



Utah Supreme Court's Oversight Committee for the Office of Professional Conduct

Draft Meeting Minutes

October 17, 2022

Via Webex

4:00–5:30 p.m.

Arthur B. Berger, presiding

Attendees:

Arthur Berger, Chair
Judge Laura Scott
Roger Smith
Elizabeth Wright, Ex-officio member

Guests:

Billy Walker, Office of Professional Conduct
Christine Greenwood, Ethics and Discipline Committee

Excused:

Nick Stiles, Appellate Court Administrator
Magistrate Judge Brooke Wells
Margaret Plane

Staff:

Amber Griffith, Recording Secretary

1. Welcome and approval of the April 25, 2022 minutes: (Arthur Berger)

Arthur Berger welcomed everyone to the meeting, and provided a special welcome to the newest member of The Committee, Judge Laura Scott.

Mr. Berger acknowledged Justice Hagen, the former chair, for all of her hard work directing the committee, especially for her help in amending the rules.

Mr. Berger then asked for approval of the minutes for April 25, 2022.

Roger Smith moved to approve the April 25, 2022 minutes. Arthur Berger seconded the motion, and it passed unanimously.

2. Discussion—New Committee Member: (Arthur Berger)

Arthur Berger noted that in accordance to Rule 11-503(a)(2), on the first meeting in which a new committee member attends, each member must briefly describe the general nature of the members legal or other practice. Mr. Berger informed The Committee that as this is Judge Scott’s first meeting this would trigger this rule.

Each committee member proceeded to introduce themselves, and provided a brief introduction to their legal or other practice.

3. Discussion and Action—Comments received on Rules 11-581 through 11-586:
(Arthur Berger)

Arthur Berger then moved onto the four public comments that were received on pending rules 11-581 through 11-586. The first comment that was received was in regards to Rule 11-583. The comment noted that the rule does not have a knowledge requirement with respect to certain types of conflicts, specifically in regards to paragraph (c)(1)(C). Mr. Berger explained that the commenter suggested adding “the lawyer knows” to paragraph (c)(1)(C) line 88, and then asked the committee members for their opinions. Christine Greenwood agreed with the suggestion and proposed added language, Ms. Greenwood also acknowledged that the added language would be consistent with the language used in paragraphs (c)(1)(A) and (c)(1)(B). Billy Walker expressed that he believed the paragraph did not need to be changed as the paragraph already states that they knowingly use information. Mr. Berger agreed that it may not be necessary to add the proposed language, but it would clarify the rule. Roger Smith also agreed with adding the additional language.

Roger Smith moved to adopt the new proposed language in response to the public comment received. Mr. Berger seconded. Judge Scott questioned if the additional language should be in line 87 instead of 88, so the lawyer knows that the matter is substantially related. Mr. Berger agreed and the proposed language was changed to line 87. Mr. Smith then made an amended motion to adopt the language. Mr. Berger seconded, and the motion passed unanimously.

The Committee then discussed the second and third comments that were received. The Committee believed these comments were editorial in nature and did not believe further changes were necessary to the Rules. Lastly, The Committee discussed the fourth comment received. Mr. Berger expressed that these rules governing sanctions do not suggest a presumptive sanction for every rule. Mr. Berger also stated that although there is not a presumptive sanction for every rule, it does not mean that if a violation occurs the person in violation cannot be sanctioned.

The Committee unanimously agreed no further changes were needed to the proposed amendments to Rules 11-581 through 11-586.

Mr. Berger continued the discussion to the final public correspondence received. This was a letter containing a suggestion for a proposed amendment, and was not a comment

in regards to the proposed amendments to Rules 11-581 through 11-586. Mr. Berger provided a summary of the suggestion and then asked The Committee members their thoughts, or if they would rather add it to the agenda to the next meeting.

Mr. Walker informed The Committee that this letter stems from a current case in the district court regarding the discipline by consent rule. Mr. Walker provided some history regarding the rule, and explained that it has been problematic for the OPC. Mr. Walker stated that there has been confusion at the screening panel and the Ethics and Discipline Committee level on when these proposals should be made so the chair has time to consider the proposal. Mr. Walker stated that due to this confusion they put in a provision that the proposal for the discipline by consent would need to occur before the screening panel so that the chair could consider it before the panel. Because of this provision, there is already a built in deadline at the Ethics and Discipline Committee level, but not at the district court level. Mr. Walker suggested that perhaps there shouldn't be a discipline by consent rule at all, and there should only be stipulations at the district court and panel level.

Christine Greenwood added that she believes the procedure for discipline by consent is confusing in general. Ms. Greenwood's viewpoint is that if we keep this procedure, then it could use some tweaking.

Judge Scott questioned if there is any benefit to having a deadline by which the OPC needs to inform the respondent of how they are going to proceed. Mr. Walker agreed that it would be fair to add a deadline, so that the respondent knows OPC's decision sooner. Mr. Berger added that if a timeline was established it may be necessary to also include an additional option for the OPC to receive more time, if they cannot respond within the original deadline.

Following this discussion The Committee chose to table the discussion for a future meeting, so that the members may review the discipline by consent rule further and determine if it is still needed or if it should be narrowed.

4. Discussion—Needs Assessment/Funding Proposal: (Arthur Berger, Billy Walker, Elizabeth Wright)

Mr. Berger began the discussion by explaining Rule 11-503(b)(2) which identifies the responsibilities of this committee. Mr. Berger explained that The Committee has addressed all of the items listed in the rule except for subsection (b)(2)(C) which requires The Committee to conduct a needs assessment and set forth a 3 to 5 year funding plan. Mr. Berger let The Committee know that prior to the meeting he spoke with both Billy Walker and Elizabeth Wright, and asked them both to explain their budget process.

Mr. Walker then provided The Committee with an explanation on how the annual budget is currently developed. Currently, Mr. Walker goes through each line item in the budget and looks at past years to help determine the budget numbers for the current year. This is then submitted to Elizabeth Wright at the Utah State Bar. Ms. Wright then includes this

budget in the overall bar budget which is submitted to the board of commissioners. Ms. Wright continued, and went into more detail on how The Bar determines the annual budget, she also explained that she works closely with Mr. Walker on needs that the OPC may have.

Mr. Berger suggests that The Committee may be able to satisfy the requirement of the needs assessment by having Mr. Walker include it in his yearly budget. In regards to the funding aspect of the rule, Ms. Wright could provide possible funding sources for various needs to the OPC. Roger Smith agreed with Mr. Berger's suggestions, there were no objections.

5. Discussion—Old/new business: (Arthur Berger)

The Committee discussed when to hold the next meeting. Mr. Walker informed The Committee that his annual report is due by February 1st, he stated it would be up to The Committee if they would like to hold two separate meetings, one for the annual report in February and one for the budget in May, or to combine them into one meeting when the budget is ready. Ms. Wright informed The Committee that The Bar wants The Committee's input on the OPC's budget prior to incorporating them into The Bar's budget.

Mr. Berger then asked how often The Committee should meet in regards to suggestions received to amend rules. Christine Greenwood added that she and Mr. Walker also may have suggestions throughout the year for suggested amendments.

Following these discussions, The Committee determined it would be necessary to meet at least twice a year to discuss any proposals for amendments received. The Committee also decided to meet in late March or early April to discuss the OPC's budget and annual plan. The meeting then adjourned.