

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

Law and Justice Center  
645 South 200 East  
Salt Lake City, UT  
May 20, 2013  
5:00 pm

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ATTENDEES

Steve Johnson, Chair  
John Bogart  
Tom Brunker  
Simon Cantarero  
Gary Chrystler  
Nayer Honarver  
Trent Nelson  
Kent Roche  
Gary Sackett  
Stuart Schultz  
Paula Smith  
Paul Veasy  
Billy Walker  
Earl Wunderli  
Diane Abegglen, Staff

EXCUSED

Leslie Van Frank

1. WELCOME AND APPROVAL OF MINUTES

Steve Johnson welcomed the members of the committee to the meeting and asked if there were any corrections to the minutes of the April 29, 2013 meeting. The minutes were approved without changes.

2. CONTINUED DISCUSSION: RULE 8.4(a)

Mr. Johnson directed the committee's attention to the proposals circulated by Billy Walker and Gary Sackett via email, and invited Mr. Walker and Mr. Sackett to briefly summarize their positions regarding Rule 8.4(a). Mr. Walker explained that he favors addressing the Supreme Court's concerns about "piling on" by adding an additional comment to the comment section of Rule 8.4(a). Mr. Walker's proposed change leaves the language in Rule 8.4(a) intact. Mr. Sackett favors changing the

disciplinary rules, rather than the Rules of Professional Conduct, to make it clear that a violation of Rule 8.4(a) does not count as two independent acts of misconduct for purposes of imposing discipline.

Following a group discussion, Tom Bruncker made a motion that the committee recommend to the Supreme Court Mr. Walker's approach. Mr. Walker seconded the motion, which was unanimously approved. Mr. Sackett's vote in favor of the motion was a "concurring" vote, wherein he reserved the right to submit a separate explanation and suggestion to the Supreme Court.

Mr. Johnson will draft a letter to the Supreme Court for its consideration at a future court conference.

3. DISCUSSION: RULES 14-801 AND 14-802

Mr. Johnson invited Mr. Sackett to provide the committee with background information regarding this agenda item. Mr. Sackett initially explained that comments [2] and [21a] of Rule 5.5 of the Rules of Professional Conduct refer to the definition of the "practice of law" that is currently codified under Rule 14-802, Authorization to Practice Law. The current text of the two comments refers to Chapter 13A, Rule 1.0, which no longer exists. (Chapter 13A is now Chapter 14 and the practice-of-law definition is in Rule 14-802.) Mr. Sackett proposed several changes to the comments to reflect this recodification and suggested that Rule 14-801 might be a more logical place to put the definitions of "the law" and "practice of law." He then asked if these proposed changes should be rolled in to the committee's overall review of Rule 5.5.

The committee agreed that the proposed changes should be considered during the overall review of Rule 5.5, and Mr. Johnson invited Mr. Sackett to join that particular subcommittee. Mr. Sackett accepted the invitation and agreed to consult with Joni Seko, Admissions Counsel for the Bar, and Katherine Fox, General Counsel for the Bar, regarding the substance of the definitions.

4. DISCUSSION: COMMITTEE MEMBER RECRUITMENT

Mr. Johnson informed the committee that Judge May has resigned, effective immediately, thereby creating a judicial vacancy on the committee. The committee asked Diane Abegglen to contact Debra Moore, District Court Administrator, to ask the Board of District Court Judges for their assistance in identifying a new judicial member of the committee. Mr. Johnson also informed the committee that he would forward PDFs of the applications Ms. Abegglen receives from the Bar at-large for their review and comment. Mr. Johnson invited committee members to encourage

attorneys with criminal defense and personal injury experience to apply for the committee.

5. DISCUSSION: ABA'S FEBRUARY 2013 AMENDMENTS TO THE MODEL RULES

Mr. Johnson drew the committee's attention to the additional amendments to the ABA Model Rules of Professional Conduct approved by the ABA House of Delegates at the ABA Midyear Meeting in Dallas, Texas on February 11, 2013. Specifically, Mr. Johnson pointed out the new amendments to Rules 5.5, 8.5, the Model Rule for Registration of In-house Counsel, and the Model Rule on Pro Hac Vice Admission. The committee agreed to add consideration of Rule 8.5 to Leslie Van Frank's subcommittee assignment (Rules 1.0, 1.4, and 4.4). Consideration of the Model Rule for Registration of In-house Counsel will be added to Nayer Honarver's subcommittee assignment (Rules 1.18, 5.3, and 5.5). And a new subcommittee composed of John Bogart as chair, Trent Nelson, and Stuart Schultz will consider the Model Rule on Pro Hac Vice Admission.

6. SUBCOMMITTEE REPORT: RULES 1.0, 1.4, AND 4.4

In Ms. Van Frank's absence, Mr. Johnson invited Paula Smith to report on the subcommittee's assignment to review Rules 1.0, 1.4, and 4.4. Ms. Smith indicated that the subcommittee has compared the ABA's changes to Rules 1.0 and 1.4 to Utah's current rules and is prepared to make recommendations at a future committee meeting. The subcommittee is waiting for Robert Hilder's proposals regarding Rule 4.4 before beginning its review of that rule.

Mr. Johnson asked the subcommittee to provide Ms. Abegglen with a red-line and clean copy of the proposed changes to Rules 1.0 and 1.4 for inclusion with the agenda for the next committee meeting.

7. SUBCOMMITTEE REPORT: RULES 1.1, 1.6, AND 1.17

Mr. Johnson invited Mr. Brunner to report on the work of his subcommittee. Mr. Brunner shared his subcommittee's initial responses to the ABA's changes to Rules 1.1, 1.6, and 1.17. Mr. Johnson asked the subcommittee to provide Ms. Abegglen with a red-line and clean copy of the proposed changes to Rules 1.1, 1.6, and 1.17 for inclusion with the agenda for the next committee meeting.

8. SUBCOMMITTEE REPORT: RULES 1.18, 5.3, AND 5.5

Mr. Johnson invited Ms. Honarver to report on the work of her subcommittee. Ms. Honarver reported that her subcommittee had not yet had the opportunity to meet. Mr. Johnson encouraged Ms. Honarver to provide Ms. Abegglen with a red-line and clean copy of any proposed changes to Rules 1.18 and 5.3 for inclusion with the agenda for the next committee meeting.

9. OTHER BUSINESS

The next meeting of the committee was set for July 1, 2013 at 5 p.m. at the Law & Justice Center.