Security.** During our interviews, one person mentioned an incident in which the personal safety of participants at a screening panel hearing was a concern. Although we cannot speak for the judiciary, the courts are likely to be willing to accommodate a screening panel hearing in a courtroom at the Matheson Courthouse. The courthouse is only a few blocks from the Law and Justice Center, the normal place for hearings, and the perimeter security is designed to prevent someone from bringing a weapon inside. The presence of several bailiffs means the response time to a duress alarm is only seconds. Mr. Walker advises us that this option has been used in the past. Of course a hearing cannot be scheduled at the Matheson Courthouse unless there is advance notice of a security concern. We encourage Mr. Walker to continue to work with court administrators to schedule hearings at the courthouse when needed to prevent violence or threats of violence.

### **III. OPC'S PERFORMANCE.**

OPC typically processes somewhere between 1,000-2,000 cases per year, some of which are dismissed, some of which are presented to screening panels, some of which result in diversions, some of which result in stipulated discipline, some of which result in the prosecution of formal cases before District Courts, and some of which involve appeals to the Utah Supreme Court. Given the volume of cases and the uniqueness of each, it is practically impossible to critique in any meaningful sense OPC's job performance in the area of determining whether OPC gets it right in each case and whether OPC appropriately deals with each case on its merits. The Committee chose to examine three areas of OPC's performance, which are addressed below.

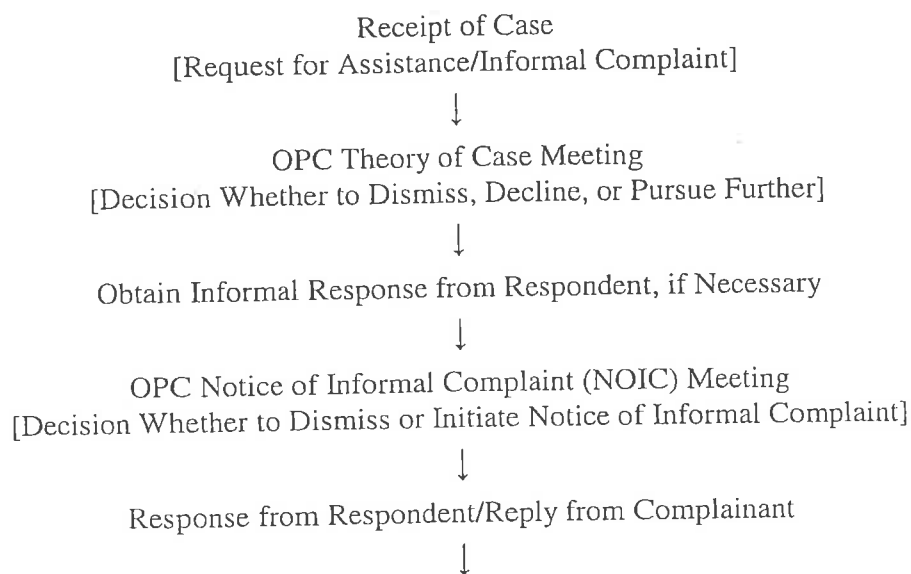
#### **A. Timeliness of OPC's Processing of Cases.**

One issue addressed by the OPC Committee was the amount of time taken to resolve disciplinary complaints. This, of course, is an important factor both from the standpoint of the public, the respondent, and the Bar. Addressing it is complicated by these factors: First, OPC



processes on average over a thousand complaints per year, only a small fraction of which result in screening panel hearings or discipline. Second, the disciplinary process is one that has multiple phases, and addressing averages in this context becomes difficult. Third, each case is unique, and it is difficult to generalize about how long it takes to process the "typical" case. Finally, because of the volume of cases addressed by OPC, accumulating meaningful information is time consuming. The latter problem will hopefully be ameliorated by OPC's acquisition and utilization of a new data management system, which should in the future facilitate more accurate case tracking and the ability easily to generate information about the time taken to process cases through various phases of the disciplinary process. Nevertheless, we have to start somewhere. The OPC Committee asked OPC to supply information about the time consumed, on average, in processing disciplinary complaints through various phases of the process. That information follows after an explanation of the process.

The disciplinary process is initiated through either a request for assistance through the Consumer Affairs Program ("CAP") or an Informal Complaint received from some party. On OPC's receipt of either, it conducts an investigation to determine what rules may have been violated, to locate relevant documents and testimony, and to generally ascertain the facts. When that process is complete, OPC either determines to dismiss or decline to prosecute or to pursue the matter further. In the latter case, OPC may secure additional information and/or obtain an informal response from the respondent. When that additional investigatory process is complete, OPC conducts a "Notice of Informal Complaint" meeting ("NOIC Meeting") at which it is decided whether to dismiss or to initiate a Notice of Informal Complaint to the respondent. The latter results in further interactions between OPC and the respondent to secure information and, in some cases, a screening panel hearing at which the screening panel may dismiss, impose various sanctions, or refer the matter to District Court for prosecution. A generalized and simplified time line would be as follows:



Screening Panel Meeting  
[Decision to Dismiss or Set for Screening Panel Hearing]



Screening Panel Hearing

OPC has promulgated “target average time frames” for processing claims within the procedures described above. Those are as follows:

From Receipt of Case to Theory of Case Meeting -- 5 months  
From Theory of Case Meeting to NOIC Meeting -- 4 months  
From NOIC Meeting to Screening Panel Meeting -- 3 months

The “Screening Panel Meeting” is a meeting of OPC attorneys -- it is not the hearing before the screening panel. As noted below, the duration of time between a Screening Panel Meeting and the screening panel hearing is variable based upon factors somewhat outside the control of OPC.

As will be seen, the average time from the Screening Panel Meeting to the screening panel hearing is in the range of two to six months. Thus, using OPC’s target times from Receipt of Case to the Screening Panel Meeting (totaling a year) and the average time from the Screening Panel Meeting to decision gives us a rough estimated time from receipt of the case to actual screening panel decision of between a year and a quarter and a year and a half.

Before addressing how long it actually took to perform these functions, one might question whether OPC’s target times for its functions are excessive. Given that OPC, not the OPC Committee, has had experience with these matters and has estimated these as reasonable targets, coupled with the fact that the periods are not on their face patently excessive, we do not further question these target times.

As to actual times, here is the data that OPC supplied to us:

**For the Period September  
2012 to June 2013:**

Average time from receipt of case to Screening  
Panel Meeting (decision to proceed to screening  
panel hearing) . . . . . 227 days

Average time from Screening Panel Meeting  
(decision to proceed to screening panel) to  
screening panel hearing . . . . . 54 days

Total Average time from receipt of case to  
screening panel hearing . . . . . 281 days

**For the Period September  
2014 to April 2015:**

Average time from receipt of case to Screening  
Panel Meeting (decision to proceed to screening  
panel hearing) . . . . . 285 days

Average time from Screening Panel Meeting (decision to proceed to screening panel) to screening panel hearing . . . . .	123 days
<u>Total Average time from receipt of case to screening panel hearing . . . . .</u>	<u>410 days</u>

OPC indicates that the second category (for the year 2014-15) to date is the average of case processing days based on a random sampling of 10 cases (the first 10 cases in each month chronologically) that were closed in each of the months of July, August, September, and October of 2014 from their opening date.

The Committee asked OPC the following three questions in response to this information, to which OPC gave the indicated responses:

1. Is there any explanation for the significant differences in average case processing days between 2012-13 and 2014-15?

OPC indicated that the best comparison between the two time frames is the time between opening a case and the decision to take a case to the screening panel because the period of time between the Screening Panel Meeting (at which a decision to proceed to screening panel hearing is decided) and the screening panel hearing itself involves factors not under the control of OPC -- screening panel members' availability, calendars of the parties, whether a given month's dates are already full and the case must be bumped, whether parties seek and obtain continuances, etc. OPC indicates that the difference in the two periods examined of 227 and 285 days between receipt of a case and Screening Panel Meeting is explainable by the following factors: (i) Between August 2013 and March 2014, OPC had significant support staff changes, (ii) in the same period, a staff attorney took maternity leave time of about five months, (iii) active caseload increased in the 2014-15 period in comparison to 2012-13, and (iv) in the latter period, OPC changed its investigative policy by requesting informal responses from the respondent prior to the initiation of a notice of informal complaint, which extended the time period but probably resulted in fewer cases proceeding to notice of informal complaint.

2. What would OPC deem to be an acceptable number of case processing days or range of same?

In response to this question, OPC indicated that the target dates indicated at the outset of this section were appropriate targets but that they are only targets and each case is unique and can vary from those time frames.

3. What can be done to facilitate reasonably speedier case processing times?

OPC indicated that if its average case processing days are within the suggested time frames noted above, importance should not be placed on speedier case processing times

but rather should be placed on having an efficient case processing system that produces competent and thorough investigations to determine which cases should be dismissed and which cases should be prosecuted. OPC indicates that the availability of human resources is a factor in handling its responsibilities in a timely manner but that it has what it needs at present.

The OPC Committee believes that, for the reasons indicated above, OPC's target time frames are, although not ideal<sup>1</sup>, reasonable and that its actual performance for the two periods examined above are consistent with those time frames. The time periods between decision to proceed to a screening panel hearing and the actual screening panel hearing (which varied between 54 and 123 days) are, in the former case, surely reasonable, and in the latter case, on the outside range of reasonable. To shorten up the latter time periods would seemingly require an adjustment to the manner in which screening panels do their business -- increasing the number of screening panels through a reduction in the number of people required to attend a screening panel hearing (which would require a change in the rules), more stringent requirements to allow continuances, etc. Our conclusion is that, at least as far as the averages given to us by OPC are concerned, this aspect of OPC's performance does not require attention.

**B. Does OPC Evenhandedly Address the Discipline of Lawyers from Large Firms, Small Firms, Criminal Lawyers, Civil Lawyers, Bankruptcy Lawyers, etc.?**

Members of the OPC Committee expressed a concern of some of them and of others who have communicated similar concerns that OPC does not evenhandedly address disciplinary complaints against lawyers from large firms, small firms, criminal lawyers, civil lawyers, bankruptcy lawyers, etc. The data contained in OPC's Annual Reports does not tie the respondent attorney to any particular area of practice, to whether he/she is a member of a large or small firm, or to other demographic information. It is therefore impossible to respond intelligently to such anecdotal concerns. But in the experience of many OPC Committee members, it seems clear that there are many attorneys who have the strong impression, whether well founded or not, that civil attorneys in large law firms are not treated as strictly in the disciplinary system as, for example, (i) criminal defense attorneys, (ii) bankruptcy attorneys, (iii) sole practitioners, and (iv) practitioners from small firms. One could argue that there is an objectively higher likelihood of disciplinary complaints being filed against criminal defense attorneys (because they are likely to have more unhappy clients), divorce attorneys (ditto), and attorneys who perform services for an uncommonly low charge (e.g., bankruptcies for \$300, divorces for \$500, etc.). One could also argue that larger law firms tend to be clubby and their members are unlikely to initiate disciplinary complaints against one another because of the social and professional ramifications. But irrespective of these baseless, hypothetical observations, the fact is that there is no reliable data available to determine whether these persistent anecdotal observations have a basis in fact. Rule 14-515 of the Rules governing the Utah State Bar make confidential virtually everything in the lawyer disciplinary arena until the filing of a formal complaint in District Court where the issuance of a public reprimand. This substantially

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<sup>1</sup>As noted above in Section I.A., OPC's staff attorneys expressed the view that a typical disciplinary matter could be processed from Informal Complaint to screening panel hearing in six to twelve months -- less than the "target" time frames advanced by OPC.

insurmountable barrier precludes access to the information that would enable an accurate response. As discussed below in the section that follows, the OPC Committee believes it appropriate that consideration be given to an exception to the confidentiality rule permitting examination of disciplinary records by limited parties for the purpose of auditing OPC's performance, collecting statistical data, and other legitimate purposes while otherwise protecting the confidentiality of such information. Irrespective of whether such a rule is adopted or implemented, the OPC Committee suggests that OPC, going forward, should begin collecting at least the following information on the opening of a disciplinary file with respect to any attorney: (i) Practice area, (ii) professional position of the attorney (government employee, house counsel, private practice), (iii) sole practitioner, member of firm of less than 5, member of firm of less than 10, etc., and (iv) years in practice. These input factors (and perhaps others as well), when used in conjunction with the OPC's new data tracking system, should enable OPC in the future, consistent with the transparency goals described below, to publish to the public accurate statistical data about the subjects of the disciplinary process, who initiates complaints against them, and the outcome of disciplinary proceedings against them. Such public availability of information would go a long way to replacing the current speculation that is so prevalent with hard, fact-based data.

**C. Does OPC Initiate and Properly Prosecute Disciplinary Cases Against Lawyers Identified in Published Opinions of Utah's Appellate Courts as having Acted Ethically Inappropriately?**

A disciplinary proceeding may be initiated "by any person, OPC counsel or the [Discipline] Committee . . . ." Absent initiation of a disciplinary proceeding, nothing happens. OPC has indicated that it, on its own, initiates disciplinary proceedings against lawyers identified in public media as having potentially transgressed the Rules of Professional Conduct.<sup>2</sup> We here address the issue whether OPC has properly pursued disciplinary action against lawyers identified in appellate decisions as having acted in such a way as to potentially violate the Rules of Professional Conduct.

The OPC Committee addressed the following specific judicial decisions as examples:

Wilson v. IHC, 289 P.3d 369, 2012 UT 43. In this case, the Utah Supreme Court in its noted Opinion made multiple statements highly critical of IHC's counsel's persistent violation of an Order in Limine preventing references to the collateral source evidence and having *ex parte* meetings. In *Wilson*, the Court's comments included the following: "IHC's trial tactics violated the In Limine Order, misled the trial court, and substantially prejudiced the jury"; "IHC adopted a trial strategy of circumventing the Trial Court's In Limine Order by presenting forbidden collateral source evidence to the jury"; "[T]he introduction of collateral source evidence was neither isolated nor inadvertent; rather, IHC's counsel in turn 'made persistent and studied attempts' to bring it to the attention of the jury . . . ."; IHC's references "did not arise from either

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<sup>2</sup>It is fair at this point to observe that lawyers, themselves, have an ethical obligation to report professional misconduct under some circumstances [Rule 8.4, Rules of Professional Conduct] and judges also have that obligation [Rule 2.15, Code of Judicial Conduct].

mistake or inadvertence”; and “we conclude that it was improper for IHC to meet *ex parte* with Dr. Boyer without first notifying and obtaining consent from the Wilsons”; “by doing so, IHC’s counsel breached his duty to refrain from conducting improper *ex parte* meetings and by encouraging disclosure of confidential information.”

Tiscareno, et al. v. Frazier, United States District Court for the District of Utah, Central Division, Case No. 2:07-CV00336. Memorandum Decision dated November 19, 2014, Judge Clark Waddoups, in his Memorandum Decision noted “very disturbing lawyering,” persistent issues of discovery disputes, noted that “IHC and its counsel knew that these representations were false based on documents in their possession . . .,” and that “IHC and its counsel’s strategic failure to advise the plaintiffs of the State Contract, severely prejudiced plaintiffs . . .”

Barrientos v. Jones, 2012 UT 33. There, the Court again addressed violations of an Order in Limine. The Court stated that IHC’s counsel’s behavior “was indefensible” and that “she pursued this course of conduct undeterred by the Court’s orders that unequivocally forbade her chosen course of action. We condemn [counsel’s] conduct.”

The OPC Committee or its members sought to learn from OPC whether disciplinary files had been opened with regard to the attorneys involved in the above cases and, if so, the status and/or disposition of those disciplinary proceedings.

The OPC Committee’s efforts in this regard consisted of verbal communications with OPC and written requests for information. With the exception of the limited data set forth below, OPC refused to give the Committee access to the files or to supply the requested information based upon its interpretation of Rule 14-515 of the Rules Governing the Utah State Bar, which in substance render disciplinary proceedings confidential. Various members of the OPC Committee felt and feel strongly that OPC’s interpretation was incorrect and that OPC was required to supply the information. Other members of the OPC Committee had the opposite view or the view that whether OPC was required to supply the information and documents under Rule 14-515 was ambiguous and OPC was not out of line in pursuing the conservative course of not disclosing the information. The bottom line is that the OPC Committee, for this reason, was unable to have access to the information that would enable it to address the subject under inquiry.

The OPC’s limited response to the OPC Committee’s request for information and documents is summarized as follows: An investigation has been opened regarding three of the counsel at issue and OPC would not comment on the fourth counsel. One counsel’s investigation is set for a screening panel hearing, one counsel’s investigation is in abeyance, and one counsel’s investigation was dismissed based on completion of a diversion. The counsel whose disciplinary proceedings were dismissed based upon completion of a diversion is the attorney to which reference above is made in the *Barrientos* case. Based upon this limited information, the OPC Committee is unable to determine when disciplinary proceedings were initiated against the counsel in question, current status of the disciplinary proceedings (other than as noted above), why counsel’s seemingly serious misbehavior was resolved through a diversion, etc.

The OPC pursued the procedure under Rule 14-515, which OPC said was required (and

which various OPC Committee members disagree with) to secure disclosure of the information by making a request for information and having OPC seek permission from the responding counsel. All but one of those counsel refused access to their disciplinary file and the one imposed conditions on the access. The OPC Committee concluded that one file was not a statistically relevant sample for our purposes and that pursuit of the remaining files judicially would be time consuming and not certain to result in disclosure of all the files and so abandoned its further pursuit of this subject.

As was the case with the subjects addressed under the preceding heading, the lack of access to disciplinary files maintained by OPC based upon its interpretation of Rule 14-515 preclude a meaningful review of the subjects here addressed. For the same reasons as are generally outlined above, the OPC Committee recommends a change/clarification to the rule that will permit limited access to disciplinary files for legitimate purposes of evaluating OPC's performance and the performance of the lawyer discipline machinery. That proposed change is addressed under Conclusions and Recommendations below.

#### **IV. OPC'S RELATIONSHIP WITH THE BAR AND PUBLIC.**

##### **OPC Transparency.**

OPC should provide to the public as much information as possible. Doing so will improve the accountability and the image of the office. We commend OPC for the information it does provide, and we encourage them to do more.

We have only anecdotal evidence of respondents and complainants not being informed of the progress of a case. Anecdotal evidence cannot support global conclusions, but neither can it be disregarded. At least in several instances respondents or complainants were left with an impression of OPC and the discipline process that was less than it needed to be. Keeping the participants informed of what to expect shows simple courtesy as well as serving OPC's self-interest.

Public discipline of lawyers is reported in the Utah Bar Journal, but limiting transparency to those outcomes hides the lion's share of what OPC does. Less well known, OPC publishes its annual reports from 2001 to the most recently completed fiscal year on the bar's website (<http://www.utahbar.org/opc/opc-history-of-annual-reports/>, last visited July 21, 2015). The categories from year to year are comparable and the information does not vary much:

- staff composition;
- attorney misconduct case process and procedure;
- statistics;
- progress and goals on cases;
- the Consumer Assistance Program (CAP);
- goals for the coming year; and
- the most recent report added "other items for consideration."

**Staff composition.** OPC has added one assistant counsel in that time and has changed two administrative assistant positions into paralegal positions. Otherwise the office today is much as it was in 2001.

**Attorney misconduct case process and procedure.** The reports summarize the discipline process, which is regulated by rules of the Supreme Court. The reports also describe the Consumer Assistance Program, which is not regulated.

**Statistics.** The numbers reported each year include the number of cases processed and how they were disposed. Table 1 is an excerpt of the reports and does not include all categories.

Table 1. Cases processed and dispositions.

Fiscal Year	Cases Processed	Voted Formal by Screening Panel	Order of Discipline Entered	Diversion Approved	Informal Complaints Dismissed	Request for Assistance Closed	Percent of "Complaint Dismissed" or "Request for Assistance Closed"
2001	1704	36	59	38	455	681	67%
2002	1750	41	144	15	353	580	53%
2003	1751	38	134	9	367	542	52%
2004	1765	39	64	8	730	322	60%
2005	1707	37	94	25	308	508	48%
2006	1768	25	106	3	266	933	68%
2007	1465	23	56	8	219	773	68%
2008	1287	25	65	4	234	635	68%
2009	1504	27	53	4	212	900	74%
2010	1428	22	57	1	236	774	71%
2011	1373	31	35	13	207	633	61%
2012	1401	19	69	2	278	652	66%
2013	1315	23	47	7	234	526	58%
2014	1217	16	33	3	246	467	59%
Total	21435	402	1016	140	4345	8926	62%

The annual reports appear to include in the orders of discipline orders entered by any means -- stipulation, screening panel or District Court -- so there is almost certainly some overlap between the number of cases voted formal by a screening panel and the number of orders entered.



The OPC Review Report from 2009 included the perception that "OPC tends to not screen out all of the cases that are not serious or in which complainant's allegations lack any credibility, or that otherwise do not warrant prosecution." And that OPC does not have prosecution priorities, so "factually simpler cases, that involve less serious ethical violations, may be more likely to be prosecuted than more complex cases." This may be legitimate. From a separate, confidential report of the Ethics and Discipline Committee, of the 177 cases prosecuted before a screening panel during 2011 to 2014, 48 or about 27% were either dismissed or dismissed with a caution.

The annual reports do not distinguish between informal complaints and requests for assistance in a way that is easy to understand. The Consumer Assistance Program is designed to help clients resolve problems with their lawyers. The requests are screened to determine whether the lawyer's alleged conduct rises to the level of misconduct, which is appropriate, but by far the majority of request closures are in the "decline to prosecute" category. In 2014, for example, only one case is reported to have been closed by sending it to the Consumer Assistance Program. One would hope that, in an ombudsman program, such an overwhelming number of pleas for help would not be dismissed with merely the conclusion that the lawyer's conduct is not a violation of the Rules of Professional Conduct.

Elsewhere in this report, we represent, based on information from the Consumer Assistance Program, that CAP opened 815 files in 2014. OPC reports 465 cases opened for that year. Although not as stark as for 2014, the CAP and OPC reports are also significantly different for 2012 and 2013, the only years for which we have information from CAP.

We have no data from other jurisdictions to compare these numbers to, so it is difficult to say whether the number of dispositions in any of the categories is too high or too low. It does seem, however, that an average of only 10 diversions per year over the last 14 years -- and only 5 diversions per year over the last 5 years -- fails to adequately use that resource. Punishment may be appropriate in many cases, but ultimately the desired outcome should be to change behavior, and diversion with appropriate conditions seems to be missing from the mix.

The annual reports also disclose the source of the cases. Table 2 is an excerpt of the reports and does not include all categories.

Table 2. Source of the information for a case (in percentages).

Fiscal Year	Opposing Counsel	Lawyer Other than Opposing Counsel	Current or Former Client	Opposing Party	Financial Institution	OPC	Judge
2001	13.0	NR*	61.0	7.8	NR	NR	3.4
2002	14.0	9.1	26.8	NR	NR	11.1	3.4
2003	5.2	1.1	32.1	9.2	13.7	12.5	3.7
2004	8.8	5.0	55.4	3.0	4.5	2.8	0.9

Fiscal Year	Opposing Counsel	Lawyer Other than Opposing Counsel	Current or Former Client	Opposing Party	Financial Institution	OPC	Judge
2005	7.3	1.7	55.8	5.0	3.5	1.2	0.5
2006	1.6	4.1	52.0	16.4	3.6	6.5	0.5
2007	3.2	1.8	54.4	20.4	7.4	1.7	1.0
2008	3.4	1.1	53.2	20.2	8.7	1.7	0.7
2009	4.9	3.9	48.5	11.6	10.0	0.6	0.9
2010	3.7	2.9	46.0	20.0	16.4	0.3	2.5
2011	2.5	2.9	62.5	11.5	11.3	1.8	1.8
2012	3.5	3.3	70.6	6.0	9.5	1.3	1.2
2013	3.3	2.0	66.1	7.4	13.5	2.8	1.7
2014	2.7	2.8	68.9	7.2	9.6	2.2	0.8
Average	5.5	3.2	53.8	11.2	9.3	3.6	1.6

\* Not reported.

OPC might disclose much more information without disclosing confidential information. The annual reports disclose the nature of the complainant but not the nature of the respondent: big firm, solo practitioner, new lawyer, experienced lawyer, prosecutor, criminal defense, family law, transaction, litigation -- there is no way to tell. The annual reports do not include any information about the time needed to dispose of a case or to get from one point in the process to another. Elsewhere in this report, we describe time data provided to us for the purpose of our research. This kind of information should be routinely reported to the public. In the absence of time standards, individuals should have the information needed to form an opinion about whether investigations and dispositions occur timely.

Other than the frequency of violations of each of the rules found to have been violated, the reports offer no analysis of the violations. Would it help new lawyers to know the 5 most common mistakes by new lawyers? The 5 most common mistakes by experienced lawyers?

The conflicting reports show there is significant uncertainty about the scope of the Consumer Assistance Program. Better reporting of the number of people helped by the Consumer Assistance Program, the nature of their requests, and how the requests were resolved would show the public that they have a way to ask for help with a lawyer rather than just a way to complain. It would also show lawyers how to avoid problems.

More information about investigations that show no ethical violation, about diversions, and about informal sanctions would remove much of the mystery shrouding OPC and the discipline process.

The new software application being used by OPC is said to be capable of significantly more detailed reports than before. Program measures can be shared with everyone without compromising anyone. More transparency will work only to the benefit of lawyers and the public -- and OPC.

**Goals for the coming year.** The annual reports also describe OPC's goals for the coming year. The overriding goal described in the most recent report is to "continue to develop the OPC case processing system to ensure that the majority of resources are utilized to more quickly prosecute those cases where it is appropriate to file formal complaints with the District Court." This is a goal about which reasonable people can disagree. Prosecuting formal complaints of the most serious misconduct is indeed important and takes much more time per case than other dispositions. But the number of formal complaints is a small fraction of what OPC does so whether it merits the majority of resources is open to question. With better information about how much time is required of OPC attorneys and staff at each stage of the proceedings, OPC could develop a formula for resource allocation.

## V. SUPERVISION OF OPC.

We have been asked to consider appropriate supervision for OPC senior counsel, but the request came to our attention rather late, and we have been unable to do the research -- principally investigation of other states' policies -- necessary to make other than rudimentary recommendations.

Rule 14-504 says only "The Board [of Bar Commissioners] shall appoint a lawyer admitted to practice in Utah to serve as senior counsel." Although unstated, presumably the Board can dismiss senior counsel. Senior counsel and the Board's executive director annually develop a budget for OPC and submit it to the Board for approval. If senior counsel is not satisfied with the Board's budget, he can petition the Supreme Court to modify it.

Aside from these few provisions, the rules do not describe any relationship between senior counsel and the Board or between senior counsel and the executive director. It appears that senior counsel does not have a boss in the traditional sense.

It is common for senior officials, such as OPC senior counsel, to have very little supervision. Senior officials exercise considerable discretion based on their own best judgment, and they should not be over-regulated. The policies and performance of senior officials need to satisfy the appointing authority. Absent adverse action by the appointing authority, presumably they do.

There are not many options for more immediate supervision. Although the Board is vested with hiring and firing authority, the Board would not be effective in a traditional supervisory role. It is too large and its primary responsibility too broad. The Board could expressly delegate a supervisory role to its executive committee. The executive committee is at least smaller than the full Board, and it is authorized by rule to act on behalf of the Board. Presumably its decisions can be overturned by the Board. Its current membership and charge

may or may not be appropriate for OPC oversight.

The Board could also expressly delegate responsibility to the executive director. Although the incumbent executive director has enjoyed a long tenure, the appointment is limited by rule to one year. It may be difficult for a position like senior counsel, with its significant authority and discretion, to be supervised by an officer who is, in essence, a short-term employee.

A third option is to establish a committee expressly for the purpose developing and monitoring OPC policies and performance in accord with those policies. Organizationally, the committee could be housed within the administration of the bar for the purpose of support. How much independence the committee would have is a matter for discussion by the Board. The committee might act entirely independently of the Board, up to and including the authority to evaluate, hire and fire OPC senior counsel. The committee could consider and resolve complaints about OPC. There might be a blend of responsibility between the committee and the Board. Membership on the committee is also a matter for discussion. The committee might have designated members or a designated number of members, or again a blend of the two.

If these options do not satisfy, the Board should appoint a study group to examine and recommend additional options.

## **CONCLUSIONS AND RECOMMENDATIONS**

Interspersed in the foregoing report are observations, suggestions, compliments, and criticisms of OPC. Our purpose in this section of the report is to highlight those areas that we believe are significantly important or reasonably require further action to improve the system and OPC's performance.

1. **OPC's Overall Performance.** OPC's overall performance, including its supervision and management, is satisfactory. The data suggest that OPC is processing every year a large volume of disciplinary complaints in a reasonable period of time, which is what it is supposed to do. The comments that follow are areas where OPC might consider changing its policies and approach or where the Bar may consider changing things that will enable OPC better to do its job.

2. **OPC Salary and Staffing Issues.** OPC staff attorney salaries are adequate. The number of disciplinary complaints initiated has been in decline over the last several years. OPC's attorney staffs were unanimous in their view that there are sufficient attorneys now at OPC to perform its functions appropriately. Some OPC attorneys and some Discipline Committee members suggested that the employment of an investigator might be considered, but declining caseload does not support this course at present.

3. **OPC Interactions with Respondents' Counsel.** Section I.C. above indicates some friction between OPC and respondents' counsel, which should be addressed. Some friction is, under the circumstances, expected. OPC should be informed of respondents' counsel's

concerns and give consideration to addressing those concerns going forward. That is not to say that OPC is wrong or the respondents' counsel are correct in any of the issue areas; it is only to say that it would be wise to inform OPC of these matters so that they can be given appropriate consideration.

4. **OPC Interactions with Respondents.** OPC should consider engaging in more communications with respondents concerning the status of the complaint and investigation and estimated or projected time frame for future significant events. OPC should strive to process complaints to a conclusion as expeditiously as feasible consistent with appropriate processing.

5. **Screening Panel Hearings.** Both respondents' counsel and the Discipline Committee members indicated a suggestion that OPC beef up the analysis section of the Screening Panel Memorandum. The Discipline Committee members indicated a desire that OPC be more "active" at screening panel hearings. Both suggestions implicate the appropriate role for OPC before the Screening Panel. Respondents, at least when competent to do so themselves or when represented by competent counsel, present a screening panel with an advocate's view of the evidence. OPC should consider shifting its emphasis a bit more in the direction of prosecutorial advocacy in the view of the Discipline Committee (which consists generally of all of the members of the Screening Panels). Such advocacy might well serve to sharpen and clarify the issues and facilitate better decision making by Screening Panels. The OPC Committee believes that OPC can accomplish this shift without improperly compromising the Screening Panels' own investigative and fact-finding charge. Parties' concerns about the timeliness of the circulation of Screening Panel Memoranda may have already been resolved, but if not, OPC should strive to have the Screening Panel Memorandum in the hands of the Screening Panel members, complainant, and respondent at least 10 days before the Screening Panel hearing.

6. **Transparency Issues.** OPC should consider the suggestions outlined above under Section IV to improve better informing the public about the disciplinary process and OPC's involvement in it. The OPC Committee suggests that OPC begin to collect demographic information on respondents, including practice area, employment arrangement (e.g., government, house counsel, private practice), firm size if applicable, years in practice, etc. This data should be included in OPC's annual report to reflect the demographic contours of respondents who receive complaints and receive discipline.

7. **Access to OPC Records.** We were unable to pursue an avenue of inquiry because we were denied access to the necessary records. We believe that a committee appointed to review OPC operations can be trusted to maintain the confidentiality of private records. OPC senior counsel said that he could not disclose the requested records because the committee did not qualify for any of the exceptions under Rule 14-515.

Rule 14-515 establishes the confidentiality of disciplinary proceedings and information. It is needlessly confusing, and, as interpreted by OPC senior counsel, creates conditions for access that are virtually impossible to meet.

If the OPC Committee does not qualify under paragraph (a)(2) ("there is a need to notify

another person or organization ... in order to protect the public, the administration of justice, or the legal profession”), then it would seemingly meet the conditions of paragraph (e)(1) (“the request for information is made by the Board, any Bar committee or the executive director, and is required in the furtherance of their duties”). However, for a request to qualify under (e)(1), it must also meet the conditions of paragraph (g) (“the request is made in furtherance of an ongoing investigation into misconduct by the respondent; the information is essential to that investigation; and disclosure of the existence of the investigation to the respondent would seriously prejudice that investigation”).

Since neither the board nor the executive director has the authority to investigate lawyer misconduct, and the only committee to have that authority is a committee of the supreme court not the Bar, the conditions in paragraph (g) are impossible to meet, rendering null all requests under paragraph (e). Consequently the requesting authority must obtain a release from the respondent or a court order. Requiring a release when by definition the information is “required in the furtherance” of the board’s, the committee’s or the executive director’s duties is poor policy. The important and necessary work of these officials should not be stymied by a lawyer’s refusal to permit access to essential records.

We recommend that Rule 14-515 be rewritten to provide access to confidential records to select officials under certain conditions. Attached as Ex. B are proposed revisions to Rule 14-515 that address these concerns and an explanation of the logic behind the changes.

8. **Diversions.** Since 2001, there have been approximately 10 diversions per year in the discipline process, and during the past three years, an average of about four per year. That suggests to the OPC Committee that either diversions should be employed more frequently when appropriate or that the machinery in place to administer diversions may not be warranted because of the relatively few cases in which diversion makes sense.

9. **CAP.** CAP is an effective and economical mechanism to address, resolve, or filter complaints about attorneys. OPC and CAP are working well together.

10. **ABA Audit.** Some have suggested that the Bar or Utah Supreme Court utilize the ABA’s auditing services that are available to individual state Bar Associations with respect to disciplinary machinery. The OPC Committee has concluded that such an audit, if appropriate, would be a waste of time unless the auditors have access to OPC files, which is not the case at present. If such access becomes available, the wisdom of such an audit can be addressed.

Dated: \_\_\_\_\_, 2015.

The Utah State Bar's Office of Professional Conduct  
Policies and Procedures

August 1, 2015

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**ADDENDUM**

Internal flow charts and graphs showing OPC processes and the use of various form letters.

## I. OVERVIEW

The following guidelines for operation of the Office of Professional Conduct ("OPC") are intended to provide a flexible set of operating guidelines for Assistant Counsel. Consistent with the Rules of Lawyer Discipline and Disability ("RLDD"), these guidelines are not intended, nor do they constitute a set of inflexible policies or procedures. The policies and procedures described herein are guidelines only, and can be changed at any time for any reason consistent with the RLDD. To the extent that any conflict arises between these operating guidelines and the RLDD, the RLDD control.

In July of 1993 the Supreme Court of Utah implemented sweeping changes in the rules governing bar discipline and thereby altered the procedures of the OPC. As enunciated by the Utah Supreme Court in Rule 1 of the RLDD, "The purpose of lawyer disciplinary and disability proceedings is to ensure and maintain the high standard of professional conduct required of those who undertake the discharge of professional responsibilities as lawyers and to protect the public and the administration of justice from those who have demonstrated by their conduct that they are unable or unlikely to properly discharge their professional responsibilities".

The OPC is responsible for evaluating complaints made against members of the Utah Bar. This includes initial investigation of the complaints as well as presentation of the informal complaints to the Screening Panels. If the Screening Panels determine that a matter should be pursued formally, the OPC represents the Bar in the prosecution of the matters in the District Courts of the state.

Additionally, the OPC handles many other types of proceedings involving the discipline of attorneys in the bar. For example, the OPC takes any emergent action that may be necessary to protect the public by applying to the district court for interim suspensions. The OPC also prosecutes matters where attorneys have criminal convictions and matters where attorneys admitted to practice in a sister state have been disciplined by the Bar in that state. The OPC initiates proceedings where an attorney has been judicially declared incompetent or is involuntarily committed on the grounds of incompetence and may request the appointment of a trustee to protect clients' interests in certain situations. The OPC represents the Bar in reinstatement proceedings. The OPC fields ethics questions from members of the bar and furnishes informal responses to these questions. These functions will be further addressed in these operating guidelines.



## POLICY - K(1)

### INVESTIGATION OF COMPLAINTS BY OPC

#### **A. Consumer Assistance Program**

Nearly all information received by the OPC is initially reviewed to see if the issues raised can better be handled by the Utah State Bar's Consumer Assistance Program ("CAP") prior to a file being opened in the OPC. Generally, the OPC does not consider sending to CAP cases involving repeat offenders or felonies, unauthorized practice of law issues, and those matters referred by judges or other disciplinary agencies. Those cases not referred to CAP generally proceed as outlined below.

#### **B. Receipt of Information**

The disciplinary process is initiated by receipt of information or a complaint concerning a Utah lawyer. The OPC tracks all information and informal complaints receives.

##### 1. Informal Complaints

Pursuant to rule 14-510(a)(2) of the RLDD the OPC only considers information to be an "informal complaint" if it is made in writing, is signed by the complainant, contains a verification attesting to the accuracy of the information, and is notarized.

##### 2. Requests for Assistance

If information concerning an attorney is received that is not notarized and verified, it is considered a Request for Assistance. Requests for Assistance are tracked and investigated in the same manner as a notarized complaint.

##### 3. Telephonic Complaints

The OPC does not investigate oral complaints. Complainants who call on the telephone are given the option of submitting the information via the OPC's online form found on the Bar's website, or of having a form sent to them in the mail.

#### **C. Prioritization of Cases**

The OPC seeks to prosecute cases consistent with the purposes of lawyer disciplinary and disability proceedings as defined by the Utah Supreme Court. Namely, to maintain the high standard of professional conduct of lawyers and to protect the public and the administration of justice. Generally, no single case or types of cases are prioritized over other cases or types of cases unless necessary to satisfy the purposes noted above. Cases are randomly assigned to investigation attorneys and the individual attorneys are left to allocate their time and resources as they see fit, with the progression of cases

monitored by the weekly attorney meeting described below.

#### **D. Central Intake**

The processing Informal Complaints and Requests for Assistance that have gone through the CAP Review process proceed as follows:

##### 1. Initial Receipt

When the intake secretary opening the file designates a Utah attorney as the Respondent in the OPC database, the database automatically fills in information drawn from the Bar's database for that attorney including: the bar number, admission date, discipline history, birth date, address and telephone number. This information is also printed out and placed in the hard file. The secretary also checks the old OPC database for a list of cases that were opened prior to July 1, 2014, in which the Respondent may have been involved but that did not result in discipline.

The complainant's name, address and telephone number and the date the complaint was received are also entered into the OPC computer database and written on the front of the file in the spaces provided.

The file is then given a case number and assigned to an OPC Investigation Attorney for investigation. Currently, Senior Counsel has assigned one Investigation Paralegal and two Assistant Counsel to handle the investigation of Requests for Assistance, and one Investigation Paralegal and one Assistant Counsel to investigate Informal Complaints.

##### 2. Preliminary Investigation

The Investigation Paralegal prepares a letter to the Respondent and Complainant informing them the OPC has received the information. The Investigation Paralegal then conducts a preliminary investigation to ascertain whether the Informal Complaint or Request for Assistance is sufficiently clear as to its allegations and is supported by the evidence submitted. If not, the Investigation Paralegal seeks additional facts from the Complainant, which must be submitted in writing and signed by the Complainant. Preliminary investigations may also include obtaining information through phone calls to the Complainant or the Respondent, and seeking information from other sources such as witnesses and court records. All telephone conversations and messages are memorialized in the database.

After the Investigation Paralegal has collected all available evidence related to the allegations the file is given to the Investigation Attorney for review and analysis. The Investigation Attorney makes one of the following preliminary determinations:

- a) Further investigation is required, which can be done by either the paralegal or the attorney;

- b) There does not appear to be a violation of the Rules of Professional Conduct and the matter should be closed;
- c) The Respondent should be asked to provide an informal response to the allegations.

### **3. OPC Attorneys' Meeting.**

The Investigation Attorney brings a Request for Assistance to the weekly OPC Attorneys' Meeting to discuss and/or recommend one of the following actions:

- a) The Complainant should be asked to notarize the information;
- b) The case should proceed with OPC as the Complainant;
- c) Exercise prosecutorial discretion by declining to prosecute for any of the reasons set forth in the Guidelines for Dismissals, Declinations, and Diversions;
- d) Settlement in accordance with the Standards for Imposing Lawyer Sanctions ("Standards");
- e) Resolution by Diversion (see below).

The Investigation Attorney brings a notarized Informal Complaint to the weekly OPC Attorneys' Meeting to discuss and/or recommend one of the following actions:

- a) The informal complaint should be dismissed for any of the reasons set forth in the Guidelines for Dismissals, Declinations, and Diversions;  
Note that Dismissal letters must include language informing Complainants that they may appeal.
- b) A Notice of Informal Complaint ("NOIC") should be served on the Respondent;
- c) The case should be set for a Screening Panel Hearing (following service of the NOIC and a response from the Respondent);
  - The case will then be assigned to a Prosecuting Attorney who will handle the Screening Panel Hearing.
- d) Propose to resolve the matter by referring it to a diversion program;
  - Contact the Respondent by letter or by telephone. Make the offer and set a finite duration for accepting. Prepare the Diversion Agreement and have the Respondent sign it. Notify the Complainant that the Informal Complaint has been resolved through diversion. [Form (A)(21)] Keep the file open until the terms of the Diversion Agreement have been complied with.

- e) Settlement (other than diversion) in accordance with the Standards.

#### **4. Transfer of Cases**

After a Request for Assistance has been notarized, either by the Complainant or the OPC, the case is transferred to the Investigation paralegal and attorney assigned to handle Informal Complaints.

#### **5. Guidelines for Dismissals, Declinations and Diversions.**

Rule 14-504 of the Rules of Lawyer Discipline and Disability provides that the OPC shall, for each matter brought to its attention over which it has jurisdiction, "dismiss; decline to prosecute; refer non-frivolous and substantial informal complaints to the [Ethics and Discipline] Committee for hearing; or petition for transfer to disability status." Thus, if the OPC decides to dismiss them, or declines to prosecute, matters may be disposed of without being presented to a Screening Panel (in the case of Informal Complaints) or the District Court (in interim suspension and disability proceedings). The following outlines the circumstances under which each of these is appropriate, and briefly discusses how these relate to the diversion program.

##### A. Dismissals

Rule 14-510(a)(7), RLDD, provides that informal complaints which, upon consideration of all factors, are determined by OPC counsel to be frivolous, unsupported by facts or which do not raise the possibility of any unprofessional conduct, may be dismissed without hearing by a screening panel. Generally, the OPC will obtain an informal response to the allegations from the Respondent prior to any dismissal.

The following are reasons that support a dismissal:

1. The Informal Complaint hasn't stated any facts that would support a finding of professional misconduct. For example, the Informal Complaint states that the Respondent is incompetent, but does not make factual allegations that would illustrate this conclusion.
2. Even if the factual allegations made by the Complainant are assumed to be true, the allegations do not constitute a violation of the Rules of Professional Conduct. Examples would include:
  - a) Each attorney has his or her own style, strategies, and techniques. Attorneys often have different opinions as to the appropriate course of a case and how to handle it effectively, and the OPC cannot substitute its judgment for that of the attorney. The fact that a matter could have been handled differently does not mean that the attorney's conduct was unethical or incompetent.

- b) Attorneys sometimes make mistakes that do not rise to the level of ethical concerns.
  - c) Attorneys sometimes use aggressive tactics that do not rise to the level of ethical concerns. This type of complaint is sometimes made by an opposing party, and often includes allegations that the Respondent was rude.
  - d) The allegations concern a fee dispute, but the fee is not excessive.
3. The evidence is insufficient to establish by a preponderance that the Respondent violated the Rules of Professional Conduct. (i.e. the allegations made by the Complainant are not credible; the allegations made by the Complainant were denied by the Respondent, and the OPC cannot give more weight to either one; the Respondent adequately explained the allegations made by the Complainant).

Pursuant to rule 14-510(a)(7) of the RLDD, the complainant may appeal a dismissal of an informal complaint by OPC counsel to the Committee chair within 15 days after notification of the dismissal is mailed. Thus, the dismissal letter must state the reasons, and the Complainant must be notified of the right to appeal. The OPC sends the Respondent a copy of the dismissal letter.

Note that the OPC has no express power under the RLDD to dismiss a matter with a caution. Pursuant to Rule 14-510(b)(6)(A), RLDD, a Screening Panel may issue a letter of caution, which "shall serve as a guide for the future conduct of the respondent," whereupon the Informal Complaint shall be dismissed. Nevertheless, a letter of caution is a useful tool for educating Respondents and the OPC may use them in situations when a dismissal would be appropriate.

#### B. Declinations to Prosecute

Sometimes the alleged facts might constitute a violation of the Rules of Professional Conduct, but the OPC nevertheless exercises its prosecutorial discretion by declining to prosecute the Informal Complaint. This is an option identified under Rule 14-504(b)(3), RLDD. Additionally, the OPC's authority to take this course even though there might be a rule violation is supported by the language in another section of the same rule permitting the OPC to refer to the Screening Panels "*substantial* informal complaints." Implicit in this language is the concept that the OPC has discretion to decline referring to the Screening Panel technical violations of the Rules that are insubstantial.

The following are reasons for the OPC to exercise its prosecutorial discretion to decline to prosecute:

- 1. Matters that should be addressed in another forum. These include but are not limited to ineffective assistance of counsel claims in criminal matters and

malpractice claims in civil matters, as well as matters in which there is a question as to whether there is a nexus between the allegations and the attorney's duties as an attorney. Examples of the latter are situations in which an attorney is an administrative law judge, a mediator, or a corporate manager. Because these positions do not necessarily require the person to be an attorney, the better forum for redressing the complaint is elsewhere (e.g. appeals to the appropriate authority of the administrative law judge's or mediator's decision, personnel review board actions, and the like). Another example might be debt collection matters unrelated to the attorney's practice.

2. The Respondent has taken immediate action to remedy conduct that is a low-level technical violation of the Rules of Professional Conduct. Examples include a Respondent who returns a client's file after termination of the representation, a Respondent who withdraws from a case in which a conflict has developed, and a Respondent who provides without charge the legal services necessary to correct a previous error where there is no harm to the client. In such cases, it may be appropriate to send a letter cautioning the Respondent to refrain from future conduct of a similar nature.

The OPC may decline to prosecute a Request for Assistance or an Informal Complaint at any stage prior to a Screening Panel hearing.

Because the Respondent may have violated a Rule of Professional Conduct, a declination to prosecute is not necessarily a final resolution. Thus, a letter informing the Complainant of the OPC's exercise of prosecutorial discretion uses language stating that the matter will be closed; not "dismissed" in this context.

Further, in cases involving allegations that should be brought before another tribunal, the letter includes language to the effect that if the court finds that the attorney has committed misconduct, the Complainant may bring this to our attention, and we will review our decision to close the matter.

A factor in declination to prosecute decisions is the effort to conserve and maximize the use of resources. Once matters are addressed and adjudicated in an appropriate forum, when necessary the OPC can use the record developed in that forum to address professional conduct issues. Further, in cases where there are low level technical violations that can be resolved with an agreed-upon remedy and caution, this is the best resolution in the "public interest, the respondent's interest, and the complainant's interest" pursuant to Rule 14-510(a)(4), RLDD.

### C. Diversions

Diversion is an alternative to discipline that is entered into by agreement in attorney discipline cases. Pursuant to Rule 14-533 of the RLDD, the Utah Supreme Court created a Diversion Committee; if the attorney consents to a Diversion Agreement that is subsequently approved by the Diversion Committee, either a Screening Panel or the OPC may dismiss cases involving minor violations of the Rules of Professional Conduct. The specific types of cases that are not appropriate for diversion are: when the attorney is accused of misappropriating client funds; the attorney's behavior will, or

is likely to, result in substantial prejudice to a client or other person absent adequate provisions for restitution; the attorney has previously been sanctioned in the immediately preceding three years; the current misconduct is of the same type for which the attorney has previously been sanctioned; the misconduct involved dishonesty, deceit, fraud, or misrepresentation; the misconduct constitutes a substantial threat of irreparable harm to the public; the misconduct is a felony; a misdemeanor that reflects adversely on the respondent's honesty, trustworthiness, or fitness as a lawyer; or, the attorney has engaged in a pattern of similar misconduct.

To be eligible for diversion, the presumptive sanction must not be more severe than a public reprimand or private admonition. Further, all involved must make an assessment of whether or not participation in diversion is likely to improve the attorney's future behavior, whether aggravating or mitigating factors exist, and whether diversion already has been attempted.

The Diversion Committee has to review and approve every diversion contract. Possible program areas of diversion are as follows: Fee Arbitration; Mediation; Law Office Management Assistance; Psychological And Behavioral Counseling; Monitoring; Restitution; Continuing Legal Education Programs, including Ethics School; and, any other program or corrective course of action agreed to by the responding attorney necessary to address an attorney's conduct.

The OPC notifies an attorney of the diversion option when a case is received. A Complainant is notified of any proposed decision to refer an attorney to diversion and that Complainant may comment, however a decision to divert is not appealable by a Complainant.

Upon entrance to the diversion contract, the complaint against the attorney is stayed pending completion of diversion. If diversion is successful, the complaint is dismissed, and all information regarding the attorney is kept confidential. Further, successful completion of diversion is a bar to disciplinary prosecution based on the same allegations. However, a material breach of the diversion contract is cause for terminating the agreement and subjects the lawyer to appropriate discipline as if diversion had never been an option. As noted below, a screening panel may also refer a complaint to the Diversion Committee.

## **E. Screening Panel Hearings**

If a matter cannot be resolved in accordance with rule 14-510(a)(5), or if good cause otherwise exists, the OPC will refer a matter to a Screening Panel of the Utah Supreme Court's Ethics and Discipline Committee.

After it has been determined that a matter should be referred to a screening panel for hearing, the case is randomly assigned to one of the three Assistant Counsel whose duties include attending the hearings. The attorney handling the hearing will be responsible for drafting the summary of the investigation and the OPC's recommendation that will be given to the panel members.

The matter is then assigned to the next available slot in the Screening Panel's calendar. If there are multiple cases involving the same Respondent, the OPC may schedule those matters on the same day before the same panel.

It is the goal of the OPC to provide its summary and recommendations to the screening panels at least one week prior to the hearing. This is done via a cloud service. The materials are also provided to the Respondent and the Complainant via the cloud. Arrangements can be made if members of the panel or the parties wish to have a hard copy of the file.

In matters where the screening panel recommends discipline, the attorney assigned to the case at that time is responsible for preparing and finalizing the Findings of Fact and Conclusions of Law as well as the final order of discipline.

If a screening panel votes that a matter should be referred to the district court the case is randomly assigned to one of three attorneys whose duties include handling formal cases. Those three attorneys are supported by two formal paralegals.



## POLICY - K(2)

### CONFIDENTIALITY OF OPC FILES (other investigative bodies)

Rule 14-515 provides, in part, that:

(a) Confidentiality. Prior to the filing of a formal complaint or the issuance of a public reprimand pursuant to Rule 14-510 in a discipline matter, the proceeding is confidential, except that the pendency, subject matter, and status of an investigation may be disclosed by OPC counsel if the proceeding is based upon allegations that have been disseminated through the mass media, or include either the conviction of a crime or reciprocal discipline. The proceedings shall not be deemed confidential to the extent:

...  
(a)(2) there is a need to notify another person or organization, including the Bar's Lawyer's Fund for Client Protection, in order to protect the public, the administration of justice, or the legal profession;  
...

In order to maintain a respondent's right to confidentiality, while at the same time fulfilling the OPC's role in protecting the public, the administration of justice, and the legal system, the OPC has instituted the following procedure with regard to disclosure of information to other investigative bodies:

Upon receipt of a written request establishing good cause, the OPC may disclose information regarding pending and closed cases to entities authorized to investigate and prosecute conduct that may be a violation of civil statutes, criminal statutes, administrative rules, or professional rules.

Generally, "good cause" will be found where the third party has an open investigation against the respondent (or in some cases the respondent's firm) based on allegations that are of the same nature as those giving rise to the OPC's investigation.

In the event information regarding a case is disclosed, a copy of all disclosed information and all correspondence between the OPC and the third party shall be kept on the left side of the case file.

This policy applies only to information disclosed pursuant to 14-515(a), and not to confidential information disclosed pursuant to 14-515(f).

POLICY - K(3)

RETENTION OF MISCELLANEOUS  
CORRESPONDENCE RECEIVED BY OPC

Rule 14-503(b)(1) imposes on the OPC the duty to, "screen all information coming to the attention of the OPC to determine whether it is within the jurisdiction of the OPC in that it relates to misconduct by a lawyer or to the incapacity of a lawyer."

At times the OPC receives written correspondence or other information from individuals that does not fall within the jurisdiction of the OPC. If, based on the information provided, the OPC is not able to identify a specific attorney involved, or discern what is being requested, or otherwise determine that the information is within the jurisdiction of the OPC, the following retention policy shall apply.

The material shall be kept for a period of one (1) year from the date it is received by the OPC. As is reasonably practicable, the material shall be reviewed to see if it relates to any information provided to the OPC subsequent to receiving the original material. If it is determined to be related to an open matter, the material shall be placed in the appropriate file with an indication of how and when it was received by the OPC. If, after one year, the material is determined not to be related to any open matters, the material shall be destroyed. No record of such materials need be maintained.

## POLICY – K(4)

### ETHICS HOTLINE

The Office of Professional Conduct ("OPC") offers an Ethics Hotline to provide attorneys licensed in Utah with informal guidance on ethics questions. Attorneys may submit ethics questions via the Ethics Hotline page on the Bar's website or by calling and leaving a message. Hotline callers must leave a message indicating their name, Utah State Bar number, and a description of the nature of the question.

Hotline calls are entered in the OPC database then assigned on a rotating basis to OPC staff attorneys. If the question came in via email, the original email is saved in the database. If the question came over the phone, the transcribed call is saved into the database. Unless the caller has stated that there is an emergency requiring an immediate response, the assigned attorney typically returns the call within 24 business hours. Emergency calls are answered as promptly as possible.

The OPC attorneys who respond to Ethics Hotline calls can only offer their opinion concerning the caller's own contemplated conduct. Callers whose question concerns the conduct of another attorney are informed that the OPC attorney cannot opine on the propriety of such conduct, and told how to file an informal complaint if the caller deems it warranted. Callers whose question concerns their own past conduct are asked whether they wish to self-report violations of the Rules of Professional Conduct, and informed how to do that if this is their intent.

The OPC attorney's response to Ethics Hotline calls is the attorney's informal opinion, based on a reading of the Rules of Professional Conduct. Callers are urged to read the rules and exercise their own judgment. In appropriate cases, callers are informed that formal written opinions can be requested from the Ethics Advisory Opinion Committee, and instructed concerning the means for requesting such an opinion. Where helpful, the OPC attorneys direct callers to other sources of information, and transmits or sends the caller copies of relevant portions of the Annotated Model Rules of Professional Conduct.

The attorney who responded to the question records in the database the date and time the call was returned and also a synopsis of the advice given. Although calls are confidential, this information may be used to in the event that the OPC receives an informal complaint about the caller concerning the same subject matter and the caller raises the Ethics Hotline communication as a defense.

A caller is told:

This is an informal opinion of our office, based upon a reading of the Rules of Professional Conduct.

You should read the rules and exercise own judgment.

Formal opinions can be requested from the Utah State Bar's Ethics Advisory Opinion Committee.

The OPC considers all conversations on the Ethics Hotline strictly confidential however, neither the District Courts of this state nor the Utah Supreme Court has made a determination of this confidentiality.

The Utah State Bar's Ethics Advisory Opinions can be found on the Bar's website at [www.utahbar.org](http://www.utahbar.org).

## POLICY - K(5)

### WHEN SHOULD A CALLER BE REFERRED TO OPC

1. If there is a call for either good standing or the disciplinary status of an attorney, do not give out any information; refer the caller to the OPC. If the caller merely requests the attorney's address or phone number, or the year the attorney was admitted, do not refer the caller to the OPC unless the caller continues asking questions about the attorney. You may give the caller the attorney's business address and telephone number.
2. The OPC cannot answer legal questions; if the caller has a legal question refer them to Tuesday Night Bar. Explain to non-attorney callers that the OPC answers ethics questions from attorneys only. If the caller is an attorney and states that it is an ethics question, refer the call to the OPC.
3. If the caller is a non-attorney who wants to know if a Bar complaint is valid, tell the caller that you cannot answer that, but you will take their name and address to mail a complaint form to them. If the caller is an attorney, refer the call to the OPC. If the caller (whether attorney or non-attorney) wants to know what has happened to a complaint they filed, find out whether the complaint was filed with the Consumer Assistance Program, or with the OPC. Leave the message for the appropriate department or person. If the caller does not remember communicating with anyone in particular; take the caller's name and phone number and the name of the attorney against whom the complaint was filed, and leave a message for the OPC. If the caller asks about the status of a complaint filed by someone else, tell the caller you cannot give any information regarding complaints. If that does not end the conversation, refer the caller to the OPC.
4. If a caller wants a complaint form, do not refer the call to the OPC, but take the caller's name and address and leave it in the OPC's box. Explain to the caller that the form will be mailed in a couple of days and that the Consumer Assistant will contact them.
5. If a call comes in for anyone in the OPC office, direct the call to the Intake Secretary. If she is not available, direct the call to her voice mail.
6. If you receive deliveries or mail for the OPC, date-stamp and initial them, then promptly notify one of the OPC staff of their arrival. With respect to hand-deliveries, if you are unable to reach one of the staff, notify the attorney to whom the delivery is addressed.
7. If someone drops in to see an OPC attorney, ask their name, who they are here to see, and the nature of the business. Communicate this information to one of

the OPC staff. If you are unable to do so, contact the OPC attorney to whom the visitor wishes to speak.

8. All Initial Complaint and Request for Assistance forms are available at the front desk. The OPC will not copy the form for the person; if they wish to keep copies, they must go to a copy center.
9. The OPC does not distribute copies of the rules. Refer callers who request copies of the Rules of Professional Conduct, the Rules of Lawyer Discipline and Disability, or the Standards for Imposing Lawyer Sanctions to the Utah Court Rules volume of the Code, which is available at the University of Utah Law Library, the library at any District Court, and in bookstores. These rules are also available on the Utah State Bar's website.
10. If the caller has a complaint about an OPC attorney refer the caller to OPC Senior Counsel. If the complaint concerns OPC Senior Counsel, refer the caller to the Executive Director of the Bar.
11. If the caller is complaining about someone who is not an attorney, this may be an unauthorized practice of law problem. Refer the caller to General Counsel for the Bar

**POLICY - K(6)**

**E-MAIL RESPONSES  
TO SUBSTANTIVE QUESTIONS**

The Office of Professional Conduct does not in general communicate on substantive issues through e-mail where the communication does not involve an active OPC case (i.e. ethics hotline responses, questions from the public).

Communications related to active OPC cases may be done through email. Each communication should be entered as an event in the OPC database and the email itself should be saved in the database.

POLICY – K(7)

SERVING NOTICES OF HEARING ON RESPONDENT ATTORNEYS

When a Screening Panel Hearing is scheduled, the Notice of Hearing will be sent to the Respondent at the "Preferred Address w/Bar" as indicated in the OPC database. If, during the course of the OPC's investigation, the Respondent has indicated a desire to receive correspondence at a different address, or by email, the Notice of Hearing should be sent to the "Preferred Address w/Bar" as well as the alternate address provided by the Respondent.



## POLICY – K(8)

### USE OF RESPONDENTS' HOME ADDRESSES

#### **Background Information**

The Rules of Lawyer Discipline and Disability ("RLDD") provide that "The Bar shall maintain and have ready access to current information relating to members of the Bar including:

- (a) full name;
- (b) date of birth;
- (c) current law office and home addresses and telephone numbers;
- (d) date of admission in the state;
- (e) date of any transfer to or from inactive status;
- (f) all specialties in which certified;
- (g) other jurisdictions in which the lawyer is admitted and date of admission; and
- (h) nature, date, and place of any discipline imposed and any reinstatements.

The Bar collects address information from its members when they are admitted. It confirms this information on the annual licensing form; attorneys are given the opportunity to change the form if the information isn't correct. Otherwise, the Bar depends upon attorneys to notify it of changes by submitting a written form.

The Address Change Form indicates that attorneys must provide street addresses for their businesses and their residences. It states that "The address of your business is public information. The address of your residence is confidential and will not be disclosed to the public if it is different from the business address." If an attorney's home address is also the attorney's place of business, "it is public information as your place of business." Attorneys may designate where they would like to receive mail, including post office boxes.

For some actions, the OPC should use the attorney's designated mailing address as it is listed in the Utah State Bar's database. For example:

"The Executive Director shall give notice of [an attorney's] removal from the rolls to such non-complying member *at the designated mailing address* on record at the Bar . . . ." Rule 8(b), RLDD.

"OPC counsel shall cause to be served a Notice of Informal Complaint by regular mail upon the respondent *at the address reflected in the records of the Bar.*" Rule 10(a)(4), RLDD.

With respect to a notice that someone has requested nonpublic information about the attorney, "the respondent shall be notified in writing *at the respondent's last known designated mailing address* as shown by Bar records of

that information . . . " Rule 15(f), RLDD.

Other rules merely provide for "notice." See, for example, Rule 10(b)(2), Rule 10(b)(5)(D), Rule 10(b)(5)(E), and Rule 10(c), 22(b). In those instances, the designated mailing address is also the appropriate place to send the notice.

The RLDD also provide direction for cases that have reached litigation: "Except as otherwise provided in these rules, the Utah Rules of Civil Procedure, . . . apply in formal discipline actions and disability actions." Rule 17(a), RLDD.

Pursuant to Rule 4 of the Rules of Civil Procedure, service of a summons and/or Complaint ordinarily must be effected through personal service unless the recipient signs a document indicating receipt. The rule provides that personal service shall be made by delivering a copy to the individual personally, "or by leaving a copy at the individual's dwelling house or usual place of abode with some person of suitable age and discretion there residing . . . ." Rule 4(d), Utah R. Civ. Pro.

Papers other than the Complaint and summons may be served on the party or the party's attorney "by delivering a copy or by mailing a copy to the last known address . . . ." Rule 5(b)(1), Utah R. Civ. Pro. Delivering a copy means handing it to the person, "or leaving it at the person's office with a clerk or person in charge thereof; or if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is close or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, . . . ." Rule 5(b)(1)(A).

### **Policy**

In light of these rules, and taking into account the Utah State Bar's assurance to its members that home addresses are "private" unless the attorney's residence is also the attorney's place of business, the OPC adopts the following policies:

1. Home addresses are never disclosed to callers seeking information about where to locate an attorney unless the attorney's business address is the same as the attorney's residential address.
2. Papers and notices to respondents in cases that have not yet progressed to litigation shall be served at the respondent's designated mailing address, even if this is the respondent's home address.
3. If the respondent instructs the OPC in writing to use a different address, that address may be used in lieu of the address designated for mailing in the Bar's database. If the instruction is given verbally but not in writing, the OPC may use that address, but also must use the address designated in the membership database.

4. Prior to submission of a case to a Screening Panel, if papers mailed to a respondent at the designated mailing address are returned as undeliverable because the address is no longer valid, a respondent's home address may be used even though copies of the document may eventually be part of a public record.
  - a) Even if papers mailed to a respondent at the designated mailing address are not returned as undeliverable as set forth in paragraph 4 above and a respondent does not respond within the timeframe set for response to a Notice of Initial Complaint, the OPC will send a letter to a respondent's home address informing her of the Notice of Informal Complaint. All subsequent documents will be sent to the residential address.
  - b) However, notwithstanding that the document may eventually be part of a public record, the OPC will attempt to curtail the disclosure of the respondent's home address whenever possible and appropriate by not copying complainants and third parties on the documents and/or redacting the home address from the documents as part of the administrative record.
  - c) Ordinarily, the OPC will also attempt to telephone the respondent to obtain new address information and inform the respondent that such changes must be made in writing to the Utah State Bar.
5. When a case proceeds to District Court, the OPC ordinarily will attempt to secure service upon the respondent at the respondent's business address. If the respondent no longer maintains a business address, personal service may be made at the person's residence, even though this information will be part of the public record.

## POLICY - K(9)

### TIME FOR PUBLISHING DISCIPLINE IN THE UTAH BAR JOURNAL

Pursuant to rule 14-510(f)(1), when a Screening Panel recommends that a Respondent be admonished or publicly reprimanded, the discipline is automatically stayed if there is an appeal to the Supreme Court. In those cases, the OPC will not publish notice of the discipline pending resolution by the Supreme Court.

If the Respondent does not seek review by the Supreme Court of a Screening Panel recommendation, the OPC will publish notice of the discipline once the time for requesting review has passed.

Any public discipline entered against a Respondent by a District Court may be appealed to the Utah Supreme Court by filing a Notice of Appeal within 30 days of the date upon which the judgment was entered. Unless such a judgment is entered pursuant to a stipulation of the OPC with the respondent, the OPC will not publish notice of the discipline until the 30 days for filing the Notice of Appeal have elapsed.

If the District Court grants a Respondent's request to stay the discipline pending an appeal, the OPC will not publish notice of the discipline pending resolution by the Supreme Court.

In cases where an appeal of a district court order of discipline has been filed, either by the respondent or the OPC, and where the Respondent has not moved to stay the discipline, upon expiration of the time in which a stay may be requested, the OPC will publish the "result" of the case, but not the rule violations or a description of the conduct. In other words, the notice will only contain the date of the order, the court in which the order was entered, the discipline that was imposed, the effective date of the discipline, and the fact an appeal has been filed.

In cases where an appeal of a district court order of discipline has been filed, the OPC will publish notice of the rule violations and the conduct constituting the rule violations, along with the result, only after the Supreme Court has issued its written decision on the matter.

## POLICY – K(10)

### Requests for Screening Panel Records

In cases where a Screening Panel has recommend discipline (admonition or public reprimand) the Screening Panel Decision Sheets and video/audio recordings will be provided to the Respondent or the Respondent's counsel only upon written request.

In cases where a Screening Panel has voted that a formal case should be filed in district court, the Decision Sheets and video/audio recordings should be identified in the Initial Disclosures, and should be produced if requested in discovery.

Transcripts of Screening Panel hearings will not be provided by the OPC. Respondents may make their own arrangements for transcripts to be made from the video/audio recordings.

The OPC charges \$15.00 per video recording (generally this will be provided on a USB flash drive).

The OPC will not produce any of the foregoing materials to the Complainant or to witnesses except pursuant to court order or express written waiver by the Respondent.

**POLICY - K(11)**

**FILE RETENTION SCHEDULE**

Cases where no discipline imposed..... 7 years from the date of closure  
Cases where discipline imposed ..... Permanent Archives  
Miscellaneous ..... See Policy K(3)  
Screening Panel Recordings..... 1 year from date of closure  
Chron files .....2 years  
Ethics call logs .....7 years

## POLICY – K(12)

### DIVERSION

Determination by OPC Counsel.

During the investigation or at the conclusion thereof, the OPC Counsel may determine that the matter should be diverted as an alternative to discipline.

#### Diversion

(a) Possible terms. OPC Counsel may offer diversion to the attorney, the terms of which may include: mediation with client, fee arbitration, law office management assistance, evaluation and treatment for substance abuse, psychological evaluation and treatment, medical evaluation and treatment, monitoring of the attorney's practice or accounting procedures, continuing legal education, ethics school, the multistate professional responsibility examination, restitution, pro bono work, or any other program agreed to by the attorney and OPC counsel.

(b) Participation in the Program. An attorney may participate in an approved diversion program in cases where there is little likelihood that the attorney will harm the public during the period of participation, where the OPC Counsel can adequately supervise the conditions of diversion, and where participation in the program is likely to benefit the attorney and accomplish the goals of the program. A matter generally will not be diverted under this Rule when:

- (1) The presumptive form of discipline in the matter is likely to be greater than public reprimand;
- (2) The misconduct involves misappropriation of funds or property of a client or a third party;
- (3) The misconduct involves a serious crime, a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, theft, or the sale, distribution, or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses;
- (4) The misconduct resulted in or is likely to result in actual injury (loss of money, legal rights, or valuable property rights) to a client or other person, unless restitution is made a condition of diversion;
- (5) The attorney has been publicly disciplined in the last three years;

- (6) The matter is of the same nature as misconduct for which the attorney has been disciplined or cautioned in the last five years;
- (7) The misconduct involves dishonesty, deceit, fraud, or misrepresentation; or
- (8) The misconduct is part of a pattern of similar misconduct that cannot be addressed by diversion (i.e., diversion is unlikely to be a deterrent for future misconduct).

An agreement between the OPC and a Respondent to place a matter in diversion will be governed by the provisions of rule 14-533 of the RLDD.



## POLICY – K(13)

### SETTLEMENTS

In an effort to conserve resources, the OPC will attempt to settle cases when appropriate. However, once a screening panel has determined that a formal complaint should be filed against an attorney, the OPC will not engage in settlement discussions until after a Complaint has been filed and the Respondent has filed an Answer. Furthermore, the OPC will not compromise cases. Any settlement will be based on rule violations the OPC can prove by a preponderance of the evidence, and the agreed upon sanction must be in line with the Standards for Imposing Lawyer Sanctions. In order to ensure consistency among cases, settlements may be offered after the case and the proposed terms of the settlement have been discussed in the OPC Attorney Meeting.

**POLICY – K(14)**

**DEALING WITH THE MEDIA**

On occasion, there may be events or cases that will be of significant interest to the public such that the OPC may be contacted by the press. Inquiries from the press of a general nature, (i.e. the activities of the OPC, the attorney discipline process) should be referred to the Bar's Communications Director.

Inquiries from the press regarding a specific case should be given to Senior Counsel. If Senior Counsel is unavailable for an extended period of time, the inquiry may be given to Deputy Senior Counsel. Unless specially approved, no other member of the OPC staff is to communicate directly with the media on a pending disciplinary matter.

POLICY – K(15)

SUMMARY OF OPC'S INVESTIGATION AND RECOMMENDATIONS  
(SPAM)

In order to assist the screening panel in its investigation of the allegations against an attorney, the OPC will prepare a Screening Panel Memo summarizing its investigation and recommendations.

After the OPC attorneys meet and determine a case should be referred to the screening panel for hearing, the matter will be set on the next available date and the case will be transferred from the Investigation Attorney to a Prosecuting Attorney. If Respondent is represented by counsel, support staff shall coordinate the date of the screening panel hearing with said counsel.

Support staff shall send the Calendar Notice at least thirty-three (33) days before the screening panel hearing date. A bates stamped copy of the file (not including the SPAM) will also be sent to the panel members at that time via the cloud.

The Prosecuting Attorney will be responsible for completing the screening panel memo. The screening panel memo should be provided to the panel, along with the merged bates stamped electronic version of the file 7-14 days prior to the hearing.

The following is a list of the elements that will generally be included in the memo and the person responsible for completing each section:

1. **Facts.** Generally, this section should only include those facts that are not disputed by either party. Each fact will include a reference, by name and bates stamp number, to a supporting document in the file. The Fact section may be taken from the NOIC and will be completed by the Investigation Paralegal.
2. **Witnesses.** This section will include a list of the witnesses contacted by the Investigation Attorney who have information that may be relevant to the screening panel's investigation. Each designation should include a brief statement that will assist the panel in understanding how the witness is connected to the case and the relevance of their testimony. It should also include a statement as to whether the witness will be appearing at the screening panel hearing or if the panel should refer to a memo in the file that memorializes their conversation with the intake attorney. The Witness section will be completed by the Investigation Paralegal.

3. **Summary of the Allegations.** This section will contain a brief narrative summary of the allegations contained in the initial complaint, as well as those uncovered in the course of the OPC's investigation. The Summary of Allegations section will be completed by the Investigation Paralegal.
4. **Summary of the Response.** This section will contain a brief narrative summary of the response to the allegations. This summary should include all responses submitted during the course of the OPC's investigation. The Summary of the Response will be completed by the Investigation Paralegal.
5. **Issues and Questions.** This section will include a numbered list of significant questions that were not resolved through the investigation process or the NOIC and that will assist the screening panel in identifying the relevant issues. The Issues and Questions will be completed by the Prosecuting Attorney.
6. **OPC's Recommendations.** This section will include a narrative discussion of OPC's view of the case as well as identifying the rules violated and OPC's recommendations for sanctions. The OPC's Recommendations will be completed by the Prosecuting Attorney.
7. **Index.** This section will identify, by name and bates stamp number, all documents included in the file. The Index will be completed by the Investigation Paralegal.

1       **Rule 14-515. Access to disciplinary information.**

2       (a) Confidentiality. Before the filing of a formal complaint or the issuance of a public reprimand, the  
3 proceeding is confidential and the records are private. OPC counsel may disclose the pendency, subject  
4 matter, and status of an investigation if the proceeding is based upon allegations that have been  
5 disseminated through the public media, or include the prosecution or conviction of a crime or reciprocal  
6 public discipline. Upon the filing of a formal complaint, a petition for reinstatement, or a motion or petition  
7 for interim suspension, the proceedings and records are public. The district court may, upon motion and  
8 for good cause, enter an order prohibiting the disclosure of specific information to protect the interest of a  
9 complainant, witness, third party, or respondent.

10       (b) Proceedings alleging disability. Proceedings for transfer to or from disability status are  
11 confidential. All orders transferring a respondent to or from disability status are public.

12       (c) Access to records. Upon request, OPC counsel will disclose private records to:

13       (c)(1) a public official investigating or prosecuting criminal activity by the respondent;

14       (c)(2) a committee or an auditor appointed by the Supreme Court or the Board to review OPC  
15 operations;

16       (c)(3) the Board, a Bar committee or the executive director if the records are essential to the  
17 performance of their duties;

18       (c)(4) any person authorized access in a writing signed by the respondent;

19       (c)(5) an appropriate person or organization, including the Lawyer's Fund for Client Protection, in  
20 order to protect the public, the administration of justice, or the legal profession;

21       (c)(6) the Professionalism Counseling Board if a referral is made to the Professionalism Counseling  
22 Board;

23       (c)(7) if the information is required in a subsequent lawyer sanctions hearing;

24       (c)(8) if the information is essential to an ongoing OPC investigation into misconduct by the  
25 respondent.

26       (d) No further disclosure. Except as authorized by other statutes or rules, persons receiving private  
27 records under paragraph (c) will not disclose the records to anyone else.

28       (e) Reasonable suspicion of a crime. OPC counsel must notify and provide access to private records  
29 to the appropriate investigating or prosecuting authority if there is reasonable suspicion to believe that a  
30 crime has been committed.

31       (f) Duty of participants. All participants in a proceeding under these rules must conduct themselves so  
32 as to maintain confidentiality.  
33

EXHIBIT "B"

### NOTES TO AMENDMENTS

The amendments maintain the basic policy that proceedings are private before a formal complaint and public afterwards. The exceptions are in paragraph (c). None of the exceptions requires notice to the respondent.

Paragraphs (c)(4) through (c)(8) collect and sometimes modify all of the current exceptions. The last 2 are more than a little confusing, but that's because we cannot figure out what is intended in the current rule.

Paragraphs (c)(1) through (c)(3) are new. Paragraph (c)(1) provides private records to investigators or prosecutors. That is a particular application of (c)(5), which is existing policy. Paragraph (c)(2) would provide the records to OPC Committees, to any future review committee, and to ABA auditors. Paragraph (c)(3) would provide necessary records to the Bar commission, bar committees, and the executive director.

Paragraph (d) prohibits further disclosure, and paragraph (e) requires OPC to notify the appropriate authorities if it discovers evidence of a crime.

**TAB**  
**2**

**REPORT OF THE  
SUMMER CONVENTION REVIEW COMMITTEE  
OCTOBER 2015**

Charge to the Summer Convention Review Committee from the Bar President:

“to evaluate the effectiveness of the [Summer] Convention and to consider what the Bar’s long term plans should be for the Summer Convention for the years 2018 and beyond, considering the Convention goals, attendance, cost, and other factors. Please recommend any improvements to Convention planning and execution.”

To address and respond to the charge stated above, starting in Fall 2014, the Committee conducted a review and investigation of the goals of the Convention, how they are being met, and past performance in terms of attendance and cost to the Bar. Specifically, the Committee considered the following information which is also attached hereto as part of the Appendices to this Report:

- 1) Results of past Summer Conventions, Spring Conventions and Fall Forum meetings in terms of attendance and costs to the Bar (Appendix 1)
- 2) Recent survey results of Convention attendees (Appendix 2)
- 3) 2011 Dan Jones survey results of all Bar membership relating to the Conventions (Appendix 3)
- 4) Information regarding potential Convention venues in Park City, Utah (Appendix 4)
- 5) Convention practices of other Western States Bars (Appendix 5).

Additionally, the Committee conducted a unique, focus group-type discussion with the Chairs and Presidents of all Utah State Bar sections and affinity groups, addressing the value of the Summer Convention and the reasons membership did or did not attend. The Committee also met on several occasions with the Utah Bar CLE Advisory Committee, which had a specific charge in 2014-15 of helping to increase attendance at the 2015 Summer Convention in Sun Valley. These meetings provided valuable information concerning the motivations, draws and purposes Bar members have or perceive in deciding whether to attend the Summer Conventions.

Finally, this Committee considered the results of the most recent Summer Convention in July 2015 which, after two years in Snowmass, Colorado (where the Convention was not successful in terms of attendance and cost to the Bar), returned to Sun Valley, Idaho. This Committee recently received the final accounting from that Convention as to attendance and costs, which results are included in this Report.<sup>1</sup>

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<sup>1</sup> This Report was initially intended to be presented to the Commission in July 2015, but during the course of the Review the Commission instructed this Committee to delay finalizing this Report until the attendance and costs of the 2015 Summer Convention were available. The 2015 Summer Convention attendance and costs are listed in Appendix 1.



## Findings and Recommendations

### FINDINGS:

1. The Summer Convention has a long tradition with the Utah State Bar and has succeeded in meeting several important needs. Those needs could be summarized as specific goals of the Summer Convention as follows:
  - Serving as the annual business meeting of the Bar<sup>2</sup>
  - Providing unique and generally high quality CLE
  - Providing social and networking opportunities for Bar members and their families
  - Grooming and mentoring of future Bar leaders
  - Fostering and preserving a tradition of Bar membership, Bar leadership and Judges socializing with and learning from each other, while promoting collegiality, professional respect and common purpose among the members of the Bar
  - Remaining, along with the other major conventions of the Bar, financially self-sustaining so that the Convention is not supported by the Bar membership at large, most of whom do not attend the Convention
2. Recent years have shown a trend of decreasing attendance at the Summer Convention, particularly in relation to the increasing number of Bar members, resulting from several factors including, at least:
  - Downturns in the economy
  - Reductions in reimbursements from law firms, particularly to young lawyers
  - Increased young lawyers practicing in solo or small firms
  - Cultural views and/or attitudes of various groups of lawyers, including younger lawyers, towards the practice of law and the role of the Bar, including the need or desirability of participating in Bar events
  - Increased local, web-based and specialized CLE offerings, including from third-party CLE providers, Fall Forum and Section-sponsored CLE events
  - Changes from traditional Summer Convention venues
3. The Sun Valley Resort has, over the years, increased its costs to the Bar and has demonstrated little flexibility in negotiating lower costs to the Bar and its members.

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<sup>2</sup> Rule 14-103(j) of the Supreme Court's Rules Governing the Utah State Bar provides that "[t]here shall be an annual meeting of the Bar, presided over by the president of the Bar, open to all members in good standing, and held at such time and place as the Board may designate, for the discussion of the affairs of the Bar and the administration of justice."

4. In spite of somewhat decreased attendance and difficulty in reaching profitability to the Bar, the Summer Convention has lost significant sums only during the two events in 2013 and 2014 in Snowmass, Colorado, when losses exceeded \$100,000 each year. In other years, the costs to the Bar have ranged, in the past ten years, between losses of \$32,250 (Newport 2006) and profits of \$18,236 (Sun Valley 2009). These numbers are consistent with Conventions going back to 1990. Further, when looked at together, the three major conventions have consistently broken even or resulted in positive revenues for the Bar, with the notable exception of the two years the Summer Convention was held in Snowmass.
5. Each of the three conventions seems to address a distinct audience, summarized as follows:
  - The Summer Convention is recognized as the Bar's "Annual" Convention, as the business of the Bar takes place, including swearing in of the new President, President-Elect and Bar Commissioners, reports from the Bar, the Courts and the Law Schools, etc. Many attendees have been coming with their families for many years and include a large number of State and Federal Court Judges. However, because of the cost and the distance from the Wasatch Front, many attendees are from larger Salt Lake City law firms. Many are also older members of the Bar. Among some solo and small firm lawyers, the Summer Convention is perceived to be intended for an elite group of Bar members.
  - The Spring Convention in St. George remains well-attended and financially viable, and has its own attendance group that does not appear to be impacted by any changes to the Summer Convention. Attendees are perceived to be a wider cross-section of Bar members including younger lawyers and more solo and small firm practitioners than attend the Summer Convention.
  - The Fall Forum has become the most successful Convention in terms of attendance and profitability. It does not, however, have a focus on networking and sociability among Bar members as the goal of most attendees is to gain inexpensive CLE hours. As a result, it has historically and primarily met the CLE goal (among those identified above), but not the others. It is believed that the largest number of solo and small firm practitioners attend this Convention.<sup>3</sup>
6. The Utah State Bar appears to be unique among state bar organizations in having three major convention-sized events, and for holding one of them out-of-state. Some states do not hold annual conventions at all. (See, Appendix 5).

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<sup>3</sup> The Committee notes that Fall Forum 2015 is experimenting with a two-day format and increased networking opportunities. The results of this experiment might conceivably impact Summer Conventions in the future, or the interactions of the three conventions.

7. Viable venues for a Summer Convention away from the Wasatch Front are limited. The 2013 and 2014 Conventions did not succeed financially, primarily because of low attendance (*See*, Appendix 1). There are probably multiple factors for that low attendance but two frequently cited reasons are distance (it is 1.5 to 2 hours further away from the Wasatch Front than Sun Valley), and unfamiliarity. There is an established tradition of going to Sun Valley (with periodic exceptions to Southern California), and many of those regular attendees chose not to go to Colorado, in spite of lower lodging and other costs than Sun Valley. Thus, the Bar should be exceedingly cautious in scheduling future Summer Conventions at locations unfamiliar to the Bar membership. Investigation into Park City venues also revealed limited options with essentially no single venue that could provide sufficient rooms, and apparently only one (the Chateaux) with meeting space that could presently accommodate even 400 in a single room.

## RECOMMENDATIONS:

1. Continue with Sun Valley/California Rotation.

So long as attendance levels support a near break-even model (consistent with the financial results of the past ten years of conventions – excluding the Snowmass conventions), the Committee recommends continuing to have the Summer Convention in Sun Valley, with a rotation every 4-5 years in California. This practice, which has been in place for most of the past twenty-five years (with the notable exception of the Snowmass conventions), has largely met the goals of the Convention as set forth above.

The Committee also makes the following additional recommendations regarding the Summer Convention:

Continue efforts to increase attendance of Young Lawyers such as those recently adopted, including use of technology (the Convention app, social media, sponsoring young lawyer-focused social events, and encouraging firms to send young lawyers

- Continue to encourage Judges' attendance at the Summer Convention, by providing complimentary registration
- Consider increased efforts to involve larger Sections in providing specialized CLE at the Summer Convention

2. Plan for Possible Alternatives as Attendance and Financial Results Change.

Importantly, the Committee recognizes that factors such as changes in the practice of law, demographics and economics (as discussed in the Findings above) may eventually result in low enough attendance and high enough costs that the Sun Valley location will become less feasible. At such time, the Committee suggests other options be considered, including the following:

- a. Eliminate the Summer Convention entirely. The Bar could then hold its required “annual business meeting” during the Fall Forum, the Spring Convention or as a stand-alone business meeting of the Bar.
- b. Move the Fall Forum to the summer in Salt Lake City and make it the “annual business meeting” of the Bar. Optionally, the Fall Forum could be replaced with an annual “Fall Convention” away from the Wasatch Front as a “replacement” for more social aspects of the Summer Convention. A few additional points were noted regarding a possible move of the Fall Forum:
  - A Fall Forum-turned-Summer Convention, in Salt Lake City, could become the Bar’s annual business meeting, but also continue its successful focus on CLE.
  - A new Salt Lake City-based Summer Convention could also be moved from July to late June to coincide with the Bar’s June 30 CLE reporting deadline, and the Bar could consider allowing some CLE to count for both reporting periods – or for either at the member’s election.
  - A new “Fall Convention” away from the Wasatch Front (not to be confused with the present Fall Forum, which would move to the summer as indicated) could help replace some of the social and networking aspects of the present Summer Convention. By being a destination convention, attendees can mingle and socialize outside of meetings. It could be scheduled in connection with the annual UEA Convention to allow families to attend. It would likely be a smaller event, allowing for venues in Park City to be considered. A Fall Convention could also take advantage of “shoulder season” discounts. It should be noted that a new Fall Convention would likely attract many of the larger firm and senior lawyers, and fewer younger attorneys, solo and small firm lawyers, as it would necessarily be more expensive than the present Fall Forum.

Respectfully submitted,

Summer Convention Review Committee, October 2015

H. Dickson Burton, Chair  
James D. Gilson  
Angelina Tsu  
Heather Farnsworth  
Curtis M. Jensen  
Aida Neimarlija  
Jonathan O. Hafen

## APPENDIX 1

Results of Past Summer Conventions  
Results of Past Spring Conventions  
Results of Past Fall Forum Meetings

SPRING CONVENTION YEAR/ST. GEORGE	PROFIT/LOSS	TOTAL REGISTERED	COMP REGISTRANTS
1988		215	
1989		244	36
1990		157	13
1991		421	40
1992		286	55
1993		468	48
1994		455	72
1995		429	63
1997		461	70
1997		501	76
1998		501	60
1999		472	65
2000		435	40
2001		499	39
2002		406	31
2003		434	32
2004		470	61
2005		420	55
2006	\$5,154	426	64
2007	-\$4,576	443	63
2008	\$27,441	492	87
2009	\$19,025	431	66
2010	\$20,027	430	43
2011	\$20,124	449	80
2012	\$3,673	420	69
2013	\$27,606	430	87
2014	\$36,899	480	88
2015	\$21,728	431	79

SUMMER CONVENTION YEAR/(RESORT/HOTEL)	PROFIT/LOSS	TOTAL REGISTERED	COMP REGISTRANTS
1985 (Sun Valley)		188	12
1986 (Sun Valley)		282	0
1987 (Salt Lake City)		226	25
1988 (San Diego) Hotel Del Coronado		352	24
1989 (Sun Valley)		307	30
1990 (Colorado) Beaver Creek	\$32,728	408	45
1991 (Sun Valley)	\$20,392	534	66
1992 (Sun Valley)	\$15,711	488	87
1993 (Sun Valley)	\$17,480	605	73
1994 (Sun Valley)	-\$12,033	514	44
1995 (San Diego) Hotel Del Coronado	\$30,498	455	57
1997 (Sun Valley)	-\$10,346	526	71
1997 (Sun Valley)	\$21,612	527	53
1998 (Sun Valley)	\$18,932	541	42
1999 (Sun Valley)	-\$18,674	568	8
2000 (San Diego) Hotel Del Coronado	\$21,515	479	49
2001 (Sun Valley)	-\$10,202	542	18
2002 (Sun Valley)		327	39
2003 (Sun Valley)	-\$4,356	496	33
2004 (Sun Valley)	-\$2,262	350	57
2005 (Sun Valley)	\$3,210	438	29
2006 (Newport Beach) Newport Beach Marriott	-\$32,250	367	3
2007 (Sun Valley)	\$3,707	450	53
2008 (Sun Valley)	\$10,097	419	67
2009 (Sun Valley)	\$18,236	424	38
2010 (Sun Valley)	\$12,086	359	34
2011 (San Diego) Manchester Grand Hyatt	-\$11,692	381	65
2012 (Sun Valley)	-\$31,196	385	79
2013 (Snowmass)	-\$101,418	329	90
2014 (Snowmass)	-\$118,693	281	103
2015 (Sun Valley)	-\$11,790	409	80

FALL FORUM YEAR/SALT LAKE CITY (HOTEL)	PROFIT/LOSS	TOTAL REGISTERED	COMP REGISTRANTS
2003 (University Park Marriott)		388	
2004 (University Park Marriott)		242	84
2005 (Little America)	\$15,886	506	33
2006 (Little America)	\$7,697	525	70
2007 (Little America)	\$14,103	589	80
2008 (Little America)	\$15,829	540	60
2009 (Downtown Marriott)	\$26,154	726	46
2010 (Salt Palace)	-\$3,237	514	48
2011 (Little America)	\$2,205	575	67
2012 (Little America)	\$4,708	479	120
2013 (Little America)	-\$12,299	369	67
2014 (Little America)	\$13,750	473	84



## APPENDIX 2

### Recent Survey Results of Convention Attendees

The editor does an excellent job of selecting articles that deal with current issues in a usable and accurate manner.
The monthly (printed) edition ends up in the restroom and over the course of the month is read in its entirety. Otherwise it would not be read -- probably.
There is far too much focus on pet-topics of persons in power in the state bar. For example, ethics and civility have been crammed down my throat so much I am choking. I would prefer to see more articles aimed at practical matters such as trial advocacy, knowledge of the rules of civil procedure and rules of evidence, and so forth.
There should be much more substantive information, and articles regarding professional topics. there are a lot of attorneys who, if asked, would provide articles on relevant subjects. And, it needs to be more timely with the classifieds and calendars etc, it seems outdated by the time it gets to print.
Unknown
Yes, stories of where members did something for Utah which waa on a pro bono basis, and the results.

Q89 - Which of the following would increase the likelihood that you will attend one or more of the above programs]
Much closer venues
\$\$\$\$\$\$\$\$
A job would help me have the money to attend.
allow for scholarships
annual meeting is too far away.
Better presentations
better quality
charge less
Charge less
Charge less
closer to wasatch front
cost
Cost
Cost
cost
Cost adjustments
Cost and time availability
cost less
Cost of Annual Convention is not affordable for solos and is geared more toward large firms - offer a discount to solo practitioners so they may participate
Could not afford the time or money to travel to attend.
Decrease cost
Decrease cost to go

Decrease cost.
Decrease the price for non-profit practitioners. There is no way I or my organization would pay for them.
Discount for Govt attorneys and relevant to Govt attorneys
Discounts for government employees
Discounts for govt employees who have to pay for their own CLE
Do it on a weekend
Do not hold Utah state bar events outside of the state of Utah!
Employer would cover cost
Encourage the AAG's office to utilize the training and pay for it rather than furnish our training
Expense of registration especially for guests
Government would pay for it
have events during non-business hours
have in slc
Have more business types presentations. Too much litigation presently.
Have practical seminars not dominated by the large law firms.
Have the conventions in-state
have them along Wasatch Front
Hold annual meeting in the state
Hold them where I don't have to travel to attend -- like the Fall Forum.
I am poor I can't afford them. If you were to make them cheaper I would go
I attend already
I attend the fall forum
I do attend regularly those I checked so this doesn't really apply to me
I do attend.
I find the content and the expense prohibitive to make me want to attend.
I go when my firm suggests me to go.
I will retire next year.
I would be more likely to attend if held in SLC.
If I could afford to go somewhere for that I would go
If I move to Utah
If I returned to the practice.
If in Salt Lake
I'm just starting out--I can't afford ANY extras. Hopefully someday I'll make more money, and would happily attend.
I'm unlikely to attend outside of wasatch front
in SLC
Include Criminal and Administrative Law
Inexpensive
keep the annual meeting in Sun Valley

Keep them in Utah and make them inexpensive
Law Firm would support
Less cost
less expensive
Less expensive
less expensivwe
less money
lower cost
lower cost
lower cost
Lower costs
Lower the cost
Lower the cost
Lower the Cost
lower the cost
Lower the cost.
lower the price
make CLE optional
Make CLEs less expensive
make it cheaper
Make it free
make it less expensive
Make it possible to attend one or more classes
Make St George a little more fun and not so OLD. Have at least 1 family event. Lower the cost for those of us who have to pay out of pocket.
make the programs much less expensive
Make them affordable.
make them more affordable
More emphasis on criminal law
More substantive content tracks
More training in the crimnal field
N/A
n/a
Needs to be near an international airport
negotiate for affordability, particularly the price of accomodations
Not have to travel
Offer a tiered approach to registration costs
Offer webinars
Park City events
prefer Sun Valley

price
provide CLE credit for first year attorneys
Provide scholarships that attorneys could apply for to be able to attend.
reduce cost
reduce cost
Reduce Cost
Reduce cost
reduce cost and travel requirements
reduce price
Reduce the cost
reduce the cost.
Reduce the costs
Reduced cost for part-timers!
See above
see above
Stay off of holidays like the 4th of July
Too expensive for most public defenders
Try for 6 months between Annual and Mid-year
try Moab

Q90 - Please share any suggestions for changes or improvements to the Annual Meeting, Spring Convention or Fall Forum
Please share any suggestions for changes or improvements to the Annual Meeting, Spring Convention or Fall Forum..
There needs to be a forum on attorneys that are polygamists who practice law and represent the polygamist entities which must include the ethics of such conduct, why such attorneys as polygamists can practice law when such conduct is illegal and whether we must report them as a matter of bar ethics.
As I mentioned above, the cost is prohibitive for my organization. I would go if my attendance could be sponsored.
Better advertising of the specific content of the program might cause me to attend.
By "attractive" I mean in the state of Utah. As a government employee, I don't feel it is a wise use of taxpayer dollars to spend a week for travel, etc. (and our budgets aren't exactly fabulous right now). At least in Salt Lake, I can stay at a relative's. While I love Sun Valley (being from Idaho originally), the expense is quite simply excessive.
Cancel them.
Decrease costs to the bar members and do not use ANY of the bar fees to pay for the events.
Do not attend the Fall Forum because is it usually too narrowly focused.
Don't give up on the Sun Valley event. It is by far the best networking, social, integrating event I've ever attended, anywhere. That is the Utah State Bar, as far as I'm concerned.
Don't go when it is in California



Fall Forum is great. The Conventions seem to be attended mostly by old men who want to golf while getting in their CLE hours. If that is your market, then keep it going. If you want the younger generation to join in, make it more family friendly and/or convenient.
Fall forum was informative but need larger rooms for the various groups
For what they are they are fine, and when I was on my own, I did attend Fall Forum as a great way to get CLE, now that I get CLE through my office, its too much (extra money) for the extra info and training not required to meet my CLE goals.
Frankly, the education I receive at the Spring Convention is mediocre. The presenters need to be more specific rather than general. I do like the panel forums where specific practice tips are discussed.
Generally attendance would be improved by selecting locations within the State of Utah -- particularly in the northern part of the State in the Spring, Summer and Fall.
Get Richard Dibblee to play tennis so he can take a whipping
have in slc
Have more highly specialized or advanced CLE presentations, and by professional presenters.
Have some real practioners, both from firms and solo practioners talk about their own experiences, not hypotheticals. We need to know real solutions, not law school exam answers.
have them in SLC
Hold it locally and increase the quality of substantive course offerings
I am a newly practicing attorney after completing a 2-year judicial clerkship. Any CLE which takes several days or several hundred dollars is quite simply out of the question. I don't have that kind of time or money right now, and if I don't spend that time at work, I will not be able to overcome the money problem. I also have a young family and church and civic responsibilities. Several days of out-of-state travel are extremely difficult to put together.
I am just too busy and too poor right now as a new associate to make it to any of the events. Keep in mind when you consider the cost of these events that only 25% of new attorneys (2011) have jobs and that firms in Utah, because of this, can pay rates that are over 30% less than what they were even a year or two ago while increasing hourly requirements. The costs of the new mentoring program does not help, especially with firms such as mine refusing to pay for any fees. I am lucky enough to have a job at least. My friend is currently working for free for a firm at 180 billables per month and they're considering offering him a job in the \$50,000 range. He often gets home at midnight. When I see things like this in conjunction with the bar president's article about how young attorneys do not have any work ethic, it is somewhat aggravating. In summary, there isn't much you can do, short of magically fixing the economy or ceasing efforts to antagonize and alienate new bar members through exorbitant fees and articles that effectively discourage the hiring of new attorneys.
I do not consider bar events to be substitutes for family vacation. I have to work on vacation enough as it is. Adding bar events on top of that makes it pointless for me to bring my family to any such event. I can get my CLE covered within a few miles of my office. The topics covered at the bar events are not really relevant to what I do (notwithstanding the "transactional" track). As a result, I do not take the extra time travel to those events.
I enjoy the Bar Meetings and the locations although I have never attended in California. I'm fine if you leave it at Sun Vally all the time. However, if I were to make a suggestion, I would omit the "acting" out problems and issues. They are silly and not helpful to me, e.g. acting out the depositions, acting out the mediations. I enjoy national (or local)

speakers on important topics who have established a great reputation for presenting. If the presentation is not good, it's more difficult to learn.
I find it difficult to take additional time off in July to attend the convention, as there are already 2 holidays that month. This difficulty is compounded due to the fact that significant travel is required. I don't view these events as vacations for my family. I view them as time away from my family and job, which is difficult to justify often.
I find most of the courses do not offer content useful for criminal law practice
I find the Federal Bar annual Boyce Seminar and the IP Summit more informative to my IP litigation practice. They also have the advantage of being held in town in one day. I prefer to get my CLE in town in one day and not mess up my vacation time with CLE meetings.
I have enjoyed the meetings I've attended (2010 St. George and Sun Valley, 2011 San Diego). I have no suggestions for changes or improvements.
I have found many of the breakout sessions by local practitioners poorly done and unhelpful, even if the topic sounded good. Look for more dynamic speakers.
I have found the conventions to be of value. I do not practice. I work as a business executive. I do not know how many others fit that category so I don't know if it would be worthwhile to have some of the classes directed toward the running of a business, ie labor law, employment law, financial reporting, etc. I attend the Spring Convention regularly because my schedule fits at that time of year. I attend the Annual Convention when I can fit it into my schedule. The Fall Forum just never seems to fit.
I have never understood why the annual convention is held out-of-state. As a government attorney, we are severely limited in budget and travel. If we are not a presenter, we have to pay all the expenses ourselves, and this is a huge disincentive. Also, there are more specialized natural resources CLEs that are more pertinent to my practice.
I have no desire to network, or "rub elbows" with the legal elite. But that is the only thing these events sponsor. Hold events that do not perpetuate the bloated legos of the "legal elite" and I might consider it.
I have not had the opportunity to attend any of the events as I am a new attorney as of 10/31/2011.
I hope to attend soon. I really haven't had the opportunity yet based on cost and short time as member of bar
I just do not see the point of traveling outside the State of Utah for Utah Bar related activities especially during a down economy when that money could be spent supporting business in the state of Utah.
I like having annual meeting in Sun Valley generally. The occasional switch to another location is ok. If it could be the same time each year (around July 4) it makes for easier planning.
I like the Fall Forum because it's easy to arrange time to get there. The out-of-state venues rarely work for me.
I like variety in venue myself.
I love the fall forum
I only attend CLE where I can network with lawyers in my specific practice area. The above events are too generalized.
I try to make the St. George Convention every year. Sun Valley I used to attend, but it is difficult to go to two conventions per year.
I would like to have the substantive classes more substantial. The classes tend to be very much for those who came to vacation and not for those who want to knuckle and actually learn. Also, I would like to have more classes where the class members are expected to prepared before coming.
I would love to attend these meetings, but I can't afford it.

I'm not really sure that it makes sense to move more activities to Southern Utah, but I am more likely to attend events that do not require that I not be able to go to my office for 3 or more days (that includes the travel time). I recognize that the vast majority of attorneys practice in the Wasatch Front area or further north, but I'm unlikely to attend many events there due to the costs - time, financial, car wear & tear, etc.
in the past two years I attended both fall forums. I recall in particular a role playing session in the litigation category that was ridiculous--the idea of the role playing was good, but the topic (can't remember it) was silly, I guess in an attempt to be entertaining--they had roles from a fairy tale--and the discussion was a legal discussion about the fairy tale issue-- , rather than a substantive legal topic!--I don't need entertainment! there was another session in which the session leader kind of behaved like bob parker on the price is right....trying for laughs. Again, not necessary. Some of the ethics/civility sessions--shamanism/meditation were interesting but could not honestly say they made any contribution to my substantive learning about those topics. In general would appreciate getting the nuts and bolts about law, whatever the category, getting the inside in sight on the way it is in the trenches, or how things really work in the courtroom, etc, real life issues or how to's. thanks.
Include nonprofit law subjects.
IP related topics.
It is too expensive for young attorneys and small firm practitioners.
It is too inconvenient to travel to St. George or out of the state (such as to Idaho or California) to attend a bar meeting. It doesn't even make sense to hold a state bar meeting outside of the state. I would probably attend the annual meeting if it were held in Utah, and the semi-annual meeting if it were sometimes held somewhere besides St. George.
It would be helpful to me if some energy, natural resources, and environmental issues could be covered.
I've enjoyed the Fall Forum the last three years. I can't think of any improvements. Maybe let paralegals attend for free, and just pay for lunch?
I've found that most CLEs are nearly worthless (except for filling the CLE requirement). I wish they were more "how to" with forms, etc. that help you expand or perfect an area of the law. Most of the time it's a lecture on what not to do with very little time spent talking about what to do.
Just make content relevant to my practice and if it is I likely would attend.
Keep the annual meeting in Sun Valley.
Keep the annual meeting in Sun valley. Could have fewer, but more helpful break-out sessions. break-out topics could be more "how to" and practical.
Lawyers should be in their communities participating in Patriotic and community service on the 4th of July. To have all the lawyers leave the state for a big party on such holidays gives the profession the deserved reputation that lawyers want to live off the community not in the community. It is an embarrassment to the bar that is talked about in every town and village in the state outside of SLC when it show up in the news media.
LESS EXPENSIVE CLE
Less time for award ceremonies. More time for "60 tips in 60 minutes." More room for the litigation classes (since every year people are left standing just outside the hallway listening).
Little relevance to local government law practice at any of the events.
location
Love going to San Diego every few years



make it cheaper
Make them convenient by location and have the price reduced substantially.
MORE LOCATIONS IN AND OUTSIDE UTAH, ONCE IN A WHILE LOCATIONS FAR AWAY, OTHERS IN WESTERN STATES MORE SPECIALTY FOCUSED CLE
More sessions relating to government lawyers.
More space in popular subjects.
Most bar events have no to little applicability to government practice. Attorneys on a government salary cannot attend expensive venues, which include Sun Valley and San Diego (the government typically does not cover these events).
Move the annual meeting to Utah. Would like to support the Utah economy. The spring convention and fall forum are in good locations and times.
My employer will not pay for travel costs associate with CLE unless the CLE is solely devoted to the kind of work I do which is quite specialized. As a result, the Fall Forum is usually the only one I can attend on occassion because it is in SLC.
My family goes to St George every year when my daughter is on spring break from college & can go with us. But the convention is usually a week earlier & I cannot take 2wks off in a row. Plus if I want to bring my husband to any of the events, it's so expensive.
My specialty is patent law. I usually attend the IP Summit in February each year. It is unreasonable to expect similar content in the major bar events. Thus, it is likely that I will continue to attend the IP Summit and not the major events.
N/A
n/a
No changes. I attend the Spring convention because it is in southern Utah and I do not attend the Fall Forum because it is in Northern Utah - I am glad there are those options so you can reach the entire state. The annual convention usually does not fit in with other obligations for a long time off in the summer due to activities of my family, so I attend it rarely.
no comment
No out of state events. No more than one of the above events outside the Wasatch front.
No suggestions
No suggestions. I appreciate the efforts of others to do what they are presently doing.
None
none
None
None at this time.
None.
None.
None.
None.
Not applicable.
Offer prizes and free annual Bar membership dues, etc.
One would think that the Annual Meeting of the Utah State Bar would be held in a location, within the state of Utah, where a majority of the members of the bar would be able to attend without having to incur significant travel time or lodging expense. As it is, the annual meeting in Sun Valley, Idaho is pretty much just a snobfest for the most successful Utah lawyers to attend. Way to not include the rank and file or have them

represented!
Park City venue would be helpful.
Pick good locations where people want to go with all kinds of fun activities. I hate Sun Valley - it's so BORING and the restaurants are terrible. The accommodations are terrible considering the price.
Price
Record these and put them online for CLE.
Registration fees may be appropriate for the attorneys who practice full time; however, since I practice only part-time and a large portion of my practice consists of services to the poor and seniors, I lose several thousand dollars every year. I would like to attend the Fall, Spring and Annual conventions each year, but simply cannot afford them.
see above
See above.
some 1/2 day sessions would be useful, I don't really want to go all day or pay for all day
Some of the classes are of such poor quality that I feel taken advantage of. Thursday night of the Fall Forum was awful. You actually told people to "know your case." Was that remedial CLE?
Sometimes hard to find topics that fit me and my practice -- commercial litigation. Even when it appears to fit me, it often ends up being too niche.
Substance focused upon actual judicial practice and consensus on forms.
The Annual Meetings are irrelevant to my practice. The ones I have attended are like a good old boys club meeting. I'd rather attend CLE events that are national in scope or specific to a practice area I want to know without the extraneous social and membership events. If they were held next door to my office I would not attend.
The Bar has some "star power" and the visitor/convention business is in SERIOUS trouble -- meaning, it should not be that hard for the Bar to negotiate some great deals for travel accommodations. I would love to attend these meetings, but my firm does not pay for it, and I have a wife and 3 kids. So, if I could afford to take my family and stay at the location, it would be a win-win, but when you consider the price of participation together with the cost of accommodations, it is outside the reach of most younger attorneys' budgets. If the Bar wants to remain relevant, it has to encourage the participation of the young cubs, not just the old lions. To do that, there should be some recognition of the value of our attendance, and a price break. For example, a sliding scale of costs depending on your number of years in the Bar or number of years in attendance. Don't you think some of the old lions would agree to pay \$50 bucks more to attend the convention, if that meant that more young associates have the chance to attend too?!? I do. Also, the Bar spends a lot of money on advertising, mentoring etc., when it is missing one of its easiest ways to encourage young lawyers to stay close to the fold ... getting them involved in the conventions/meetings and getting them trained in the seminars. Perhaps the Bar could set aside a certain number of attendance vouchers or "scholarships" for young lawyers to attend the conventions and annual meetings, and have a process where young lawyers could apply to use them on an as needed basis. I know you have to cover your costs, but the "return on investment" for this would probably make it worth it. Call me to discuss, Joe McAllister.
The bar seems to ignore the fact that many of us are government attorneys. I am not a litigator, but so much of the training seems only to focus on that. I would like to see more training on employment law as it relates to government entities, the Government Employee Ethics Act, GRAMA, the Open and Public Meetings Act, State constitutional issues, etc.

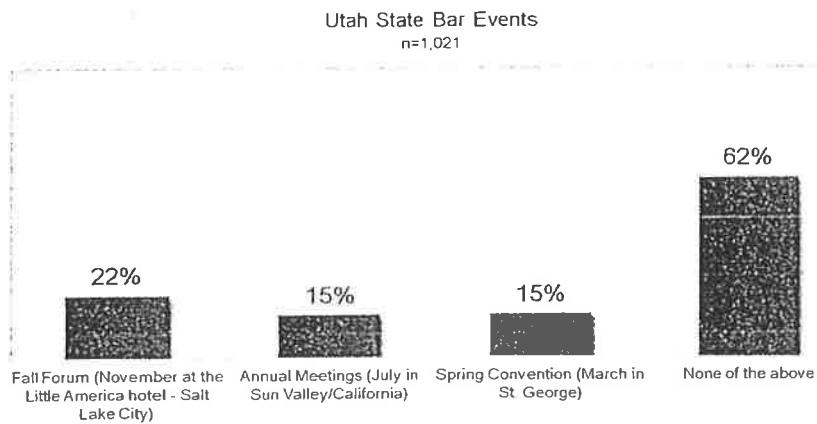
The bar seems to view all members as well-paid attorneys and plans its activities accordingly. I and I suspect many other attorneys struggling to earn a decent living cannot attend fancy junkets in San Diego or Sun Valley. The bar is happy to take our annual dues then plan fancy trips for its rich colleagues. I don't expect this will ever change.
The Conventions do not seem geared toward government criminal practice. With tight budgets and low pay, it really isn't a realistic option for most of us to attend.
The cost is prohibitive for government employees. Almost none of it is relevant to the practice of criminal law.
The fall forum should break up the lunch with the session that they normally include in the lunch. In other words, they should have a 30-45 minute lunch, and then continue with the breakout sessions.
The litigation panel was well done at the Fall Forum. The other Fall Forum classes were not as good. They didn't give much insight or instruction. Seemed that the panels weren't prepared. The mediation "drama" wasn't really worth going to.
The nature of the practice of law is changing with the economy and upcoming generations. More and more young attorneys who are dedicated to practicing law but are finding no openings with firms or government, are moving into solo practice or "indirect" legal jobs. Furthermore, as "Gen-X" and "millennials" increase their presence among bar membership the need to bridge the generation gap and acknowledge the shift to small or solo firm work will become increasingly necessary to sustain their participation in bar activities.
The only reason I do not attend the annual meeting is that we are always busy during the summer. November has also been quite busy as well.
The vast majority of the topics presented have no interest to me.
There seems to be minimal focus on criminal law.
they don't need to be vacations.
They're too expensive; you should have a free one with no food or anything at a free location, so more people can come to hear speakers; you could get those free too. Have a few different ones, in different countries so people could take 4 hours in a day to attend, and wouldn't have to spend a weekend or make a big expense in it. Not every attorney is a big shot high roller, most are people who need to work every day but would still like to go to events to see what is happening in the law. Why does the bar try to keep the old boys network, and only cater to those who have more money, and then guilt trip everyone for not providing pro-bono services. Most people need to work full time just to make ends meet, and don't have the luxury of going to California for the weekend to listen to overpaid attorney blather on about some thing. Why don't we have more, smaller, local events?
Too many sessions are specialized, making them of little interest to those not practicing in the focus area.
use different speakers--a handful of people appear regularly, and it would be nice to see new faces and hear different perspectives
Utah State Bar fuctions should be held in the state of Utah
We should be supporting our own local economy, not another state's!
Why pay money to be given a sales demo at the Fall Forum. Also, I believe that the cost is prohibitive for solo members.
Young lawyers like me simply cannot afford such events.

## APPENDIX 3

2011 Dan Jones Survey of Bar Membership – Portion Relating to Bar Conventions

## Questionnaire #4

Q87. Which of the following Utah State Bar events do you attend when you are able?  
(select all that apply)

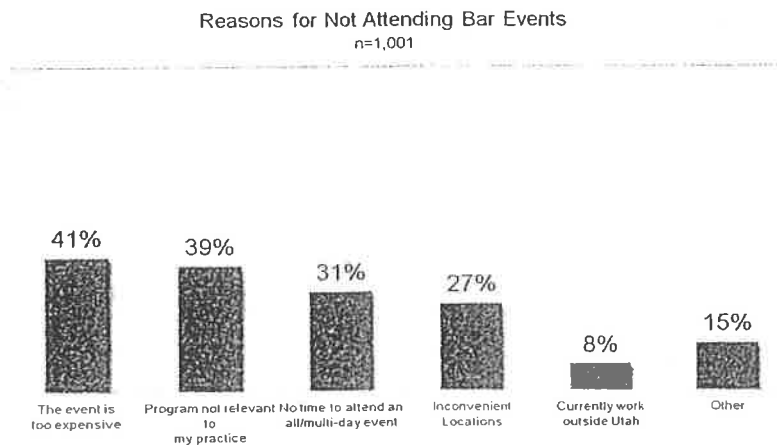


#97

2011 Utah State Bar Annual Survey of Members -

## Questionnaire #4

Q88. If you do not attend one or more of the above-mentioned major Utah Bar events (the Annual Meeting in July, the Spring Convention in March, or the Fall Forum in November), please select the reasons why below:



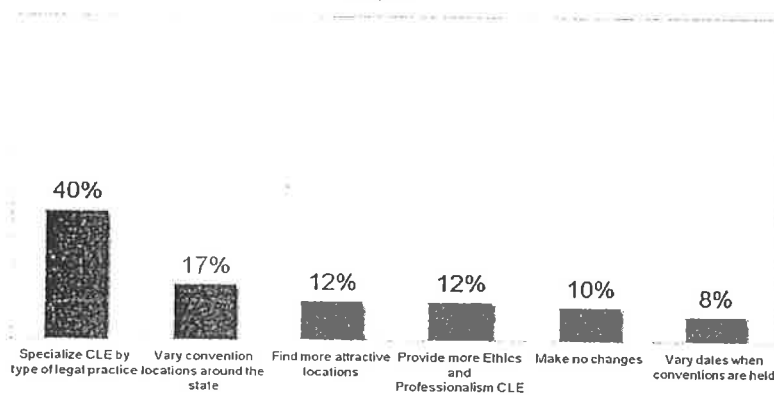
#98

2011 Utah State Bar Annual Survey of Members -

## Questionnaire #4

Q89. Which of the following would increase the likelihood that you will attend one or more of the above-mentioned major Utah Bar events in the next year?

Reasons for Not Attending Bar Events  
n=1,001



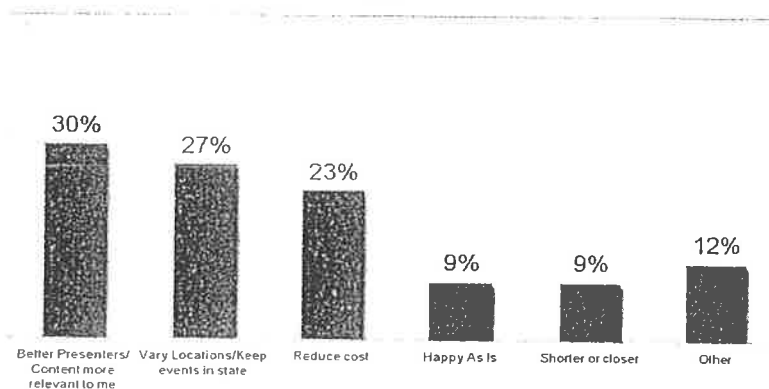
#99

2011 Utah State Bar Annual Survey of Members

## Questionnaire #4

Q90. Please share any suggestions for changes or improvements to the Annual Meeting, Spring Convention or Fall Forum?

Suggestions Changes / Improvements  
n=113



#100

2011 Utah State Bar Annual Survey of Members

## APPENDIX 4

Information Regarding Potential Convention Venues in Park City, Utah

## APPENDIX 4

### POTENTIAL CONVENTION VENUES IN PARK CITY, UTAH

#### *Canyons Resort Village*

Grand Summit Hotel: \$144; Sundial Lodge: \$119; Silverado Lodge: \$114

Resort fee: \$15-\$25/day + 12% tax

F&B minimum: \$39,000 + 32% service charge/tax

Meeting room rental: \$5,000

Meeting room capacity: Ballroom: 700 theatre; 375 classroom; breakouts (6 rooms): 100-145

#### *The Chateaux Deer Valley*

\$179 + 5% resort fee + 11% tax

F&B minimum: \$30,000 + 20% service fee + 9% tax

Meeting room space waived if F&B minimum met

Meeting room capacity: Ballroom: 660 theatre; breakouts (6 rooms): 50-220 theatre

#### *Westgate Park City*

\$175 + \$19.95 resort fee + 12% tax

F&B minimum: \$5,000/day

Meeting room space waived if F&B minimum met

Meeting room capacity: 300 theatre; 500 attendees—insufficient space

*Montage, Stein Eriksen, St. Regis*: \$259-279 and up; presently have insufficient meeting room space.



## APPENDIX 5

Report on Convention Practices of other Western States Bars

## APPENDIX 5

### CONVENTION PRACTICES OF OTHER WESTERN STATES BARS\*

**Alaska:** Annual Convention (May); generate a slight profit; 23% attendance over the last 4 years (750-800)

**Arizona:** Annual Convention; profit (does not include overhead associated with staff); 7% (1,600)

#### **California**

**Colorado** (voluntary): Discontinued Annual Convention

**Hawaii:** Annual Convention; generates a profit; 15% attendance (1,050)

**Idaho:** Summer Convention; sustains annual loss; 5-6% attendance (250-300)

**Montana:** Annual Convention (September); 6% attendance (200-300)

**Nevada:** Annual Convention; breaks even or slight loss; 4% (360)

**New Mexico:** Annual Convention – 4% attendance (350)

**North Dakota:** Summer Convention; 8 of the last 10 years lost money; 10% attendance (270)

**Oregon:** Does not hold an Annual Convention

**South Dakota:** Summer Convention; 33% attendance (750); subsidized with dues

**Texas:** Annual Convention (June); generates a profit; 2% attendance (1,900)

**Washington:** Has not held an “Annual Convention for decades”

**Wyoming:** Annual Convention; always a profit unless held in Jackson Hole; 8%-14% attendance (300)

\* None of the other Western States hold a Mid-Year Convention or Fall Forum Conference.

**TAB**  
**3**

# Utah State Bar®

## MEMORANDUM

TO: Bar Commission

FROM: Elizabeth A. Wright

DATE: November 16, 2015

RE: Proposed Changes to Law Student Assistance Rule

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The Judicial Council's Standing Committee on Resources for Self-represented Parties has proposed changes to the Law Student Legal Assistance Rule 14-807. The changes allow more law students to provide legal assistance under the rule and thereby expand the number of individuals available to assist indigent and low income people. The changes also expand the types of cases law students can handle and thus enable them to gain more practical experience while in law school. A redlined copy of the rule is attached.

Notable changes to the current rule include expanding the rule to allow second year law students to provide assistance under this rule. The current rule only allows third year students and recent graduates who have not yet passed a bar exam. Neighboring states Nevada, Wyoming, Arizona and California also allow second year law students to provide legal assistance.

The proposed rule also allows students to handle felony cases under the supervision of a lawyer who is present. Neighboring states Idaho, Nevada, Wyoming, Arizona and Oregon allow law students to assist on felony matters. Allowing Utah law students to handle felony cases will keep them competitive in a job market in which peers from neighboring states have had the opportunity to handle those types of cases.

Students providing assistance under the rule must do so as part of a law school clinic or externship, be volunteering for a tax-exempt or governmental agency or employed by a for-profit entity and supervised by an attorney who works for that entity. The rule does not allow students to seek private clients or to provide assistance on their own without supervision.

The rule requires students to be supervised by a licensed attorney, have written authorization from the client and, if in court, have the permission of the judge. Additionally, the law student must be in the presence of the supervising attorney in order to appear in a deposition

on or appear in court on a felony criminal matter. If the client consents, law students would be able to appear in court on civil matters without the supervising attorney's presence.

Finally, the proposed changes remove the requirement that opposing counsel approve the student's participation. The Judicial Council's Standing Committee on Resources for Self-represented Parties found that many lawyers were objecting to having a student participate on the grounds the student would have too much time to devote to the case and would "out lawyer" the licensed attorney. No other jurisdiction requires opposing counsel to approve a law student's participation in a case.

**Rule 14-807. Law student and law 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 ~~to discharge~~ in discharging their responsibilities to help create a just legal system that is understood, valued and accessible to all, which helps provide access to those individuals of limited means.

(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~~ either:

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

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

(c)(2) ~~a A law school graduate who must have graduated~~ has graduated from an ABA approved law school, and who is taking a regularly-scheduled bar exam within one year after graduating from law school, and have submitted an application for admission to the Bar in time for the first regularly-scheduled bar examination after graduation who is working under the supervision of an attorney authorized to practice law in the state of Utah.

(d) ~~The law school student's or graduate's participation shall be limited to civil, misdemeanor or administrative cases. Subject to all applicable rules, regulations and statutes, a law student or law school graduate as defined under this rule may:~~

(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 student or law school graduate;

(d)(1)(A) Obtains the approval of the supervising attorney to engage in the activities;

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

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(d)(1)(C)Performs the activities under the general supervision of the supervising attorney;

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

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(d)(2)(A)Obtains the approval of the supervising attorney to engage in the activity;

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

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(d)(2)(C)Obtains a signed consent from the client on whose behalf the law student or law school graduate acts approving the performance of such acts by such a law student or law graduate;

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(d)(3)Appear in any court or before any administrative tribunal in this state on behalf of any person if the person on whose behalf the law student or law school graduate is appearing has consented in writing to that appearance and the supervising attorney has also indicated in writing approval of that appearance. In each case, the written consent and approval shall be filed in the record of the case and shall be brought to the attention of the judge of the court or the presiding officer of the administrative tribunal. In addition, the law student or law school graduate shall orally advise the court on the occasion of the student's initial appearance in the case of the certification to appear as a law student pursuant to these rules. A law student or law school graduate may appear in the following matters:

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

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(d)(3)(B)Felony Criminal Matters on Behalf of the State. In any felony prosecution matter in any court, the supervising attorney must be present throughout the proceedings and shall be fully responsible for the manner in which they are conducted.

(d)(3)(C)Infraction or Misdemeanor Criminal Matters on Behalf of the State. In any infraction or 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 shall be present during any misdemeanor trial.

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(d)(3)(D)Felony Criminal Defense Matters. In any felony criminal defense matter in any court, the supervising attorney must be present throughout the proceedings and shall be fully responsible for the manner in which they are conducted.

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(d)(3)(E) Infraction or Misdemeanor Criminal Defense Matters. In any infraction or 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 shall be present during trial.

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(d)(3)(F) Appellate Oral Argument. In any oral argument in the Utah Supreme Court and the Utah Court of Appeals, but only in the presence of the supervising attorney and with the specific approval of the court for that case.

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(d)(3)(G) Notwithstanding anything the activities set forth in (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.

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(d)(4) Under the general supervision of the supervising attorney, but outside his or her personal presence, a law student or law school graduate may:

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

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(d)(4)(B) prepare briefs and other documents to be filed in appellate courts of this state, but such documents must be reviewed and signed by the supervising attorney;

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(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 a lawyer of record in the matter, all such assistance must be supervised by the lawyer of record, and all documents submitted to the court on behalf of such a client must be reviewed and signed by the lawyer of record and the supervising attorney);

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(d)(4)(D) render legal advice and perform other appropriate legal services, but only after prior consultation with and upon the express consent of the supervising attorney.

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(e) A law school student's or graduate's participation shall be under the direct and immediate personal supervision and in the presence of a resident attorney admitted to practice law before the court, except that the presence of the supervising attorney shall not be required at default divorce proceedings which are not contested and where the appearing party is represented by a non-profit public service legal agency.

(e) For any student participating under this rule, the law school Dean, or his or her designee, shall certify to the supervising attorney that the 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 student is enrolled in a law school clinic or externship.



(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) A law school student's or graduate's participation shall be agreed to by written stipulation of counsel for all parties to the action and filed in the case file.~~

(gh) Before participating under this rule, a law school graduate shall:

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

(gh)(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

(gh)(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.

~~(i) A law school student shall not receive any compensation or remuneration of any kind from the client on whose behalf the services are rendered.~~

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

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

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

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(hj)(2)(A) failure to submit a timely application for admission to the Bar under (c)(2);

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(hj)(2)(B) the Bar's admissions office's or its character and fitness committee's decision to disallow the law school graduate to take the first a regularly-scheduled bar examination under (c)(2);

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(hj)(2)(C) notification of the law school graduate's failure to successfully pass the first regularly-scheduled the bar examination under (c)(2); or or

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(hj)(2)(D) the law school graduate's failure to be admitted to practice at the first a regularly-scheduled admission ceremony within six months after of taking and passing the bar examination under (c)(2).

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**Rule 14-807. Law student and law 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 understood, valued and 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 :

(c)(1) a law school student in good standing who must have 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 either:

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

(c)(2) a law school graduate who must have graduated from an ABA approved law school, who is taking a regularly-scheduled bar exam within one year after graduating from law school and who 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 student or law school graduate may:

(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 student or law school graduate:

(d)(1)(A)Obtains the approval of the supervising attorney to engage in the activities;

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

(d)(1)(C)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 student or law school graduate:

(d)(2)(A) Obtains the approval of the supervising attorney to engage in the activity;

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

(d)(2)(C) Obtains a signed consent from the client on whose behalf the law student or law school graduate acts approving the performance of such acts by such a law student or law graduate;

(d)(3) Appear in any court or before any administrative tribunal in this state on behalf of any person if the person on whose behalf the law student or law school graduate is appearing has consented in writing to that appearance and the supervising attorney has also indicated in writing approval of that appearance. In each case, the written consent and approval shall be filed in the record of the case and shall be brought to the attention of the judge of the court or the presiding officer of the administrative tribunal. In addition, the law student or law school graduate shall orally advise the court on the occasion of the student's initial appearance in the case of the certification to appear as a law student pursuant to these rules. A law student or law school graduate may appear in the following matters:

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

(d)(3)(B) Felony Criminal Matters on Behalf of the State. In any felony prosecution matter in any court, the supervising attorney must be present throughout the proceedings and shall be fully responsible for the manner in which they are conducted.

(d)(3)(C) Infraction or Misdemeanor Criminal Matters on Behalf of the State. In any infraction or 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 shall be present during any misdemeanor trial.

(d)(3)(D) Felony Criminal Defense Matters. In any felony criminal defense matter in any court, the supervising attorney must be present throughout the proceedings and shall be fully responsible for the manner in which they are conducted.

(d)(3)(E) Infraction or Misdemeanor Criminal Defense Matters. In any infraction or 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 shall be present during trial.

(d)(3)(F) Appellate Oral Argument. In any oral argument in the Utah Supreme Court and the Utah Court of Appeals, but only in the presence of the supervising attorney and with the specific approval of the court for that case.

(d)(3)(G) Notwithstanding anything set forth in (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) Under the general supervision of the supervising attorney, but outside his or her personal presence, a law student or law school graduate may:

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

(d)(4)(B) prepare briefs and other documents to be filed in appellate courts of this state, but such documents must be 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 a lawyer of record in the matter, all such assistance must be supervised by the lawyer of record, and all documents submitted to the court on behalf of such a client must be signed by the lawyer of record and the supervising attorney);

(d)(4)(D) render legal advice and perform other appropriate legal services, but only after prior consultation with and upon the express consent of the supervising attorney.

(e) For any student participating under this rule, the law school Dean, or his or her designee, shall certify to the supervising attorney that the 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 student is enrolled in a law school clinic or externship.

(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 shall:

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

(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.

(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) cessation of 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) failure to submit a timely application for admission under (c)(2);

(h)(2)(B) the Bar's admissions office's or its character and fitness committee's decision to disallow the law school graduate to take a regularly-scheduled bar examination under (c)(2);

(h)(2)(C) notification of the law school graduate's failure to successfully pass the bar examination under (c)(2);

(h)(2)(D) the law school graduate's failure to be admitted to practice at a regularly-scheduled admission ceremony after taking and passing the bar examination under (c)(2).

**TAB**  
**4**

## **CHARGE TO STANDING COMMITTEE**

**TO:** TBD, Co-chair, Innovation in Law Practice Committee,  
TBD Co-chair, Innovation in Law Practice Committee,

**FROM:** Angelina Tsu, President

**DATE:** October 2015

### **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).

**BAR STAFF LIAISON:** IT Director/Webmaster Lincoln Mead

**TAB**  
**5**





# Utah State Courts

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## Supreme Court Task Force to Examine Limited Legal Licensing

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Report and Recommendations November 18, 2015

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The mission of the Utah judiciary is to provide the people an open, fair, efficient, and independent system for the advancement of justice under the law.

## **SUPREME COURT TASK FORCE TO EXAMINE LIMITED LEGAL LICENSING**

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## (1) INTRODUCTION AND SUMMARY

### (a) INTRODUCTION

Probably most Utah communities are not that different from “Middle City, USA,” a mid-size, mid-West community that was the location of the 2014 Community Needs and Services Study by the American Bar Association.<sup>1</sup> In a random sampling of adults in Middle City, 66% of the respondents had experienced an average of 3.3 “civil justice situations”<sup>2</sup> in the previous 18 months, almost half of which resulted in “a significant negative consequence.” Yet respondents identified only 9% of the situations as “legal” and another 4% as “criminal.” In other words, many may not have recognized recourse to the courts as an option.

About 16% of the people facing a civil justice situation did nothing; 46% relied on self-help; and 23% relied on the help of family or friends. Only 22% used the assistance of a lawyer or other professional. Somewhat surprisingly, 21% of the situations were described as “properly dealt with within the family or community.” In other words, to a substantial minority, using an outside third party to seek a legal remedy seemed inappropriate.

Forty-six percent relied on self-help. That is, as well as we can estimate, about the percentage of self-represented parties in select types of litigation in the Utah district court, and the imbalance of self-representation between petitioners and respondents is even more stark. Probably the other circumstances, opinions and responses of the residents of Middle City represent those of Utah residents as well.

The cost of legal services is often cited as a major reason that people with need of legal services do not employ lawyers,<sup>3</sup> yet in the Community Needs

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<sup>1</sup> Accessing Justice in the Contemporary USA: Findings from the Community Needs and Services Study. Rebecca L. Sandefur, American Bar Association, University of Illinois at Urbana-Champaign, 2014. ([http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2478040](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2478040); <http://perma.cc/3K7P-UPD2>).

<sup>2</sup> Employment, rental housing, owned housing, money, debt, insurance, government benefits, education, relationship breakdown, personal injury, criminal negligence.

<sup>3</sup> See, for example, Robert Ambrogi, *Washington State moves around UPL, using legal technicians to help close the justice gap*, ABA JOURNAL (Jan. 1, 2015, 5:50 AM), ([http://www.abajournal.com/magazine/article/washington\\_state\\_moves](http://www.abajournal.com/magazine/article/washington_state_moves)

and Services Study “concerns about cost were a factor in 17% of cases,” even though 58% of respondents agreed with the statement that “lawyers are not affordable for people on low incomes.”<sup>4</sup> The cost of legal services cannot be ignored as a factor in the number of self-represented parties, but a common perception is that an increasing number of people choose to represent themselves and seek help only as needed.

Given our charge and the high concentration of self-represented parties in select casetypes, we have focused primarily on creating a supply of non-lawyer paraprofessionals qualified to provide specified legal services in specified practice areas. In doing so, we have been guided by the ABA Commission on the Future of Legal Services draft resolution<sup>5</sup> urging “each state’s highest court, and those of each territory and tribe, to be guided by the ABA Model Regulatory Objectives to help (1) assess the court’s existing regulatory framework and (2) identify and implement regulatory innovations related to legal services beyond the traditional regulation of the legal profession” The commission’s regulatory objectives are:

- Protection of the public
- Advancement of the administration of justice and the rule of law
- Access to information about, and advancement of the public’s understanding of, the law, legal issues, and the civil and criminal justice systems
- Transparency regarding the nature and scope of legal services to be provided, the credentials of those who provide them, and the availability of regulatory protections
- Delivery of affordable and accessible legal services
- Efficient, competent, and ethical delivery of legal services
- Protection of confidential information

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around upl using legal technicians to help close the;  
<http://perma.cc/FL75-QKAR>): “[M]ultiple state and federal studies [show] that 80 to 90 percent of low- and moderate-income Americans with legal problems are unable to obtain or afford legal representation. The economics of traditional law practice make it impossible for lawyers to offer their services at prices these people can afford.”

<sup>4</sup> Community Needs and Services Study, *Id.* at pages 3, 13 and 15.

<sup>5</sup>  
([http://www.americanbar.org/content/dam/aba/images/office\\_president/draft\\_regulatory\\_objectives.pdf](http://www.americanbar.org/content/dam/aba/images/office_president/draft_regulatory_objectives.pdf); <http://perma.cc/2HWB-9LNY>).

- Independence of professional judgment
- Accessible civil remedies for breach of duties owed and disciplinary sanctions for incompetence, misconduct, and negligence
- Diversity and inclusion among legal services providers and freedom from discrimination in the delivery of legal services and in the justice system

We have also included five other strategies to meet the needs of self-represented parties for assistance with their civil justice situations and to improve access for everyone.

We recognize the value of a lawyer representing a client in litigation, or advising a client about options, or counseling a client on a course of action. We recognize the valuable services that lawyers provide to their clients every day, in and out of court. But the data show that, even after years of effort with pro bono and low bono programs, a large number of people do not have a lawyer to help them. The data also show that the demand is focused on the areas where the law intersects everyday life, creating a “civil justice situation.” The people facing these situations need correct information and advice. They need assistance. Our purpose is to consider and recommend whether there is an alternative source for that assistance.

Given the time available to us and the need for policy decisions before beginning the arduous work of implementation, this report remains a planning blueprint. If our recommendations are approved, we recommend that the supreme court appoint a steering committee to guide the next steps.

#### **(b) TASK FORCE CHARGE**

In May, 2015, the supreme court created this task force to:

- examine emerging strategies and programs that authorize individuals to provide specific legal assistance in areas currently restricted to licensed lawyers; and
- recommend whether similar programs should be established in Utah.

Specifically, the court asked us to:

- examine the Limited Licensed Legal Technician Program in the State of Washington—as well as other, similar programs;
- determine the origin, purpose, content, requirements, cost, authorizing entity, administration and evaluation of these programs;

- evaluate whether the programs would materially improve access and affordability for select types of legal assistance;
- evaluate the balance between increasing access and ensuring consumer protection;
- evaluate where the greatest need for legal assistance exists and how these programs might address that need; and
- consider issues that would have to be addressed in the implementation, regulation and administration of a program, such as:
  - role definition;
  - training/certification requirements;
  - scope of services;
  - regulatory authority; and
  - supervision/quality control/complaint process.

We were ably assisted in this inquiry by Dr. Thomas Clarke, Director of Research and Technology for the National Center for State Courts. At our request, Dr. Clarke and the National Center for State Courts prepared a white paper with analysis and recommendations.<sup>6</sup> Dr. Clarke's experience and opinions were invaluable, and we express our sincere appreciation.

Our research and materials, including this report, are on the court's website at [http://www.utcourts.gov/committees/limited\\_legal/](http://www.utcourts.gov/committees/limited_legal/); <http://perma.cc/9GCN-2J3R>.

### **(c) SUMMARY OF RECOMMENDATIONS**

(1) The supreme court should:

- Exercise its constitutional authority to govern the practice of law to create a subset of discrete legal services that can be provided by a licensed paralegal practitioner in three practice areas:
  - temporary separation under Section 30-3-4.5, divorce, paternity, cohabitant abuse and civil stalking, custody and support, and name change;
  - eviction; and
  - debt collection.

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<sup>6</sup> Non-Lawyer Legal Assistance Roles—Efficacy, Design, and Implementation. Thomas Clarke, Director of Research and Technology for the National Center for State Courts. ([http://www.utcourts.gov/committees/limited\\_legal/NonLawyer%20Legal%20Assistance%20Roles.pdf](http://www.utcourts.gov/committees/limited_legal/NonLawyer%20Legal%20Assistance%20Roles.pdf); <http://perma.cc/A92U-NBQJ>)



- Within an approved practice area, authorize a licensed paralegal practitioner to:
  - establish a contractual relationship with a client who is not represented by a lawyer;
  - conduct client interviews to understand the client's objectives and to obtain facts relevant to achieving that objective;
  - complete court-approved forms on the client's behalf; advise which form to use; advise how to complete the form; sign, file and complete service of the form; obtain, explain and file any necessary supporting documents; and advise the client about the anticipated course of proceedings by which the court will resolve the matter;
  - represent a client in mediated negotiations and consider whether to authorize a licensed paralegal practitioner to represent a client in unmediated negotiations;
  - prepare a written settlement agreement in conformity with the mediated agreement; and
  - advise a client about how a court order affects the client's rights and obligations.
- Establish education requirements and regulatory requirements to qualify as a licensed paralegal practitioner.

(2) If the supreme court approves these recommendations, the court should appoint a steering committee to plan, design and implement the program details.

(3) The board of bar commissioners should implement as soon as possible the recommendations of its futures commission to build an online lawyer directory and for increasing the use of discrete task legal services.

(4) The judicial council should:

- work with the committee on resources for self-represented parties to:
  - develop forms appropriate for approved practice areas;
  - improve existing forms; and
  - publish information about the facts and procedures relevant to the forms;
- establish a pilot program of assisted resolution of family law and/or debt collection cases involving self-represented parties;
- continue to plan, design and build an online dispute resolution application; and

- request an appropriation to fund additional work by the self-help center to instruct court staff, public library staff, community and faith-based groups and other volunteers to enable them in turn to assist others, for free, with general legal information, opinions or recommendations about possible legal rights, remedies, defenses, procedures, options or strategies and to assist in completing court-approved forms.

## **(2) THE PRACTICE OF LAW IN UTAH**

### **(a) AUTHORITY OF THE SUPREME COURT TO GOVERN THE PRACTICE OF LAW**

“The 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.”<sup>7</sup> “Admission to practice law” should retain its traditional meaning; that is, lawyers who are licensed by the supreme court after meeting the minimum qualifications established by rule and the procedures of the board of commissioners of the Utah State Bar. Elsewhere in Utah law—the qualifications of a judge of a court of record, for example—the phrase is used as a term of art to mean “lawyers.”

Later in this report we recommend that the supreme court exercise its authority to “govern” the practice of law to establish rules authorizing a paraprofessional who is not a lawyer to do some of the things traditionally reserved for lawyers. The paraprofessional will be engaged in the practice of law by performing specified tasks in specified practice areas, but will not be “admitted” to practice law.<sup>8</sup> The limited tasks fit well within the traditional definition of the practice of law, even though the paraprofessional is not a lawyer. The supreme court’s exclusive authority to establish this policy is established in the Utah constitution and recognized by statute. Utah Code Section 78A-9-103(1)(a) provides:

*Unless otherwise provided by law or court rule, an individual may not practice law or assume to act or hold himself or herself out to the public as an individual qualified to practice law within this state if that individual is not admitted and licensed to practice law within this state.... (emphasis added)*

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<sup>7</sup> Utah Constitution Art VIII, Section 4.

<sup>8</sup> We also recommend separate licensing, conduct, discipline, and administrative regulations for this new paraprofessional.

The respective authority of the supreme court and the legislature over the practice of law has been described as the supreme court governing the authorized practice of law and the legislature governing the unauthorized practice of law. See Board of Commissioners of the Utah State Bar v. Petersen, 937 P.2d 1263, 1270 (Utah 1997). Section 78A-9-103 prohibits practicing law without a license and provides a civil remedy for the board of commissioners of the Utah State Bar.

**(b) SUPREME COURT RULES**

The practice of law is a defined term, and, with certain exceptions, only lawyers may do it. Initially adopted in 2005 under a different system for organizing the rules governing the practice of law, Rule 14-802 now provides:

[O]nly persons who are active, licensed members of the Bar in good standing may engage in the practice of law in Utah. ... The “practice of law” is the representation of 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.

Special Practice Rules. Rule 14-802(a)(2) and (b).

Rule 14-802(c) then removes from the definition certain services that possibly satisfy the general definition, but which nevertheless are not the practice of law. In other words, sometimes a non-lawyer with specified credentials and sometimes anyone may perform the following services; sometimes for a fee and sometimes only for free; always without the supervision of a lawyer.

- (1) Making legal forms available to the general public, whether by sale or otherwise, or publishing legal self-help information by print or electronic media.
- (2) Providing general legal information, opinions or recommendations about possible legal rights, remedies, defenses, procedures, options or strategies, but not specific advice related to another person’s facts or circumstances.
- (3) Providing clerical assistance to another to complete a form provided by a municipal, state, or federal court located in the State of Utah when no fee is charged to do so.

(4) When expressly permitted by the court after having found it clearly to be in the best interests of the child or ward, assisting one's minor child or ward in a juvenile court proceeding.

(5) Representing a party in small claims court as permitted by Rule of Small Claims Procedure 13.<sup>9</sup>

(6) Representing without compensation a natural person or representing a legal entity as an employee representative of that entity in an arbitration proceeding, where the amount in controversy does not exceed the jurisdictional limit of the small claims court set by the Utah Legislature.

(7) Representing a party in any mediation proceeding.

(8) Acting as a representative before administrative tribunals or agencies as authorized by tribunal or agency rule or practice.

(9) Serving in a neutral capacity as a mediator, arbitrator or conciliator.

(10) Participating in labor negotiations, arbitrations or conciliations arising under collective bargaining rights or agreements or as otherwise allowed by law.

(11) Lobbying governmental bodies as an agent or representative of others.

(12) Advising or preparing documents for others in the following described circumstances and by the following described persons:

(12)(A) a real estate agent or broker licensed by the state of Utah may complete State-approved forms including sales and associated contracts directly related to the sale of real estate and personal property for their customers.

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<sup>9</sup> Rule 13 provides: "A party in a small claims action may be self-represented, represented by an attorney admitted to practice law in Utah, represented by an employee, or, with the express approval of the court, represented by any other person who is not compensated for the representation."

(12)(B) an abstractor or title insurance agent licensed by the state of Utah may issue real estate title opinions and title reports and prepare deeds for customers.

(12)(C) financial institutions and securities brokers and dealers licensed by Utah may inform customers with respect to their options for titles of securities, bank accounts, annuities and other investments.

(12)(D) insurance companies and agents licensed by the state of Utah may recommend coverage, inform customers with respect to their options for titling of ownership of insurance and annuity contracts, the naming of beneficiaries, and the adjustment of claims under the company's insurance coverage outside of litigation.

(12)(E) health care providers may provide clerical assistance to patients in completing and executing durable powers of attorney for health care and natural death declarations when no fee is charged to do so.

(12)(F) Certified Public Accountants, enrolled IRS agents, public accountants, public bookkeepers, and tax preparers may prepare tax returns.

Special Practice Rules. Rule 14-802(c).

In addition to restricting the practice of law to "active, licensed members of the Bar in good standing" under Rule 14-802, a separate rule, which prohibits practicing law without a license covers much of the same ground.

Pursuant to Rule 14-506(a), no person who is not duly admitted and licensed to practice law in Utah as an attorney at law or as a foreign legal consultant nor any person whose right or license to so practice has terminated either by disbarment, suspension, failure to pay his or her license and other fees or otherwise, shall practice or assume to act or hold himself or herself out to the public as a person qualified to practice law or to carry on the calling of an attorney at law in Utah. Such practice, or assumption to act or holding out, by any such unlicensed or disbarred or suspended person shall not constitute a crime, but this prohibition against the practice of law by any such person shall be enforced by such civil action or proceedings, including writ, contempt or injunctive proceedings, as may be necessary and appropriate,

which action or which proceedings shall be instituted by the Bar after approval by the Board.

Rules of Integration and Management. Rule 14-111.<sup>10</sup>

A third rule authorizes paralegals to perform an unspecified range of legal services that would normally be performed by a lawyer, provided the services are for a lawyer or the paralegal is supervised by a lawyer.

A paralegal is a person qualified through education, training, or work experience, who is employed or retained by a lawyer, law office, governmental agency, or the entity in the capacity of function which involves the performance, under the ultimate direction and supervision of an attorney, of specifically delegated substantive legal work, which work, for the most part, requires a sufficient knowledge of legal concepts that absent such assistance, the attorney would perform. A paralegal includes a paralegal on a contract or free-lance basis who works under the supervision of a lawyer or who produces work directly for a lawyer for which a lawyer is accountable.

Rules of Integration and Management. Rule 14-113(a).

We have restated the laws regulating the practice of law in some detail because our charge is to examine whether and to what extent someone other than a licensed lawyer might practice law.

### **(3) PROGRAM DESIGN PRINCIPLES**

We have tried to identify the gaps in legal services and to find solutions that address those gaps. We have tried to view the need for legal services from the client's perspective: the desire for relevant, competent, accessible and affordable service.

We conclude that the authority of a paraprofessional should be limited along two lines of inquiry: (1) the potential demand for assistance within a practice area, as measured by the high concentration of self-represented parties; and (2) specified authority, as determined by the needs of the client or by what is proper for the paraprofessional's minimum qualifications, whichever limit is reached first.

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<sup>10</sup> The supreme court should consider repealing this rule. Given the provisions of Rule 14-802 and Section 78A-9-103, it seems superfluous.

#### (4) PRACTICE AREAS OF GREATEST DEMAND

There is little point to extending the authority of a paraprofessional into areas in which there is no demand. To detail the first line of inquiry, we look to fiscal year 2015 court records that show the casetypes in which parties largely are not represented by lawyers. Previous years are similar.

**Table 1. Self-Represented Parties in Select Casetypes**

Casetype	Case Filings	Both Parties Represented	One Party Represented	No Party Represented	Self-Represented Petitioner	Self-Represented Respondent
Paternity	1,043	36%	44%	20%	23%	61%
Contracts	2,608	28%	71%	1%	1%	71%
Protective Order	4,744	23%	35%	42%	48%	71%
Custody & Support	1,281	20%	49%	31%	36%	76%
Divorce/Annulment	13,227	19%	31%	50%	52%	80%
Temporary Separation	85	19%	38%	44%	52%	73%
Civil Stalking	858	13%	18%	69%	79%	77%
Eviction	7,465	4%	83%	13%	13%	96%
Debt Collection	67,510	2%	98%	0%	0%	98%
Guardianship	1,622	1%	43%	56%	57%	3%
Conservatorship	143	1%	84%	15%	15%	2%
Adoption	1,352	1%	84%	14%	14%	4%
Name Change	1,014	0%	17%	83%	83%	1%
Personal Representative	2,107	0%	87%	12%	12%	0%
Total	105,059	6%	81%	12%	13%	87%

Focusing on the three areas in which the concentration of self-represented parties is highest—family law cases, including temporary separation, divorce, paternity, cohabitant abuse and civil stalking, custody and support and name change; eviction; and debt collection—the number of self-represented parties is very high, both in the absolute number of self-represented parties and in the number of self-represented parties as a percent of all parties.

Case Type	Case Filings	Both Parties Represented	One Party Represented	No Party Represented	Self-Represented Petitioner	Self-Represented Respondent
Family Law	23,604	18%	36%	46%	49%	69%
Debt Collection	67,510	2%	98%	0%	0%	98%
Eviction	7,465	4%	83%	13%	13%	96%

The gaps in these areas are substantiated by two 2014 data sets from Utah Legal Services.

**Table 2. Utah Legal Services Areas of Client Services**

Area	Clients	Area	Clients
Divorce	3506	All others	157
Housing, utilities	2996	Guardianships, Conservatorships	153
Small estates and consumer protection	2106	Food	70
Paternity, support, custody, visitation	1508	Adoption	66
Adult services	1500	Indian and Tribal law	63
Domestic violence, abuse and neglect, child abuse	1467	Education	15
SSI, SSDI	975	Disability	6
Medicaid, Medicare	490	Independence, communication	3
Employment	220	Total	15,301

**Table 3. Areas of Client Service by Pro Bono Lawyers Recruited by ULS**

Area	Clients	Area	Clients
Bankruptcy/Debtor Relief	250	Contracts	3
Divorce	192	Adoption	2
Paternity/Custody	56	Name Change	2
Domestic Abuse	25	Stalking	2
Advanced Directives	14	Human Trafficking	2
Guardianship/Conservatorship	12	Torts	2
Wills/Estates	10	Support	1
Other	9	State Assistance	1
Collection	7	SSI	1
Housing	5	Total	596

**(5) PROCEDURAL AREAS OF PARAPROFESSIONAL COMPETENCE**

The process of civil litigation that has evolved over centuries is not simple, and it continues to evolve. Some parts of that process must be reserved for lawyers because only law school teaches the necessary information and skills. Other parts of the process can be negotiated by a paraprofessional. To detail the second line of inquiry, we have tried to identify through the course of litigation the services that a self-represented party might need and whether a paraprofessional might appropriately provide those services.

**(a) HOW DO PEOPLE GET ADVICE ABOUT REMEDIES TO THEIR “CIVIL JUSTICE SITUATIONS”?**

Paraphrasing Rule 14-802: “Do I need someone to apply the law to my circumstances and inform, counsel, advise, assist, advocate for or draft



documents for me?” Based on the experience of task force members, we know that unlicensed providers are serving some of these needs beyond what is now permitted.

General legal information is available from a variety of sources. In addition to the Utah state courts and government agencies, non-profit organizations such as the Utah State Bar, Utah Legal Services and the Legal Aid Society of Salt Lake City provide information, primarily for self-represented parties. Private attorneys sometimes include on their websites general information about rights and remedies in the area of law in which they practice. Several commercial internet sites do the same. There are several free legal clinics around the state. Schools, libraries, law enforcement agencies and consular officials are resources. Homeless shelters, domestic violence shelters, and community and faith-based organizations assist as well.

Many organizations provide court-approved forms. Some organizations provide them for free; others charge a fee.

Filtering and providing information, opinions and recommendations about relevant laws and procedures are tasks appropriate for a paraprofessional. A paraprofessional should be able to do at least as much as is permitted by Rule 14-802(c)(2): “Providing general legal information, opinions or recommendations about possible legal rights, remedies, defenses, procedures, options or strategies, but not specific advice related to another person’s facts or circumstances.”

A paraprofessional can be educated to conduct initial client interviews, identify needs, advise whether those needs can be met by the paraprofessional or require a lawyer’s skills, and otherwise inform clients of options. A paraprofessional can be educated to provide information on navigating the legal system: what are the steps in the litigation process; what forms are needed; where to obtain them; how to file them; etc.

Unless there is an approved form, moving beyond “information, opinions or recommendations” to counsel and advice should be reserved for a licensed lawyer. Just as diagnosis of a symptom’s cause is at the core of the physician’s role, recognizing that a person’s circumstance creates legally enforceable obligations, rights and remedies is at the heart of what lawyers do. Lawyers, also like doctors, should be the only professionals authorized to advise on a course of action, and assist in completing that course of action.

Compare the services of Rule 14-802(b)(1), which only a licensed lawyer may provide,

The “practice of law” is the representation of 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.

with the services of Rule 14-802(c)(2), which anyone provide.

Providing general legal information, opinions or recommendations about possible legal rights, remedies, defenses, procedures, options or strategies, but not specific advice related to another person’s facts or circumstances.

The difference between “specific advice” and “general ... opinions or recommendations” about rights, remedies, defenses, options or strategies is a fine line to be sure. But it is a line paraprofessionals should be educated to understand and honor.

In the area of “general legal information, opinions or recommendations about possible legal rights, remedies, defenses, procedures, options or strategies,” Utah law would currently allow a paraprofessional to provide much more value to a client than is permitted in most other states without crossing that line.

The permission given by Arizona law, for example, is exactly opposite Utah. As is described in the section on Arizona document preparers, the document preparer is expressly prohibited from giving opinions or recommendations about possible legal rights, remedies, defenses, options, or strategies. In Utah a person is expressly permitted to do just that. A step beyond is the Washington limited license legal technician who can advise a client about his or her particular circumstances.

#### **(b) HOW DO PEOPLE OBTAIN AND PREPARE FORMS?**

Court forms have been around for at least decades if not centuries. The offices of court clerks always used to include a forms cabinet with a pigeon hole for each form. Advice on which form to use and how to complete it was often requested and given. The primary difference today is that approved forms are on the internet rather than in the cabinets of court clerks.

Unapproved forms also are available on the internet rather than at the stationer’s shop. A paraprofessional will appreciate the difference between approved and unapproved forms. A self-represented party might not. Unapproved forms may or may not be legally sufficient. A person filing an unapproved form may spend a lot of time and money only to have the proceeding dismissed.

If an approved form exists within a practice area, then an authority has decided that a particular collection of information is necessary to achieve a particular objective. The form is designed to elicit that information. The same is true whether the form is a traditional fill-in-the-blank-and-check-the-box form or a web-based interactive interview conducted by software that produces a digital file suitable for saving and electronic filing.

Advising a client about which form to use overlaps a little of the attorney's core role, but choosing one set of forms rather than another is a relatively simple task. Approved district court forms are organized by objective: "I want to:

- garnish a debtor's wages
- change my visitation schedule
- be appointed guardian of Dad
- evict a tenant
- adopt my stepchild
- etc."

If a client comes with an objective in mind and a form has been approved to request that result, selecting the correct form is a task suitable for a paraprofessional. For a contrary approach, see the authority of a California legal document assistant.

Once the form is selected, a paraprofessional can help gather the information needed to complete the form. Sometimes the information is simple; sometimes complex. In either event, a paraprofessional is capable of the task.

Under Rule 14-802, anyone can provide "clerical assistance" to another to complete a court-provided form when no fee is charged to do so. Presumably "clerical assistance" means acting as a scribe. The California legal document assistant is limited to the scrivener's role.

If assistance goes only so far, it is of little value. To increase the value to a client, assistance must include the authority to explain the purpose, relevance and relationship of the entries and to assist with phrasing an entry. Once prepared, a paraprofessional should have the authority to sign, file and complete service of the form on behalf of his or her client. This is similar to the Arizona legal document preparer.

Rule 14-802 allows a person to provide clerical assistance in completing court-approved forms on behalf of another. If a paraprofessional is authorized to provide greater advice and assistance with forms in an approved practice area, the paraprofessional should also be able to obtain

and explain documents necessary to support the form. For example, if a paraprofessional assists a client to complete a financial declaration form as part of establishing child support, the paraprofessional should also be able to help the client obtain his or her tax return, which is a necessary supporting document. Or, under Section 26-2-25, upon entry of a decree of divorce or adoption, a form must be filed with the Office of Vital Records and Statistics. It is not a court form, but it is a necessary part of the court process.

If there is no approved form for a particular objective, then there is no agreed-upon collection of information needed to achieve that objective. That being the case, drafting pleadings and other documents for which there is no form should be reserved for a licensed lawyer. For a contrary approach, see the description of a Louisiana notary public. A Washington limited license legal technician may prepare documents other than forms, but only if the document is reviewed and approved by a lawyer.

In the previous section we identified debt collection cases as an area in which there is a need for legal services. However, there are no approved forms specifically for debt collection cases, and, until there are, the services of a paraprofessional in this practice area will necessarily be limited to other specified tasks and forms that apply more generally but can be used in this practice area.

### **(c) HOW DO PEOPLE PARTICIPATE IN MEDIATION?**

Rule 14-802(c)(7) permits anyone to represent another in mediated negotiations. We believe that a paraprofessional should have at least the same authority as any other person, but we are divided on whether a paraprofessional should be authorized to negotiate without a mediator. Some see no sound reasons for distinguishing between the two circumstances. Others see the third-party neutral as creating a dynamic that levels any power imbalances, enabling a non-lawyer to negotiate on behalf of a client.

Mediators sometimes but not always memorialize settlement agreements. Parties often are not represented in mediated negotiations, and the only person with the wherewithal to memorialize the agreement is the mediator. If a paraprofessional is representing someone in the mediation, that person is in as good a position as the mediator to memorialize the agreement. There should be no risk of overreaching because the mediator can identify any discrepancy between the written and oral agreements and the other party can reject the written agreement as not conforming to the oral agreement.

However, a paraprofessional should be able to prepare a form of order based on the settlement agreement only if there is an approved order form.

**(d) HOW DO PEOPLE PARTICIPATE IN HEARINGS?**

Traditionally only lawyers and self-represented parties have been permitted to participate in hearings. Unlike forms and general information and opinions, for which a person can look to resources other than lawyers, in a hearing a person must have a lawyer or go it alone. Advocacy, like advice and counsel specific to the client's particular circumstances, is at the heart of what lawyers do. Eliciting testimony, selecting evidence, applying the law to the facts presented and weaving them together in a cogent argument should be reserved for a licensed lawyer.

**(e) HOW DO PEOPLE LIVE WITHIN THE RESOLUTION OF THEIR LEGAL ISSUE?**

There is no program for explaining to a self-represented party the outcomes, rights and responsibilities encompassed in a court order. An individual might turn to a family member or to a trusted friend or colleague to provide an explanation of a written order. Or a volunteer attorney at a workshop or clinic might explain an order.

The general opinions or recommendations that Rule 14-802(c)(2) permits at the beginning of a consultation should be just as permissible at the end of litigation. In the beginning, a paraprofessional might provide information and opinions to a client about relevant laws and procedures. And, if there is an approved form, the paraprofessional might advise about the forms and the procedures to achieve the client's particular objectives. At the end of the process, a paraprofessional might do the same regarding the order that the court has just entered: advise the client about his or her rights and obligations under that order; how to enforce the order; whether the order can be modified, under what circumstances and how to do it; whether the order must be served on anyone else; and so forth.

**(f) HOW DO PEOPLE FIND A LAWYER?**

The Utah State Bar's directory of lawyers is essentially a listing of lawyers with contact information. Unless one is looking for a particular lawyer, it is not effective. We urge the Bar to make the improvements we recommend in the section on the [online lawyer directory](#).

Someone in need of a lawyer might get lucky with a Google search with the relevant search terms. Many people will ask family, friends or colleagues for suggestions. Telephone directories are still around.

A major component of a paraprofessional practicing law in limited circumstances is that he or she understands and honors the boundaries of the profession. A paraprofessional should be authorized and encouraged to refer a client to a lawyer if a needed service is beyond the person's professional competence or is not authorized. Finding competent counsel is difficult and stressful; a paraprofessional can help.

#### **(6) CHALLENGES TO ESTABLISHING A PARAPROFESSIONAL PROGRAM**

According to a survey conducted by the futures commission of the Utah State Bar, 60% of the responding lawyers either disagreed or strongly disagreed with a proposal to explore limited licenses for certain practice areas (with 41% "strongly" disagreeing).<sup>11</sup> One barrier to establishing a paraprofessional program, therefore, may be opposition from lawyers. However, the nature and magnitude of the opposition may depend on program design. A fine-tuned program, which is clear about training, certification and scope of practice, could minimize opposition.

Also, we encourage lawyers, as they consider our analysis and proposal, to embrace their role as public citizens:

A lawyer is ... a public citizen having special responsibility for the quality of justice. .... As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession.

As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education. In addition, a lawyer should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority.

A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate

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<sup>11</sup> Report and Recommendations on the Future of Legal Services in Utah. Employer's survey, page 19. ([https://www.utahbar.org/wp-content/uploads/2015/07/2015FuturesCommission\\_Employers.pdf](https://www.utahbar.org/wp-content/uploads/2015/07/2015FuturesCommission_Employers.pdf); <http://perma.cc/KWK9-A444>).

legal assistance and therefore, all lawyers should devote professional time and resources and use civic influence in their behalf to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel.

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The profession has a responsibility to ensure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the Bar.<sup>12</sup>

General opposition is not the only barrier to establishing a paraprofessional program:

**Barrier: Lack of rural markets.** The American Bar Association task force on the future of legal education identified a paraprofessional program as a method of placing legal services in rural areas.<sup>13</sup> But, the argument goes, if there is no viable market for lawyers in rural areas, there may be no viable market for paraprofessionals either.

**Responses and solutions.** Paraprofessional businesses might be able to exist in areas for which there is no viable market for law firms if paraprofessionals have less educational debt, lower overhead and lower income expectations.

The option for a lawyer to practice with a paraprofessional may also make a rural practice more viable for both if the combined practice allocates matters more efficiently according to each professional's specified authority, allowing services to be provided at lower costs.

Ultimately, our role is to recommend whether and under what conditions it is proper for a paraprofessional to engage in the limited practice of law. We are not able to conduct market research on the viability of rural or other markets. Paraprofessionals will have to test what markets are viable and how. As with any form of free enterprise, some business

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<sup>12</sup> Preamble: A Lawyer's Responsibilities. Rules of Professional Conduct.

<sup>13</sup> Report and Recommendations American Bar Association Task Force on the Future of Legal Education, at pages 13 and 33.  
([http://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/report\\_and\\_recommendations\\_of\\_aba\\_task\\_force.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/report_and_recommendations_of_aba_task_force.authcheckdam.pdf); <http://perma.cc/N6XQ-2CX6>).

models will work, and others will not, and market entrants must adapt and innovate accordingly.

**Barrier: Nature of clientele and markets.** The rates for a successful paraprofessional may price some clients out of the market just as effectively as the rates for a successful lawyer. Some question whether paraprofessionals will be able to charge less than the modest means program<sup>14</sup> already administered by the Utah State Bar. Legal services in two of the recommended practice areas—eviction and debt collection—will be especially difficult because the respondents who need assistance do not have the money to pay for it.

**Responses and solutions.** As with any service, a paraprofessional likely will start with lower prices and grow to serve more sophisticated clients willing to pay more as the paraprofessional gains experience. Those paraprofessionals might retain their existing clients, or other providers might enter the market to fill any gaps.

Utah enjoys a superb modest means program that charges a \$25 finder's fee and \$50 to \$75 per hour based on the client's income and assets. That service can continue to grow, but the section on practice areas of greatest demand shows that lawyers fill only a fraction of the existing gap in legal services, and a multi-faceted approach is appropriate.

**Barrier: Gaps in representation.** If a paraprofessional represents a client, but the case develops beyond the scope of his or her competence or license to practice, the client will be disadvantaged while seeking a lawyer or navigating the rest of the case without representation.

**Responses and solutions.** A paraprofessional does not have to abandon the client. For matters that are too complex based on the paraprofessional's judgment or for matters beyond the scope of the limited license, a paraprofessional can refer the client to a specific lawyer or to several lawyers from which to choose. A paraprofessional who practices with a lawyer can handle matters within his or her competence and authority and call in the lawyer-colleague when appropriate.

Additionally, a licensed paralegal practitioner, as we have recommended it, will necessarily be a paralegal, and will continue to have the authority of a paralegal. If a client needs a service within the licensed paralegal practitioner's competence, but beyond his or her license, the licensed

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<sup>14</sup> (<https://www.utahbar.org/modest-means-lawyer-referral-program/>; <http://perma.cc/8RGQ-J3JG>).



paralegal practitioner can provide that service under a lawyer's supervision and license, much as they have for decades.

All of these referral methods ensure reasonable continuity of representation. Plus, if a client can enter the legal services market through a lower-priced paraprofessional, the client might seek the further assistance of a lawyer when the paraprofessional's representation must end, making available to lawyers clients they would not otherwise have.

This is similar to what occurs when a nurse practitioner refers a patient to a physician, when a general physician refers a patient to a specialist, or when an accountant refers a client to a tax attorney. Inevitably there is some delay, and some transitions are smoother than others, but the client is not left to sink or swim.

**Barrier: Service quality.** The quality of legal services may decline. Practicing law requires a particular legal education, and a JD provides the public with the value of legal competence. A legal education teaches numerous skills and attitudes that are an instrumental part of the practice of law. Among others, these skills include professionalism, communication and listening, research techniques, task organization and management, creative thinking, and inference-based analysis. These skills are taught and reinforced throughout three years of law school.

**Responses and solutions.** The level of education and other qualification requirements should match the nature of the authorized services. At a minimum, education should include concepts of professionalism, responsibility, civility and ethics similar to those conveyed to lawyers. Paraprofessionals must also be educated to understand the line between authorized and unauthorized services—perhaps with a clear admonition to err on the side of referring a client to a lawyer or to seek an opinion from the appropriate licensing authority in close cases. Paraprofessionals must also acquire the judgment necessary to understand when a task is beyond their competence, even if technically authorized.

**Barrier: Administrative costs.** A paraprofessional program will have administrative costs for regulating a new class of practitioners.

**Responses and solutions.** Licensing and other regulations are necessary, and clearly will result in costs to ensure consumer protection and to ensure that paraprofessionals are properly educated and limiting their practice to authorized services. The best way to minimize additional costs is to combine paraprofessional licensing within the existing system for licensing attorneys.

Although parallel licensing should minimize additional costs by building on the existing infrastructure, the income and expense for licensing lawyers must be kept separate from the income and expense for licensing paraprofessionals. This presents a significant chicken-and-egg problem: how to initiate licensing and regulation of a fledgling profession without any current dues-paying members.

**Barrier: Oversaturated legal market.** By some measures, the legal market is already oversaturated, and the addition of paraprofessionals engaging in the practice of law will stress the market even more.

**Responses and solutions.** This argument seems belied by the large number of self-represented parties in some types of litigation. To the extent that the legal market is saturated, it is that segment of the market that can afford to pay a lawyer for full representation.

#### **(7) PROGRAM EVALUATION**

Dr. Clark's white paper recommends planning the evaluation up front as a way to focus on the characteristics of a paraprofessional program that are intended to add value and on how those characteristics will help achieve the intended goals.<sup>15</sup> The regulatory balance is between increasing access to justice and protecting the public against incompetent assistance.

To achieve that balance we consider the appropriateness, effectiveness and sustainability of the role.

##### **(a) APPROPRIATENESS**

Dr. Clarke defines appropriateness as: (1) a discrete set of services that will make a significant difference in access to justice; and (2) the knowledge required to competently perform those services. If a paraprofessional program is to make a difference, the authorized services must fill the gaps in access.

##### **(b) EFFECTIVENESS**

Effectiveness is the measure of competence and use. If the paraprofessionals are not sufficiently educated to perform competently, they will not be effective. But competence does not necessarily ensure significant use. If paraprofessionals are competent but their services are not used for other reasons, then access to justice is not improved.

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<sup>15</sup> Clarke, *Id.* at pages 4-5.

Possible secondary measures of effectiveness include: reduced burden on courts from self-represented litigants; improvements in procedural justice; improvements in litigant understanding; increased use of courts to address legal problems; and improved outcomes, such as reduced costs, greater satisfaction and more timely resolutions.

To be proven effective a paraprofessional program must achieve competence and use, but to measure the impact of the new role on secondary goals, benchmarks must be realistically chosen. For example, if the realistic alternative for most litigants is no assistance, then that is a better comparison than with a lawyer that the litigant would never have retained in the first place.

### **(c) SUSTAINABILITY**

Sustainability of the role is a function of perceived legitimacy and economic viability. Paraprofessionals may be competent, but they must be perceived to be competent if clients are going to use them. And clients will not take advantage of a paraprofessional, no matter how competent, unless they perceive value for cost.

The new role may not be sustainable for a variety of reasons: key support may come from a few individuals, who then move on; temporary funding subsidies may dwindle or disappear; market-based programs may fail to find a market; regulatory and education strategies may prove to be too costly.

### **(d) MEASUREMENTS**

Program goals: Increase access to legal remedies. Protect consumers.

Participant's role: See the section on recommended authority.

Key stakeholders: A successful program will need participation by:

- Clients/Public
- Lawyers in the specified practice areas
- Bar administration
- Paraprofessionals in the specified practice areas
- Paraprofessional administration
- Higher education
- District court judges
- District court staff
- Self-help center lawyers
- Supreme court

**Appropriateness.** Determine whether the specified authority of a paraprofessional will make a significant difference in access to legal remedies. Determine whether the education, licensing and regulation required of a paraprofessional are sufficient to enable him or her to perform those tasks competently. Determine whether the education, licensing and regulation required of a paraprofessional are sufficient to protect clients.

**Effectiveness.** Determine whether paraprofessionals are indeed competently performing their authorized tasks. Determine whether paraprofessionals are being used. Identify and measure any secondary goals of key stakeholders.

**Sustainability.** Determine whether a market-based solution in which paraprofessional services are paid for by clients is durable. Determine whether the education, licensing and regulation of paraprofessionals in which the cost is paid for by the paraprofessional is durable. Determine whether the key stakeholders, particularly the paraprofessionals and their clients, perceive value.

Measuring a program such as this is very difficult, but these measurements represent the evidence on which evidenced-based practices are based.

## **(8) CHARACTERISTICS OF LIMITED-LICENSING IN OTHER STATES**

Utah is not the first state to venture down this road, but there are only a handful of examples from which to draw experience. We have identified programs in six states in which a person may provide some legal services directly to a client for pay without the supervision of a lawyer. In addition we have identified three states that are, like Utah, considering whether to start a program. California licenses document preparers and is considering whether to license technicians. We have not included the New York City court navigator program because, although innovative, it is a volunteer program. For a summary of the key characteristics of programs of other states, see the section on characteristics of limited-licensing in other states.

## **(9) PARAPROFESSIONALS IN UTAH**

### **(a) CURRENT UTAH AUTHORITY**

When comparing the Utah rules governing paralegals and the practice of law with the statutes and rules of the states with paraprofessional programs of some kind, one is struck by the liberality of the Utah rules. In Utah there are no minimum education or experience requirements for a paralegal. "A paralegal is a person qualified through education, training, or

work experience....” There is no examination, no licensing, no application and approval. Yet a paralegal may do anything a lawyer might do: “the performance ... of ... substantive legal work, which ... requires a sufficient knowledge of legal concepts that ... [an] attorney would [otherwise] perform.” There are conditions on what a paralegal may do, but no limits. The paralegal must produce “work directly for a lawyer for which a lawyer is accountable,” or the paralegal must be under the “ultimate direction and supervision” of a lawyer, and the work must be “specifically delegated.”

The definition of the practice of law excludes a long list of services. Again, there are no regulations governing the qualification or credentialing of non-lawyers who provide these services—except for regulations that govern other professions that provide the services.

Utah, then, has a flexible base on which to build a paraprofessional program that other states may not have.

#### **(b) OTHER STATE MODELS**

The American Bar Association Task Force on the Future of Legal Education viewed Washington’s efforts as a positive step toward achieving the goal of increasing access to legal services through a paraprofessional program.<sup>16</sup> Although this may be true, and, while the Washington experience might provide useful lessons for a nascent Utah program, it appears that Washington’s program is not the right fit for Utah.

First, the education and experience requirements of Washington’s program are so arduous that it remains to be seen whether LLLTs can provide services at rates significantly less than those provided by lawyers. Second, some of the restrictions in the Washington program do not dovetail with current Utah law. For example, a Washington LLLT may not represent a client in negotiations. In Utah, anyone may do so, provided the negotiations are mediated.

Similarly, we can learn lessons from the program in other states, but neither are they exactly suitable for Utah. Paraprofessionals in the programs of states other than Washington are essentially document preparers who perhaps can discuss general legal principles but may not apply those principles to the facts of the case and may not give advice. In some states the document preparer cannot even advise which form to use. In most states, they cannot file the documents that they prepare. The authorized

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<sup>16</sup> Future of Legal Education, *Id.* at pages 14 and 25.

services are disjointed, requiring a client to employ a lawyer for parts of tasks that can otherwise be performed by a paraprofessional.

**(10) RECOMMENDATIONS**

The more common example of paraprofessionals in the limited practice of law is the document preparer. An Oregon task force has recommended a program similar to the Washington LLLT program, but the Washington program is the only extant example of a paraprofessional authorized to offer services beyond document preparation.

The liberality of Utah's current rules point to a program of services greater than just document preparation. Establishing a program of document preparers would professionalize the system we currently have, in which unregulated document preparers are currently engaged in the unauthorized practice of law by charging a fee to prepare a court-approved form. Or they avoid the unauthorized practice of law by preparing forms for free, perhaps after selling the blank form to the client, and perhaps without the education and experience to do a good job.

Professionalizing those services would improve the quality of the documents being filed and would provide a better service to the client, but there is no way to know whether unregulated document preparers would spend the time and money to become licensed document preparers. And, if Dr. Clarke is correct in his opinion that smart systems will eventually replace or at least limit the use of document preparers, then we need to take a bolder step.

**(a) RECOMMENDED TITLE**

Licensed Paralegal Practitioner

**(b) RECOMMENDED PRACTICE AREAS**

Recognizing that implementing all practice areas simultaneously may be beyond human capacity, and recognizing the differing impact of different civil justice situations on people's lives, we recommend developing the approval, education and licensing for practice areas in the following order:

- (1) temporary separation under Section 30-3-4.5, divorce, paternity, cohabitant abuse and civil stalking, custody and support and name change;
- (2) eviction—a licensed paralegal practitioner should not represent corporate clients; and
- (3) debt collection—a licensed paralegal practitioner should not represent corporate clients.

If experience shows a practice area in which lawyers are not representing parties, the supreme court should consider appointing an appropriate group to examine that area and recommend:

- whether to authorize it as an approved practice area;
- whether any of the then-existing authority of a licensed paralegal practitioner would be inappropriate; and
- an appropriate course of instruction for the practice area.

**(c) RECOMMENDED AUTHORITY**

The licensed paralegal practitioner's authorized services will necessarily fall somewhere between these two extremes: the first of which anyone may perform under Rule 14-802; and the second only a licensed lawyer.

- Providing general legal information, opinions or recommendations about possible legal rights, remedies, defenses, procedures, options or strategies, but not specific advice related to another person's facts or circumstances.
- 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.

There is not much difference between the meaning of opinions and recommendations on the one hand and of counseling and advising on the other. So the distinguishing feature of the "practice of law" appears to be whether the opinions, recommendations, counsel or advice relate to the client's particular circumstances.

We have tried to outline the discrete tasks within an approved practice area that are appropriate for a licensed paralegal practitioner and that the client will see as valuable. And we have tried to avoid requiring a lawyer to complete discrete parts of those tasks. There remain parts of the litigation process, even within an approved practice area, within the sole province of a lawyer—drafting non-form pleadings, discovery, subpoenas, presentation of evidence and advocacy are examples—but a client should be able to rely on a licensed paralegal practitioner to accomplish an entire authorized task without a lawyer's assistance for parts of it.

**(i) INTAKE, CLIENT COUNSELING AND LAWYER REFERRAL**

All of the jurisdictions prohibit paraprofessionals from practicing beyond their license, but none appear to expressly require referral to a

lawyer. Perhaps it is simply presumed. A major component of a licensed paralegal practitioner practicing law in limited circumstances is that he or she understands and honors the boundaries of the profession. Finding competent counsel is difficult and stressful; a client's licensed paralegal practitioner is in a better position than anyone to help. The obligation to practice within one's competence and license is better expressed as a rule of professional conduct than as a description of authority.

None of the jurisdictions expressly authorize client interviews, although Washington permits a LLLT to "obtain facts." Obviously some type of client interview is necessary in any business relationship, and in an approved practice area the licensed paralegal practitioner should be authorized to interview the client to understand the client's objectives and to obtain the facts relevant to achieving that objective.

Unless there is a court-approved form to achieve the client's objective, the licensed paralegal practitioner's authority in client counseling should be limited to general information, opinions or recommendations about possible legal rights, remedies, defenses, procedures, options or strategies.

## **(ii) FORMS**

If there is a court-approved form to achieve the client's objective in an approved practice area, a licensed paralegal practitioner should have extensive authority to:

- advise which form to use;
- advise how to complete the form;
- make the entries on behalf of the client;
- sign, file and complete service of the form;
- obtain, explain and file any necessary supporting documents; and
- advise about the anticipated course of the proceedings by which the court will decide the matter.

We did not reach agreement on whether a licensed paralegal practitioner should sign or otherwise acknowledge a form ghost-written but not filed by him or her. Lawyers who draft but do not file documents for a client do not have to acknowledge the document, and this encourages this discrete task. But this program is new, and perhaps the court needs to know when a form has been prepared by a licensed paralegal practitioner. If the supreme court decides that a ghost-written form should be signed or acknowledged by a licensed paralegal practitioner, it should make that an express requirement.

The judicial council should continue its work with the committee on resources for self-represented parties to develop new forms appropriate for



approved practice areas and to improve the forms that we already have. The council and committee should also continue to publish instructions for the forms and information about the facts and procedures relevant to the forms.

Except for a settlement agreement memorializing negotiations in which the licensed paralegal practitioner represented the client, a licensed paralegal practitioner should not be authorized to prepare a pleading or other paper for which there is no court-approved form.

### **(iii) INTERACTION WITH ANOTHER PARTY**

The licensed paralegal practitioner should be authorized to communicate with another party or the party's representative if the communication relates to the matter raised by the form.

The licensed paralegal practitioner should be authorized to represent a client in mediated negotiations. This is co-extensive with a service that is currently defined as outside the practice of law under Rule 14-802.

As noted earlier, we differ on whether a licensed paralegal practitioner should be authorized to represent a client in unmediated negotiations. If the supreme court decides to authorize a licensed paralegal practitioner to do so, it should be permitted only in an approved practice area, but it should include communicating the position of the client to the other party and vice versa, outside of formal negotiation sessions.

In an approved practice area the licensed paralegal practitioner should be authorized to explain to the client the documents of another party. If the paralegal is to represent the client during negotiations, the client needs to understand the other party's case.

In an approved practice area the licensed paralegal practitioner should be authorized to prepare a written settlement agreement in conformity with the negotiated agreement. If an order form exists, a licensed paralegal practitioner should be authorized to complete the form in conformity with the settlement agreement.

### **(iv) POST-LITIGATION ROLE**

In an approved practice area the licensed paralegal practitioner should be authorized to counsel and advise a client about how a court order affects the client's rights and obligations. This would authorize for the litigation's outcome the same authority we recommend for client counseling at the beginning: If there is a form—in this case the court's order—the licensed paralegal practitioner should be authorized to give counsel and advice about the order specific to the client's particular circumstances.

**(v) SERVICES AS A PARALEGAL**

A licensed paralegal practitioner, as we have recommended qualifying for it, will necessarily be a paralegal, and continues to have the authority of a paralegal. If a client needs a service within the licensed paralegal practitioner's competence, but beyond his or her license, the licensed paralegal practitioner is already authorized to provide that service under a lawyer's supervision and license.

**(vi) FUTURE EXPERIENCE**

If experience shows additional tasks that would be valuable to a client and appropriate for a licensed paralegal practitioner—or if experience shows that any of the tasks we have proposed are inappropriate—the supreme court should consider appointing an appropriate group to examine the tasks and recommend whether to add to or remove from the authorized list.

**(d) RECOMMENDED EDUCATION**

Beyond basic paralegal education, Washington requires that its legal technicians complete 15 credit hours (or 112 hours of instruction) of specialized education in order to practice in an approved practice area. The recommended model for Oregon is similar. By comparison, graduation from the University of Utah S.J. Quinney College of Law requires 88 credit hours. Washington also requires that the specialized education be obtained through a law school, and the University of Washington School of Law in Seattle is the only school to offer the curriculum. The courses are available through remote simultaneous participation.

At the other end of the spectrum, Nevada does not have any minimum education requirements for its document preparers, and Louisiana requires only a high school diploma or GED for its notaries public.

We recommend that the Utah licensed paralegal practitioner be authorized to provide a range of services that require independent judgment. The minimum education requirements must be sufficient to qualify those individuals to perform the services competently. We recommend a concentration of specialized classes in each of the approved practice areas, and we recommend delivery through the higher education infrastructure.

Specifically, we recommend that the minimum education of a licensed paralegal practitioner be:

- a Doctor of Jurisprudence degree from an ABA-approved law school; or
- an associate's degree with a paralegal or legal assistant certificate from a program approved by the ABA plus:
  - successful completion of the paralegal certification through the National Association of Legal Assistant's Certified Paralegal/Certified Legal Assistant exam<sup>17</sup>;
  - successful completion of a course of instruction for a practice area (content to be determined based on the approved practice area); and
  - experience working as a paralegal under the supervision of a lawyer or through internships, clinics or other means for acquiring practical experience.

Many Utah paralegals already have a bachelor's or associate's degree and a paralegal certificate. Most of them have been working under the supervision of a lawyer for years. Several of those have already successfully completed the NALA CP/CLA exam. For this last group, all that remains is to successfully complete the yet-to-be-created specialized course work in an approved practice area.

We recommend that a JD degree be one of two methods for meeting the education requirements of a licensed paralegal practitioner, but the candidate under either method would be required to meet any licensing requirements.

Since the range of authorized tasks that we recommend depends so heavily of the existence of a form, we recommend that the advanced instruction include intense work with the forms in a practice area, the objective that each form is intended to achieve, and the facts and procedures relevant to that objective.

## (e) RECOMMENDED LICENSING AND OTHER REGULATIONS

### (i) ADMINISTRATION

Louisiana and Nevada administer their document preparer programs in the executive department through the secretary of state. California administers its document preparer program in the executive department through the county clerks of the several counties. Under the Utah Constitution, governance of the practice of law must be under the authority

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<sup>17</sup> <http://www.nala.org/examdesc.aspx>; <http://perma.cc/UET2-22LA>.

of the supreme court. Arizona administers its document preparer program directly by the supreme court, but we do not recommend this model.

We recommend that a licensed paralegal practitioner program be administered through the Utah State Bar, as is done for the Washington LLLT program. The revenue from lawyers should not be used to pay the costs of administering a paraprofessional program, and vice-versa.

## **(ii) MINIMUM REQUIREMENTS**

The purpose of regulations should be to protect the public. What protections do we rely on when employing a lawyer? Education; examination; character and fitness review; mentored experience; continuing education; compliance with Rules of Professional Conduct; a complaint and discipline process; and the Lawyer's Fund for Client Protection. In addition, lawyers must comply with two administrative regulations: an application fee; and a licensing fee. The minimum requirements of a licensed paralegal practitioner should not be regulated beyond these without good reason.

Based on the requirements for paraprofessionals in other states and for lawyers in Utah, we recommend that regulations in the following areas be considered.

- Application and fee
- Character and fitness review
- Utah-specific licensing exam in the approved practice areas
- Mentored experience
- Appointment by the supreme court
- Oath of office
- Financial responsibility (bond or professional liability insurance)
- IOLTA account
- Annual licensing fee
- CLE
- Rules of professional conduct
- Complaint and discipline process

The supreme court might also consider establishing the paralegal division as a regulatory board, instead of using the board of bar commissioners for that role.

State and local business regulations would apply to a licensed paralegal practitioner's firm as to any other form of business.

### **(iii) LEGAL RELATIONSHIP WITH CLIENT**

In an approved practice area and within the approved tasks, a licensed paralegal practitioner should have a relationship with his or her client similar to that of a lawyer.

- Fiduciary duties
- Privileged communications
- Standards of care

### **(11) OTHER STRATEGIES**

Although authorizing qualified non-lawyers to engage in the practice of law in limited circumstances draws the most attention, it was not the limit of our charge. We offer five other strategies to help self-represented parties, and we hope that these other strategies are not put on hold while a program of licensed paralegal practitioners is being built.

#### **(a) DISCRETE LEGAL SERVICES**

Our focus on discrete services by licensed paralegal practitioners reveals the benefits to clients of discrete services by lawyers. The futures commission of the Utah State Bar recommends increasing “the use of discrete task representation and fixed fee pricing by (1) marketing the availability of “unbundling,” (2) educating lawyers and courts on best practices for implementing these approaches and (3) establishing an “unbundled” section for the Bar with lawyers who are willing to help clients on a fee-per-task, limited scope basis.”<sup>18</sup> We fully endorse these recommendations and urge the Bar to promptly implement them.

Because discrete tasks have an identifiable beginning and end, lawyers can offer a fixed price that is less than the unknown cost of full representation. This is a tremendous benefit to clients who in every other purchase of goods or services in their lives know or have a reasonably accurate estimate of the bottom line.

Offering discrete legal services is the only way a lawyer or licensed paralegal practitioner will reach a party who has decided for reasons other than cost to prosecute or defend a case without representation. Perhaps the party wants more control; perhaps the party believes he or she can perform the tasks more quickly or more professionally or will take greater care because of the personal connection to the litigation. Whatever the reason,

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<sup>18</sup> Future of Legal Services in Utah, *Id.* at page 5.

the party does not want full representation, and no seller will succeed by offering something the buyer does not want.

Lawyers are missing a large population of clients because not many lawyers offer discrete services, or those who do have not effectively advertised the services. The bar should do all that it can to support this business model. If the rules regulating discrete legal services are not sufficiently explicit, they should be made so. If the rules interfere with effectively delivering discrete legal services, the barriers should be removed.

#### **(b) ONLINE LAWYER DIRECTORY**

The futures commission of the Utah State Bar recommends “a robust online lawyer referral directory that is easily available to the public.” Building on this, the commission recommends “a consumer-focused website which, building on the online directory of lawyers, will become the key clearinghouse for clients in need of legal assistance.”<sup>19</sup>

A robust, bar-sponsored directory would help potential clients find lawyers and other legal services—something most lawyers should support—and it would be invaluable to the lawyers of the self-help center, who quickly see the need for full representation or a discrete legal service, but are prohibited from referring clients to a particular lawyer. Rarely does a bar commission find a product that simultaneously serves both its lawyer constituency and its public constituency. The recommended directory is that product.

The bar is examining implementation of the recommendations in the form of a “portal,” but the product to be delivered under that rubric is not well defined. We recommend that the bar begin implementation with a portal to what consumers need most—and what would most benefit lawyers—a portal to legal services. From the perspective of the potential client, this basic but robust referral system should include an online method of filtering and sorting legal services by:

- nature of the “civil justice situation” framed from the client’s perspective;
- location of the client; location of the dispute;
- languages spoken by the provider and other information meant to overcome barriers to access;
- license (lawyer or licensed paralegal practitioner);

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<sup>19</sup> Future of Legal Services in Utah, *Id.* at page 5.

- price, including qualification for pro bono and modest means;
- discrete services offered, including information, advice, document preparation, document review, coaching, representation at a hearing; and
- any other criteria that may be relevant to a potential client.

The effort begins with accumulating data that the bar does not now have: the information about individual lawyers, law firms and legal services that the application would use to filter and sort legal services based on the client's answers to the questions just posed. This directory should be the only bar-sanctioned directory, and it should be based on the most current and accurate information available. It should provide to lawyers a simple interface to describe the services they offer, and it should provide to the public a simple interface to shop for those services. We recommend the supreme court do what it can to assist the board of bar commissioners in a campaign to gather this information. We hope lawyers will quickly see an opportunity for advertising their services to clients.

The International Space Station is larger than a six-bedroom house.<sup>20</sup> The initial platform, completed in December, 1998, was about the size of a one bedroom apartment.<sup>21</sup> If the bar's directory expands—to include expert systems, intelligent checklists, business process analysis, document assembly, document translation, electronic filing, and all of the other terms used to describe portals—all well and good, but that also might take almost 20 years to build. The best start is the basic, robust referral system recommended by the futures commission.

The initial platform cannot be built too soon, and it will be put to good use while the rest of the modules are being planned, designed and built. The bar should advertise the directory's availability to the public in general, and several times a day court clerks, libraries and community organizations from around the state and the lawyers of the self-help center will refer people to it. The court website will link to the directory, and the self-help center will include information about it in their work with public libraries,

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<sup>20</sup> NASA

([https://www.nasa.gov/mission\\_pages/station/main/onthestation/facts\\_and\\_figures.html](https://www.nasa.gov/mission_pages/station/main/onthestation/facts_and_figures.html); <http://perma.cc/D75W-J3UP>).

<sup>21</sup> Approximately 9,700 cubic feet, the size of the two initial modules, Zarya <https://en.wikipedia.org/wiki/Zarya> and Unity [https://en.wikipedia.org/wiki/Unity \(ISS module\)](https://en.wikipedia.org/wiki/Unity_(ISS_module)).

community groups and other volunteers who in turn work with members of their communities in need of various legal services.

**(c) ONLINE DISPUTE RESOLUTION**

The judicial council is pursuing online dispute resolution in small claims litigation. Although the conceptual design is of a computer-assisted method of dispute resolution by humans, rather than the intelligent-system method of automated resolution recommended by Dr. Clarke's white paper, it represents a significant opportunity for more convenient and less costly access to the court. If successful, the lessons learned can be applied in other types of litigation, including interlocutory decisions during litigation.

**(d) ASSISTED RESOLUTION OF CASES INVOLVING SELF-REPRESENTED PARTIES**

The basic features for assisted resolution of litigation involving self-represented parties are: get the parties into the courthouse; provide them with an opportunity to explain their circumstances and their preferred outcomes; and then have the resources in place to reach and finalize an acceptable outcome. Alaska, California, Colorado and Minnesota have experienced good results with their programs.

In cases involving self-represented parties, Alaska conducts a hearing, early in the life of the case, at which attorneys are available to complete documents if a case is resolved. Only 2% of parties failed to appear at the hearings, 80% of new cases fully resolved with only one hearing, and 77% of modifications resolved with only one hearing. Only 5% of resolved cases required a further hearing within the next year.

Colorado and Minnesota have similar programs in which self-represented parties have a conference with a judge early in the case. Both states include an exchange of initial disclosures before the conference.

In Minnesota, an "evaluator" meets with the parties before they meet with the judge to try to mediate a settlement. If the case does not settle, the parties meet with the judge who tries to mediate a settlement or establishes deadlines for moving the case toward a litigated resolution. In Colorado 34% of cases fully resolved with stipulations and another 25% had no further hearings. Cases within the Colorado program resolved about 2 months more quickly than other similar cases.

Rule of Civil Procedure 16 provides the court with sufficient authority to structure a conference in just about any way that makes sense for this purpose. The authority exists; all that is needed is someone to plan, design,



organize and implement a program and to examine whether the program is achieving its goals.

Utah has a program of assisted resolution of family law cases, but the conference and assistance occur toward the end of case, rather than the beginning. The Utah program is currently operating with court commissioners in the Third District Court, and there are plans to implement it in the Fourth District Court.

In the Utah program the case management system screens family law cases for cases in which there has been no activity for 180 days. Our rules permit these cases to be dismissed without prejudice, provided the parties are given an opportunity to show cause why the case should not be dismissed. The court commissioners schedule a special calendar consisting only of cases with self-represented parties. The commissioners also schedule other law and motion matters involving only self-represented parties on this calendar. Volunteer attorneys are available at the hearing, as are volunteer mediators and self-help center lawyers, who provide staff support. All of these people work with the parties to resolve the matter or, if the matter is not settled, to move the case to the next steps in the process.

The Third District Court has a similar program for debt collection cases, in which volunteer lawyers represent a self-represented defendant. In many cases the volunteer lawyers are able to negotiate a settlement or a payment plan with the plaintiff.

If an opportunity for assisted resolution were provided early in the case, instead of after 6 months of inactivity, it would be a substantial improvement. Or experience may show that there remains a purpose to providing an opportunity for assisted resolution rather than dismissal.

We recommend that the judicial council establish a pilot program of assisted resolution of family law and/or debt collection cases involving self-represented parties. The council should consider the features of the Alaska, California, Colorado and Minnesota programs, which include mutual initial disclosures, a conference early in the case with defined objectives, and the resources—mediators, lawyers, judges, commissioners and staff—to reach and finalize an outcome.

As part of the pilot program, the council should address a practical problem with the OCAP application. OCAP allows a party to prepare the appropriate forms for a divorce, but it does not include the capability to complete any particular form. This limitation hampers the self-help center lawyers who staff the calendar and prepare the necessary documents. The judicial council should work with the OCAP board and staff to develop this

capability, or it should work with the committee of resources for self-represented parties to develop and approve the necessary stand-alone forms.

**(e) SELF-HELP CENTER**

The self-help center is a human portal of sorts, providing information and assistance, especially with forms. The self-help center would be assisted greatly by improving the qualifications of those in the community who already provide general information, opinions or recommendations and assistance completing court-approved forms.

Improving those qualifications would professionalize the services already being offered. The recommendation that follows is for consideration by the judicial council as well as by the supreme court, because, although the self-help center is ultimately the responsibility of the supreme court, and the recommendations will leverage the self-help center's resources by training others to provide assistance, the recommendations will increase the work of the self-help center lawyers, and the judicial council ultimately must agree that the additional cost is a sound use of public money.

- Instruct court staff, public library staff, community and faith-based groups and other volunteers. The course of instruction would be offered for free. The participants would be certified upon completion of the coursework, but would not be permitted to charge for their services.
- Instruct in English and Spanish.
- Maintain a roster of certified providers.
- Provide virtual support to the providers.
- Continue to develop and review simple and clear forms and informational webpages.
- Explore other information media.
- Facilitate the translation of webpages, forms and any new medium into Spanish.

**(12) IMPLEMENTATION**

**(a) STEERING COMMITTEE**

We have outlined a supply-side model to meet the gaps in access to justice. We have developed as much detail as possible in the time available. But we recognize that this report remains only a blueprint. If the supreme court decides to move forward with this model, we recommend that it appoint a steering committee to identify, plan, develop and implement the

thousands of details necessary for the blueprint to become a reality. The committee should include representatives or input from:

- lawyers experienced in the practice areas;
- community organizations;
- the paralegal division;
- higher education administration;
- bar administration and leadership;
- court administration and leadership;
- judges and court commissioners;
- the self-help center;
- the office of professional conduct;
- the committee on rules of professional conduct; and
- others as needed.

#### **(b) QUESTIONS FOR CONSIDERATION**

We have identified a handful of questions for a steering committee, but the committee, as it investigates finer and finer details, will encounter many more.

- Should a licensed paralegal practitioner be required to sign or otherwise acknowledge a form prepared but not filed by the licensed paralegal practitioner?
- Should a licensed paralegal practitioner be authorized to represent a client in non-mediated negotiations?
- Should a licensed paralegal practitioner be authorized to accept service on behalf of a client?
- Should guardianship of a minor be an authorized practice area?
- Must a JD degree be from an ABA approved law school to satisfy the education requirement of a licensed paralegal practitioner?<sup>22</sup>
- Are there equivalent credentials from other states or nations that should satisfy the education requirement?
- Should any of the education or experience requirements of a licensed paralegal practitioner be waived for current paralegals? Which requirements should be waived? What should be the

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<sup>22</sup> We recommend that an ABA approved law school be sufficient, but is it necessary? See the section on recommended education.

minimum requirements to qualify for the waiver? For how long should waiver be available?

- What should be the data points and data collection methods for measuring the success of the program?
- What should the content of the advanced course work and examination in a practice area consist of?
- What should the specific rules for the regulation, administration and licensing of the profession consist of?

Bar regulation, administration and licensing may serve as a model from which to start, but we urge the steering committee not to simply copy and paste. Detailed investigation may reveal legitimate differences between the licensing and regulation of licensed paralegal practitioners and of lawyers. Perhaps more important, this is an opportunity to think afresh about the issues and to transfer lessons learned back to the licensing and regulation lawyers.

**(13) TASK FORCE MEMBERS AND STAFF**

This report would not have been possible without the generous contribution of time, experience and judgment by the following people:

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S.J. Quinney College of Law  
Workgroup Chair

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Administrative Office of the Courts,  
Staff

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Utah Supreme Court, Staff

(14) DRAFT RULES

1       **Rule 14-802. Authorization to practice law.**

2       (a) Except as set forth in subsection paragraphs (c) of this rule and (d),  
3       only persons who are active, licensed members of the Bar in good standing  
4       may engage in the practice of law in Utah.

5       (b) For purposes of this rule:

6           (b)(1) The “practice of law” is the representation of the interests of  
7           another person by informing, counseling, advising, assisting,  
8           advocating for or drafting documents for that person through  
9           application of the law and associated legal principles to that person’s  
10          facts and circumstances.

11          (b)(2) The “law” is the collective body of declarations by  
12          governmental authorities that establish a person’s rights, duties,  
13          constraints and freedoms and consists primarily of:

14           (b)(2)(A) constitutional provisions, treaties, statutes,  
15           ordinances, rules, regulations and similarly enacted declarations;  
16           and

17           (b)(2)(B) decisions, orders and deliberations of adjudicative,  
18           legislative and executive bodies of government that have authority  
19           to interpret, prescribe and determine a person’s rights, duties,  
20           constraints and freedoms.

21          (b)(3) “Person” includes the plural as well as the singular and legal  
22          entities as well as natural persons.

23          (b)(4) “Licensed paralegal practitioner” means a natural person  
24          qualified and licensed under the rules governing the practice of law.

25          (b)(5) “Practice area” means litigation in the district court in:

26           (b)(5)(A) temporary separation under Section 30-3-4.5, divorce,  
27           paternity, cohabitant abuse and civil stalking, custody and support  
28           and name change;

29           (b)(5)(B) forcible entry and detainer; and

30           (b)(5)(C) debt collection.

31 (c) Whether or not it constitutes the practice of law, the following  
32 activity by a non-lawyer, who is not otherwise claiming to be a lawyer or to  
33 be able to practice law, is permitted:

34 (c)(1) Making legal forms available to the general public, whether by  
35 sale or otherwise, or publishing legal self-help information by print or  
36 electronic media.

37 (c)(2) Providing general legal information, opinions or  
38 recommendations about possible legal rights, remedies, defenses,  
39 procedures, options or strategies, but not specific advice related to  
40 another person's facts or circumstances.

41 (c)(3) Providing clerical assistance to another to complete a form  
42 provided by a municipal, state, or federal court located in the State of  
43 Utah when no fee is charged to do so.

44 (c)(4) When expressly permitted by the court after having found it  
45 clearly to be in the best interests of the child or ward, assisting one's  
46 minor child or ward in a juvenile court proceeding.

47 (c)(5) Representing a party in small claims court as permitted by  
48 Rule of Small Claims Procedure 13.

49 (c)(6) Representing without compensation a natural person or  
50 representing a legal entity as an employee representative of that entity  
51 in an arbitration proceeding, where the amount in controversy does not  
52 exceed the jurisdictional limit of the small claims court set by the Utah  
53 Legislature.

54 (c)(7) Representing a party in any mediation proceeding.

55 (c)(8) Acting as a representative before administrative tribunals or  
56 agencies as authorized by tribunal or agency rule or practice.

57 (c)(9) Serving in a neutral capacity as a mediator, arbitrator or  
58 conciliator.

59 (c)(10) Participating in labor negotiations, arbitrations or  
60 conciliations arising under collective bargaining rights or agreements  
61 or as otherwise allowed by law.

62 (c)(11) Lobbying governmental bodies as an agent or representative  
63 of others.

64 (c)(12) Advising or preparing documents for others in the following  
65 described circumstances and by the following described persons:

66 (c)(12)(A) a real estate agent or broker licensed by the state of  
67 Utah may complete State-approved forms including sales and  
68 associated contracts directly related to the sale of real estate and  
69 personal property for their customers.

70 (c)(12)(B) an abstractor or title insurance agent licensed by the  
71 state of Utah may issue real estate title opinions and title reports  
72 and prepare deeds for customers.

73 (c)(12)(C) financial institutions and securities brokers and  
74 dealers licensed by Utah may inform customers with respect to  
75 their options for titles of securities, bank accounts, annuities and  
76 other investments.

77 (c)(12)(D) insurance companies and agents licensed by the state  
78 of Utah may recommend coverage, inform customers with respect  
79 to their options for titling of ownership of insurance and annuity  
80 contracts, the naming of beneficiaries, and the adjustment of claims  
81 under the company's insurance coverage outside of litigation.

82 (c)(12)(E) health care providers may provide clerical assistance  
83 to patients in completing and executing durable powers of attorney  
84 for health care and natural death declarations when no fee is  
85 charged to do so.

86 (c)(12)(F) Certified Public Accountants, enrolled IRS agents,  
87 public accountants, public bookkeepers, and tax preparers may  
88 prepare tax returns.

89 (d) Within a practice area for which the licensed paralegal practitioner  
90 qualifies, a licensed paralegal practitioner may represent the interests of a  
91 natural person who is not represented by a lawyer by:

92 (d)(1) establishing a contractual relationship with the client;



93           (d)(2) interviewing the client to understand the client's objectives  
94           and obtaining facts relevant to achieving that objective;  
95           (d)(3) completing a form approved by the judicial council or board  
96           of district court judges;  
97           (d)(4) informing, counseling, advising and assisting with which  
98           form to use and how to complete the form;  
99           (d)(5) signing, filing and completing service of the form;  
100           (d)(6) obtaining, explaining and filing any document needed to  
101           support the form;  
102           (d)(7) reviewing documents of another party and explaining them;  
103           (d)(8) informing, counseling and advising about the anticipated  
104           course of proceedings by which the court will resolve the matter;  
105           (d)(9) informing, counseling, advising, assisting and advocating for  
106           the client in mediated negotiations;  
107           (d)(10) drafting, signing, filing and completing service of a written  
108           settlement agreement in conformity with the negotiated agreement;  
109           (d)(11) communicating with another party or the party's  
110           representative; and  
111           (d)(12) informing, counseling and advising about a court order that  
112           affects the client's rights and obligations.  
113

**(15) CHARACTERISTICS OF LIMITED-LICENSING IN OTHER STATES**

**(a) ARIZONA**

**Status.** Program in place since July 1, 2003.

**Title.** Legal document preparer.

**Minimum education.**

Individual:

- (1) A high school diploma or GED and two years of law-related experience as a court employee or under the supervision of a lawyer or a certified legal document preparer.
- (2) A certificate of completion from a paralegal or legal assistant program approved by the ABA.
- (3) A certificate of completion from a paralegal or legal assistant program that is institutionally accredited and that requires 24 semester units, or the equivalent, in legal specialization courses.
- (4) A certificate of completion from an accredited educational program designed specifically to qualify a person for certification as a legal document preparer.
- (5) A degree from a law school accredited by the ABA or institutionally accredited.

Business:

- (1) Certification as a business entity.
- (2) Designated principal who holds individual certification as a legal document preparer.

**Administration and regulation.**

Examination on legal terminology, client communication, data gathering, document preparation, ethical issues, and professional and administrative responsibilities. Certification and renewal of certification by the supreme court. Regulatory board. Examination fee. Application fee. Licensing fee. Revenue and expenses administered by the supreme court. Background investigation. 20 CLE hours per 2-year certification cycle. Rules of professional conduct. Complaint and discipline process. Administrative support staff: approximately 3 FTE.

**Authority.** To or for a person or entity not represented by a lawyer:

- (1) Prepare or provide legal documents.

- (2) Provide general legal information—but not specific advice, opinions, or recommendations—about possible legal rights, remedies, defenses, options, or strategies.
- (3) Provide general factual information about legal rights, procedures, or options.
- (4) Provide forms and documents.
- (5) File, record, and arrange for service of legal forms and documents.
- (6) May not sign any document other than some specified notices.

**Source.** Arizona Code of Judicial Administration Section 7-208.

(<http://www.azcourts.gov/cld/Legal-Documents-Preparers>;  
<http://perma.cc/4K9H-C8RC>).

## **(b) CALIFORNIA**

**Title.** Limited license to practice law or licensing of legal technicians.

**Status.** The Limited License Working Group was created on March 6, 2013 as a subcommittee of the Board of Trustees' Committee on Regulation, Admissions and Discipline Oversight to explore, research and report the feasibility of creating a limited license to enable certified individuals to provide limited, discrete legal services to consumers in defined subject matter areas. Meetings continue.

**Source.** Website of the California State Bar

(<http://www.calbar.ca.gov/AboutUs/BoardofTrustees/LimitedLicenseWorkingGroup.aspx>; <http://perma.cc/3YAP-EUD9>).

**Title.** Legal document assistants.

**Status.** Program in place.

### **Minimum education.**

- (1) A high school diploma or GED and 2 years of law-related experience under the supervision of a lawyer.
- (2) A baccalaureate degree in any field and 1 year of law-related experience under the supervision of a lawyer.
- (3) A certificate of completion from a paralegal program approved by the ABA.
- (4) A certificate of completion from a paralegal program that is institutionally accredited and that requires 24 semester units, or the equivalent, in legal specialization courses.

**Administration and regulation.** Register with the county clerk of the county of principal place of business and of any other county in which

services are performed. Registration fees. Bi-annual re-registration. \$25,000 bond for an individual; \$25,000 to \$100,000 bond for a business, depending on the number of assistants. Other statutory regulations. Unable to determine the number of administrative support staff because registration is decentralized.

**Authority.** For compensation, provide “any” [that is, the following] self-help services to a self-represented individual.

- (1) At the individual’s specific direction complete in a ministerial manner legal documents selected by the individual.
- (2) Provide general published factual information about legal procedures, rights, or obligations that have been written or approved by an attorney.
- (3) Make published legal documents available.
- (4) File and serve legal forms and documents at the specific direction of the individual.
- (5) May not provide advice, explanation, opinion, or recommendation about possible legal rights, remedies, defenses, options, selection of forms, or strategies.
- (6) In order to suggest what forms to complete, the legal document assistant must have a detailed guide, approved by an attorney, stating exactly what forms are needed for a particular objective.
- (7) The client must know what he or she wants, and what forms to use. Or the client can decide which forms to use based on the attorney-approved guide.

**Source.** Business and Professions Code Chapter 5.5.

(<http://www.leginfo.ca.gov/cgi-bin/calawquery?codesection=bpc&codebody=&hits=20>; <http://perma.cc/4CAA-QRBW>). See also the website of the California Association of Legal Document Assistants, (<http://calda.org/>; <http://perma.cc/5Y22-L8TC>).

### (c) COLORADO

**Status.** A subcommittee of the Colorado Supreme Court Advisory Committee is examining the Washington state LLLT program. First meeting: June 2015.

**Source.** Press release: *Colorado Studying New Limited Legal License*. (<http://www.coloradosupremecourt.us/Newsletters/Spring2015/Colorado%20studying%20new%20limited%20legal%20license.htm>; <http://perma.cc/GCY7-HNCH>).

**(d) FLORIDA**

**Status.** Program in place.

**Title.** Association of Legal Document Preparers.

**Minimum education.**

Not stated.

**Administration and regulation.**

Not stated.

**Authority.**

Not stated.

**Source.** Website of the Florida Association of Legal Document Preparers (<http://www.faldp.org/>; <http://perma.cc/A7RR-6J2S>).

**(e) LOUISIANA**

**Status.** Program in place since “time immemorial.”

**Title.** Notary public.

**Minimum education.** High school diploma, or GED.

**Administration and regulation.** Pre-assessment test. Examination. Application with the secretary of state. \$35 application fee. \$75 examination fee. Good moral character, integrity, and sober habits. Appointed by governor with the advice and consent of the Senate. Registration with secretary of state. \$10,000 bond renewed every 5 years. May be appointed in the parish of residence and in any parish in which he or she maintains an office. Annual report to the secretary of state with \$25 report fee. Voluntary associations.

**Authority.**

(1) Draft, prepare and execute affidavits, acknowledgements and authentic acts.

(2) Documents listed on the website of the Professional Civil Law Notaries Association as proper for a notary to prepare, but not negotiate on behalf of a client:

- |                       |                          |
|-----------------------|--------------------------|
| • Affidavits          | • Bond for Deed          |
| • Acknowledgments     | • Acts of Adoption       |
| • Authentic Acts      | • Guarantee Letters      |
| • Security Agreements | • Power of Attorney      |
| • Mortgages           | • Affidavits of Heirship |
| • Acts of Sales       | • Small Successions      |
| • Donations           | • Wills                  |

- Trusts
- Real Estate Transactions
- Partition of Property
- Incorporations
- LLC Formations
- Operating Agreements
- Partnership Agreements
- Matrimonial Agreements
- Public Inventories
- Contracts
- Bill of Sales
- Quit Claims
- Public Inventories
- Contracts in Authentic Form
- Provisional Custody Agreements

**Source.** Louisiana R.S. Title 35; (<http://perma.cc/RDN5-KKBN>). See also the website of the Professional Civil Law Notaries Association, ([http://www.pclna.org/notary\\_duties.html](http://www.pclna.org/notary_duties.html); <http://perma.cc/3RH6-YNBY>) and the website of the Louisiana Notary Association, (<http://www.lna.org/>; <http://perma.cc/U9WY-7X7J>).

#### (f) NEVADA

**Status.** Program in place since March 1, 2014.

**Title.** Document preparation services.

**Minimum education.**

None.

**Administration and regulation.** Registration with the secretary of state. Applicant information and history, business information, background check and a cash or surety bond in the amount of \$50,000. No application fee. Annual renewal. Active state business license. Complaint and discipline process. Private right of action for double damages. Criminal liability for willful violation of the enabling act. Written disclosure and written contract required. Communication with client is not privileged.

**Authority.** For compensation and at the direction of a client, provide assistance to the client in a legal matter, including:

- (1) preparing or completing any pleading, application or other document;
- (2) translating an answer to a question posed in a document;
- (3) securing any supporting document, such as a birth certificate, required in connection with the legal matter; or
- (4) submitting a completed document on behalf of the client to a court or administrative agency.

**Source.** Nevada Revised Statutes Chapter 240A and secretary of state Regulation R136-13. (<http://nvsos.gov/index.aspx?page=1346>; <http://perma.cc/4N7M-ZBM3>).

**(g) OREGON**

**Title.** Limited License Legal Technician. (The task force also outlines a voluntary registered paralegal program.)

**Status.** The task force studying limited licensing issued its report and recommendations in February, 2015.

**Recommendation.**

The Task Force recommends that the Board of Governors consider the possibility of the Bar's creating a Limited License Legal Technician (LLLT) model as one component of the BOG's overall strategy for increasing access to justice. It further recommends, should the Board decide to proceed with the LLLT concept, that it begin with the suggestions developed by Task Force Subcommittees. The Task Force also suggests that the first area that be licensed be family law, to include guardianships.

Should the Board decide to proceed with this concept, the Task Force recommends a new Board or Task Force be established to develop the detailed framework of the program. For the reasons set out herein, the BOG should review the recently established Washington State Bar Association LLLT program and consider it as a potential model.

**Recommended minimum education.** Associate degree. 45 quarter credit hours of legal studies in core curriculum requirements (paralegal studies). Instruction in an approved practice area for the number of credit hours determined by the board. Core curriculum exam and practice area exam.

**Recommended minimum experience.** 4,160 hours or 2 years of substantive law-related experience supervised by a lawyer with 2,080 hours or 1 year of experience in the specialty practice area in which the applicant is requesting licensure. Completed within 3 years of passing core curriculum exam.

**Recommended administration and regulation.** Regulatory board with administrative support from the state bar association. Examination fee. Application fee. Background check. Character and fitness review. Oath. Annual licensing fee. Financial responsibility (Professional liability insurance). 45 CLE hours every 3 years with a 3-year rotating reporting cycle. One prong of the CLE component would cover the core CLEs and the other prong would be specific to the specialty license. Rules of

professional conduct. Complaint and discipline process. Privileged communications.

**Recommended authority in family law.**

- (1) Provide approved forms, assist client to choose which forms to use. Assist in completing forms in a ministerial capacity and without giving legal advice.
- (2) Provide generalized explanations of the law without applying it specifically to the client's case or fact pattern.
- (3) Explain options without offering legal opinions.
- (4) Review approved documents completed by the client to determine if they are complete and correct.
- (5) Review and interpret necessary background documents and offer limited explanations necessary to complete approved forms.
- (6) Provide or suggest published information about legal procedures, legal rights and obligations and materials of assistance with children's issues.
- (7) Explain court procedures without applying it specifically to the client's case.
- (8) File documents at the client's request.

The family law subcommittee also discussed whether LLLTs should be permitted to work with both parties, subject to ethics rules applicable to LLLTs.

**Discussed but not decided.**

- (1) What entity should oversee the program?
- (2) How would the program be implemented initially?
- (3) How would the initial implementation be financed?
- (4) Should legal technicians have to contribute to a client protection fund?
- (5) Should legal technicians have to maintain client trust accounts?
- (6) What entity should provide malpractice insurance?
- (7) What activities and roles should be permitted of legal technicians?
- (8) How should legal technicians with licenses from other states be treated?
- (9) How should legal technicians who have a primary office outside of Oregon be handled?
- (10) What responsibilities should legal technicians have depending on whether they are under the direction and supervision of a lawyer? Is supervision relevant?



**Source.** Legal Technicians Task Force Final Report to the Board Of Governors  
([http://bog11.homestead.com/LegalTechTF/Jan2015/Report\\_22Jan2015.pdf](http://bog11.homestead.com/LegalTechTF/Jan2015/Report_22Jan2015.pdf); <http://perma.cc/4NE3-AJK5>).

**(h) WASHINGTON**

**Title.** Limited license legal technician.

**Status.** Program in place. Initial licenses issued Spring 2015.

**Minimum education.** Associate degree. 45 credit hours of core curriculum instruction in paralegal studies. Instruction in an approved practice area for the number of credit hours determined by the regulatory board. (Currently 15 credit hours in family law, the only approved practice area.) One credit hour is 7.5 hours of instruction. Core curriculum exam and practice area exam.

**Minimum experience.** 3,000 hours of substantive law-related work experience supervised by a licensed lawyer. Acquired no more than three years before licensure and no more than three years after passing the examination.

**Administration and regulation.** Regulatory board with administrative support from the state bar association. Budget approved by the association's board of governors. Examination fee. Application fee. Background check. Character and fitness review. Oath. Annual licensing fee. Financial responsibility (Professional liability insurance). IOLTA account. 10 CLE hours per year. Rules of professional conduct. Complaint and discipline process. Privileged communications.

**Authority.** Within an approved practice area for which the technician qualifies:

- (1) Obtain relevant facts and explain the relevancy to the client.
- (2) Inform the client of procedures, including deadlines and documents that must be filed, and the anticipated course of the proceeding.
- (3) Inform the client of procedures for filing documents and service of process.
- (4) Provide the client with self-help materials prepared by a lawyer or approved by the board.
- (5) Review documents or exhibits of the opposing party and explain them to the client.
- (6) Select, complete, file and effect service of approved forms, federal forms, forms the content of which is specified by statute, or forms

prepared by a lawyer. Advise the client of the significance of the forms.

- (7) Perform legal research.
- (8) Draft legal letters and documents beyond what is permitted in paragraph (6), if the work is reviewed and approved by a lawyer.
- (9) Advise a client about other documents that may be necessary to the client's case, and explain how the additional documents may affect the client's case.
- (10) Assist the client in obtaining necessary documents or records, such as birth, death, or marriage certificates.

**Source.** Washington Rule APR 28 and implementing regulations.

(<http://www.wsba.org/Licensing-and-Lawyer-Conduct/Limited-Licenses/Legal-Technicians>; <http://perma.cc/RJ5W-NQU2>).

**(i) OTHER STATES**

- (1) Nearly all states have pro bono programs in which lawyers or non-lawyers offer information, advice or representation for qualified individuals.
- (2) The Connecticut Bar Association's Task Force on the Future of Legal Education and Standards of Admission issued a June 2014 report recommending the state modify its practice rules "so that nonlawyers be permitted to offer some basic legal services to the public."
- (3) The Massachusetts Bar Association voted in March 2014 to endorse the recommendations of the ABA Task Force on the Future of Legal Education, including the licensing of people other than those with law degrees.
- (4) Other states have held meetings about limited licensing but have taken no official steps as January 1, 2015.

**Source.** Robert Ambrogi, Washington. State moves around UPL, using legal technicians to help close the justice gap, ABA JOURNAL (Jan. 1, 2015, 5:50 AM),

([http://www.abajournal.com/magazine/article/washington\\_state\\_moves\\_around\\_upl\\_using\\_legal\\_technicians\\_to\\_help\\_close\\_the\\_justice\\_gap](http://www.abajournal.com/magazine/article/washington_state_moves_around_upl_using_legal_technicians_to_help_close_the_justice_gap); <http://perma.cc/FL75-QKAR>).

**TAB**  
**6**

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

**OCTOBER 30, 2015**

**ALTA CLUB, SALT LAKE CITY**

- In Attendance:** President Angelina Tsu, President-elect Rob Rice; Commissioners: H. Dickson Burton, Steven Burt, Kate Conyers, Kenyon Dove, Heather Farnsworth, Mary Kay Griffin, Susanne Gustin, Liisa Hancock, John Lund, Michelle Mumford, Herm Olsen and Katie Woods.
- Ex-Officio Members:** Nate Alder, James D. Gilson, Melinda Bowen, Professor Carl Hernandez (for Dean Rasband), Susan Motschiedler, Margaret Plane, Chris Wharton and Supreme Court Liaison Tim Shea.
- Not in Attendance:** Ex-Officio Members: Dean Robert Adler, Heather Allen, Dean James Rasband, and Lawrence Stevens.
- Also in Attendance:** Executive Director John C. Baldwin, Assistant Executive Director Richard Dibblee, General Counsel Elizabeth A. Wright, Sean Toomey, Utah State Bar Communications Director and Bar member Gabe White.

**Minutes: 9:15 a.m. start**

**1. President's Report:**

**1.1 Welcome**

**1.2 OPC Review Committee Report: Bruce Maak.** Bruce Maak explained the findings and recommendations in the Committee's report attached to the minutes behind Tab 1. The Review Committee found that overall OPC is doing its job well. The Committee recommended that OPC do a better job of telling respondents where they are in the process and how long it will likely take. The Committee also recommended providing statistics to Bar members to clarify misconceptions among Bar members about the types and number of cases prosecuted and that the Commission clarify the OPC rules governing confidentiality and supervision.

**1.3 Remind about Fall Forum on November 19<sup>th</sup> and 20<sup>th</sup>.**

**1.4 Bar Review November 12<sup>th</sup>.**

**1.5 Report on meeting with Chief Justice Durrant.** Angelina Tsu reported that the Chief Justice was open to the idea of having the ABA review OPC procedures but wanted any

OPC rule changes the Commission is considering to go into effect before requesting the ABA review. The Chief Justice was not thrilled about a Court governed Access to Justice Commission given all of the other committees considering access to justice issues.

**1.6 Update on Financial Administrator Position:** The application deadline is closed and interviews will begin next week.

## **2. Action Items**

**2.1 UMBA Scholarship and Awards Banquet Table:** Rob Rice. **Rob Rice moved that the Commission purchase a table at the UMBA Scholarship Awards banquet and donate \$1500 to the UMBA Scholarship Fund and if more people want to attend, the Bar will purchase more seats. John Lund seconded the motion which passed unopposed.**

**2.2 Double Dutch Convention App Renewal:** Rob Rice moved that the Commission purchase the convention application for four more events. H. Dickson Burton seconded the motion which passed with Kenyon Dove opposed.

**2.3 Client Security Fund Report:** Hon. David Hamilton. Judge Hamilton reported on the claims the Fund for Client Protection awarded at its September 11, 2015 meeting. A description of the cases and claims is attached to the minutes behind Tab 2. **John Lund moved that the Commission approve the payments recommended in the Fund memo. Herm Olsen seconded the motion which passed unopposed.**

**2.4 Summer Convention Review Committee Report: Dickson Burton.** Dickson outlined all of the reasons the Summer Convention is important including the statutory requirement that the Bar have annual business meeting, its importance in fostering collegiality among bar members and the judiciary and in fostering future bar leaders. The two Snowmass conventions were an experiment that resulted in tremendous financial losses. The Sun Valley conventions have not resulted in unacceptable losses. Accordingly, the Committee recommended continuing to have a Summer Convention in Sun Valley with a rotation to California every few years for as long as economically feasible. The Commission again discussed the pros and cons of having the convention in Park City. The main concern is that people will not bring families and stay, but rather will attend various breakouts and then drive back to the office.

The Bar has already contracted with Sun Valley for summer 2017. The Commission was asked to vote on contracting with Sun Valley for summer 2018. **John Lund moved to table a motion to commit to Sun Valley for 2018 until the Fall Forum financials are calculated and until the deadline for contracting with Sun Valley is closer. Katie Woods seconded the motion which passed unopposed.**

**2.5 Legal Assistance to Former Members of Fundamental Communities:** Katie Woods and Chris Wharton. Katie Woods reported that she and Chris investigated the legal

resources available to members of fundamentalist communities in Southern Utah. Their investigation concluded that there were plenty of legal resources available to those citizens through the South Utah Bar Association and other volunteer organizations and that a Bar program was unnecessary.

**2.6 Approve Mentoring Breakfast of Champions.** Michelle Mumford proposed a breakfast in February to recognize lawyers who have proven to be valuable mentors. The awards will be named after Paul Moxley, James Lee and Charlotte Miller. **Katie Woods moved to approve the breakfast and awards. Heather Farnsworth seconded the motion which passed unopposed.**

**2.7 Bar Scholarship Fund and Fundraising Gala: Heather Farnsworth.** Heather proposed a gala to fund a scholarship program for lawyers who cannot afford to pay for CLEs. The gala would be modeled on the Salt Lake County Bar scholarship gala. Kate Conyers pointed out the tremendous expense of the SLCBA gala that was not covered by ticket price. **Kate Conyers moved the Heather form a Committee to explore the costs associated with the gala. Michele Mumford seconded the motion which passed unopposed.**

**2.8 Leadership Academy.** Gabe White asked the Commission to approve the creation of a Leadership Academy to encourage and train new lawyers for future Bar leadership positions. The Commission asked Gabe to report back to them with a proposed budget, mission statement, selection criteria and process, program description and other information required before it could vote on the proposal.

**2.9 Select Professionalism Award Recipient. Heather Farnsworth moved to award Tara Isaacson the Professionalism Award. Kate Conyers seconded the motion which passed unopposed.**

**2.10 Select Community Member Award Recipient. John Lund moved to award Anne Burkholder Community Member Award. Kate Conyers seconded the motion which passed unopposed.**

**2.11 Select Outstanding Member Award. Herm Olsen moved to give Mark Tolman and Scott Hansen the Outstanding Mentor Award. John Lund seconded the motion which passed unopposed.**

**2.12 Accept 2014-2015 Audit Report.** Mary Kay Griffin conducted a page-by-page review and explanation of the Audit Report and asked for questions. **John Lund moved to accept the audit report and Rob Rice seconded the motion which passed unopposed.**

### **3.**

#### **Discussion Items**

#### **3.1**

#### **Futures Commission Follow Up:**

**John Lund.** Commissioners assigned to implement particular Futures Commission

recommendations must submit a letter to Rob Rice by November 20, 2015 outlining what steps they will take to implement their assigned action item.

**3.2**

**Overhead Allocations to Sections**

**Policy:** Angelina formed a committee consisting of Angelia Tsu, Mary Kay Griffin, Dickson Burton, Rob Rice, Liisa Hancock, Michelle Mumford and Heather Thuet to examine how the Bar allocates overhead expenses to the sections.

**HANDOUTS DISTRIBUTED AT MEETING:**

1. List of Bar Commission Section Liaison assignments.

**ADJOURNED:** 12:00 p.m.

**CONSENT AGENDA:**

1. Approve Minutes of September 18, 2015 Commission Meeting.
2. Appoint Lesley Manley as NLTP Committee Chair.
3. Approve Section Liaison Assignments.

**TAB**  
**7**



Utah State Bar  
Summary Income Statement  
October 31, 2015

		Year to Date			YTD %	2015/16
		Actual	Budget	Variance Fav/(Unfav)	of Ttl Bdgt	Total Budget
<b><u>Revenue</u></b>						
Licensing	01	\$ 4,032,293	\$ 4,041,262	\$ (8,969)	97.5	\$ 4,137,400
Admissions	02	175,370	129,353	46,017	39.9	439,300
NLTP	03	28,650	39,531	(10,881)	31.7	90,300
Mgt - Service	04	7,251	11,235	(3,975)	34.7	20,900
In Kind Revenue		143	826	(683)	6.0	2,400
Mgt - Interest & Gain		14,192	7,487	6,705	83.0	17,100
Property Mgt	05	78,250	84,460	(6,210)	25.1	312,152
OPC	06	1,171	136	1,035	10.0	11,700
CMIS/Internet	08	-	100	(100)	-	500
CLE	09	133,522	103,620	29,902	24.6	543,100
Summer Convention	10	193,394	149,305	44,089	122.9	157,400
Fall Forum	11	63,295	65,858	(2,563)	35.8	176,750
Spring Convention	12	2,150	-	2,150	1.7	124,300
Bar Journal	13	58,717	44,557	14,160	39.4	149,100
Committees	14	-	480	(480)	-	480
Member Benefits	15	1,593	754	839	51.4	3,100
Section Support	16	-	-	-	-	76,621
Consumer Assistance	17	-	-	-	-	800
Access to Justice	18	5,900	5,455	445	36.9	16,000
Commission/Sp Proj	21	15	79	(64)	0.2	7,300
Young Lawyers Division	23	-	-	-	-	100
Total Revenue		<u>\$ 4,795,916</u>	<u>\$ 4,684,499</u>	<u>\$ 111,417</u>	76.3	<u>\$ 6,286,803</u>
<b><u>Expenses</u></b>						
				(Fav)/Unfav		
Licensing	01	46,478	61,096	(14,618)	38.5	120,653
Admissions	02	185,215	181,048	4,167	40.4	457,985
NLTP	03	25,164	22,591	2,573	33.6	74,845
Bar Mgt	04	293,830	241,653	52,177	42.2	696,249
Property Mgt	05	152,697	183,749	(31,052)	26.2	582,642
OPC	06	423,068	421,385	1,683	33.8	1,253,170
General Counsel	07	70,419	79,628	(9,209)	27.3	257,990
Computer/MIS/Internet	08	57,826	63,466	(5,640)	27.9	207,053
CLE	09	119,603	93,298	26,305	23.6	506,224
Summer Convention	10	206,646	249,838	(43,192)	77.5	266,758
Fall Forum	11	25,700	14,483	11,217	14.6	178,114
Spring Convention	12	5,882	4,195	1,687	5.1	114,878
Bar Journal	13	59,027	56,688	2,339	32.8	180,104
Committees	14	79,760	84,342	(4,582)	60.3	132,226
Member Benefits	15	49,857	49,154	703	33.8	147,546
Section Support	16	29,251	26,410	2,841	38.2	76,621
Consumer Assistance	17	38,720	31,556	5,164	30.0	122,449
Access to Justice	18	62,505	58,494	4,011	34.9	178,919
Tuesday Night Bar	19	11,788	13,869	(2,081)	32.0	38,810
Legislative	20	-	51,974	(51,974)	-	73,074
Commission/Sp. Proj	21	89,112	75,025	14,087	52.9	168,336
Public Education	22	38,655	32,679	5,976	23.0	168,346
Young Lawyers Division	23	10,227	24,384	(14,157)	18.2	56,100
Total Expenses		<u>\$ 2,079,430</u>	<u>\$ 2,121,005</u>	<u>\$ (41,575)</u>	34.3	<u>\$ 6,065,092</u>
Net Revenue/(Expense)		<u>\$ 2,716,486</u>	<u>\$ 2,563,494</u>	<u>\$ 152,992</u>		<u>\$ 231,711</u>
Add: Depreciation		<u>72,403</u>	<u>68,585</u>	<u>3,818</u>		<u>166,458</u>
Cash Increase/(Decrease) from Operations		<u>\$ 2,788,889</u>	<u>\$ 2,632,079</u>	<u>\$ 156,810</u>		<u>\$ 397,169</u>
Other Uses of Cash						
Change in Assets/Liabilities		(2,133,479)	(2,133,479)	-		126,000
Capital Expenditures		36,739	125,000	(88,261)		
Net Change In Cash		<u>\$ 618,671</u>	<u>\$ 373,600</u>	<u>\$ 245,071</u>		<u>\$ 272,169</u>

NOV - 2 2015

Salt Lake County

By: lm Deputy Clerk**In the Third Judicial District Court, Salt Lake County, State of Utah****In the Matter of the Discipline of:****Susan Rose, #07985****FINDINGS OF FACT, CONCLUSIONS OF LAW,  
AND ORDER OF DISBARMENT**

Case No. 070917445

Hon. Royal Hansen

This ruling represents the final step in bringing resolution to these proceedings that have now spanned almost eight years. The Office of Professional Conduct (the OPC) of the Utah State Bar (the Bar) initiated this attorney discipline case against the Respondent, Susan Rose, on December 7, 2007. Since that time, the Court has addressed myriad motions and issues, including numerous challenges to the Court's subject matter jurisdiction over this action. In February 2010, the Court granted the OPC's motion to compel Ms. Rose to produce various materials. When Ms. Rose failed to comply with the Court's ruling, the Court issued another ruling on July 1, 2010 (the July 2010 Ruling), that sanctioned Ms. Rose by striking her Answer and entering Default against her. Due to the entry of Default, the Court accepted all of the allegations in the Complaint as true. Inasmuch as the allegations in the Complaint showed that Ms. Rose violated the Utah Rules of Professional Conduct, the Court proceeded to the next phase of the attorney discipline process required under the Utah Rules of Lawyer Discipline and Disability (RLDD) and scheduled a Sanctions Hearing to determine what sanction is appropriate. *See generally* RLDD 14-511(f) (providing that after a district court determines that an attorney has engaged in misconduct, the court should hold a sanctions hearing to determine what sanction is appropriate for the attorney's misconduct).

After addressing various motions and other matters, the Court held the Sanctions Hearing on August 17 and 18, 2015. Barbara L. Townsend, appeared on behalf of the Office of Professional Conduct (OPC). Ms. Rose, acting pro se,<sup>1</sup> appeared briefly on the morning of August 17, 2015. She entered her appearance and subsequently chose to leave rather than participate. The Court repeatedly invited Ms. Rose to participate and indicated that if she chose to leave, the hearing would go forward without her participation. Ms. Rose chose not to participate and left the courthouse without participating in the hearing.

<sup>1</sup> Ms. Rose was previously represented by Doug Short. However, his appearance was limited to a few specific matters. At the time of the Sanctions Hearing on August 17 and 18, he was no longer representing Ms. Rose.

The Court heard testimony of the witnesses presented by the OPC and admitted exhibits on August 17, 2015. On August 18, 2015 since Ms. Rose was not present to be called by the OPC, the Court allowed OPC counsel to proffer evidence and exhibits. After considering the OPC's trial brief, the allegations of the Complaint, and all of the evidence and arguments presented at the Sanctions Hearing, the Court finds, concludes and orders as follows:

## **I. FINDINGS AND CONCLUSIONS REGARDING MS. ROSE'S MISCONDUCT**

### **Findings of Fact**

As stated above, the Court struck Ms. Rose's Answer and entered Default against her. As a result of the Default, the Court must accept all of the allegations in the Complaint as true. *See Skanchy v. Calcados Ortope SA*, 952 P.2d 1071, 1076 (Utah 1998) (explaining that when default is entered, the "factual allegations [in the Complaint] are deemed admitted"). Based on the allegations in the Complaint,<sup>2</sup> the Court enters the following findings of fact regarding Ms. Rose's misconduct and violations of the Utah Rules of Professional Conduct.

1. Ms. Rose is an attorney licensed in the State of Utah and a member of the Utah State Bar. Her address according to the records of the Executive Director of the Utah State Bar is 9553 South Indian Ridge, Sandy, Utah 84092.
2. According to Utah State Bar records, Ms. Rose has been a member of the Utah State Bar since 1997.
3. At all relevant times, Ms. Rose either resided or practiced law in Salt Lake County in the State of Utah.
4. The OPC's Complaint was filed on behalf of the Utah State Bar's Office of Professional Conduct as directed by the Ethics and Discipline Committee of the Utah Supreme Court, and is based upon two Informal Complaints submitted against Ms. Rose; one by Joyce Smith (the Smith Matter) and the other by the OPC (the OPC Matter).
5. The OPC served a Notice of Informal Complaint (NOIC) on Ms. Rose in the OPC matter on February 11, 2004.
6. The OPC served a NOIC on Ms. Rose in the Smith matter on June 7, 2005.
7. A Screening Panel of the Ethics and Discipline Committee of the Utah Supreme Court heard the OPC and Smith Matters on September 13, 2007.
8. The Screening Panel consisted of three members, including one member of the general public and two attorneys who are licensed to practice law in the State of Utah.

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<sup>2</sup> Because Default was entered against Ms. Rose, the Court accepts all of the allegations in the Complaint as true. The Court notes, however, that evidence in support of these allegations was presented at the Sanctions Hearing.

9. At the conclusion of the hearings on September 13, 2007, the Screening Panel directed the OPC to file formal complaints against Ms. Rose in both the Smith and OPC Matters.

*(The OPC Matter)*

10. On October 3, 2001, the OPC received a letter regarding Ms. Rose's handling of the case of Dr. Steven MacArthur, *et. al.* v. San Juan County, *et. al.* and referring an opinion issued by the Honorable Dale A. Kimball on September 19, 2001 in addressing Ms. Rose's conduct in that matter. Ms. Rose was representing the Plaintiffs in that action.
11. On April 12, 1999, Ms. Rose filed suit in the Navajo Tribal Court on behalf of her clients, some former employees of the Montezuma Clinic (Plaintiffs), against numerous individual Defendants and San Juan County (Defendants).
12. The Complaint sought control of the Montezuma Clinic and damages for discrimination and other torts.
13. The Tribal Court issued an Order on March 3, 2000 granting the relief requested and additionally directing the Defendants to pay a fine of \$10,000 per day for each day the mandate was not carried out. The Order further ordered each individual Defendant to pay \$1000 per day of the \$10,000 from their own personal assets.
14. Ms. Rose sought and obtained from the Navajo Tribal Court a Special Order granting Plaintiffs leave to sue in Utah federal court to enforce the orders of the Navajo Tribal Court.
15. Ms. Rose filed a Complaint on July 25, 2000 on behalf of the Plaintiffs against San Juan County and several individual Defendants in the United States District Court for Utah (District Court). The claims included: civil rights violations; RICO claims; federal antitrust claims; mail fraud; witness tampering; interference with commerce by threats; claims under the Freedom of Access to Clinic Entrances Act Health Care Quality Improvement Act, Emergency Medical Treatment and Active Labor Act, and the Medical Bill of Rights. The complaint, drafted by Ms. Rose, also included numerous state law tort, contract claims, and federal common law claims.
16. The complaint sought the "entry of sweeping declaratory judgments and writs of mandamus requiring a GAO audit of federal funds expended by the county for the previous ten years, an IRS audit of payroll tax withholding, the convening of a federal grand jury investigation, and the immediate seizure or sequestration of the Defendants entities' financial records by the U.S. Marshals pending the investigation and the GAO and IRS audits."
17. During her representation of Plaintiffs in the District Court, Ms. Rose filed numerous pleadings and motions that were later found to be frivolous.

18. At one point, Defendants brought a motion claiming that Ms. Rose should be disqualified because she had contacted one of the named Defendants who was represented by counsel, and attempted to represent him while representing the Plaintiffs.
19. On October 14, 2000, the Honorable Dale Kimball granted the Defendants' motion to dismiss based on sovereign immunity and denied the Plaintiffs' Motion for Preliminary Injunction requesting enforcement of the Tribal Court Orders.
20. On or about December 14, 2000, Judge Kimball declared that the Tribal Court Orders were not enforceable against two other Defendants based upon lack of jurisdiction.
21. Although the decisions of the District Court were not final judgments, on December 27, 2000 Ms. Rose filed a Notice of Appeal to the Tenth Circuit Court of Appeals.
22. On March 7, 2001, Judge Kimball issued an Order pursuant to Rule 54(b) of the Federal Rules of Civil Procedure certifying the prior Orders for appeal.
23. On June 3, 2001, Ms. Rose filed a motion to disqualify Judge Kimball from the case.
24. As a basis for the disqualification, Ms. Rose stated that the case "involves Mormon Church leaders in San Juan County" and had Judge Kimball ruled for her clients, he would have been supporting the Navajo Court findings and this "would have caused political and social embarrassment."
25. Ms. Rose also complained that if Judge Kimball, "being a member of said Church and an acknowledged social leader in Utah, 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."
26. In his 16 page Recusal Order, Judge Kimball explained that "Plaintiffs will not find a judge more sympathetic to their claims, more willing to apply the law impartially, or more patient with the blundering-but probably well-meaning efforts of Plaintiff's counsel" but granted the motion because "Plaintiffs have lost faith in this court's ability to treat them impartially, and in light of this court's numerous reprimands of Plaintiffs and their counsel, which reprimands, while justified, have obviously fueled Plaintiffs' loss of confidence."
27. In his opinion, Judge Kimball commented on the conduct of Plaintiffs' counsel, stating that at one point, he had instructed Plaintiffs to refrain from filing any motions because of "Plaintiffs constant stream of motions, corrections to motions, amendments to motions, refilling of motions after the responsive memorandum had been filed by the Defendants, and further briefing of motions after oral argument."
28. Judge Kimball further commented that "if Plaintiffs had done their homework before conjuring up claims of bias as a pretext for their unmeritorious and/or incomprehensible

claims, they would have discovered that this court has previously demonstrated its respect for the jurisdiction of the Navajo Court.”

29. With regard to the recusal motion, Judge Kimball stated that “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, as the court simply did not make the global statements discussed in the affidavits supporting Plaintiffs’ motion for recusal or their proposed amendments.”
30. Judge Kimball also stated that “it was apparent in various memoranda and oral arguments throughout this litigation that Plaintiffs and their counsel do not appear to understand the contents of [the prior] Orders or the reach of those Orders, as they have repeatedly mischaracterized and/or misinterpreted various statements in the Orders.”
31. Judge Kimball expressed his frustration with Ms. Rose stating, “the court has clearly demonstrated its frustrations with Plaintiffs and their counsel for their failure to understand the law or the follow the Federal Rules of Civil Procedure, the local rules, and the Rules of Professional Conduct.”
32. Judge Kimball further stated that he felt that he had demonstrated extreme patience in “tolerating Plaintiffs’ counsel’s repeated and time-consuming calls to chambers with procedural questions and also tolerating Plaintiffs’ often incomprehensible pleadings and memoranda. For example, Defendants have repeatedly—“and justifiably”—requested, during various oral arguments, that the Court dismiss Plaintiffs’ Complaint based on, among other things, its utter incomprehensibility and its failure to identify which claims are alleged against which Defendants. This court, however, has declined to grant Defendants’ request and has chosen . . . to endure Plaintiffs’ inscrutable Complaint.”
33. Judge Kimball also pointed out that not only was the conduct of Plaintiffs counsel “prejudicial to Defendants, but it directly violates the court’s March 6 Order in which the court admonished Plaintiffs to discontinue this prejudicial and unprofessional practice.”
34. In a footnote, Judge Kimball described Ms. Rose’s conduct by stating, “[o]nly 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.”
35. Judge Kimball concluded that, “it is clear that Plaintiffs’ perception is not based in reality.”

36. On September 21, 2001, the case was reassigned to the Honorable Bruce S. Jenkins.
37. Between September, 2001 and July, 2002, Judge Jenkins dismissed several of the claims against the remaining Defendants and granted one motion for summary judgment as to some of the discrimination claims.
38. Over the course of the proceeding before Judge Jenkins, Ms. Rose continued to file numerous motions, amendments to motions, objections to rulings and motions for reconsideration each time a ruling was made against her clients.
39. On October 7, 2002, the Tenth Circuit ruled that the jurisdictional dismissal would stand but that the sovereign immunity question was remanded for further determination.
40. On or about November 14 and 15, 2002, Judge Jenkins held a final pretrial hearing for the remaining six Plaintiffs and remaining claims.
41. Ms. Rose was asked by the court to proffer the facts and evidence supporting the remaining claims. After hearing all of the evidence, Judge Jenkins ruled that all of the claims should be dismissed because there was no factual basis for any claim to go forward to trial.
42. Ms. Rose filed numerous motions after the pretrial hearing.
43. On April 5, 2005 in his Order Re: Plaintiffs' April 4, 2005 Motion, Judge Jenkins denied the motion, "[i]n light of counsels' failure to comply with the court's local rules."
44. On June 13, 2005, Judge Jenkins issued a 192-page Memorandum Decision and Order clarifying his rulings at the pretrial hearing in the case.
45. In the Memorandum Decision, Judge Jenkins commented, "gleaning the elements of a particular antitrust law violation from the dense thicket of the plaintiff's pleadings, original and amended, proves a daunting and largely fruitless task."
46. Judge Jenkins stated, "it 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."
47. With regard to his dismissal of the claims, Judge Jenkins stated that "[t]hose claims may properly be dismissed as frivolous pursuant to Fed. R. Civ. P. 16(c)(1) because they are based upon an indisputably meritless legal theory, or are footed upon conclusory assertions rather than specific facts."
48. According to Judge Jenkins, "[f]rom 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."

49. On June 17, 2005, Ms. Rose filed a pleading entitled Motion and Memorandum to Disqualify Judge and Reassign Case to the Chief Judge or the 10th Circuit and Motion and Memorandum to Vacate all Orders and Judgments filed by All Plaintiffs--Hearing Requested.
50. On October 5, 2005, Judge Jenkins issued an Order re: Motion for Extension of Time & Restriction of Further Filings. He said "[t]his motion shall be denied for the reason that it is wholly superfluous." Further he wrote, "enough is enough" and ordered that no further motions be filed pending the receipt of the mandate from the Tenth Circuit.
51. On October 21, 2005, Judge Jenkins issued a Memorandum Opinion & Order Re: Plaintiffs' Recusal Motions in which he stated that Ms. Rose had filed five motions to recuse him and that, "the court has reviewed, considered and denied each of the plaintiffs' disqualification motion for lack of the requisite factual grounds that would cause an objective observer reasonably to question the court's impartiality."
52. Judge Jenkins stated, "[a]s pointed out at the February 24, 2003 hearing, plaintiffs' claims were examined – and dismissed as frivolous – in the context of pretrial under Rule 16(c)(1), not under Rule 56 or Rule 12(b)(6)."
53. He further noted that "[o]bjectivity is often found to be in short supply in this case."
54. Judge Jenkins commented "[p]arsing plaintiffs' various allegations as best it can, the court simply finds no sufficient basis for recusal under Sec. 455(a) on the grounds asserted by the plaintiffs."
55. Judge Jenkins concluded, "[t]he underlying purpose of the plaintiffs' recusal motions may be discerned in the particular relief that plaintiffs sought: disqualification of the entire bench of the District Court of Utah in favor of designation of a federal district judge from outside Utah – perhaps a judge that Plaintiffs hoped may take a more favorable view of the Plaintiffs' theories of jurisdiction and liability."
56. On November 9, 2005, Ms. Rose filed a Notice of Appeal to the Tenth Circuit.
57. After more motions were filed in the District Court case, Judge Jenkins issued a Minute Entry on October 5, 2006 that "no further motions may be filed in this case" pending the mandate from the Court of Appeals.
58. The Tenth Circuit Court of Appeals handed down its decision regarding Judge Jenkins's rulings at the Pretrial on July 18, 2007. The appeal was dismissed as "frivolous."



59. On February 23, 2004, Ms. Rose made a request to the chair of Ethics and Discipline Committee that the complaint and OPC investigation of the complaint against her be held in abeyance. The request was granted and the investigation put on hold until the abeyance was terminated on May 18, 2007.
60. The Screening Panel for the Ethics and Discipline Committee heard the two cases on September 13, 2007. The Screening Panel voted that formal cases be filed in both matters.
61. Subsequent to the Screening Panel determination, Ms. Rose has filed motions in the underlying district court case resulting in an opinion issued by Judge Jenkins on November 8, 2007, stating that “[a]t some point, litigation must come to an end, and judgments must become final. For plaintiffs . . . , this case has indisputably reached that point.”

*(The Smith Matter)*

62. The OPC received a complaint regarding Ms. Rose’s conduct from Joyce Smith on April 18, 2005.
63. Ms. Rose was opposing counsel in a case in which Joyce Smith filed a Verified Petition for Grandparent Visitation on behalf of the Petitioners.
64. Ms. Rose represented the Respondent Mother of the Child at issue.
65. On November 15, 2004, Ms. Rose filed a Notice of Entry of Appearance as well as a pleading to request more time to file an answer.
66. When the motion for more time was denied, Ms. Rose filed a Motion to Stay the Proceedings.
67. On January 20, 2005, Judge Anderson set a hearing for oral argument on the Motion for Stay for February 14, 2005.
68. On the morning of the hearing, Ms. Rose faxed a letter to the Court. In the letter she indicated that she could not attend the hearing due to an Order from the Navajo Tribal Court that, according to Ms. Rose, stated that anyone appearing in the state court would be subject to confinement for a year or a \$5,000 fine.
69. On the day of the hearing, Ms. Rose also filed an Objection to All Proceedings Until The Federal Questions of Navajo Court Jurisdiction Over All of D.C.W.’s Domestic Relations Can Be Determined in Federal Court.
70. Ms. Rose had initiated a lawsuit in District Court on behalf of the minor child of her client against the Whaley’s, Ms. Smith’s clients.

71. The very same motion was renewed on February 17, 2005.
72. Judge Anderson went forward with the hearing on February 14, 2005, and heard the testimony of the witnesses.
73. Ms. Rose did not appear for the hearing.
74. Judge Anderson issued an Order pursuant to the hearing on February 16, 2005.
75. In that Order, Judge Anderson stated, “[a]s an initial matter, the court notes that the quality of the pleadings filed in this case on behalf of the Mother suggest that her counsel 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 Utah State Bar.”
76. The Court explained that the claim that Ms. Rose was forbidden to appear in the matter was “entirely self imposed” because Ms. Rose’s client sought and obtained the restriction on her own.
77. Judge Anderson set another hearing in the case for March 14, 2005.
78. On March 14, 2005, the same day as the hearing, Ms. Rose filed a Motion for Disqualification of Judge Anderson.
79. Even though Ms. Smith’s clients appeared for the hearing and were ready to testify in their case, the hearing was taken up with Ms. Rose’s motion and nothing else was addressed.
80. Judge Anderson referred the motion to disqualify to Judge Scott N. Johansen.
81. On March 22, 2005, Judge Johansen issued an Order on Motion to Disqualify indicating that the motion was untimely and stating, “the last date of the eleven points cited in Respondent’s Memorandum in Support of the Motion for Disqualification in February 16, 2005, except for an undated threat to refer Judge Anderson to the ‘Judicial Misconduct Committee.’”
82. In spite of the fact that the motion was untimely, Judge Johansen addressed the issues and ruled that all eleven of the allegations “fell woefully short of the standard.”
83. Judge Johansen concluded that “[t]he interjection of these other issues is so bizarre as to raise serious questions of compliance with Rule 11 URCP . . . respondent’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.”

84. On April 4, 2005, Ms. Rose filed an objection to the proceedings.
85. On April 18, 2005, after hearing argument, the Court sanctioned Ms. Rose for the unnecessary hearing on March 14, 2005.
86. The Court ordered that Ms. Rose pay attorneys fees and submit a report regarding the standard for judicial disqualification.
87. As of the date of the Screening Panel Hearing, Ms. Rose had not complied with the Order.
88. In addition to the state court action, because Ms. Rose filed the federal action, Ms. Smith's clients incurred legal expense in defending that action.
89. The Federal Court action was dismissed by Judge Dee Benson on February 3, 2005.
90. Ms. Rose appealed Judge Benson's ruling to the Tenth Circuit Court of Appeals.
91. The appeal was dismissed for lack of subject matter jurisdiction on March 2, 2006.

#### **Conclusions of Law**

Based upon the foregoing Findings of Fact, the Court makes the following Conclusions of Law with respect to the adjudication that Ms. Rose engaged in misconduct:

1. Jurisdiction is proper in this Court pursuant to Rule 14-511(a) of the RLDD.
2. Venue is proper in this Court pursuant to Rule 14-511(b) of the RLDD, in that, at all relevant times, Ms. Rose resided or practiced law in Salt Lake County.
3. Rule 1.1(Competence) of the Utah Rules of Professional Conduct provides that "[a] lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation." Ms. Rose violated Rule 1.1 in both the Smith and OPC Matters.
  - a. In the OPC Matter, Ms. Rose filed numerous pleadings and claims in the state courts, the United States District Court and in the Tenth Circuit Court of Appeals that were not supported by the facts or law, and which contained inaccurate information. By filing papers that were not supported by the facts and law, and which contained inaccurate information, Ms. Rose failed to provide competent representation to her client and thereby violated Rule 1.1.
  - b. In the Smith Matter, Ms. Rose 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. By filing papers that

were not supported by the facts and law, and which contained inaccurate information, Mr. Rose failed to provide competent representation to her client and thereby violated Rule 1.1.

4. Rule 1.7(a) (Conflict of Interest: Current Clients) of the Utah Rules of Professional Conduct provides that “a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if: 1) The representation of one client will be directly adverse to another client; or 2) There is a significant risk that the representation of one or more clients will be materially limited by the lawyer’s responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.”
5. In the OPC Matter, Ms. Rose communicated with and attempted to represent a Defendant in the litigation whose interests were directly adverse to those of Ms. Rose’s clients, the Plaintiffs. By communicating with and attempting to represent a Defendant while concurrently representing the Plaintiff in the same lawsuit, Ms. Rose violated Rule 1.7(a).
6. Rule 3.1 (Meritorious Claims and Contentions) of the Utah Rules of Professional Conduct provides that “[a] lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.” Ms. Rose violated Rule 3.1 in both the OPC and Smith Matters.
  - a. In the OPC Matter, Ms. Rose 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. Those frivolous filings caused unnecessary delays and expense to the parties and the judicial system. By filing claims, pleadings and appeals without any reasonable basis for the same, Ms. Rose violated Rule 3.1.
  - b. In the OPC Matter, Ms. Rose 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 laws. Those actions caused unnecessary delays and expense to the parties and the judicial system. By filing claims, pleadings and appeals without any reasonable basis for the same, Ms. Rose violated Rule 3.1.
7. Rule 3.2 (Expediting Litigation) of the Utah Rules of Professional Conduct, provides that “[a] lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.” Ms. Rose violated Rule 3.2 in both the OPC and Smith matters.

- a. In the OPC Matter, Ms. Rose filed a constant stream of motions, corrections to motions, amendments to motions, filed corrected or amended motions after the opposing parties filed their response, filed lawsuit on other courts, and filed appeals which had no basis. Ms. Rose failed to understand the law or follow the Rules of Civil Procedure, the local rules, and the Rules of Professional Conduct. These unnecessary filings and actions served only to delay the proceedings. By filing the above-described pleadings and failing to comply with the rules or understand the law, she unnecessarily delayed litigation to the parties' counsel and judicial system's detriment and therefore failed to make reasonable efforts to expedite the litigation, and violated Rule 3.2.
  - b. In the Smith Matter, Ms. Rose filed a constant stream of motions, corrections to motions, amendments to motions, filed corrected or amended motions after the opposing parties filed their response, filed lawsuit on other courts, and filed appeals which had no basis. Ms. Rose failed to understand the law or follow the Rules of Civil Procedure, the local rules, and the Rules of Professional Conduct. These unnecessary filings and actions served only to delay the proceedings. By filing the above-described pleadings and failing to comply with the rules or understand the law, she unnecessarily delayed litigation to the parties' counsel and judicial system's detriment and therefore failed to make reasonable efforts to expedite the litigation, and violated Rule 3.2.
8. Rule 4.2(a) (Communication With Persons Represented By Counsel) of the Utah Rules of Professional Conduct, provides that "[i]n representing a client, 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. Notwithstanding the foregoing, an attorney may, without such prior consent, communicate with another's client if authorized to do so by any law, rule, or court order, in which event the communication shall be strictly restricted to that allowed by the law, rule or court order, or as authorized by paragraphs (b), (c), (d) or (e) of this Rule."
9. In the OPC Matter, Ms. Rose violated Rule 4.2(a) when she communicated with a represented person who she named as a Defendant in the same case, and knew to be represented by counsel.
10. Rule 8.2 (Judicial Officials) of the Utah Rules of Professional Conduct provides 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, adjudicatory officer, or of a candidate for election or appointment to judicial office."
11. Ms. Rose violated Rule 8.2 by filing a motion to recuse a judicial official and in the memoranda supporting the motion, Ms. Rose made disparaging remarks about the judge's integrity and qualifications with reckless disregard as to the truth or falsity of

the statements. By making such statements with reckless regard to the truth or falsity of those statements, Ms. Rose violated Rule 8.2.

12. Rule 8.4(d) (Misconduct) of the Utah Rules of Professional Conduct provides that “[i]t is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.” Ms. Rose violated Rule 8.4(d) in both the OPC and Smith Matters.

- a. In the OPC Matter, Ms. Rose filed numerous pleadings and claims that were frivolous. Ms. Rose continued to file frivolous pleadings even after being warned and sanctioned. Ms. Rose’s conduct caused significant delays and expense. By continuing to file frivolous claims and pleadings, Ms. Rose engaged in conduct prejudicial to the administration of justice, and thereby violated Rule 8.4(d).
- b. In the Smith Matter, Ms. Rose filed numerous pleadings and claims that were frivolous. Ms. Rose continued to file frivolous pleadings even after being warned and sanctioned. Ms. Rose’s conduct caused significant delays and expense. By continuing to file frivolous claims and pleadings, Ms. Rose engaged in conduct prejudicial to the administration of justice, and thereby violated Rule 8.4(d).

13. Rule 8.4(a) (Misconduct) of the Utah Rules of Professional Conduct provides that “[i]t is professional 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.” As described herein, Ms. Rose violated the Rules of Professional Conduct in both the OPC and Smith Matters, and thereby violated Rule 8.4(a) (Misconduct), Rules of Professional Conduct.

## **II. FINDINGS AND CONCLUSIONS REGARDING THE APPROPRIATE SANCTION FOR MS. ROSE’S MISCONDUCT**

### **Findings of Fact**

Based upon Ms. Rose’s violations of the Rules of Professional Conduct and the evidence and arguments presented at the Sanctions Hearing, the Court finds as follows:

1. Under the RLDD, a district court must weigh various factors, including “the duty violated,” the “mental state” of the lawyer, “the potential or actual injury caused by the lawyer’s misconduct,” and “the existence of aggravating or mitigating factors.” RLDD 14-604; *see also id.* R. 14-511(f) (providing that a court should receive evidence regarding the aggravating and mitigating factors in determining what sanction should apply).

2. Ms. Rose violated her duties as a lawyer. The duties Ms. Rose has breached include those to her clients, to opposing parties, to the legal system and to the public.
  - a. Ms. Rose breached her duty 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. Evidence was presented that Ms. Rose's own client, Dr. MacArthur, eventually sought assistance from opposing counsel because Ms. Rose continued to include Dr. MacArthur in the case when he no longer wished to be represented.
  - b. Ms. Rose breached her duty to opposing counsel in these cases by consistently misstating the facts and filing frivolous motions that only served to delay the inevitable outcome of the cases.
  - c. Ms. Rose breached her duties to the legal system by not complying with Court orders, by not 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. Evidence was presented by way of witness testimony and through the various Court orders and motions to recuse.
  - d. Ms. Rose breached her duties to the public by her flagrant disregard for the legal process. Ms. Rose's conduct lowers the public's perception of how attorneys should behave. Further, Ms. Rose's relentless pursuit of her own agenda without regard for court rulings and without respect for the other side weakens the public trust of attorneys and in the judicial system.
3. Ms. Rose violated the Rules of Professional Conduct knowingly and intentionally. From the time the OPC's formal Complaint was filed against Ms. Rose, and over the course of the past eight years, Ms. Rose has intentionally delayed, interfered with, and even blocked the judicial process.
4. Ms. Rose was well aware of her actions as is evidenced by both the number of filings in each case and the deliberate attacks upon judges, opposing counsel and anyone who disagreed with her. Her intentions are discussed by the Tenth Circuit Court of Appeals in its ruling.
5. Ms. Rose's misconduct has caused real or potential injury to the parties in the underlying cases and to the legal system.
  - a. The opposing parties and opposing counsel in the OPC and Smith Matters suffered economic loss. Evidence was presented by the witnesses as to financial losses by opposing parties and personal losses suffered by opposing attorneys.
  - b. Ms. Rose has caused injury to the legal system, injury to the public's perception of how attorneys should behave, and injury to judges and attorneys

who disagreed with Ms. Rose's interpretation of the facts and the law. Ms. Rose's unfounded disparaging remarks about judicial officers further has the potential of damaging their reputation and the legal system itself.

- c. The immeasurable waste of resources which resulted from Ms. Rose's misconduct is also a direct injury. Many people have had to spend unnecessary time dealing with Ms. Rose's constant barrage of motions and cases being filed. This includes lawyers and their staffs, and the courts and their staffs. The time involved has been massive and the resources wasted are enormous.
5. Because Ms. Rose elected not to participate in the Sanctions Hearing, no evidence regarding mitigation was presented.
6. The only mitigating factors, *see* RLDD 14-607(b) ("Mitigating circumstances are any considerations or factors that may justify a reduction in the degree of discipline to be imposed."); *see also id.* (listing various mitigating factors that a court may consider), apparent from the record are the facts that Ms. Rose was relatively inexperienced in the practice of law at the time of her misconduct and that she lacked any supervising attorney or other mentor who could have helped her avoid the misconduct. However, 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. Indeed, it has now been more than ten years since the activities giving rise to the charges of misconduct, but during this disciplinary action, Ms. Rose has continued to engage in the same type of misconduct and activities despite the Court's repeated admonitions that her actions were improper.
7. The Court finds that the following aggravating circumstances apply in this case. *See id.* R. 14-607(a) ("Aggravating circumstances are any considerations or factors that may justify an increase in the degree of discipline to be imposed."); *see also id.* (listing various aggravating factors that the Court may consider).
  - a. Dishonest or Selfish Motive. At least some of the motive for Ms. Rose's actions in both of the underlying cases (and in the cases filed against the Bar<sup>3</sup>) was selfish. In both the OPC and Smith Matters, Ms. Rose refused to accept

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<sup>3</sup> To be clear, the Court is not sanctioning Ms. Rose for her conduct in this disciplinary action or for filing her actions against the Bar. However, under the RLDD, a respondent's actions during a disciplinary proceeding may constitute an aggravating factor where the respondent seeks to delay, obstruct, or mislead the disciplinary authority. *See* RLDD 14-607(a)(5)-(6) (stating that it is an aggravating factor if the respondent obstructs the disciplinary proceedings, does not comply with the rules or orders of the disciplinary court, acts deceptively during the disciplinary process, or submits false statements or evidence to the disciplinary authority). As discussed below, many of Ms. Rose's actions during these proceedings and in her cases against the Bar were undertaken to delay, obstruct, or mislead the disciplinary process. Because of Ms. Rose's actions, what should have been a simple attorney discipline case has now stretched on for almost eight years. Accordingly, the Court properly considers Ms. Rose's actions in this case and in her related cases against the Bar as an aggravating factor.



any adverse rulings and went to extreme lengths in pursuing victory. In doing so, Ms. Rose demonstrated that she had no regard for the other parties, for her opposing counsel, or for the judges hearing the cases. In the OPC Matter, Ms. Rose may have initially had some altruistic motives in litigating that case. However, it is evident that her motives became more selfish over time. Money was clearly a motivating factor because Ms. Rose would have made a substantial amount of money if the federal court ruled that the Navajo judgment money was enforceable. Thus, by the end of the OPC Matter, her actions had very little to do with obtaining relief for her clients and more about winning at all costs and obtaining her share of any monetary award. In her myriad filings in this disciplinary action and in the frivolous cases she filed against the Bar, Ms. Rose's motive was to delay and possibly even halt the discipline proceedings against her in order to maintain her ability to practice law. Moreover, Ms. Rose seems to have no concern for the considerable harm and burdens that those frivolous actions caused. Therefore, the Court finds that these actions were undertaken with selfish motive.

- b. Pattern of Misconduct. The orders of the various courts before whom Ms. Rose practiced include summaries of instance after instance of similar misconduct. The witnesses detailed how Ms. Rose filed frivolous motion after frivolous motion in the cases at issue. The Orders of Judge Anderson, Judge Johanson, Judge Jenkins, Judge Faust, Judge Trease and Judge Johnson contain rulings on numerous motions to recuse. In each instance, these motions were brought simply because Ms. Rose did not like the ruling preceding the motion to recuse. The pattern of Ms. Rose's extreme litigious conduct has been continuous and extensive. Ms. Rose employed the same sweeping pattern of litigiousness in the two underlying cases at issue.

In addition, Ms. Rose's conduct has continued to proliferate in the context of this disciplinary action. Ms. Rose has attempted to delay and derail this disciplinary action by filing a constant stream of motions, filing countless motions that revisit issues that have already been decided, filing unwarranted motions to stay the proceeding in the Utah Supreme Court, filing cases against all participants in the case, and by appealing nearly every ruling made by another Court up to, and including, the United States Supreme Court. Ms. Rose simply refuses to accept the rulings of each court when the courts rule against her. As further evidence of the pattern of Ms. Rose's misconduct in the Smith matter, Ms. Rose refused to appear when told to do so by Judge Anderson. He ultimately issued a Sanctions Order. She has also been sanctioned by the U.S District Court and by the Tenth Circuit Court of Appeals. She has also been enjoined by both courts from filing further actions unless she complies with strict conditions. Despite those rulings from those courts and this Court's admonitions that her actions are inappropriate, Ms. Rose has continued to engage in the same type of behavior and actions. Those actions clearly constitute a pattern of misconduct on Ms. Rose's part.

- c. Multiple Offenses. Ms. Rose's misconduct involved multiple offenses in two separate cases with twelve separate violations of the Rules of Professional Conduct having been found by this Court. In addition, Ms. Rose has continued to violate the rules of procedure and the rules of professional conduct throughout the pendency of this disciplinary matter.
- d. Obstruction of the Disciplinary Proceeding by Intentionally Failing to Comply with Rules or Orders of the Disciplinary Authority. As discussed above, Ms. Rose has repeatedly sought to delay and obstruct this disciplinary proceeding by filing myriad motions with little or no merit, repeatedly raising the same legal issues, seeking to revisit issues that have already been decided, and by filing several frivolous motions to stay or delay these proceedings by intentionally failing to comply with the Court's rules or Orders. Moreover, as the Court found in the July 2010 Ruling, Ms. Rose refused to participate in discovery and failed to comply with the Court's orders on those matters. Those actions led the Court to strike Ms. Rose's answer and enter Default against her. In addition, Ms. Rose refused to take part in the Sanctions Hearing, which prevented the Court from hearing evidence that may have been relevant to the Court's decision regarding an appropriate sanction.
- e. Submission of False Evidence, False Statements, or Other Deceptive Practices During the Disciplinary Process. Throughout these proceedings, Ms. Rose has made numerous misstatements. Among other things, Ms. Rose has ignored or mischaracterized this Court's rulings, mischaracterized the OPC's statements, and taken other statements from the Court or the OPC out of context. Even after being confronted with evidence that her statements on those matters were inaccurate, Ms. Rose failed to correct her misstatements and, in many cases, continued to rely upon those same misstatements in subsequent motions. In light of that fact, the Court is left to conclude that Ms. Rose knowingly submitted false or deceptive statements to the Court during these disciplinary proceedings.
- f. Refusal to Acknowledge the Wrongful Nature of the Misconduct Involved, Either to the Client or to the Disciplinary Authority. It is evident from Ms. Rose's actions that she does not appreciate the wrongful nature of her conduct in the OPC and Smith Matters. In her countless filings before this Court and the appeals she filed in the other courts, Ms. Rose has been completely unwilling to acknowledge that she bears any responsibility for her actions and the harm that they caused. Instead, she has continued to engage in the same types of behaviors and actions that led to the original charges of misconduct. Moreover, in her filings and appearances before this Court, Ms. Rose has repeatedly stated that she is the real victim in this case. Indeed, Ms. Rose alluded to her alleged status as the victim when she elected to leave rather than participate in the Sanctions Hearing.

- g. Lack of Good Faith Effort to Make Restitution or to Rectify the Consequences of the Misconduct Involved. Ms. Rose has not made any attempt to rectify the damage caused by her misconduct in the underlying matters. She has refused to pay any of the sanctions ordered in the Tenth Circuit Court to compensate Ms. Cox, whose only mistake was to fulfill her duty under Rule 8.3 of the Utah Rules of Professional Conduct. She has also failed to pay the attorney's fees ordered to be paid to the Bar for her pursuit of several frivolous suits against the Bar, OPC attorneys and Ethics and Discipline Committee members who were forced to hire outside counsel. Not only has she failed to acknowledge her conduct in the underlying cases, but she filed cases against Ms. Smith and Ms. Cox for having fulfilled their duties under the Rules of Professional Conduct by bringing Ms. Rose's conduct to the attention of the OPC.

### Conclusions of Law

Rule 14-501(a) of the RLDD provides that

“[t]he purpose of disciplinary and disability proceedings is to ensure and maintain the high standard of professional conduct required of those who undertake the discharge of professional responsibilities as lawyers and to protect the public and the administration of justice from those who have demonstrated by their conduct that they are unable or unlikely to properly discharge their professional responsibilities.”

The Court is guided by those principles in determining what sanction applies to Ms. Rose's misconduct. Before making specific conclusions of law regarding the appropriate sanction in this case, the Court first addresses the different presumptive sanctions that may apply in this case. The Court then addresses the appropriate sanction when the aggravating and mitigating circumstances are applied.

The OPC asserts that under the RLDD, the presumptive sanction in this case is disbarment. As the OPC states,

Disbarment is generally appropriate when a lawyer:

(a)(1) knowingly engages in professional misconduct as defined in Rule 8.4(a), (d), (e), or (f) of the Rules of Professional Conduct with the intent to benefit the lawyer or another or to deceive the court, and causes serious or potentially serious injury to a party, the public, or the legal system, or causes serious or potentially serious interference with a legal proceeding; or . . .

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

RLDD 14-605(a). The OPC maintains that Ms. Rose's misconduct meets this standard because she knowingly violated the Utah Rules of Professional Conduct for selfish reasons and caused serious injury to her clients, opposing counsel, and the legal system. The OPC also maintains that Ms. Rose engaged in intentional misconduct that seriously and adversely reflects on her ability to practice law.

Alternatively, the OPC maintains that even if disbarment is not the presumptive sanction, a suspension of three years would be the presumptive sanction. Under Rule 14-605(b) of the RLDD, a presumptive sanction of suspension applies where "a lawyer[] knowingly engages in professional misconduct as defined in Rule 8.4(a), (d), (e), or (f) of the Rules of Professional Conduct and causes injury or potential injury to a party, the public, or the legal system, or causes interference or potential interference with a legal proceeding." Other factors, including "the existence of aggravating or mitigating factors" may justify a departure from the presumptive sanction. RLDD 14-604(d). Here, the OPC argues that suspension is an appropriate presumptive sanction because Ms. Rose knowingly engaged in the activities constituting misconduct and those actions caused injury to her clients, opposing counsel, and that her unethical actions interfered with various legal proceedings. The OPC further maintains that if the presumptive sanction is a suspension, disbarment would be appropriate when the aggravating and mitigating circumstances are applied.

Ultimately, the Court does not need to decide whether a presumptive sanction of disbarment or suspension applies because the Court agrees with the OPC that the same result would apply in either case. As discussed below, at a minimum, Ms. Rose's misconduct warrants a presumptive sanction of suspension. When the substantial aggravating factors are weighed against the minimal mitigating factors, it is apparent that the more serious sanction of disbarment is warranted in this case. It is also apparent that Ms. Rose's intentional misconduct seriously interfered with legal proceedings and caused serious injury to the legal system in each of the underlying cases and these disciplinary proceedings. In light of that conclusion, disbarment would also be a presumptive sanction in this case.<sup>4</sup> However, because the result under either presumptive sanction would be the same, the Court need not decide which presumptive sanction applies in this action.

Based on the foregoing, the Court enters the following conclusions of law regarding the appropriate sanction for Ms. Rose's misconduct:

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<sup>4</sup> The Court notes that there is a split of authority among the other courts that have considered similar cases of attorney misconduct. In some of those cases, the appellate courts have determined that a sanction of suspension applies, see *Attorney Grievance Comm'n v. Alison*, 349 Md. 623 709 A.2d 1212, 1222 (1998), while at least one appellate court has determined that a sanction of disbarment would apply, see *In re Disciplinary Proceeding Against Scannell*, 169 Wash. 2d 723, ¶ 51, 239 P.3d 332 (2010). None of those cases is directly on point, however, because they do not involve the same type of repeated and continuous misconduct that is present in the case at bar. Moreover, as discussed below, Ms. Rose has continued to engage in the same types of unethical behavior, even after multiple courts have informed her that her conduct is inappropriate and directed her to stop. Consequently, based on the unique facts and circumstances presented by this case, the Court believes that a sanction of disbarment is appropriate for Ms. Rose's misconduct.

1. At a minimum, the presumptive sanction of suspension applies in this case because the evidence shows that Ms. Rose knowingly engaged in misconduct and that her misconduct interfered with various legal proceedings and caused real and potential injuries to others, including her own clients, opposing parties and counsel, the legal system, and court staff. *See* RLDD 14-605(b). Among other things, Ms. Rose's misconduct increased costs, forced her clients to participate in proceedings against their wishes, strained judicial resources, unnecessarily disparaged judicial officers, and unreasonably delayed the legal process.
2. Alternatively, a presumptive sanction of disbarment would also likely apply in this case because Ms. Rose knowingly or intentionally engaged in misconduct and her misconduct caused serious potential injury to the the legal system and seriously interfered with the legal proceedings in the Smith and OPC Matters. *See* RLDD 14-605(a). Ms. Rose's repeated and unwarranted disparaging remarks about judicial officials who ruled against her also has the potential of seriously injuring the legal system by discrediting and disparaging the reputation of individuals who serve as judicial officers. Likewise, the evidence shows that Ms. Rose's extreme litigation tactics severely burdened judicial staff and opposing counsel in both the OPC and Smith Matters.<sup>5</sup> Furthermore, Ms. Rose's actions severely delayed resolution of the OPC and Smith Matters. In the latter case, Ms. Rose's misconduct even caused the opposing party to drop the case and limited opposing counsel's ability to work on other cases. In light of these facts, it is evident that Ms. Rose's misconduct caused serious potential injury to the legal system and seriously interfered with the legal proceedings in both the Smith and OPC Matters. Consequently, disbarment is likely a presumptive sanction for Ms. Rose's misconduct.
3. When the aggravating and mitigating factors are applied, it is clear that the the more serious sanction of disbarment is appropriate in this case. As discussed above, the mitigating factors of inexperience and the lack of supervision carry only minimal weight because Ms. Rose has continued to engage in the same type of misconduct for an extended period, even after she has been repeatedly informed that her behavior was inappropriate. The aggravating factors, on the other hand, carry substantial weight in this case. These factors include a dishonest or selfish motive, a clear pattern of misconduct, multiple offenses, obstruction of these disciplinary proceedings, submission of false or deceptive evidence and statements to the disciplinary court, refusal to acknowledge the wrongfulness of her actions, and the lack of a good faith effort to make restitution or take corrective actions. The seriousness and substantial weight associated with these aggravating factors dramatically outweighs the minimal weight given to the mitigating factors apparent from the record. Consequently, the Court concludes that on balance, the number and seriousness of the aggravating factors justifies the sanction of disbarment rather than suspension.

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<sup>5</sup> Ms. Rose's conduct during these disciplinary proceedings has similarly strained limited judicial resources as the Court has been required to address a steady stream of motions and other matters that have little or no merit.

4. Furthermore, in light of Ms. Rose's unethical conduct in both the underlying cases and the fact that she has continued to engage in the same types of actions throughout these disciplinary proceedings, the Court has serious concerns regarding Ms. Rose's fitness to practice law and her ability to take corrective action to conform her conduct to the Utah Rules of Professional Conduct. Indeed, Ms. Rose's conduct throughout almost eight years of these proceedings demonstrates that her misconduct has not only continued but has even worsened in many respects. Multiple courts have also admonished Ms. Rose and clearly indicated that her actions were inappropriate, but Ms. Rose has continued to engage in the same type of misconduct. Given these facts, the Court believes that a lesser sanction of a suspension would be futile because Ms. Rose lacks either the willingness or the ability to conform her conduct to the rules.
5. After considering all of the factors and concerns discussed above, including the presumptive sanctions of disbarment or suspension, the minimal mitigating factors and compelling aggravating factors, the Court concludes that Ms. Rose should be **DISBARRED** from the practice of law as a sanction for her misconduct.

### **ORDER OF DISBARMENT**

Based upon all of the factors above and based upon the Standards for Imposing Lawyer Discipline, the Court finds that disbarment is the appropriate sanction for Ms. Rose's misconduct.

IT IS THEREFORE ORDERED that Ms. Rose is hereby disbarred from the practice of law in Utah for her violations of the Rules of Professional Conduct. The disbarment is effective 30 days after the date of this Order.

IT IS FURTHER ORDERED that Ms. Rose is hereby enjoined and prohibited from practicing law in the State of Utah, holding herself out as an attorney at law, performing any legal services for others, giving legal advice to others, accepting any fee directly or indirectly for rendering legal services as an attorney, appearing as counsel or in any representative capacity in any proceeding in any Utah court or before any Utah administrative body as an attorney (whether state, county, municipal, or other), or holding herself out to others or using her name in any manner in conjunction with the words "Attorney at Law," "Counselor at Law," or "Lawyer" during the period of disbarment.

IT IS FURTHER ORDERED that Ms. Rose is to comply with Rule 14-526.

IT IS FURTHER ORDERED that Ms. Rose is to reimburse to the Utah State Bar Fund for Client Protection any money that the Fund pays based upon its rules.

IT IS FURTHER ORDERED that Ms. Rose may be readmitted as provided in Rule 14-525.

IT IS FURTHER ORDERED that Ms. Rose shall pay attorney fees assessed against her in the amount previously entered by this Court and \$810.00 in connection with the Court's August 5, 2015 Ruling and Order on Pending Motions.

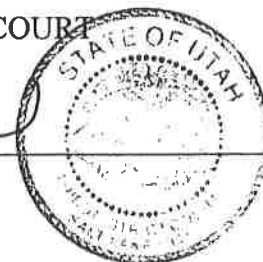
IT IS FURTHER ORDERED that Ms. Rose shall pay costs incurred by the OPC in prosecuting this action.

DATED this 2 day of <sup>Nov</sup>~~October~~, 2015

THIRD DISTRICT COURT



Royal Hansen  
District Court Judge



Utah State Bar 10294  
645 South 200 East  
Salt Lake City, UT 84111

Quarterly Report 07/01/15 to 09/30/15  
Year to Date 01/01/15 to 09/30/15

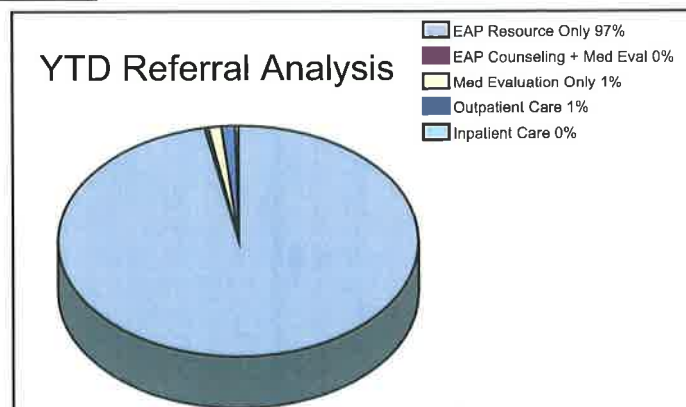
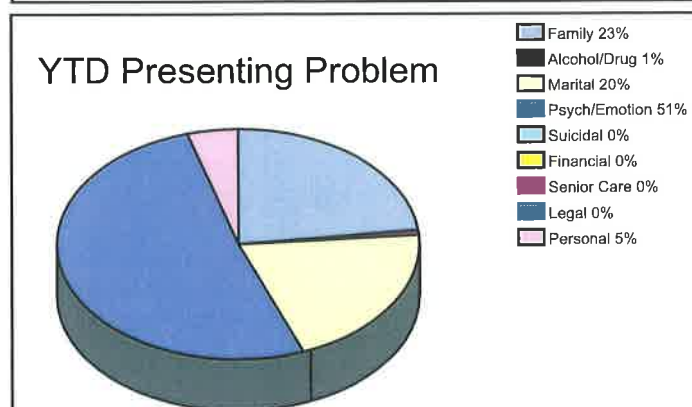
Presenting Problems	Current		YTD	
	Emp	Dep	Emp	Dep
Family	13	12	34	33
Alcohol/Drug	0	1	0	2
Marital	11	8	30	27
Psychological/Emotional	36	14	105	44
Suicidal	0	0	0	0
Financial	0	0	0	0
Senior Care	0	0	0	0
Legal	0	0	0	0
Personal	2	3	5	10
Wellness	0	0	0	0
<b>Totals</b>	<b>62</b>	<b>38</b>	<b>174</b>	<b>116</b>
<b>Total Individuals</b>	<b>100</b>		<b>290</b>	
<b>Total Cases</b>	<b>70</b>		<b>200</b>	

	Current	YTD
New Cases	70	200
Referral Type		
Self	70	200
Supervisor	0	0
<b>Totals</b>	<b>70</b>	<b>200</b>
Case Status		
Active	37	62
Inactive	33	138
<b>Totals</b>	<b>70</b>	<b>200</b>
Number of Employees		7672
Annualized Utilization		
By Cases		3.49
By Individuals		5.06

Referral Actions	Current		YTD	
	Emp	Dep	Emp	Dep
In house EAP counseling	74	41	194	122
In house Group	1	1	2	2
Rx for Psych Meds - pcp	0	1	1	1
Rx for Psych Meds - psy	0	1	0	3
Outpatient Psychiatric	1	1	3	1
Outpatient A & D	0	0	0	0
Inpatient Psychiatric	0	0	0	1
Inpatient A & D	0	0	0	0
Financial	0	0	0	0
Attorney	0	1	1	1
Self Help Group	0	0	0	0
<b>Totals</b>	<b>76</b>	<b>46</b>	<b>201</b>	<b>131</b>

Clinical Hours	Current	YTD
Therapy Time	265.00	622.25
Group Time	6.00	6.00
Follow-up Time	19.75	37.25
<b>Total Clinical</b>	<b>290.75</b>	<b>665.50</b>
Service Time		
Company Contacts		
Customer Service	35.50	55.00
Emp/Sup Training	0.00	0.00
Seminars/Training	1.50	3.00
<b>Total Service</b>	<b>37.00</b>	<b>58.00</b>
# Critical Events	3	5

Referral Analysis Individual Status	Current		YTD	
	Count	%	Count	%
EAP Resource Only	98	98.00	280	96.55
EAP Counseling + Med Eval	0	0.00	1	0.34
Med Evaluation Only	1	1.00	4	1.38
Outpatient Care	1	1.00	4	1.38
Inpatient Care	0	0.00	1	0.34
<b>Totals</b>	<b>100</b>		<b>290</b>	





# BLOMQUIST HALE

## EMPLOYEE ASSISTANCE

## Individual Support

### DIRECT CARE & NO SET SESSION LIMITS

Unique in the industry, our EAP does not place any pre-determined session limits on the course of treatment. This creates greater trust and comfort for your employees as they visit with our staff, and ensures that we are able to truly help them navigate the life challenges that come their way.

### NO FORMS OR PRE-QUALIFICATION

The entire cost of our services is covered by you, the employer. The services provided by Blomquist Hale are FREE to your employees.

### SERVICES WITH NO CHARGE OR CO-PAY

All services are included in our basic monthly fee, with no co-pay, insurance approval, or deductible required. There are no additional charges for employees or their dependents, or for your organization to use any or all of the services that we offer.

### PERSONAL, FACE-TO-FACE ASSISTANCE

Help with virtually any distressing life issue, many of which are not covered by medical insurance:

- Marital, relationship, and family counseling
- Stress, anxiety or depression
- Personal and emotional challenges
- Grief or loss
- Financial or legal difficulties
- Substance abuse and other addictions
- Senior care planning

### BHEA CLIENT SUPPORT CONTACT:

**Sean Morris**

**801-262-9619**

**sean@blomquisthale.com**

## Organizational Support

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We are Blomquist Hale.

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Face-to-Face  
Therapy



Supervisory &  
Management Training



Onsite Crisis  
Intervention



Dedicated  
Support



Drug-Free Workplace  
& SAP Services



Change  
Courses



Behavioral  
Wellness



Risk Reduction & Assistance  
with Troubled Employees



Customizable  
Training

**Start any time during the year.  
Call us today!**

## JUDICIAL COUNCIL MEETING

### AGENDA

Monday, November 23, 2015  
Flynn Faculty Workshop Room – Room 6500  
SJ Quinney Law School  
Salt Lake City, Utah

*Chief Justice Matthew B. Durrant, Presiding*

1. 9:30 a.m. Welcome & Approval of Minutes . . . . Chief Justice Matthew B. Durrant  
(Tab 1 - Action)
2. 9:35 a.m. New Member – Oath of Office. . . . . Chief Justice Matthew B. Durrant
3. 9:40 a.m. Chair's Report. . . . . Chief Justice Matthew B. Durrant
4. 9:45 a.m. Administrator's Report. . . . . Daniel J. Becker
5. 10:00 a.m. Reports: Management Committee. . . . Chief Justice Matthew B. Durrant  
Liaison Committee. . . . . Judge David Mortensen  
Policy and Planning . . . . . Judge Reed Parkin  
Bar Commission. . . . . John Lund, esq.  
(Tab 2 - Information)
6. 10:15 a.m. Legislative Update. . . . . Rick Schwermer  
(Information)
7. 10:25 a.m. Judicial Conduct Commission Update. . . . . Colin Winchester  
(Information)
- 10:45 a.m. Break
8. 10:55 a.m. Language Access Report. . . . . Alison Adams-Perlac  
(Tab 3 - Information)
9. 11:15 a.m. Pre-Trial Release Practices Report. . . . . Judge Todd Shaughnessy  
(Tab 4 - Action) Alison Adams-Perlac  
Nancy Sylvester
10. 12:00 p.m. Comments from the Dean of the SJ Quinney Law  
School. . . . . Dean Robert W. Adler  
(Information)
- 12:10 p.m. Lunch

- |     |            |  |  |
|-----|------------|--|--|
|     | 12:40 p.m. | Tour of the Law School                           |  |
| 11. | 12:50 p.m. | Board of District Court Judges Update. . . . .   | Judge Noel Hyde<br>(Tab 5 - Information)   |
| 12. | 1:10 p.m.  | Domestic Study: Proposed Charge. . . . .         | Daniel J. Becker<br>(Tab 6 - Action)       |
| 13. | 1:30 p.m.  | Farmington/Davis County Justice Court. . . . .   | Rick Schwermer<br>(Information)            |
| 14. | 1:40 p.m.  | Fourth District Law Clerk/Bailiff Issue. . . . . | Daniel J. Becker<br>Shane Bahr<br>(Action) |
| 15. | 1:50 p.m.  | Senior Judge Certification. . . . .              | Nancy Sylvester<br>(Tab 7 - Action)        |
| 16. | 2:00 p.m.  | Executive Session                                |  |
| 17. | 2:20 p.m.  | Adjourn  |  |

#### **Consent Calendar**

*The consent items in this section are approved without discussion if no objection has been raised with the Admin. Office (578-3806) or with a Council member by the scheduled Council meeting or with the Chair of the Council during the scheduled Council meeting.*

- |  |   |
|--|---|
| 1. Committee Appointments<br>(Tab 8)   | Ray Wahl<br>Ron Bowmaster<br>Nancy Sylvester<br>Debra Moore |
| 2. Rules for Public Comment<br>(Tab 9) | Alison Adams-Perlac   |