



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

Meeting Minutes  
September 13, 2021

WEBEX  
17:00 Mountain Time

*J. Simon Cantarero, Chair*

**Attendees:**

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

**Staff:**

Gage Hansen

**Guests:**

Scotti Hill, Bridget Lavender, Jacqueline Carlton,  
Nancy Sylvester

**Absent**

Angie Allen, Phil Lowry, Billy Walker.

## **1. Welcome and approval of the August 3, 2021 meeting minutes: Mr. Canterero**

Chair Cantarero recognized the existence of a quorum, welcomed everyone to the meeting and it commenced at 17:05.

The Chair asks for a Motion to approve the August 3, 2021 meeting minutes.

The Chair indicates a needed change that removes Vanessa from the absence list as she was no longer on the committee and Robert Gibbons will be added to the meeting minutes as present.

Julie Nelson moves and Robert Gibbons seconds the Motion. The minutes are adopted unanimously without the noted corrections.

The Chair asks Bridget Lavender (new clerk for Justice Himonas) to introduce herself. Next, Scottie Hill introduces herself as Associate General Counsel for the Utah State Bar. Jacqueline Carlton is also recognized and welcomed to the meeting.

## **2. Rules 1.0 and 1.5: (Chair Cantarero)**

Alyson McAllister is asked to discuss the work of her subcommittee and proposed revisions. She starts with modifications to Rule 1.0 regarding referral fees and proposes an addition clarifying that lawyers that remain involved in a case (i.e. actively representing the client) are not considered as being “referring” under the rule. The Committee discussed the impact of Licensed Legal Practitioners on this rule and whether they were included in the definition of “lawyer.” In the end, the term “legal professional” will be used to solve the issue discussed in 1.0(p). There still seems to be an inconsistency and the Chair will examine this inconsistency (lawyers and LPP’s sharing fees) with the Supreme Court. For now the Committee will focus on bare referral fees pending the fee sharing clarification.

The Committee also discussed “shall” vs. “must” in the Rules and expresses some dissatisfaction with a wholesale change to the language in the Rules driving by a good faith attempt to modernize the Rules as some usages of “shall” do not mean “must.”

The Committee reviews additions by the Court to 1.5(e) and to 1.5(f) and 1.5(g). There were no concerns expressed by these additions.

Mr. Sackett raises an issue regarding 1.5(f) regarding potential witnesses and whether verbiage placed in the Rule by the Court are appropriately in the Rule or should be left as comments to the Rule. The Chair will discuss with the Court.

Mr. Sackett also believes that the fee referral rules should probably reside in another Rule rather than in Rule 1.5 as these rules regard fee splits paid amongst lawyers rather than fees paid by clients to lawyers. Some in the Committee propose moving this rule to create a new Rule 5.8 but there is not unanimity of opinion in adopting this approach.

Ms. McAllister moves the following be adopted by the Committee:

Adopt the changes:

to 5.4(c) and comment 3 to reference referral fee rule 5.8 and other fee sharing arrangements with non-lawyers besides referral fees as defined in 1.0 are governed by supreme court standing order 15.

in the terminology in Rule 1.0 we add the sentence at the end of paragraph P that the prohibition does not apply to lawyers who remain representing a client in the referred matter.

in 1.5, that referral fee sections E, F, G and the comments 7 and 8 to a new Rule 5.8 entitled "Referral Fees," creating:

5.8(a) Referral fee restrictions, and adopting the changes recommended by the Court and adding a change in paragraph (a)(2) that "not be passed directly *or indirectly* to the client"

5.8 (b) No referral fees to witnesses, and adding a change in paragraph (b) that "no referral fee may be paid, directly *or indirectly*"

5.8 (c) Any referral fee payable in the case must be reasonable relative to the total attorney fees that may ultimately be earned, considering any applicable factors in Rule 1.5(a).

Comment 5.8[1] from 5.4[7] and move the commas inside the quotation marks, the phrase "referral fees," and a reference to rule 1.0.

Comment 5.8[2] from Comment 5.4[8] and changing "must" to "should" in the third sentence.

Ask the Court whether the 2<sup>nd</sup> and 3<sup>rd</sup> sentence should be a comment or a Rule.

Comment 5.8[3] will state that this Rule is not part of the ABA model Rules.

In 1.5c on lines 27 and 28 that should be modified to read "will be owed to the lawyer."

And readjust the paragraph numbering and references to numbering appropriate after the language is amended.

Ms. Venti seconds the Motion. The Motion passes unanimously.

**3. Rules 8.4 and 14-301.** (Adam Bondy)

Mr. Bondy updated the Committee on the sub-committee's recommendation and will circulate the sub-committee's draft for the next meeting.

The meeting adjourned at 19:00.

The next meeting will be held on October 4, 2021.