

**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
July 1, 2013
5:00 pm

ATTENDEES

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

EXCUSED

Kent Roche
Stuart Schultz
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 May 20, 2013 meeting. The minutes were approved without changes.

Mr. Johnson then informed the committee that Earl Wunderli is resigning from the committee today after 18 years of dedicated service. The committee expressed its sincere thanks to Mr. Wunderli for his countless contributions to the committee through the years and wished him well in his retirement.

2. UPDATE: RULE 8.4(a)

Mr. Johnson updated the committee about his June 12, 2013 meeting with the Supreme Court. He indicated that after considering both the committee's recommendation regarding Rule 8.4(a) and Gary Sackett's June 4, 2013 letter, the

Court approved the concept of amending Comment [1a] only, rather than amending Rule 8.4(a) and Rules 14-601 and 14-604 of the Rules of Lawyer Discipline. To further clarify its position with respect to Rule 8.4(a), the Court suggested the following edit to Comment [1a]:

[1a] A violation of paragraph (a) based solely on the lawyer's violation of another Rule of Professional Conduct shall not be charged as a separate violation, ~~for purposes of discipline.~~ However, this Rule defines professional misconduct as a violation of the Rules of Professional Conduct as the term professional misconduct is used in the Supreme Court Rules of Professional Practice, including the Standards for Imposing Lawyer Sanctions. In this respect, if a lawyer violates any of the Rules of Professional Conduct, the appropriate discipline may be imposed pursuant to Rule 14-605.

The Court asked Mr. Johnson to present its edit to the committee to determine if there were any concerns with the suggested language. Following a brief discussion, Mr. Wunderli made a motion that the revised comment be adopted by the committee. Paula Smith seconded the motion, which passed unanimously. Diane Abegglen will submit the revised comment for publication in the Utah Code.

3. UPDATE: COMMITTEE MEMBER RECRUITMENT

Mr. Johnson initiated a discussion about filling the committee's existing vacancies and invited input regarding the applicant pool. The committee discussed its geographic diversity and practice area needs and identified several possible candidates. Mr. Johnson encouraged the committee to fill one vacancy at this time and reserve a second slot for a member of the judiciary. Ms. Abegglen reported that she has solicited judicial nominations from the Board of District Court Judges and the Board of Juvenile Court Judges and hopes to hear back from the Boards in the near future.

Following the discussion, the committee unanimously endorsed one attorney applicant whose name will be advanced to the Supreme Court. Committee members agreed to continue their efforts to identify at least one active district or juvenile court judge to fill the remaining vacancy.

4. UPDATE: LAWYER ADVERTISING RULES

Mr. Johnson summarized for the committee the Bar Commission's petition to the Supreme Court regarding new lawyer advertising rules. He reminded committee members that the public comment period is underway and encouraged everyone to familiarize themselves with the Bar Commission's petition prior to the next meeting. Mr. Johnson anticipates that the Supreme Court will ask the committee to weigh in on the proposed rules this fall.

5. SUBCOMMITTEE REPORT: RULES 1.0, 1.4, 4.4, AND 8.5

Mr. Johnson invited Ms. Smith to present her subcommittee's recommendations regarding the ABA's recent changes to Rules 1.0 and 1.4. With respect to Rule 1.0, the subcommittee recommends adopting the ABA's changes, but retaining Utah's definitions of "consult" and "consultation." Following a group discussion, Ms. Smith made a motion that the changes to Rule 1.0 be adopted as proposed by the subcommittee. Mr. Wunderli seconded the motion, which passed unanimously.

*Woods
may appear
in
the Rules*

With respect to Rule 1.4, the subcommittee recommends adopting the ABA's changes. Following a group discussion, Ms. Smith made a motion that the ABA's changes be adopted as recommended by the subcommittee. Mr. Wunderli seconded the motion, which passed unanimously.

Mr. Johnson clarified that the committee will advance all ABA Model Rules-related changes to the Supreme Court as a single package, thereby allowing the committee to look at the "big picture" once more after each rule has been reviewed, discussed, and approved by the committee.

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

Mr. Johnson invited Tom Bruner to present his subcommittee's recommendations regarding Rules 1.1, 1.6, and 1.17. Mr. Bruner directed the committee's attention to the previously distributed red-line proposals. Following a discussion of the proposed amendments to Rules 1.1 and 1.6, Mr. Bruner requested additional time for his subcommittee to study specific areas of concern to the committee and circulate revised red-lines.

With respect to Rule 1.17, the subcommittee recommends adopting the ABA's changes. Following a discussion, Mr. Bruner made a motion that the ABA's changes be adopted as recommended by the subcommittee. John Bogart seconded the motion, which passed unanimously.

7. SUBCOMMITTEE REPORT: RULES 1.18, 5.3, 5.5, AND MODEL RULE FOR REGISTRATION OF IN-HOUSE COUNSEL

Mr. Johnson invited Nayer Honarver to present her subcommittee's recommendations regarding Rule 1.18. The subcommittee recommends adopting the ABA's changes, in a format consistent with existing Utah rules. Following a discussion, Ms. Honarver made a motion that the ABA's changes be adopted. Mr. Bruner seconded the motion, which passed unanimously.

With respect to Rule 5.3, Mr. Wunderli stated that the subcommittee recommends adopting the ABA's changes, but keeping Comment [1a] which explains how Utah's comment differs from the Model Rules' comment. Following a discussion, Mr.

Wunderli made a motion that the changes be adopted as recommended by the subcommittee. Ms. Honarver seconded the motion, which passed unanimously.

With respect to Rule 5.5, Mr. Johnson informed the committee that the Bar's Admissions Committee, co-chaired by Steven Waterman and Judge James Davis, has asked the subcommittee to delay its review of the ABA Model Rules related directly to their committee's duties. Mr. Johnson agreed to delay the subcommittee's review of this rule and the Model Rule for Registration of In-House Counsel while Mr. Waterman and Judge Davis undertake a separate review of the ABA Model Rules related to admissions.

8. SUBCOMMITTEE REPORT: MODEL RULE ON PRO HAC VICE ADMISSION

Mr. Johnson asked Mr. Bogart to update the committee with respect to the Model Rule on Pro Hac Vice Admission. Mr. Bogart stated that his subcommittee has completed its initial review of the rule, but has been encouraged by the Admissions Committee to discuss the Model Rule with the Bar's General Counsel, Katherine Fox. Mr. Johnson asked the subcommittee to obtain Ms. Fox's input prior to the next meeting.

9. OTHER BUSINESS

The next meeting of the committee was set for September 16, 2013 at 5 p.m. at the Law & Justice Center.