

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

December 3, 2018

The meeting commenced at 5:01 p.m.

**Committee Members Attending:**

Steven G. Johnson, Chair  
Gary Sackett (emeritus)  
Tom Bruner  
Simon Cantarero  
Hon. James Gardner  
Joni Jones  
Amy Oliver  
Austin Riter  
Cristie Roach  
Melina Shiraldi  
Cory Talbot  
Katherine Venti  
Billy Walker

Daniel Brough (by telephone)  
Tim Conde (by telephone)  
Hon. Darold McDade (by telephone)  
Hon. Trent Nelson(emeritus) (by telephone)  
Padma Veeru-Collings (by telephone)

**Guests:**

None

**Members Excused:**

Phillip Lowry  
Vanessa Ramos

**Staff:**

Nancy Sylvester

**Recording Secretary:**

Adam Bondy

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

Mr. Johnson welcomed the committee. He then introduced two new members, Cory Talbot and Melina Shiraldi, and asked all members to introduce themselves and their practice areas per rule. Mr. Johnson requested a motion on the prior meeting's minutes.

### **Motion on the Minutes:**

*Ms. Roach moved to approve the minutes from the October 22, 2018 meeting. Ms. Jones seconded the motion. The motion passed unanimously.*

## **II. Update: Military Lawyers & Military Spouse Lawyers**

Mr. Johnson reported on the progress regarding the rules for out-of-state military lawyers and military spouse lawyers. Those rules are currently out for comment.

## **III. Update: Supreme Court Standing Order 7/Rules 14-302 and 14-303**

Judge Gardner reported for the Standing Order 7 subcommittee. Judge Gardner discussed the rule relating to judicial recusal upon informal referral, and noted that the judicial code already governs judicial recusal. The committee reviewed the current proposed language noting that referral does not form an independent basis for recusal. Ms. Sylvester noted that the proposed language was likely substantive and belonged in the rule itself. The committee made the following amendment to paragraph (a)(5):

(a)(5) ~~Referrals~~ Submission of a complaint from a judge may be made by telephone. A judge's submission of a complaint does not independently form the basis for disqualification of the judge.

The committee discussed the order of the Board composition rules and the Board function rules.

### **Motion:**

*Ms. Jones moved to amend the proposed rule to add the language to paragraph (a)(5) and to place Board composition before the complaint submission process. Ms. Roach seconded the motion. The motion passed unanimously.*

## **IV. In re Discipline of Steffensen and Rule 8.4 Comment [1a]**

Mr. Johnson summarized the issues surrounding *In re Steffensen*, which addressed a problem with the way Comment [1a] is written regarding sanctions for a violation of Rule 8.4(a). Mr. Walker provided further explanation regarding the historical background of the rule and the problems that have arisen regarding the interplay of Rule 8.4 and Rule 14-604, which addresses appropriate sanctions under each 8.4 paragraph. Mr. Johnson directed the committee's attention to Rule 14-605 and how it connects with Rule 8.4. Judge Gardner and Mr. Cantarero noted that certain conduct such as fraud is not independent grounds for disbarment under the current formulation. Further discussion ensued regarding the effect of *In re Discipline of Steffensen* on Comment [1a].

The committee proposed the following change to Rule 8.4 Comment [1a], which tracks the language of footnote 21 in *Steffensen*, with the addition of new paragraphs (g) and (h):

~~[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. 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. Professional misconduct that falls under Rule 8.4(b), (c), (d), (e), (f), (g), or (h) cannot also fall under Rule 8.4(a) for the purpose of sanctions. Conduct that violates other Rules of Professional Conduct, however, falls under Rule 8.4(a) for the purpose of sanctions.~~

**Motion:**

*Judge Gardner moved to propose to the Supreme Court an amended comment [1a] to Rule 8.4. Tom Bruner seconded the motion. The motion passed unanimously.*

**V. Retired Attorneys, Rules 7.1 and 7.5, and Ethics Advisory Opinion 18-01**

Mr. Johnson raised the issue of whether attorneys serving in the Utah Legislature or who have retired may still appear on their firm's name. The question extends to all lawyers who are not practicing currently but who are eligible to be practicing. Ms. Shiraldi noted the key issue is whether the firm name becomes misleading. The committee had a long discussion about law firm trade names and the effect of a partner's death, retirement, or leaving a firm to start another and how that relates to whether a firm may retain the name of a former partner.

The committee proposed the following amendments to Rule 7.5 Comment [1]:

[1] A firm may be designated by the names of all or some of its members, by the names of deceased or retired members where there has been a continuing succession in the firm's identity or by a trade name such as the "ABC Legal Clinic." A lawyer or law firm may also be designated by a distinctive website address or comparable professional designation. Although the United States Supreme Court has held that legislation may prohibit the use of trade names in professional practice, use of such names in law practice is acceptable so long as it is not misleading. If a private firm uses a trade name that includes a geographical name such as "Springfield Legal Clinic," an express disclaimer that it is not a public legal aid agency may be required to avoid a misleading implication. It may be observed that any firm name including the name of a deceased or retired partner is, strictly speaking, a trade name. The use of such names to designate law firms has proven a useful means of identification. However, it is misleading to use the name of a lawyer who has not been associated with the firm or a predecessor of the firm, or the name of a nonlawyer.

**Motion:**

*Ms. Venti moved to amend comment [1] to Rule 7.5 to clarify that retired attorneys' names may remain in firm names. Ms. Jones seconded the motion. The motion passed unanimously.*

**VI. Next Meeting**

The next meeting is scheduled for January 14, 2018, at 5:00 p.m.

**VII. Adjournment**

The meeting adjourned at 6:47 p.m.