

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

June 17, 2019

The meeting commenced at 5:00 p.m.

Committee Members Attending:

Steven G. Johnson, Chair
Tom Brunker
Simón Cantarero
Tim Conde (by telephone)
Hon. James Gardner (by telephone)
Joni Jones
Phillip Lowry (by telephone)
Hon. Trent Nelson (emeritus)
Amy Oliver (by telephone)
Vanessa Ramos
Austin Riter
Cristie Roach (by telephone)
Cory Talbot
Padma Veeru-Collings (by telephone)
Billy Walker

Members Excused:

Daniel Brough
Hon. Darold McDade
Gary Sackett (emeritus)
Katherine Venti

Staff:

Nancy Sylvester

Recording Secretary:

Adam Bondy

Committee Webpage: <http://www.utcourts.gov/committees/RulesPC/>

I. Welcome and Approval of Minutes

Mr. Johnson determined quorum and welcomed the committee.

Motion:

Mr. Cantarero moved to approve the minutes from the May 20 meeting. Ms. Ramos seconded the motion. The motion passed unanimously.

II. Report: Rule 8.4 subcommittee on Rule 8.4 and 14-301

Mr. Cantarero reported for the subcommittee on the comments made to the rules during the comment period. The subcommittee recommended adoption of subsection (g) and comments as drafted and published. The committee considered realistic scenarios in which the proposed rule could infringe on First Amendment protections. Members of the committee discussed experiences and cases they were aware of in which the rule might have applied and how. The committee generally agreed that the rule must be narrowly tailored to avoid infringement. The committee discussed what differentiates chilling speech versus appropriate regulation.

Motion:

Mr. Cantarero moved to amend paragraph (h) in comment 4a to read:

Paragraphs (g) and (h) do not apply to expression or conduct protected by the First Amendment to the United States Constitution or by Article I of the Utah Constitution.

Ms. Jones seconded the motion. The motion passed unanimously.

Motion:

Mr. Cantarero moved to revert the last sentence of comment 3 to Rule 8.4 to refer to the rule rather than only 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."). Ms. Ramos seconded the motion. The motion passed unanimously.

The committee then considered the comment to standard 3 of Rule 14-301. The committee discussed whether there was a functional and desirable difference between "include all" and "including but not limited to." The committee noted that "federal law" is not coextensive with "federal statute." The committee also noted that the standard as currently drafted is concerned with two related but distinct concepts.

Motion:

Mr. Brunner moved to amend the standard to read:

3. Lawyers shall not, without an adequate factual basis, attribute to other counsel or the court improper motives, purpose, or conduct. Neither written submissions nor oral presentations should disparage the integrity,

intelligence, morals, ethics, or personal behavior of any such participant unless such matters are directly relevant under controlling substantive law.

Lawyers shall avoid hostile, demeaning, humiliating, intimidating, harassing, or discriminatory conduct with all other counsel, parties, judges, witnesses, and other participants in all proceedings. Discriminatory conduct includes all expressions of discrimination against protected classes as enumerated in the Utah Antidiscrimination Act of 1965, Utah Code section 34A-5-106(1)(a), and federal statutes, as amended from time to time.

Comment: Lawyers should refrain from expressing scorn, superiority, or disrespect. Legal process should not be issued merely to annoy, humiliate, intimidate, or harass. Special care should be taken to protect witnesses, especially those who are disabled or under the age of 18, from harassment or undue contention. Lawyers should refrain from acting upon or manifesting bigotry, discrimination, or prejudice toward any participant in the legal process, even if a client requests it.

Mr. Talbot seconded the motion. The motion passed unanimously.

III. Report: MDP subcommittee on Rule 5.4

Mr. Bruner reported for the subcommittee. The subcommittee examined the nexus between Rule 5.4(a) and 1.5(e) and suggested several edits. The whole committee discussed several concerns including that the rule does not define what a reasonable fee is and what the potential for mischief is if the rule allows nonlawyer sharing of fees rather than mixed ownership.

The committee deferred discussion of Rules 1.5 and 5.4 until the next meeting.

IV. Report: Rule 6.5

The MJP subcommittee will report at the next meeting on the proposals made by the Innovation in Law Practice Committee and their analysis.

V. Other Business

No other business.

VI. Scheduling of Future Meetings

August 19, 2019 at 5:00 p.m.

September 16, 2019 at 5:00 p.m.

October 21, 2019 at 5:00 p.m.

November 18, 2019 at 5:00 p.m.

VII. Adjournment

The meeting adjourned at 6:59 p.m.