



Utah Supreme Court Oversight Committee for the Office of Professional Conduct

Meeting Minutes

January 24, 2022

Via Webex

4:00–5:30 p.m.

Judge Diana Hagen, presiding

Attendees:

Judge Diana Hagen, Chair
Magistrate Judge Brooke Wells
Art Berger
Roger Smith
Margaret Plane
Elizabeth Wright, Ex-officio member

Guests:

Billy Walker, Office of Professional Conduct
Christine Greenwood, Ethics and Discipline Committee
Nancy Sylvester, General Counsel, Utah State Bar

Staff:

Marina Kelaidis, Recording Secretary

Excused:

Nick Stiles, Staff, Appellate Court Administrator

1. Welcome and approval of the October 13, 2021 minutes: (Judge Diana Hagen)

Judge Diana Hagen welcomed everyone to the meeting and asked for approval of the minutes.

Art Berger moved to approve the October 13, 2021 minutes. Roger Smith seconded the motion, and it passed unanimously.

2. **Discussion—Discuss proposed caretaker rules:** (Nancy Sylvester)

Nancy Sylvester gave a brief overview of the development process and goals of the proposed caretaker rules. The Committee discussed alternative methods for encouraging Bar members to participate in succession planning annually without creating a rule. Judge Hagen suggested providing a link to the Bar’s succession planning resources when a member is relicensing and including a check box for the member to click confirming they have reviewed the materials. Ms. Sylvester agreed with the Committee’s suggestions and will pursue other methods of encouragement, particularly for small firm and solo practitioners.

3. **Action—Introductions of each Committee member and general practice area:** (Judge Diana Hagen)

Each Committee member introduced themselves and described their general practice area.

4. **Discussion—Update on Screening Committee rule changes:** (Christine Greenwood)

Christine Greenwood reported the proposed rule changes received no comments during the comment period and the rules are now in effect. The screening committee is now able to increase the number of screening panel members and Ms. Greenwood has already filled those vacancies.

5. **Discussion—Update on Presumptive Sanction Rules:** (Judge Diana Hagen)

Rule 11-582:

Factors to be considered in imposing sanctions:

No further recommendations.

Art Berger moved to approve the proposed changes to Rule 11-582. Roger Smith seconded the motion, and it passed unanimously.

Rule 11-583:

Presumptive sanctions for violating duties owed to clients:

Judge Hagen recommended amending paragraphs (d)(2) and (e)(2) by separating the latter part of the sentence into a separate sentence and adding “The appropriate sanction will depend.”

Art Berger moved to approve the proposed changes to Rule 11-583(d)(2) and (e)(2). Judge Wells seconded the motion, and it passed unanimously.

Rule 11-584:

Presumptive sanctions for violating duties owed to the public:

Judge Hagen recommended reinstating paragraph (b) and adding a reference to Rule 3.8.

Judge Wells moved to approve the proposed changes to Rule 11-584(b). Art Berger seconded the motion, and it passed unanimously.

Rule 11-585:

Presumptive sanctions for violating duties owed to the legal system:

Judge Hagen recommended amending paragraph (a)(2) by replacing “learns that others have submitted false statements or documents or improperly withholding material information” and replacing it with “learns that false statements or documents have been submitted or material information improperly withheld.”

Margaret Plane moved to approve the proposed changes to Rule 11-585(a)(2). Roger Smith seconded the motion, and it passed unanimously.

Rule 11-586:

Sanctions for violating duties owed as a member of the legal profession:

No further recommendations.

Art Berger moved to approve the proposed changes to Rule 11-586. Roger Smith seconded the motion, and it passed unanimously.

6. Discussion—Private Probation under Rule 11-581: (Billy Walker)

Mr. Walker gave a brief overview of Rule 11-581(g) which allows for public and private probation. As a result of this rule, attorneys have requested for private discipline rather than an admonition at the district court level. However, there are potential conflicts with private probation, such as conflicts with the Bar’s policy for good standing and protecting the public. Judge Hagen suggested for the order of probation to be public, but the terms of the probation may be designated as public or private, similar to Rule 11-561(c). Judge Hagen will draft a proposed rule change to circulate to the Committee via email for a vote.

7. Action—Conduct needs assessment and development of 3–5-year funding plan (Rule 11-503(b)(2)(C)): (Judge Diana Hagen)

This matter was postponed and will be conducted at a future meeting.

8. **Action—Committee member term end dates (Rule 11-503(a)(2)):** (Judge Diana Hagen)

Judge Hagen reminded the Committee members of their term beginning and end dates (March 4, 2019 – March 4, 2023) and proposed for the members to consider serving a second term if desired.

9. **Other business—Schedule next meeting:**

The meeting adjourned at 5:30 p.m. The next meeting is scheduled for Wednesday, March 23, 2022.