

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

February 26, 2018

DRAFT

The meeting commenced at 5:02 p.m.

Committee Members Attending:

Steven G. Johnson, Chair
Thomas B. Bruner
Daniel Brough – via telephone
J. Simon Cantarero
Tim Conde – via telephone
Hon. James Gardner
Phil Lowry
Hon. Trent D. Nelson – via telephone
Vanessa M. Ramos - via telephone
Austin Riter
Cristie Roach – via telephone
Padma Veeru-Collings - via telephone
Billy Walker
Katherine Venti (recording secretary)

Guests: None

Members Excused:

Gary G. Sackett
Joni Jones
Hon. Darold J. McDade
Timothy Merrill
Donald Winder

Staff:

Nancy Sylvester

I. Welcome and Approval of Minutes

Simon Cantarero moved to approve Minutes of January 22, 2018 Meeting. Billy Walker seconded the motion. The motion to approve carried unanimously.

II. Rule 11-101 Creation and Composition of Advisory Committees

Steve Johnson read and referred to an amendment regarding rules for committee members, including emeritus members and special circumstances members, and emphasized attendance at committee meetings.

The amendment to Paragraph (2) provides: “A committee may also have up to two nonvoting emeritus members. An emeritus member has the same authority and duties as other committee members, except that such members shall have not authority to vote. An emeritus member may serve two terms in addition to the terms served as a member.”

Mr. Johnson also noted that Paragraph (4) provides, in part, “No member may serve more than two full consecutive terms on the committee unless appointed by the Supreme Court as the committee chair or when justified by special circumstances, such as an academician or counsel staff attorney. A member appointed as chair may serve up to four terms as a member and chair. Judges who serve as members of the committees generally shall not be selected as chairs. Committee members shall serve as officers of the court and not as representatives of any client, employer, or other organization or interest group. At the first meeting of a committee in any calendar year, and at every meeting at which a new member of the committee first attends, each committee member shall briefly disclose the general nature of his or her legal practice.” The underscored language is part of the Amendment.

Mr. Johnson also reminded the committee members about attendance requirements of Paragraph (5): “In the event that a committee member fails to attend three committee meetings during a calendar year, the chair may notify the Supreme Court of those absences and may request that the Supreme Court replace that committee member.”

Mr. Johnson identified the following committee members whose terms are expiring this year: Daniel Brough, 1st term; Trent Nelson, 2nd Term, Gary Sackett; one-year extension term.

Mr. Johnson also called out committee members whose terms expire in 2019.

III. Rule 8.4(g) Continued Discussion

Steve Johnson reported on the February 21, 2018 meeting with the Supreme Court, attended by Mr. Johnson, Mr. Cantarero, and Ms. Sylvester. Mr. Johnson submitted for review the February 21, 2018 draft of Rule 8.4(g) which added the following:

(g) engage in conduct that amounts to unlawful discrimination or harassment under applicable local, state, or federal law; or

(h) egregiously violate or engage in a pattern of repeated violations of the Standards of Professionalism and Civility.

Mr. Johnson reported that the Supreme Court's preferred approach is to simplify the language of paragraph (g) as above. This eliminates the enumerated list of protected classes/groups because the enumerated list changes.

Mr. Johnson also discussed Comment 3(a) being incorporated into Rule itself as paragraph (h). Finally, the Court wanted to include Comment 4 from ABA Model Rules as "Paragraph (g) does not limit the ability of a lawyer to accept, decline, or withdraw from a representation in accordance with Rule 1.16, nor does paragraph (d) preclude legitimate advice or advocacy consistent with these Rules."

Also, the Supreme Court wants this Committee to strengthen the Standards of Professionalism and Civility as per these changes in the Rules. The Committee on Standards of Professionalism and Civility no longer exists and the Court expressed its opinion that this Committee now has such responsibilities.

A discussion was had on the proposed changes, what the rule didn't address, and what it does address.

As to moving Comment 3(a) to a paragraph (h), a non-formal polling of the committee saw no objections. Judge Nelson recommended that portions of Comment 3(a) and second sentence of Comment 4 also be moved to paragraph (h).

A discussion was also had regarding the applicability of Rule 8.4 and the possibility of the Legislature reducing the affected employer size from 15 to 1 with HB-283.

The Subcommittee was assigned to revise language for the next meeting regarding proposed paragraph (g) and (h) and possible changes to proposed paragraph (h), depending on the outcome of HB-283. The Committee will also propose updates to the Standards of Professionalism and Civility accordingly.

IV. Rule 14-802 (Comments) Discussion

The committee discussed a proposed comment to address in-house counsel that may not fall into one of the exceptions.

Mr. Johnson raised the submission of Gary Sackett regarding Rule 14-802 and whether changes should be made to the Comment. Mr. Johnson submitted a revision to the Advisory Committee Comment to add language regarding legal advice "to the business entity" and to add "A person providing legal advice to a business entity would be required to apply for admission under Rule 14-719." Mr. Johnson also suggested adding a reference to Rule 5.5 to the comment.

The committee discussed the recommended changes and their potential effect. The committee also discussed the threshold for an in-house lawyer to become Utah licensed and whether there was a need for the proposed change given the definitions section of the rule. The definition section "person" as including "entity."

Judge Gardner moved to keep rule the same, without changes. Simon Cantarero and Thomas Bruner seconded the motion. The motion carried unanimously.

V. Supreme Court Standing Order No. 7

Mr. Johnson raised the issue of Standing Order No. 7 regarding referral to the Professionalism Counseling Board. Billy Walker reported about the Board's meeting with the Supreme Court.

Steve Johnson called for subcommittee member volunteers to analyze Standing Order No. 7 and possibly develop a comment to a rule or a preamble for maintaining the integrity of the profession. Cristie Roach, Padma Veeru-Collings, Tim Conde, and Judge Gardner volunteered. Steve Johnson appointed Don Winder *in absentia*. Tim Conde volunteered to chair the subcommittee, which will report to the committee at the April meeting.

VI. Possible Future Issues

- a. Attorney wellness
- b. Advertising
- c. Paralegal practice rules

VII. Next Meeting:

The next meeting is scheduled for Monday, March 19, 2018 at 5:00. The April meeting will be held on Monday, April 23, 2018 at 5:00.

VIII. Adjournment

The meeting adjourned at 6:23 p.m.