



Utah Supreme Court's Advisory Committee on the Rules of Professional Conduct

Meeting Minutes

January 4, 2021

Via WebEx

5:01 p.m.

Simón Cantarero, Chair

Attendees:

Simón Cantarero, Chair
Angie Allen
Adam Bondy
Daniel Brough
Tim Conde
Hon. Michael Edwards
Hon. James Gardner
Steven G. Johnson (Emeritus)
Joni Jones
Philip Lowry
Alyson Carter McAllister
Amy Oliver
Vanessa Ramos
Jurhee Rice
Austin Riter
Gary Sackett (Emeritus)
Cory Talbot
Katherine Venti
Billy Walker*

Staff:

Nancy Sylvester
Recording Secretary-vacant

Guests

Michael Drechsel
Shelley Miller
Lucy Ricca

Not Present

Hon. Trent Nelson
Dane Thorley

1. Welcome and approval of the December 7, 2020 meeting minutes: Simón Cantarero, Chair

Simón Cantarero, Chair welcomed everyone to the meeting and asked for approval of the minutes.

Alyson McCallister moved to approve the December 7, 2020 minutes with changes. Judge Edwards seconded the motion, and it passed unanimously.

2. Bare referral fees: Referral Fee Statement: Lucy Ricca, Simón Cantarero, Shelley Miller, Nancy Sylvester, Steve Johnson

On September 1, 2020, the Court authorized the sharing of reasonable fees with nonlawyers within the oversight of the regulatory reform sandbox. On December 8, 2020, the Court halted its consideration and authorization of bare referral fee arrangements. The Committee will consider and recommend ethical guidance for lawyers entering into referral fee arrangements with nonlawyers and whether and how to regulate those arrangements, including whether the collection of data from lawyers in referral fee arrangements will be necessary.

The Committee will first evaluate whether to amend Rule 1.5(a) to clarify that the percentage of a fee paid as a referral to a nonlawyer is a factor to be considered in the reasonableness of the fee.

Rule 1.5(a) states:

A LAWYER SHALL NOT MAKE AN AGREEMENT FOR, CHARGE, OR COLLECT AN UNREASONABLE FEE OR AN UNREASONABLE AMOUNT FOR EXPENSES. THE FACTORS TO BE CONSIDERED IN DETERMINING THE REASONABLENESS OF A FEE INCLUDE THE FOLLOWING:

- (1) THE TIME AND LABOR REQUIRED, THE NOVELTY AND DIFFICULTY OF THE QUESTIONS INVOLVED AND THE SKILL REQUISITE TO PERFORM THE LEGAL SERVICE PROPERLY;
- (2) THE LIKELIHOOD, IF APPARENT TO THE CLIENT, THAT THE ACCEPTANCE OF THE PARTICULAR EMPLOYMENT WILL PRECLUDE OTHER EMPLOYMENT BY THE LAWYER;
- (3) THE FEE CUSTOMARILY CHARGED IN THE LOCALITY FOR SIMILAR LEGAL SERVICES;
- (4) THE AMOUNT INVOLVED AND THE RESULTS OBTAINED;
- (5) THE TIME LIMITATIONS IMPOSED BY THE CLIENT OR BY THE CIRCUMSTANCES;
- (6) THE NATURE AND LENGTH OF THE PROFESSIONAL RELATIONSHIP WITH THE CLIENT;
- (7) THE EXPERIENCE, REPUTATION AND ABILITY OF THE LAWYER OR LAWYERS PERFORMING THE SERVICES; AND
- (8) WHETHER THE FEE IS FIXED OR CONTINGENT.

A subcommittee chaired by Alyson McAllister and joined by Angie Allen, Dan Brough, Simón Cantarero, Tim Conde, Steve Johnson, Shelley Miller, Jurhee Rice, and Gary Sackett will review Rule 1.5 and report back at the next RPC meeting.

3. Conflict between GAL statute and Rule 1.6: Michael Drechsel, Nancy Sylvester

As part of the juvenile recodification bill, Mike Drechsel presented an exception to Rule 1.6 of the Rules of Professional Conduct found in statute 78A-6-902(12) regarding the disclosure of GAL records.

STATUTE 78A-6-902(12) PROVIDES A STATUTORY EXCEPTION TO RULE 1.6 OF THE RULES OF PROFESSIONAL CONDUCT AND STATES:

- A. EXCEPT AS PROVIDED IN SUBSECTION 12(B), ALL RECORDS OF AN ATTORNEY GUARDIAN AD LITEM ARE CONFIDENTIAL AND MAY NOT BE RELEASED OR MADE PUBLIC UPON SUBPOENA, SEARCH WARRANT, DISCOVERY PROCEEDINGS, OR OTHERWISE. THIS SUBSECTION SUPERSEDES TITLE 63 G, CHAPTER 2, GOVERNMENT RECORDS ACCESS AND MANAGEMENT ACT.
- B. CONSISTENT WITH SUBSECTION 12(D), ALL RECORDS OF AN ATTORNEY GUARDIAN AD LITEM:
 - I) ARE SUBJECT TO LEGISLATIVE SUBPOENA, UNDER TITLE 36, CHAPTER 14, LEGISLATIVE SUBPOENA POWERS; AND
 - II) SHALL BE RELEASED TO THE LEGISLATURE.
- C. EXCEPT AS PROVIDED IN SUBSECTION 12(C)(II):
 - I) RECORDS RELEASED IN ACCORDANCE WITH SUBSECTION 12(B) SHALL BE MAINTAINED AS CONFIDENTIAL BY THE LEGISLATURE.
 - II) NOTWITHSTANDING SUBSECTION 12(C)(I), THE OFFICE OF THE LEGISLATIVE AUDITOR GENERAL MAY INCLUDE SUMMARY DATA AND NONIDENTIFYING INFORMATION IN ITS AUDITS AND REPORTS TO THE LEGISLATURE.
- D. SUBSECTION 12(B) CONSTITUTES AN EXCEPTION TO RULES OF PROFESSIONAL CONDUCT, RULE 1.6, AS PROVIDED BY RULE 1.6(B)(4), BECAUSE OF:
 - a. THE UNIQUE ROLE OF AN ATTORNEY GUARDIAN AD LITEM DESCRIBED IN SUBSECTION (8); AND
 - b. THE STATE'S ROLE AND RESPONSIBILITY;
 - I) TO PROVIDE A GUARDIAN AD LITEM PROGRAM; AND
 - II) AS PARENS PATRIAE, TO PROTECT MINORS.

A CLAIM OF ATTORNEY-CLIENT PRIVILEGE DOES NOT BAR ACCESS TO THE RECORDS OF AN ATTORNEY GUARDIAN AD LITEM BY THE LEGISLATURE THROUGH LEGISLATIVE SUBPOENA.

RULE 1.6(B)(4) STATES:

A LAWYER MAY REVEAL INFORMATION RELATING TO THE REPRESENTATION OF A CLIENT TO THE EXTENT THE LAWYER REASONABLY BELIEVES NECESSARY TO SECURE LEGAL ADVICE ABOUT THE LAWYER'S COMPLIANCE WITH THESE RULES.

The discussion was tabled pending final legislation.

- 4. Meeting Schedule:** (all)
- February 1, 2021 at 5:00 p.m.
 - March 1, 2021 at 5:00 p.m.
 - April 5, 2021 at 5:00 p.m.
 - May 3, 2021 at 5:00 p.m.
 - June 7, 2021 at 5:00 p.m.
 - July 2021: No meeting
 - August 2, 2021 at 5:00 p.m.
 - August 30, 2021 at 5:00 p.m.
 - September 2021: No meeting
 - October 4, 2021 at 5:00 p.m.
 - November 1, 2021 at 5:00 p.m.
 - December 6, 2021 at 5:00 p.m.-Tentative

The meeting adjourned at 6:16 p.m. The next meeting will be held on February 1, 2021 at 5p.m. via WebEx.