



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

Meeting Minutes

August 2, 2021

WEBEX

17:00 Mountain Time

J. Simon Cantarero, Chair

Attendees:

J. Simon Cantarero, Chair
Hon. James Gardner
Katherine Venti
Alyson McAllister
Cory Talbot
Adam Bondy
Joni Jones
Gary Sackett (Emeritus)
Steve Johnson (Emeritus)
Jurhee Rice
Dan Brough
Hon. Trent Nelson (Emeritus)
Billy Walker
Amy Oliver
Dane Thorley
Julie J. Nelson
Hon. Mike Edwards
Phil Lowry
M. Alex Natt, Recording Secretary

Staff:

Gage DM Hansen

Guests:

Scottie Hill

Absent –Austin Riter, Angie Allen,
Vanessa Ramos, Phil Lowry

1. Welcome and approval of the June 7, 2021 meeting minutes: (Chair Cantarero)

Chair Cantarero recognized the existence of a quorum, welcomed everyone to the meeting including the guests. The Chair introduced the new members Julie J. Nelson and Robert Gibbons, spoke to the charge of the Committee, the attendance requirements and other matters and asked each member to introduce themselves starting with the Emeritus members.

The Chair asks for a Motion to approve the June 7, 2021 meeting minutes.

Mr. Talbot moves and Jurhee Rice seconds the Motion. The minutes are adopted unanimously without correction.

2. Rules 8.4 and 14-301: (Chair Cantarero)

The Chair presents the issue to the new members and revisits what has transpired to this point. At its last meeting the Committee tabled discussion and a proposed vote on a revised 8.4 pending review of a Colorado Supreme Court decision discussed in our last meeting entitled In the Matter of Robert E. Abrams, 2021 CO 44 which upheld the Colorado Rule 8.4 finding it Constitutional in a circumstance where counsel made a comment denigrating the presiding judge's physical appearance and alleged sexual orientation. The Chair asks for Committee opinions on the Colorado case vs. the rule proposed by this Committee. Mr. Johnson highlights some of the differences between the Colorado rule and our proposed rule. Mr. Sackett suggests we adopt a version of the Colorado rule, slightly modified, to be sure that our proposal passes Constitutional muster. Mr. Johnson and Judge Nelson suggest the Committee's proposed 8.4(g) should be maintained and not altered to match the Colorado standard.

The Chair turns to 8.4(h) and discusses egregious and/or repeated violations of the standards set forth therein, that would constitute violation of the standards of professional conduct. Can the Supreme Court limit attorney speech by these standards? Chair Cantarero asks each Committee member to give their thoughts. Vigorous discussion ensues.

Ms. Venti asks whether we are in a position to vote today or whether this discussion will continue until next month's meeting. The Chair suggests that we not vote today but instead the Subcommittee be reconstituted to (1) identify the state interests (i.e. the Utah Supreme Court's interests) at play and whether that it's compelling and (2) considering the options proposed in light of the Colorado Rule and Colorado Supreme Court decision. Mr. Bondy will remain Chair but Ms. Venti and Ms. Nelson are added to the subcommittee and Mr. Thorley is released from this assignment with the thanks of the Committee. Mr. Lowry is asked to invite Professor Volokh to meet with the subcommittee if possible to offer his thoughts on this matter.

3. Rule 5.5: (Ms. Jones)

Ms. Jones moves to adopt the changes to rule 5.5 as shown on tab 4 of the packet. Judge Gardner seconds the Motion. Mr. Sackett asks for a clarification of “public facing” and is directed to the definition in the materials which describes it as a defined term. A question is raised as to why the word “shall” is changed to “must” in this Rule. Mr. Sackett objects to this usage and urges it remain “shall” for consistently. Mr. Hansen discusses the Supreme Court’s direction that “must” is a modernization of “shall” and reflects modern usage for non-lawyer understanding. After the discussion the Motion remains the same and the Committee is asked to vote.

The Motion passes unanimously.

The remainder of the agenda is tabled until September’s meeting.

The meeting adjourned at 19:05. The next meeting will be held on September 13, 2021.