

**MINUTES OF THE SUPREME COURT'S
ADVISORY COMMITTEE ON THE RULES OF PROFESSIONAL CONDUCT**

August 22, 2016

The meeting commenced at 5 p.m.

Committee Members Attending:

Gary G. Sackett (directed the meeting)
Christie Roach
Padma Veeru-Collings
Joni Jones
Nayer H. Honarvar
Trent D. Nelson
John H. Bogart
Vanessa M. Ramos
Phillip E. Lowry
Simòn Cantarero (via phone)
Timothy K. Conde
Hon. Darold J. McDade
Daniel Brough
Gary L. Chrystler
Timothy Merrill
Billie Walker
Don Winder
Tom Bruner
Timothy Conde (recording secretary)

Excused:

Steven G. Johnson, Chair

Staff:

Nancy Sylvester

Welcome and Recognition of New Committee Members

Mr. Sackett presided and welcomed committee members to the meeting. He excused Mr. Johnson, who was travelling. He also recognized new committee members Joni Jones, Phillip Lowry, Timothy Merrill, Cristie Roach, Padma Veeru-Collings, and Timothy Conde (recording secretary).

Recognition of Retiring Member

Mr. Sackett recognized and thanked retiring member Nayer Honarvar for her dedicated service to the committee. He presented a certificate of appreciation to Ms. Honarvar and spoke of the significant contribution she had made to committee during her tenure.

Rule 11-101(4)

The committee was provided with a copy of Rule 11-101(4), which describes the creation and composition of advisory committees. The rule was reviewed and Mr. Sackett asked whether members had questions or comments about it. None did.

Rule 8.4

Members were provided with a copy of Rule 8.4. The committee discussed newly added comment 3a, which states, “The Standards of Professionalism and Civility approved by the Utah Supreme Court are intended to improve the administration of justice. An egregious violation or a pattern of repeated violations of the Standards of Professionalism and Civility may support a finding that the lawyer has violated paragraph (d).” Mr. Sackett asked what members’ experiences were with this rule and the comment. The committee was especially interested in whether the judicial members of the committee and Mr. Walker had thoughts about the rule. Judge McDade commented that he has yet to make a referral to the Office of Professional Conduct. Mr. Walker stated that he would have preferred to include the substance of some of the comments in the rule itself, but that it was decided to address some of the substance of the rule via comments. Mr. Walker commented that leaving it in the comment may be insufficient, in light of the *Larsen* decision (addressed below).

***Larsen v. Utah State Bar*, 2016 UT 26 (and Comment 3 to Rule 3.3)**

Mr. Sackett addressed the recent Utah Supreme Court, *Larsen v. Utah State Bar*. He identified the following issue and asked the committee to discuss it: As a result of the decision, is the Utah Supreme Court encouraging that the rules be changed? For example, should the rule be amended to include “reckless,” or should the comment be changed to remove the portion regarding reasonable diligence?

There was disagreement among the members regarding the issues. Some members opined that they thought the Court had not taken a position as to what should be changed, but that it merely concluded that a rule cannot be contradicted by a comment. In other words, a comment must be consistent with the rule. Others disagreed and believed that the Court was signaling that it rejects the notion that Rule 3.3 be governed by a subjective standard of recklessness. The committee agreed that its staff representative, Ms. Sylvester, should confer with the Court to discuss the issue. Mr. Sackett appointed a subcommittee to further consider the issue. The members of that subcommittee are John Bogart, Phil Lowry, Padma Veeru-Collings, and Tom Brunner.

Update on Licensed Paralegal Practitioners and Effect on Rules of Professional Conduct (Rule 14-802, Rule 4.2, and Rule 5.1)

Ms. Sylvester described the task a Supreme Court task force is undertaking to form a new kind of bar license for paralegal professionals. Committee members commented that some of the Rules of Professional Conduct, *e.g.*, Rule 4.2, and Rule 5.1, may need to be amended to account for the program. The committee agreed to consider the matter further and discuss those changes during future meetings. Mr. Johnson is a member of the task force addressing this issue, so he'll be bringing the task force's recommendations to the committee.

Next Meeting

Ms. Sylvester said she would coordinate with committee members to determine an appropriate date for the next meeting.

The meeting adjourned at 5:41.