



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

Meeting Minutes

April 5, 2022

Via Zoom

16:00 Mountain Time

J. Simon Cantarero, Chair

Attendees:

Dan Brough
Joni J. Jones
Katherine Venti
Alyson McAllister
Cory Talbot
Adam Bondy
Gary Sackett (Emeritus)
Steve Johnson (Emeritus)
Billy Walker
Dane Thorley
Julie J. Nelson
Robert Gibbons
Hon. Mike Edwards
M. Alex Natt, Recording Secretary

Staff:

Nancy Sylvester

Guests:

Scotti Hill
Christine Greenwood
Stacy Haacke
Douglas Thompson
Jacqueline Carlton
Jonathan Puente
Nick Styles

Absent - Angie Allen, Hon. Amy Oliver, Austin Riter, Hon. James Gardner, Chair J. Simon Cantarero, Phillip Lowry, Hon. Trent Nelson (Emeritus), Jurhee Rice.

1. Welcome and approval of the March 1, 2022 meeting minutes (Acting Chair Johnson)

Acting Chair Steve Johnson recognized the existence of a quorum, called the meeting to order at 16:01 and asked for a motion to approve the minutes. Ms. Jones indicated that she was not recorded as having been present at the March meeting and the Recording Secretary indicated he will correct the record in the revised minutes. With that correction, Ms. Jones moved for approval and Mr. Thorley seconded. The motion passed by acclamation.

2. Rule 1.2 (Acting Chair Johnson)

Mr. Johnson welcomed guests Douglas Thompson and Stacy Haacke to discuss their proposal to amend Rule 1.2 to add language that specifically requires an attorney in a criminal case to abide by their client's decision of whether to file an appeal.

Committee members asked questions of Mr. Thompson and discussion ensued. The Acting Chair indicated that this question should be referred to a subcommittee and asked Dane Thorley to chair. Alex Natt, Adam Bondy, Billy Walker, Doug Thompson, and Stacy Haacke will comprise the subcommittee. The subcommittee will discuss the proposal and decide whether it would fit better in 1.4, 1.16, or 2.1, or if there is another option for fixing issues surrounding the increased requests for reinstating time in criminal appeals. The subcommittee will report at the next meeting on May 3, 2022.

3. Rule 8.3 and Fee Dispute Rules (Acting Chair Johnson, Nancy Sylvester)

Mr. Johnson and Ms. Sylvester presented a proposal to provide an exception to the requirement of reporting misconduct in the context of a Utah State Bar-sponsored fee dispute resolution program.

Language was proposed to resolve a conflict in the Rules which presently requires reporting of attorney misconduct but does not comport with other law governing arbitrations and mediations.

Ms. Venti made a motion to recommend that the Supreme Court circulate the proposed language for comment. Ms. McAllister seconded the motion. The motion carried unanimously.

4. Rules 8.4 and 14-301: Anti-Discrimination Rules (Mr. Puente)

Mr. Puente, from the Utah State Courts' Office of Fairness and Accountability, explained the courts' interest in Rule 8.4(g). He said the courts created a committee on fairness and accountability, the goal of which is to eliminate bias in the courts. He said the courts can't meet their mission when there is bias present. Sometimes things come downstream to the courts, such as from a prosecutorial or law enforcement decision. But, he said, there must be a concerted effort by the

whole legal community to eliminate bias. Bias creates an access to justice issue. He noted that a number of states have been requiring education on eliminating bias through MCLE requirements. He said the RPC Committee should continue to work on these efforts. The court's new committee on fairness and accountability will be a resource to the RPC committee.

Mr. Johnson asked Ms. Sylvester to try to compile the history of 8.4(g), if possible, for the Committee's May meeting. Ms. Jones suggested that the original 8.4(g) subcommittee might be helpful in compiling the history of the effort and she and Ms. Venti indicated that they would be willing to help.

Timeline:

- Ms. Sylvester to report to the Committee by the May meeting on the history of Rules 8.4, 14-301, including addressing the negative treatment in the federal courts.
- The subcommittee will report back to Committee by the August meeting on a recommendation.

5. Adjournment.

The meeting adjourned at 17:21. The next meeting will be held on May 3, 2022 in-person at the Utah Law and Justice Center.