

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

March 19, 2018

The meeting commenced at 5:03 p.m.

**Committee Members Attending:**

Steven G. Johnson, Chair  
Daniel Brough  
J. Simon Cantarero  
Tim Conde – via telephone  
Hon. James Gardner  
Joni Jones  
Phil Lowry  
Hon. Darold J. McDade –via telephone  
Hon. Trent D. Nelson – via telephone  
Vanessa M. Ramos  
Austin Riter  
Cristie Roach  
Gary G. Sackett  
Padma Veeru-Collings – via telephone  
Billy Walker  
Donald Winder  
Katherine Venti (recording secretary)

**Guests:**

Steve Waterman  
Joni Seko  
Paul Burke

**Members Excused:**

Thomas B. Bruner  
Timothy Merrill

**Staff:**

Nancy Sylvester

## **I. Welcome and Approval of Minutes**

Mr. Johnson welcomed the committee members and guests. **Motion on the minutes:** Simón Cantarero moved to approve the minutes of the February 26, 2018 meeting. Billy Walker seconded the motion. The motion to approve carried unanimously.

## **II. Military attorney admissions, Rules 14-804, 14-805, 14.806**

The Committee continued discussion from the December 4, 2017 meeting regarding the Military Attorney Admission Rule (Rule 14-804) and the Military Spouse Admission Rule (14-806). Steve Waterman and Joni Seko appeared and represented the Bar Admissions Committee. Paul Burke appeared as a member of the subcommittee.

Steve Johnson raised a question as to Rule 14-804(h)(1) regarding disciplinary hearings. He requested a change from merely disciplinary hearing to disciplinary hearing with adverse determination. Mr. Johnson also raised questions as to paragraph (i) regarding reporting of actions in other state courts.

The Committee discussed in detail the March 19, 2018 submission from Mr. Burke regarding differences between the Military Spouse rule proposals from the subcommittee and the version offered by the Admissions Committee.

Mr. Johnson reported on recent legislative action regarding licensure of military spouses in other licensed areas licensed under DOPL.

**Motion** to recommend to the Court to adopt the Admissions Committee's version of the Military Lawyer Rule 14-804, with modification of language regarding revocation of license upon adverse disciplinary hearing: offered by Billy Walker. Seconded: Austin Riter. The motion carried unanimously.

Lengthy discussion continued regarding Rule 14-806, Admission for Military Spouses, and the differences between the subcommittee and the Admissions Committee versions. The discussion covered the following topics:

- Supervising attorneys for certain Military Spouse attorneys. The Admissions Committee's draft appeared to have more detail regarding supervision;
- The Admissions Committee's requirement of "limited licensure" disclosure and the issues the subcommittee had with that language. The subcommittee stated it took issue with the language of limited licensure because of its possible chilling effect on attorneys' ability to attract clients.
- Whether the Admissions Committee version required physical presence in Utah in order to be licensed or in order to apply. The Admissions Committee will clarify that applications can be submitted upon the military member's receipt of orders to Utah.

- The differences between the timing of termination: six months versus ninety days. Ms. Seko explained that for Admissions' purposes, termination is after the military member receives permanent orders to transfer and change "home of record."
- Length of service time recognition and the disagreement between the subcommittee and the Admissions Committee regarding the Military Spouse license length being a 36-month license. The subcommittee prefers no set deadline.
- The transfer of pending matters upon the military spouse leaving the state.
- The Bar's timing on processing and reviewing military spouse applications.
- The fee for the military spouse applications.

The committee summarized the remaining issues between the Subcommittee and the Admissions Committee versions as follows: (1) supervision; (2) time limitations; and some other issues.

Gary Sackett proposed that the subcommittee and the Admissions Committee revisit the actual differences and submit a marked version showing agreements and disagreements, using the Admissions Committee format.

Mr. Cantarero requested clarification regarding outstanding issues and whether they are specifically contained in the Admission Committee version: (a)(12) (b), (c), (f), (g), (j),(k), and (n)(1). Mr. Johnson requested that the Admissions Committee submit to the subcommittee a clean version of its Rule.

**Motion** that the Admissions Committee coordinates with subcommittee and redraft in their format the things they can agree on and note the things they cannot agree on in the Admissions Committee format: offered by Mr. Sackett. Seconded: Don Winder. Motion carried unanimously.

Ms. Seko, Mr. Burke, and Mr. Waterman departed the meeting.

Mr. Winder departed the meeting.

### **III. Rule 8.4(g), (h) Continued Discussion**

Mr. Cantarero reported back to the committee that HB 283 (2018) failed during the legislative session. It would have made all businesses subject to non-discrimination laws, not just those over a certain size.

Mr. Cantarero discussed issues raised in the subcommittee's March 16, 2018 Memorandum, which was submitted to the Committee to review before the present meeting. Mr. Cantarero also discussed various propositions regarding changed to Standards of Professionalism #3 in addition to Rule 8.4(g). The Supreme Court had requested this Committee also address the Standards. The Subcommittee addressed the comments to Rule 8.4 and the Standards and whether they should be aspirational or mandatory.

Judge Trent Nelson commented on the size of a law firm and the issue of harassment and discrimination in smaller firms. The committee discussed whether Comment 4 regarding the size of the law firm should be inserted in the Rule itself.

Mr. Johnson proposed adding the language “irrespective of the size of the number of employees” to paragraph (g). Mr. Johnson also proposes adding “ordinances” to Comment 4.

Mr. Johnson read into the record the final proposed changes as follows:

**Rule 8.4. Misconduct.**

It is professional misconduct for a lawyer to:...

(g) engage in conduct that amounts to unlawful discrimination or harassment under applicable local, state, or federal law, irrespective of the number of employees; or

(h) egregiously violate or engage in a pattern of repeated violations of the Standards of Professionalism and Civility.

Comment

...

[3] A lawyer who, in the course of representing a client, knowingly manifests by words or conduct bias or prejudice based upon race, color, sex, pregnancy, childbirth, or pregnancy-related conditions, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status, or socioeconomic status may violate paragraph (d) when such actions are prejudicial to the administration of justice. Legitimate advocacy respecting the foregoing factors does not violate paragraph (d). A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of this rule.

[3a] The Standards of Professionalism and Civility approved by the Utah Supreme Court are intended to improve the administration of justice.

[4]. The substantive law of antidiscrimination and anti-harassment statutes, ordinances and case law guides the application of paragraph (g), except for for purposes of determining the violation of paragraph (g), the size of a law firm or number of employees is not a defense. Paragraph (g) does not limit the ability of a lawyer to accept, decline, or withdraw from a representation in accordance with Rule 1.16, nor does paragraph (g) preclude legitimate advice or advocacy consistent with these Rules. Discrimination or harassment does not need to be previously proven by a judicial or administrative tribunal or fact-finder in order to allege or prove a violation of this Rule. Lawyers may engage in conduct undertaken to discuss diversity and inclusion, including any benefits and challenges, without violating this rule. Implementing initiatives aimed at recruiting, hiring, retaining, and advancing employees of diverse backgrounds

or from historically underrepresented groups, or sponsoring diverse law student organizations, are not violations of paragraph (g).

[4a] A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not alone establish or rule out a violation of paragraph (g). A lawyer does not violate paragraph (g) by limiting the scope or subject matter of the lawyer's practice or by limiting the lawyer's practice to members of underserved populations in accordance with these rules and other law.

[5] A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists. The provisions of Rule 1.2(d) concerning a good faith challenge to the validity, scope, meaning or application of the law apply to challenges of legal regulation of the practice of law.

[6] Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of lawyers. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, agent and officer, director or manager of a corporation or other organization.

[7] This rule differs from ABA Model Rule 8.4.

**Motion** to approve amendments to Rule 8.4(g) and (h) with comments, as read with changes: offered by Judge James Gardner. Seconded: Vanessa Ramos. The motion carried.

With regard to Standard 3, Mr. Cantarero requested that committee members submit their preferences to him regarding the four options in the materials. The committee will review the options at the April meeting.

#### **IV. Supreme Court Standing Order No. 7**

This matter was deferred until the April meeting.

#### **V. Next Meeting**

The next meeting is scheduled for Monday, April 23, 2018 at 5:00. The May meeting will be held on Monday May 21, 2018 at 5:00.

#### **VI. Adjournment**

The meeting adjourned at 7:06 p.m.