



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

Meeting Minutes

April 5, 2021

WEBEX

5:00 p.m. Mountain Time

J. Simon Cantarero, Chair

Attendees:

J. Simon Cantarero, Chair
Steven Johnson (Emeritus)
Katherine Venti
Alyson McAllister
Cory Talbot
Hon. James Gardner
Adam Bondy
Joni Jones
Hon. Trent Nelson
Gary Sackett (Emeritus)
Amy Oliver
Prof. Dane Thorley
Hon. Mike Edwards
Jurhee Rice
Alex Riter
Dan Brough
M. Alex Natt, Recording Secretary

Staff:

Nancy Sylvester

Guests:

Shelley Miller, Christopher Williams

1. Welcome and approval of the March 1, 2021 meeting minutes: Mr. Cantarero

Mr. Cantarero recognized a quorum, welcomed everyone to the meeting, asked the guests to introduce themselves, and then asked for approval of the minutes.

Mr. Bondy asked that his name be spelled correctly. There was also a transcription error in the last full paragraph where a line was included in red type. It will be deleted from the minutes.

Ms. Jones moved for approval of the minutes and Ms. McAllister seconded. The Motion passed unanimously.

2. Rule 1.5 and 5.4 (Referral Fees, Fee Sharing, Solicitation : Ms. McAllister

Ms. McAllister presented an update from her committee and the Committee reviewed a side by side redline of proposed changes denoted as proposal A and proposal B.

Mr. Cantarero sought comments on whether the referral fees discussion should appear in one rule or in the alternative in both 5.4 and 1.5.

Mr. Johnson suggested there be one primary rule but that 5.4 could have a comment that directed the reader to 1.5(e). The Committee agreed in general terms with that suggestion.

Mr. Sackett provided an email in advance of the meeting and was asked to address its contents. He said he believed the language added to proposal A that adds "unless and until" is confusing and unnecessary and that reminding individuals of their responsibility to "follow the rules" in both proposals was unnecessary. Addressing proposal B, he said he didn't believe it was our responsibility to get too granular (e.g. stating percentages) on how fees can or must be paid. He said he also believed that all of the proposed changes should actually be in 5.4 and not in 1.5.

Ms. McAllister noted that the prior rule contained an entire prohibition of fee sharing and now the rule must be updated as that is now allowed in certain circumstances.

Ms. Venti suggested that the language be returned back to a "reasonable fee" rather than specifying a certain percentage limitation.

Mr. Bondy suggested that "reasonableness" was difficult to define without more specificity.

The Chair reminded the Committee that these are rules of general application and having something so specific in the rule is contrary to that general application status.

Ms. McAllister said the Regulatory Sandbox was seeking guidance from the Committee on how one would be able to determine reasonableness. Mr. Sackett said he believed the Sandbox should be making the reasonableness determination. Ms. Sylvester informed the Committee that the intention of the

Supreme Court was to have this Committee undertake the rule drafting that is being undertaken.

Ms. Venti asked whether the real issue is “bare referral fees” instead of things that should rightly be in the sandbox scheme.

The Chair suggests that this be returned to the subcommittee for further consideration and specifically addressing Ms. Venti’s question regarding bare referral fees.

3. Old business/new business: All

Rule 8.4(g) and 14-301.

Mr Bondy updated on the [Greenburg](#) case from Pennsylvania which he said had been resolved short of an appellate decision being rendered.

The Chair asked that Mr. Bondy review what effect if any that case would have on our proposed rule.

Judge Nelson was asked to address an email he sent earlier. It spoke to the history of this committee’s efforts and how the First Amendment applies to lawyers. He suggested that the Committee review that document and consider its contents. A dialogue ensued about how to determine compelling state interest and where the line is drawn as to what is the practice of law.

Mr. Cantarero and Ms. Jones spoke to studies that detailed experiences sustained by women lawyers in particular. These studies led this Committee to consider how poorly women have been treated (outside of the employment law context) and that conduct detailed in these studies should not be tolerated in the practice of law.

The Chair asked that the subcommittee continue its work on this matter.

The Chair suggested that the committee review the [Bohman Aggregates](#) case, which Ms. Sylvester shared.

The balance of the agenda was tabled until May.

4. Adjournment: All

The meeting adjourned at 6:25p.m. The next meeting will be held on May 3, 2021 at 5:00 p.m. via Webex.