

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

January 22, 2018

The meeting commenced at 5:00 p.m.

Committee Members Attending:

Steven G. Johnson, Chair
Thomas B. Brunner
Daniel Brough
J. Simón Cantarero
Hon. James Gardner – via telephone
Joni Jones
Hon. Darold J. McDade –via telephone
Timothy Merrill –via telephone
Hon. Trent D. Nelson
Vanessa M. Ramos
Austin Riter - via telephone
Cristie Roach
Gary G. Sackett
Billy Walker
Donald Winder
Katherine Venti (recording secretary)

Members Excused:

Tim Conde
Padma Veeru-Collings
Phil Lowry

Staff:

Nancy Sylvester

I. Welcome and Approval of Minutes

Joni Jones moved to approve the minutes of the December 4, 2017 committee meeting. Simón Cantarero seconded the motion and the motion carried.

II. Rule 8.4(g) Discussion

Simón Cantarero reported from the Rule 8.4 Subcommittee, which provided a detailed memorandum in the materials. Even though the model rule received many negative comments, the subcommittee still recommended amendments to Rule 8.4 to prohibit harassment and discrimination. The subcommittee offered four options, aside from the option of doing nothing: (1) ABA Model Rule 8.4(g); (2) the January 23, 2017 subcommittee version; (3) the March 6,

2017 subcommittee version; and (4) the December 4, 2017 version based on California Rule 2-400, which narrowed the focus to the employment context.

Billy Walker commented on the constitutional concerns that had been addressed by the ABA and others. Chairman Johnson commented on the possibility of adopting option 4 and addressed section 8.4(d) regarding the language, “prejudicial to the administration of justice.”

Gary Sackett asked whether the subcommittee had a recommendation. The subcommittee reported it was not unanimous, but that the majority supports option 3. This option was previously submitted to the Supreme Court, but the court rejected it in favor of the ABA model rule.

Chairman Johnson reported that the Supreme Court is very concerned about this issue and did not expect the number or kind of comments that expressed opposition to the ABA model rule.

The committee continued to discuss the options and issues at length.

Don Winder then submitted an article from Civility Matters regarding the Utah Standards of Professionalism and Civility. He asked whether something should be added to the Standards, which are aspirational, rather than amending the rule. Committee members also inquired whether it was time to change the Standards from aspirational to required. The committee discussed these options.

Judge Nelson pointed out that the Code of Judicial Conduct already addresses issues of harassment and discrimination that occur within the courtroom, but committee members pointed out the problems that happen once parties leave the courtroom.

Steve Johnson submitted a new redlined option 4 adding additional categories from the ABA Model Rule 8.4(g) into paragraph (g), revising Comments 2, and 3, and adding a Comment 4 regarding several definitions, including “law practice.” The revisions also added Comment 7 to flag that this rule would differ from the ABA Model Rule.

Chairman Johnson took an informal poll regarding options 3 and 4 and Mr. Winder’s proposal to add language to the Standards. The committee was not unanimous on any of the options.

Chairman Johnson then proposed sending option 4 to the Supreme Court with the subcommittee’s memorandum and a letter of explanation. The committee discussed the pros and cons of this option, including that addressing the employment context, which has a well-developed body of law already, could be an interim step before more robust amendments.

Thomas Brunker moved to recommend option 4, as amended by Steve Johnson and the committee during discussion, to the Supreme Court. Mr. Winder seconded the motion. The motion carried, but not unanimously.

Cristie Roach moved that Chairman Johnson also include in his letter to the Supreme Court a recommendation or suggestion that it amend the Standards to address these issues more broadly

along the lines of option 3. Mr. Winder seconded motion. The motion carried, but not unanimously.

III. Rule 14-802 and HJR 3 Discussion

The committee briefly discussed an issue raised by the Bar about an argument made recently by an attorney that in-house counsel did not fall under Admissions Rules because of a comment to the rule. The committee also briefly discussed related issues under proposed HJR 3.

The committee will continue this discussion at its next meeting.

IV. Next Meeting

The next meeting is scheduled for Monday, February 26, 2018 at 5:00.

V. Adjournment

The committee adjourned at 6:53 p.m.