

# Agenda

## Supreme Court's Advisory Committee on the Rules of Professional Conduct

August 3, 2020

5:00 to 7:00 p.m.

*Via Webex*

Welcome and approval of minutes	Tab 1	Simón Cantarero, Chair
Combining the LPP Rules of Professional Conduct with the Attorney Rules of Professional Conduct	Tab 2	Elizabeth Wright, Steve Johnson
Regulatory Reform: <ul style="list-style-type: none"><li>• Overview of <a href="#">comments</a> (comment period closed July 23)</li><li>• Rule 5.4 subcommittee review of suggested amendments to Rules 5.4A and B (Cory Talbot (Chair), Judge Gardner, Simón Cantarero, Gary Sackett, Tim Conde, and Steve Johnson)</li></ul>	Tab 3	Cory Talbot, Simón Cantarero
Status of <a href="#">comments</a> to Rules 8.4(g) and (h) and 14-301 (comment period closed August 1, 2020).		Simón Cantarero

### 2020 Meeting Schedule:

September 21

October 19

November 16

# Tab 1

**Draft May 2020 Minutes:**

The May 2020 minutes attached below are ready for review and approval.

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

May 18, 2020

The meeting commenced at 5:05 p.m. via Zoom Conferencing

**Committee Members Attending:**

Simón Cantarero, Chair  
Adam Bondy  
Daniel Brough  
Tim Conde  
Hon. Michael Edwards  
Hon. James Gardner  
Steven G. Johnson (Emeritus)  
Joni Jones  
Philip Lowry  
Alyson Carter McAllister  
Hon. Trent Nelson (Emeritus)  
Amy Oliver  
Cristie Roach  
Gary Sackett (Emeritus)  
Cory Talbot  
Katherine Venti  
Billy Walker

**Not Present**

Austin Riter  
Hon. Darold McDade  
Padma Veeru-Collings (Excused)  
Vanessa Ramos (Excused)

**Staff:**

Nancy Sylvester

**Recording Secretary:**

Jurhee Rice

**Committee Webpage: <http://www.utcourts.gov/committees/RulesPC/>**

**I. Welcome and Approval of Minutes**

Simón Cantarero determined quorum and welcomed the committee.

**Motion:**

*Alyson McAllister moved to approve the minutes from the April 20, 2020. Hon. James Gardner seconded the motion. The motion passed unanimously.*

**II. Rule 14-301(3), “expressions of discrimination,” toward “others,” “law-related activities,” and Keeping “standards.”**

Simón Cantarero reported on his meeting with the Court.

- a. Under 14-301(3), “Lawyers shall avoid hostile, demeaning, humiliating, or discriminatory conduct when interacting with any other counsel, parties, judges, court personnel, witnesses, and others.” The Court expressed concern regarding the undefined use of the word “others” in 14-301(3).
- b. Based on Court discussions, the Committee recommended adding, “in law-related activities” with a description of those activities to address vagueness and avoid chilling of protected speech activities. The Committee also recommended deleting, “any other counsel, parties, judges, court personnel, witness, and others” as these groups will be reflected within “law-related” activities.
- c. Under 14-301(3), Discriminatory conduct includes all expressions of discrimination against protected classes as enumerated in the Utah Antidiscrimination Act of 1965, Utah Code section 34A-5-106(1)(a), and federal statutes, as amended from time to time. The Court expressed concern regarding the phrase “all expressions of discrimination” as it relates to free speech, due process, and issues of notice in the process of discrimination.
- d. The Committee recommends removing “expressions of” so discriminatory conduct encompasses all discrimination against protected classes.
- e. Under the Committee’s proposed revisions, 14-301(3) now read as follows:

“Lawyers shall avoid hostile, demeaning humiliating or discriminatory conduct in law-related activities. Discriminatory conduct includes all discrimination against protected classes as those classes are enumerated in the Utah Antidiscrimination Act of 1965, Utah Code section 34A-5-106(1)(a), and federal statutes, as amended from time to time.”

**Motion**

*Cristie Roach moved to approve the motion on Rule 14-301(3) regarding law-related activities omitting a list of parties but adding a definition of discriminatory law related conduct. Katherine Venti seconded the motion. The motion passed by majority.*

## **Motion**

*Billy walker moved to incorporate the following language into 14-301, “Finally, the term “standard” has historically pointed to the aspirational nature of this rule. But Rule 8.4(h) now makes the provisions of this rule mandatory for all lawyers. Cross-References: R. Prof. Cond. Preamble [1], [13]; R. Civ. P. 1; R. Civ. P. 65B(b)(5); R. Crim. P. 31 1(b); R. Juv. P. 1(b); R. Third District Court 10-1-306; Fed. R. Civ. P. 1; DUCivR 83-1.1(g)” and to retain standards throughout for Rule 14-301. Joni Jones seconded the motion. The motion passed by a majority.*

### **III. Rule 6.5: Review of subcommittee proposal**

- a. Under Rule 6.5(a), A lawyer who provides short-term limited legal services to a client, normally through a one-time consultation or representation provided through a program sponsored by a nonprofit organization, a government agency, a law school, or a court, without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter.
- b. The Court expressed concern regarding use of the word “normally.”

## **Motion**

*Joni Jones moved to remove the word “normally.” Cristie Roach seconded the motion. The Motion passed unanimously.*

The Committee revised Rule 6.5, comment 6 to read: “Comment 5(a): This Rule differs from ABA model Rule 6.5 to the extent that it changes the title, changes paragraph (a), adds new paragraph (c), and modifies comments [1] and [2].”

### **IV. Regulatory Reform**

- a. The 5.4 Subcommittee will review regulatory reform comments regarding 5.4A and 5.4B and report back at the June 15, 2020 RPC meeting.
- b. Daniel Brough will report on the advertising proposal comments at the June 15, 2020 RPC meeting.
- c. Utah State Bar and Regulatory Reform CLE feedback will be reported on at the June 15, 2020 RPC meeting.

### **V. Other business**

Farewell and thanks to Cristie Roach!

### **VI. Scheduling of Future Meetings**

June 15, 2020 at 5:00 p.m.  
August 17, 2020 at 5:00 p.m.  
September 21, 2020 at 5:00 p.m.  
October 19, 2020 at 5:00 p.m.  
November 16, 2020 at 5:00 p.m.

### **VII. Adjournment**

The meeting adjourned at 6:38 p.m.

# Tab 2

## **Combining the LPP and Attorney Rules**

The Supreme Court asked the Bar and other rule drafters to combine as many lawyer and LPP rules as possible. The lawyer rules are currently in Chapter 14 of the Supreme Court Rules of Professional Practice and the LPP rules are in Chapter 15. Generally, the LPP rules mirror the lawyer rules but it is very confusing to have two nearly identical sets of rules.

At the LPP Committee's request, Elizabeth Wring has prepared a draft combination of the lawyer and LPP Rules of Professional Conduct. As with other rules that are being combined or applied to both license categories, the term "lawyer" is defined as both a lawyer and LPP except where it cannot because of the limited nature of the LPP license. This definition is also being used in rules like the Rules of Evidence for which it would have been daunting and repetitive to insert "LLP" into every rule. The Rules of Evidence now say they apply to LPPs except where they cannot because of the limited nature of the LPP practice. The limitations in the LPP practice are listed in Rule 14-802.

# Tab 3

## **Regulatory Reform:**

The regulatory reform comments are found in a tracker that is separately attached. Many comments address the policies, but do not look specifically at fixing language. The subcommittee has thoroughly studied the comments and will be presenting on the ones specifically addressing language fixes to the committee.