



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

Meeting Minutes

August 3, 2020

Via WebEx

The Meeting commenced at 5:03 p.m.

Simón Cantarero, Chair

Attendees:

Simón Cantarero, Chair
Adam Bondy
Hon. James Gardner
Steven G. Johnson (Emeritus)
Joni Jones
Philip Lowry
Alyson Carter McAllister
Amy Oliver
Austin Riter
Gary Sackett (Emeritus)
Cory Talbot
Katherine Venti
Billy Walker

Not Present

Daniel Brough
Time Conde
Hon. Michael Edwards

Excused

Padma Veeru-Collings

Staff:

Nancy Sylvester
Jurhee Rice, Recording Secretary

Guests:

Jacquelyn Carlton, Office of Legislative Research
Elizabeth Wright, Utah State Bar

Welcome and approval of the May 18, 2020 meeting date's minutes: Simón Cantarero, Chair

Simón Cantarero welcomed everyone to the meeting and asked for approval of the minutes.

Amy Oliver moved to approve the May 18, 2020 minutes. Cory Talbot seconded the motion, and it passed unanimously.

1. Discussion-Combining the LPP Rules of Professional Conduct with the Attorney Rules of Professional Conduct: Elizabeth Wright, Utah State Bar

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 Wright 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.

The Committee has requested the following be reviewed and/or added to the combined rules prior to submission to the Supreme Court:

- a. Elizabeth Wright and Steven Johnson will add comment(s) showing how the merged rule(s) deviates from the ABA model rule and URCP 86 and the definitions of LPP, lawyer and attorney.
- b. Define lawyer using RPC definition under Rule 14-506: anything deemed the practice of law.
- c. Under section 14-802 (c), the Committee recommends revision and uniform use of the term lawyer within the document.
- d. Under URCP 86: A lawyer includes LPPs. Must define when the scope of practice exceeds that of the LPP.

It is anticipated that the Court will rescind the current LPP rules in lieu of merging the LPP rules with the attorney rules.

Any additional comments or questions should be forwarded to Nancy Sylvester or Simón Cantarero so they may be forward to Ms. Elizabeth Wright by the end of the month.

2. Discussion: Regulatory Reform-Overview of Comments: Cory Talbot

Many of the comments address the policies, but do not look specifically at fixing language. Most comments asked the Court to either not proceed or proceed with caution. The Subcommittee concluded that the policy-based comments went beyond the scope of what the Committee was tasked to do.

The Subcommittee addressed the following drafting concerns:

- a. The Subcommittee previously discussed requiring liability insurance but determined it was unnecessary because any entity engaged in the practice of law would be subject to the rules of professional conduct.
- b. The Subcommittee previously addressed whether the disclosure language under 5.4(B) is adequate and does not feel additional changes are needed at this time.
- c. The Subcommittee discussed whether fee sharing could be clarified and concluded that fee sharing is a term used throughout the rules, and its use here is clear.
- d. The Subcommittee did not address how fee sharing may increase the costs with non-lawyers, as this is another policy argument that exceeds the scope of the Committee.

The Committee will communicate the different categories of comments along with Committee recommendations to the Court. Simón Cantarero will draft a proposed letter addressing the categories of comments and will distribute to the Committee for review and comment prior to submission to the Court.

3. Discussion: Status of comments to Rule 8.4(g) and (h) and amendments to 14-301 (comment period closed August 1, 2020).

Comments were overwhelmingly in opposition to the rules and amendments. A discussion of the comments to Rule 8.4(g) and (h) and amendments to 14-301 will be tabled until next meeting to allow further review of comments. Adam Brody to report back at next meeting.

4. Other business

Simón Cantarero proposed the following changes to the meeting schedule: No objections were raised to the proposed changes.

August 31, 2020 at 5:00 p.m.

October 05, 2020 at 5:00 p.m.

November 02, 2020 at 5:00 p.m.

December 07, 2020 at 5:00 p.m. (tentative)

The meeting adjourned at 6:07 p.m. The next meeting will be held on August 31, 2020 at 5:00 p.m. via WebEx.