



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

**Meeting Minutes**

**May 3, 2021**

WEBEX

17:00 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  
Gary Sackett (Emeritus)  
Amy Oliver  
Hon. Mike Edwards  
Jurhee Rice  
Dan Brough  
Austin Riter  
Hon. Trent Nelson  
Tim Conde  
Billy Walker  
Phil Lowry  
Angela Allen  
M. Alex Natt, Recording Secretary

**Staff:**

Nancy Sylvester

**Guests:**

Shelley Miller, Christopher Williams, Kim Free,

**Excused:**

Vanessa Ramos  
Dane Thorley

1. **Welcome and approval of the April 5, 2021 meeting minutes: Mr. Canterero.**

Mr. Cantarero recognized the existence of a quorum and welcomed everyone to the meeting including the guests, Shelly Miller, Chris Williams, and Kim Free. Mr. Cantarero noted some corrections to the minutes including a misspelling of his name and some minor grammatical errors that will be corrected.

Mr. Conde moved for approval and Ms. McAllister seconded with those changes. The Motion passes unanimously.

## **2. Rule 1.01 (Attorney Competency – Virtual Hearings):** (Ms. Kim Free)

Mr. Cantarero asked Ms. Free to address Rule 1.01 and an issue raised by Judge Linda Jones about attorney competency with virtual hearings. She informed the Committee that attorneys are not coming prepared to “virtual court.” Ms. Free expressed Judge Jones’s concern that preparation for a virtual hearing should be a competency issue. The Committee questioned whether the Rule as currently drafted is broad enough to include virtual hearings. Mr. Cantarero raises an issue regarding litigation by the Bar surrounding competency issues in this instance and whether the expectation should be noted in the comments rather than as an amendment to the Rule. Mr. Walker and Mr. Sackett both said they did not believe this should be in the ethical rules. Ms. Venti supported placing the language addressing this kind of competency into the comments to the Rule. The Chair tabled the matter for now.

## **3. Rules 1.5 and 5.4 (Bare Referral Fees):** (Ms. McAllister)

The committee discussed the following recommendation from the subcommittee:

- (e) Referral fees paid to a non-lawyer or paid to a lawyer who does not represent the client in the referred matter shall:
    - (1) not be paid until such time as an attorney’s fee is payable to the lawyer representing the client in the referred matter;
    - (2) not be passed directly or indirectly to the client: and
    - (3) be subject to the client giving informed consent confirmed in writing to the terms of the referral fee arrangement.
  - (f) No referral fee may be paid to anyone who is a potential witness in that client's case.
  - (x) If the lawyer is to be paid by a contingent fee, any referral fee payable in the case must be a percentage of the total fee obtained.
- [Note: does this fit better with (c) contingency fees or (e) referral fees]

The committee also incorporated Mr. Sackett’s feedback as follows:

- (e)(1): “ until such time as” is redundant; “until” means “up to the time.” Same in Comment [7] (twice).
- (e)(3): subject to the client’s giving . . .(gerund possessive)
- (f): “A referral fee may not be paid,” rather than “No referral fee . . .” [7], second page: Third line from top, “ a lawyer whom” – “ who” is the subject of “ is competent to handle.”
- [8]: witness for witnesses.

[8] line 4: Delete “pervasive.” It seems redundant with “serious” and is not a word I have ever seen used in connection with a description of legal impropriety.

[8], three sentences beginning with “Before entering” seem to be an unnecessarily detailed explanation of what the rule states – more detail than is in most comments.

The committee sent the rules back to the subcommittee for further discussion.

#### **4. Rule 5.5 (Remote Work): (Joni Jones)**

The Chair asked Ms. Jones to present her subcommittee’s recommendations on Rule 5.5 (Remote Work) which are contained in Tab 5 to the agenda. Ms. Jones presented the Committee with background on the issue and highlighted the changes to paragraph (c) and the additional comment. Mr. Walker addressed the Jardine case and noted that physical presence in Utah doesn’t mean one is practicing law in Utah if that attorney is providing counsel in another jurisdiction. Mr. Cantarero asked for clarification on what the subcommittee meant by establishing a “public office.” Ms. Jones indicated that it is anything other than a home office per se. An example is given of a California attorney (not admitted in Utah) who moved to their condo in Park City during the pandemic while providing counsel to their California clients. That fact pattern would not constitute the practice of law in Utah under the revision proposed. Mr. Sackett and Mr. Cantarero asked that the comment be moved to the end for continuity with the ABA model rules. Mr. Cantarero asked the subcommittee to continue to work on where the proposed language would be best placed in the rule and report back to the Committee as a whole.

#### **5. Balance of agenda and adjournment.**

The balance of the agenda was tabled until the next meeting. The meeting adjourned at 18:25. The next meeting will be held on June 7, 2021 at 17:00 via Webex.