

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

December 4, 2017

The meeting commenced at 5 p.m.

Committee Members Attending:

Steven G. Johnson (chair)
Daniel Brough (phone)
Thomas B. Brunker
J. Simòn Cantarero
Timothy Conde
Joni Jones
Hon James Gardner (phone)
Phillip Lowry, Jr.
Hon. Trent Nelson
Vanessa Ramos
Austin Riter
Gary G. Sackett
Billy L. Walker
Donald Winder

Excused:

Judge Darold J. McDade
Timothy Merrill
Cristie Roach
Katherine Venti
Padma Veeru-Collings

Staff:

Nancy Sylvester

Guests:

Joni Seko
Dan Jensen
Bryon Benevento

Approval of Minutes

The minutes were approved without comment.

ADA Lawsuits and Abusive Practices

Austin Riter, subcommittee chair, provided a report of the subcommittee's work. The subcommittee met and considered the issue and recommended that no specific language be proposed by the committee to address the issue. The subcommittee published a memorandum outlining its reasons for its recommendation. It was included in the distributed agenda materials and presented to the committee for consideration. Mr. Sackett raised whether there is a way for the Office of Professional Conduct to police the matter. Billy Walker opined that it always has that option. The committee voted in favor of adopting the subcommittee's recommendation.

Military Attorney Admissions Rules 14-804, 14-805, 14-806

Phil Lowry provided the committee with an update concerning the status of the issue. Joni Seko, Dan Jensen, and Bryon Benevento represented the Bar's Admissions Committee. The military attorney admission rule is nearly complete (14-804). The subcommittee's proposal mirrors the Virginia rule. The subcommittee is confident it and the Admissions Committee can reconcile the final points. Discussion ensued as to whether to adopt the "gold standard" Virginia rule or the Bar's proposed rule. Mr. Sackett moved to adopt the Admission's proposal. The motion passed.

The military spouse rule (Rule 14-806 for Military Spouses), however, remains in dispute. The subcommittee's proposed rule for bar admission of a military spouse attorney (a "Military Spouse Attorney") is the majority rule nationwide. Before the meeting, there appeared to be two material issues left to resolve: (1) whether passing a bar exam must be a requirement; and (2) whether the Military Spouse Attorney must be supervised by a Utah-based attorney. As to the first issue, the subcommittee ultimately agreed that a Military Spouse must have passed a bar exam. There was disagreement, however, regarding what score the Utah State Bar would accept for the MBE portion of the exam. As to the second issue, there was substantial disagreement regarding how much, if any, supervision a Military Spouse Attorney must have as a condition to being admitted to the Utah State Bar. The committee engaged in substantial discussion. The Admissions Committee favored more supervision, while the subcommittee favored less. The subcommittee, as well as other committee members, was concerned that the Military Spouse Attorney would almost certainly be unknown to Utah-based attorneys and that the applicant would have a difficult time identifying and convincing a Utah-based attorney to accept supervision obligations over him or her. The Admissions Committee representatives, as well as other committee members, emphasized the Bar's responsibility to protect the public and the integrity of the profession, and that more supervision ensures that the Bar is fulfilling that responsibility. Ultimately, the discussion focused on who should carry the burden of associating themselves with a local attorney and how material that burden should be.

After significant discussion, the committee favored two options:

1. The applicant must (i) participate and complete the Bar's New Lawyer Training Program and (ii) have passed a bar exam with an MBE score that satisfies the Utah State Bar's minimum score requirement; or
2. The applicant must (i) participate and complete the Bar's New Lawyer Training Program; (ii) have passed a bar exam; and (iii) be supervised by Utah attorney while admitted under the Military Spouse Attorney rule.

The Admissions Committee agreed to consider the two options and will report back to the subcommittee. In the meantime, Paul Burke agreed to revise the draft of the proposed rules to reflect the committee's discussion.

Rule 8.4(g)

The committee discussed briefly whether to make another attempt to reach an agreement on the Rule 8.4 issue. No final action was taken, although the committee confirmed that an available option is to take no action and observe how other states' versions of the ABA model rule are applied and enforced.

Adjournment

The meeting adjourned at 7:07 p.m. The next meeting was scheduled for January 22, 2018 at 5 p.m.