

**MINUTES OF THE SUPREME COURT'S  
ADVISORY COMMITTEE ON THE RULES OF PROFESSIONAL CONDUCT**

*May 15, 2017*

The meeting commenced at 5 p.m.

**Committee Members Attending:**

**Steven G. Johnson (chair)**  
**John H. Bogart**  
**Daniel Brough**  
**Joni Jones**  
**Thomas B. Bruncker**  
**J. Simòn Cantarero**  
**Cristie Roach**  
**Gary G. Sackett**  
**Hon. Trent Nelson**  
**Billy L. Walker**  
**Tim Merrill (phone)**  
**Phillip Lowry, Jr. (phone)**  
**Timothy Conde (recording secretary)**

**Excused:**

**Donald Winder**  
**Gary Chrystler**  
**Hon. Darold J. McDade**

**Staff:**

**Nancy Sylvester**

**Welcome and Approval of Minutes**

Steve Johnson welcomed the committee to the meeting and requested a motion on the minutes. John Bogart moved to approve them and Billy Walker seconded the motion. The committee unanimously approved the March 6, 2017 minutes.

**Attorney Advertising Subcommittee Report and Recommendation re Chairman Goodlatte's letter**

Mr. Sackett reported that his subcommittee had reviewed and researched the issues surrounding Chairman Goodlatte's letter. Chairman Goodlatte had requested that Utah amend its Rules of Professional Conduct to make it unethical for a lawyer to advertise in a way that causes medical patients to discontinue medications without first seeking the advice of a physician. Mr.

Sackett said the subcommittee concluded that no change is necessary. There had been no complaints about issues in Utah as far as the subcommittee was aware and the subcommittee determined that the advertising rules the Supreme Court had adopted in the last few years were sufficient to foreclose deceptive advertising. The committee discussed the matter further and ultimately agreed to adopt the subcommittee's recommendation that no action be taken. Mr. Sackett moved to report the recommendation to the Utah Supreme Court. Tom Brunner seconded the motion and the committee unanimously joined it.

### **Report and Recommendation of ABA Model Rule 8.4(g) subcommittee**

Mr. Cantarero reported on ABA Model Rule 8.4(g). The Utah Supreme Court had posed several questions and comments to the committee when Mr. Cantarero, Mr. Johnson, and Nancy Sylvester met with them. Their comments and questions were provided in the materials. Mr. Cantarero's subcommittee addressed each of them and recommended that the proposed rule be revised as shown in the draft attached as an exhibit to the agenda. The revisions included the following deviations from the ABA Model Rule 8.4(g): (a) a lawyer must know his conduct is harassing, and (b) the conduct must reflect adversely on the profession. The draft sparked discussion regarding what type of conduct reflects adversely on the profession, i.e., how that phrase should be defined and interpreted. The committee also discussed Comment 3 and whether "the substantive law" sentence is necessary in light of the addition of "unlawful." Ultimately, Cristie Roach moved to circulate the rule in a preliminary discussion period (as opposed to a full comment period) to get a feel for attorneys' thoughts on the proposed rule and its deviations from the Model Rule. Mr. Brunner seconded the motion and it passed unanimously. The subcommittee agreed to draft bullet points outlining the pros and cons of the revisions versus the Model Rule for the discussion period. Mr. Johnson requested that the committee review the subcommittee's document within one week. If there were no objections, the proposed rule would be sent to Bar members for discussion. Ms. Sylvester reminded the committee that she and Mr. Johnson would need to meet with the Supreme Court first to determine if the justices preferred a committee discussion before the full comment period. She said she would arrange a meeting with them sometime in the next few weeks.

### **Rules 1.0 and 3.3: Review Comments and final action**

The committee reviewed comments regarding the proposed amendments to Rules 1.0 and 3.3 and determined that no changes were needed. Mr. Brunner moved to recommend the rule as drafted to the Supreme Court and Mr. Sackett seconded the motion. The committee unanimously approved it.

### **Paralegal Practitioner Rule Review**

Committee members continue to review the Rules of Professional Conduct to determine what rules would impact paralegal practitioners. The committee deferred further discussion to a future meeting.

### **Next Meeting and Adjournment**

The next meeting will be held on August 28, 2017 @ 5 p.m. in the Judicial Council Room of the Matheson Courthouse. The meeting adjourned at 7 p.m.