



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

## Meeting Minutes October 4, 2022

Utah Law and Justice Center & Zoom  
16:00 Mountain Time

*J. Simon Cantarero, Chair*

**Attendees:**

J. Simon Cantarero, Chair

Joni J. Jones  
Gary Sackett  
Dane Thorley  
Alyson McAllister  
Cory Talbot  
Adam Bondy  
Billy Walker  
Austin Riter  
Robert Gibbons  
Mark Hales  
Hon. Mike Edwards  
Hon. James Gardner  
Hon. Trent Nelson  
Hon. Amy Oliver  
Ian Quiel  
Julie Nelson

Christine Greenwood (ex officio)

Hon. M. Alex Natt, Recording  
Secretary

Excused: Phillip Lowry, Jurhee Rice

**Staff:**

Nancy Sylvester  
Scotti Hill

**Guests:**

Richard Mauro  
Jacqueline Carlton  
Douglas Thompson

**1. Welcome and approval of the September 32, 2022 meeting minutes (Chair Cantarero)**

Chair Cantarero recognized the existence of a quorum, called the meeting to order at 16:08 and asked for a Motion to Approve the September 23, 2022 Meeting Minutes.

Ms. Nelson moved to accept the September 23, 2022 minutes. Mr. Hales seconded the Motion. The Motion passed by acclamation.

**2. Rule 1.6 (Mr. Thorley)**

Subcommittee Chair Thorley presented the subcommittee's work on Rule 1.16. He recapped the work of the Committee to date. Mr. Mauro was asked to provide his comments on the proposed Rule. His comments together with those from the public had previously been shared in more detail with the Committee in advance of the meeting. He expressed concern that creating a new ethical rule is unnecessary as Utah Rule of Criminal Procedure 11 already provides sufficient protection to address the issue raised. He further warned that incarcerated individuals would likely be incentivized to file ethical complaints against public defenders in bad faith or in a mistaken attempt to overturn their convictions.

Committee member Mr. Quiel disclosed his role as a public defender then echoed Mr. Mauro's concerns that this will be a sword used by clients against the public defender's office and will not lead to any better outcomes for clients while straining the resources of the public defender's office, which is already resource-constrained.

Professor Thorley educated that the subcommittee's goal was not to create new obligations that didn't already exist in the law and if the Committee wanted to re-consider its position then he believes it's entirely appropriate to do so.

Judge Nelson warned the Committee that pleas and judge and jury convictions are still "convictions" under the law and the language to the proposed Rule should be reviewed to ensure those terms are accurately employed.

Chair Cantarero thanked those who presented comments and asked Mr. Thompson to respond to the comments raised by Mr. Mauro and Mr. Quiel. Mr. Thompson acknowledged the comments and expressed his concern regarding providing a new avenue for abusive bar complaints but weighed that concern against a client's right to due process in criminal cases.

Mr. Sackett expressed his concern that the Rules are intended to be rules of general applicability to all areas of the practice of law rather than to specific practices, in this case criminal procedure. He also questioned whether there is an

actual audience who had been disadvantaged in the past that this Rule would remedy.

Professor Thorley suggested that the subcommittee review the language and consider the comments provided and bring the matter back to the Committee.

Chair Cantarero asked the subcommittee to undertake an examination of the costs/benefits of bringing the Rule forward and provide the Committee with its analysis and options before the Committee's next meeting.

### **3. Rule 8.4(c) (Ms. Jones)**

Ms. Jones discussed that the intention behind the Rule 8.4(c) amendments was to clarify that government attorneys who engage in clandestine operations are not violating 8.4 (dishonesty) prohibitions when performing their functions in good faith.

Ms. Jones discussed the comments received and speculated that perhaps some of the language in the proposed Rule could be overly broad. Ms. Jones introduced the analogous Colorado rule which limits the rule specifically to those attorneys who are supervising the operations. Ms. Jones educated that the Colorado rule was amended in response to a bar complaint filed in an ICAC case where the accused filed a complaint against the Colorado AG's office conducting the undercover operation. The Colorado ethics panel submitted its clarification as it felt that under the existing rule it was compelled to pursue the Complaint. The Committee asked questions and discussion ensued.

Mr. Jones proposed not adopting the Colorado rule but perhaps explicitly limiting the amendments to government lawyers supervising the covert conduct rather than participating themselves in the covert operation.

Chair Cantarero asked that Ms. Jones, Judge Edwards, Allison McAllister, Julie Nelson, Gary Sackett and Mark Hales form a subcommittee with Ms. Jones as Chair to discuss this matter further and advise the committee in an upcoming meeting.

### **4. Adjournment.**

The meeting adjourned at 17:37. The next meeting will be held on November 1, 2022 at the Law and Justice Center and via Zoom.