



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

[Draft] Meeting Minutes

June 7, 2021

WEBEX

17:00 Mountain Time

J. Simón Cantarero, Chair

Attendees:

J. Simón Cantarero, Chair
M. Alex Natt, Recording Secretary
Hon. James Gardner
Katherine Venti
Alyson McAllister
Cory Talbot
Adam Bondy
Joni Jones
Gary Sackett (Emeritus)
Amy Oliver
Hon. Mike Edwards
Jurhee Rice
Dan Brough
Austin Riter
Hon. Trent Nelson (Emeritus)
Billy Walker
Angie Allen
Phil Lowry
Tim Conde

Staff:

Nancy Sylvester

Guests:

Scotti Hill (Utah State Bar)
Jacqueline Carlton (Legislative Research and
General Counsel)

Absent:

Steven Johnson (Emeritus)
Vanessa Ramos
Dane Thorley

1. Welcome and approval of the May 3, 2021 meeting minutes: (Mr. Cantarero)

Chair Cantarero recognized the existence of a quorum, welcomed everyone to the meeting including the guests. He welcomed Ms. Carlton and Ms. Hill. Regarding the minutes from the last meeting, Mr. Walker was shown as a guest but needed to be corrected as a member of the Committee. Phil Lowry and Angela Allen also attended the meeting but were marked absent. Vanessa Ramos and Dane Thorley were absent but excused and will be noted as such.

The Chair added language regarding a discussion regarding Rules 1.5 and 5.4.

With those changes Judge Gardner moved to approve the minutes and Judge Edwards seconded the Motion. The minutes were adopted unanimously with the corrections.

2. Rule 5.5 (Remote Work): (Ms. Jones)

Ms. Jones discussed the work of the Rule 5.5 subcommittee and mentioned some amendments that were suggested by Mr. Sackett. The Committee reviewed the proposed language and adds a comment noting that this Rule deviates from the ABA model rule. With those changes the Committee voted to recommend the proposed rule amendments to the Supreme Court. Ms. Venti moved and Ms. McAllister seconded. The Motion passed unanimously.

3. Rules 8.4 and 14-301: (Mr. Bondy)

Mr. Bondy presented on behalf of the subcommittee and proposed 3 options in Rule 14-301 standard 3 for the Committee's evaluation. Judge Nelson expressed concerns in general with restriction of speech on attorneys in Rule 14-301 and whether the rule would survive strict scrutiny analysis. He opined that the Constitution's role is generally not to limit individual rights, which in his opinion are not created by the Constitution but simply exist. He indicated that he believed individuals are free to act in a discriminatory fashion unless specific statutes or opinions bar discrimination as in the employment law context. Mr. Riter and others expressed a contrary opinion and the Committee discussed the subject at length. Mr. Lowry noted that restrictions on speech by military attorneys have been upheld by the courts.

Mr. Walker noted a new opinion from the Colorado Supreme Court captioned In the Matter of Robert E. Abrams, 2021 CO 44, which upheld the Colorado Rule 8.4(g). The court found the rule Constitutional in a circumstance where counsel made a comment denigrating the presiding judge's physical appearance and apparent sexual orientation. Mr. Walker circulated the opinion for committee review. Ms. Venti suggested that the Committee review the opinion before

voting on the 3 proposals. The Chair tabled this matter pending the review and asked that the committee come prepared in August to vote on this matter.

4. Rules 1.5 and 5.4 (Ms. McAllister)

The Committee began with a review of Rule 5.4 generally and particularly some suggested revisions circulated by the Chair, Mr. Cantarero. Ms. McAllister suggested some revisions, which the Committee discussed.

Rule 1.5 was then reviewed and the Chair invited the subcommittee to weigh in on some revisions he made to their proposed work. The Committee discussed whether we are focusing too much on referral fees as a specific case or whether the focus on contingent fee cases should or shouldn't inform the Rule. Ms. Oliver commented that she believes the Committee was to put forth a framework to ensure that guard rails existed to define appropriate referral fees after the sandbox permitted them for the first time. Mr. Walker agreed with that perspective.

Mr. Cantarero also highlighted his addition that lawyers cannot avoid the restriction by offering value in kind or other compensation other than a cash payment.

The Committee reviewed his suggestions and makes some revisions of its own.

Ms. McAllister moved to recommend Rule 5.4 and comments 3 and 5 as amended by the Committee to the Supreme Court. Ms. Oliver seconded the motion. The Motion was approved unanimously.

Ms. McAllister moved to recommend to the Supreme Court amendments to Rule 1.5 and the addition of comments 7 and 8, which resulted in a renumbering of subsequent comments 9 and 10. Mr. Walker seconded the Motion. The Motion passed unanimously.

5. Fond Farewell.

The Chair thanked Vanessa Ramos for her excellent service to the Committee as this was her last meeting. He also thanked Tim Conde for his service. Mr. Simon noted that Nancy Sylvester will be leaving as staff liaison to join the Utah Bar as General Counsel. She will be missed by this Committee but the Bar will be served well by her skills.

6. Adjournment.

The meeting adjourned at 19:02. The next meeting will be held on August 2, 2021 via Webex.