



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

Meeting Minutes

May 6, 2025

Via Webex

4:00 pm Mountain Time

Cory Talbot, Chair

Attendees:

Cory Talbot (Chair)
Jurhee Rice (Vice Chair)
Adam Bondy
Ian Quiel
Alyson McAllister
Hon. Amy Oliver
Hon. Matthew Bates
Hon. Craig Hall
Mark Nickel
Mark Hales
Kent Davis
Lakshmi Vanderwerf
Robert Harrison
Ashley Gregson
Beth Kennedy (ex officio)
Christine Greenwood (ex officio)
Hon. Trent Nelson (emeritus)

Staff:

Stacy Haacke

Guests:

Courtney Risk Easterling

Excused: Lynda Viti; Robert Gibbons;
Alyson McAllister

1. Welcome, Approval of the May 6, 2025 meeting minutes (Chair Talbot)

Chair Cory Talbot called the meeting to order and welcomed the attendees. The Chair requested a review of the minutes from the previous meeting. Kent Davis moved to adopt the prior month's minutes (April 1, 2025), stating they were consistent with his recollection. The motion received a second from Mark Nickel. There being no opposition voiced, the motion passed unanimously.

2. Rule 3.3 Update (Chair Talbot)

Chair Talbot reported on the status of Rule 3.3, confirming that the rule had been approved by the Committee and subsequently by the Supreme Court, which then sent it out for public comment. The Chair informed the Committee that the Court made a single modification to the rule's comments without returning it to the Committee. Specifically, the Court removed language from a comment that suggested an attorney could violate the duty of candor by being reckless with respect to the truth, determining that this phrase went beyond the language contained in the rule itself. This update was provided to address any potential inquiries regarding the revised language in the request for public comment.

3. Use of Language in the Rules – Lawyer, Legal Professional, LPP (Beth Kennedy and Courtney Risk Easterling)

Beth Kennedy introduced the discussion item, noting that the proposals regarding terminology originated from Courtney Risk Easterling, the new Ethics Hotline person. Ms. Easterling explained that, while Rule 1.0 defines "lawyer" and "legal professional" to include Licensed Paralegal Practitioners (LPPs), the interchangeable and broad use of these terms creates confusion, particularly for lawyers who tend to view LPPs as "non-lawyers". Ms. Easterling stated that cleaning up the language—such as ensuring "lawyer" refers solely to an attorney and "legal professional" encompasses both LPPs and lawyers—would provide greater clarity, citing examples within Rule 5.4 where this ambiguity arises.

Chair Talbot noted that this appeared to be an issue affecting the rules comprehensively. After reviewing Rule 1.0, he observed that the definitions of lawyer (H) and legal professional (I) appear duplicative or circular, which he described as a "recipe for confusion". Mark Nickel agreed, noting that the current structure essentially means "lawyer means legal professional and legal professional means lawyer". Hon. Amy Oliver recalled that LPPs were included in the definition of "lawyer" originally to avoid having to amend every single *rule individually, ensuring they were covered by the professional conduct duties*. Chair

Talbot agreed that maintaining the terminology was also intended to avoid impacting past disciplinary rulings. Given that Ms. Easterling noted the definitions are creating practical confusion among LPPs, the Committee determined that a thorough review of the usage of these terms throughout the Rules of Professional Conduct is warranted.

The Committee decided to establish a subcommittee to investigate the consistent use of the terms "lawyer," "legal professional," and "LPP" throughout the rules and analyze the potential impact of terminology changes. This will include Lakshmi Vanderwerf, Kent Davis, and Hon. Craig Hall. Hon. Trent Nelson also suggested the subcommittee review LPP study guides as a resource.

4. Fee Sharing with Non-Lawyers (Courtney Risk Easterling)

Ms. Easterling started this discussion and reported significant confusion regarding referral fees following the 2020 rule amendments and the subsequent state statute, which prohibits sharing referral fees with nonlawyers but permits it between authorized practitioners, raising questions about LPPs' status. Ms. Easterling specifically highlighted the ambiguity in Rule 5.4(c) and Comment 3.

Chair Talbot confirmed that the allowance for referral fees was quickly pulled out by the court after initial authorization, which resulted in the rule not being amended as cleanly. Beth Kennedy reminded the Committee that the Committee had already submitted amendments to Rule 5.4 (including Comment 3) and a new Rule 5.8 to the Justices. Chair Talbot explained that the Justices are holding those amendments because staff needed to consult with a legislator regarding the amendments.

The Committee agreed to hold further discussion on fee sharing and Rule 5.4 until the Supreme Court acts on the proposed amendments currently under review.

5. Upcoming Items

Rule 8.4 will return from Subcommittee discussions.

The next meeting of the Committee is scheduled for June 3, 2025.

The meeting adjourned.