



**Utah Supreme Court's
ADVISORY COMMITTEE ON THE RULES OF PROFESSIONAL
CONDUCT**

Meeting Minutes

October 05, 2020

Via WebEx

5:08 p.m.

Simón Cantarero, Chair

Attendees:

Simón Cantarero, Chair
Adam Bondy
Daniel Brough
Tim Conde (via phone)
Hon. Michael Edwards
Hon. James Gardner
Steven G. Johnson (Emeritus)
Joni Jones
Philip Lowry (via phone)
Alyson Carter McAllister
Hon Trent Nelson (Emeritus)
Amy Oliver
Vanessa Ramos
Jurhee Rice
Austin Riter
Gary Sackett (Emeritus)
Cory Talbot
Billy Walker
Dane Thorley

Staff:

Nancy Sylvester
Recording Secretary-vacant

Guests:

Jacquelyn Carlton-Office of Legislative Research

Not Present:

Angie Allen
Katherine Venti

1. Welcome and approval of August 31, 2020 meeting minutes: Simón Cantarero

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

Motion:

Judge Gardner moved to approve the August 31, 2020 meeting minutes. Alyson McAllister seconded the motion. The motion passed unanimously.

2. Discussion-Review Comments to Rule 8.4(h): Adam Bondy, Alyson McAllister, Judge Mike Edwards, Steve Johnson Dan Brough, Simón Cantarero

Rule 8.4(h) has been revised to provide that it is professional misconduct for a lawyer to egregiously violate, or engage in a pattern of repeated violations of, Rule 14-301 if such violations harm the lawyer's client or another lawyer's client or are prejudicial to the administration of justice.

The majority of comments that oppose revisions to 8.4(h) claim that revisions will chill free speech, but fail to provide analyses to support how free speech will be chilled. The RPC Committee reviewed longstanding rules already limiting the free speech of attorneys. In particular, the Attorney Oath provides that Attorney speech may be limited.

3. Discussion-Review Comments to Standard 14-301: Adam Bondy, Alyson McAllister, Judge Mike Edwards, Steve Johnson Dan Brough, Simón Cantarero

Committee discussion regarding whether the standards in 14-301 should be aspirational or enforceable. After a review of the language, the Committee discussed whether a rule or order that is not enforced can be considered a rule or even aspirational.

The preamble was revised to provide clarification regarding the rules and standards and now reads as follows:

“Although originally intended to be aspirational, the Supreme Court, by adopting Rule 8.4(h) of the Rules of Professional Conduct, has made these Standards mandatory to the extent that an egregious violation of the Standards or a pattern of repeated violations of the Standards where a client is harmed or if the conduct is prejudicial to the administration of justice, may subject the lawyer to disciplinary action.”

Standard 3 was revised to read as follows:

“Lawyers shall not, without an adequate factual basis, attribute to other counsel or the court improper motives, purpose, or conduct. Lawyers should avoid hostile, demeaning, or humiliating words in written and oral communications with adversaries. Neither written submissions nor oral presentations should disparage the integrity, intelligence, morals, ethics, or personal behavior of an adversary or other participant in the legal process unless such matters are directly relevant under controlling substantive law or are necessary for legitimate advocacy.

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

Motion

Joni Jones moves to approve the motion for 8.4(h) as published and 14-301 with modifications incorporating the inclusion of preamble language and revisions to standard 3 as discussed. Adam Bondy seconded the motion. The motion passed.

Simón Cantarero will prepare a transmittal letter for submission to the Court.

4. Scheduling of Future Meetings:

November 02, 2020 at 5:00 p.m.: This meeting is tentative and subject to change.
December 07, 2020 at 5:00 p.m.

The meeting adjourned at 6:17 p.m. The next meeting will be held on November 02, 2020 at 5:00 p.m. via WebEx.