



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

Meeting Minutes February 7, 2023

Utah Law and Justice Center & Zoom
16:30 Mountain Time

J. Simon Cantarero, Chair

Attendees:

J. Simon Cantarero, Chair
Cory Talbot, Vice Chair
Jurhee Rice
Joni J. Jones
Gary Sackett
Alyson McAllister
Robert Gibbons
Mark Hales
Hon. Mike Edwards
Hon. Trent Nelson
Hon. Amy Oliver
Ian Quiel
Julie J. Nelson
Phillip Lowry
Hon. James Gardner
Christine Greenwood (ex officio)
Hon. M. Alex Natt, Recording
Secretary

Excused:

Billy Walker
Adam Bondy
Austin Riter
Dane Thorley

Staff:

Nancy Sylvester

Guests:

J.D. Lauritzen
Anna Hollander
Nick Stiles

1. Welcome and approval of the December 6, 2022, meeting minutes (Chair Cantarero)

Chair Cantarero recognized the existence of a quorum, called the meeting to order at 16:32 and discussed Rule 11-101(4) code of Judicial Administration which requires the committee members to introduce themselves at each first meeting of a new year. The members introduced themselves accordingly.

Chair Cantarero asked the committee if everyone had an opportunity to review the minutes from the December 6, 2022, meeting. Judge Oliver moved to approve the minutes; Julie Nelson seconded. The Motion passed by acclamation.

2. Projects in the Pipeline (Chair Cantarero)

Chair Cantarero updated the committee on the status of Rules 8.4(c) (investigative activities), 1.2 (cannabis company advising), 5.8 (referral fees between attorneys). Each of the committee's suggestions regarding these rules had been briefed to the Supreme Court. Ms. Sylvester noted that referral fees and investigative activities will come back to the committee in March.

3. Rule 8.3 (Chair Cantarero)

The Committee reviewed the one comment that followed the publication of the proposed amendments to Rule 8.3 and determined that was best addressed by the Fee Dispute Resolution Committee. Chair Cantarero called for a vote on recommending Rule 8.3 as final to the Supreme Court. A motion and vote was taken, with unanimous support for that action. Rule 8.3 will accompany the Fee Dispute Resolution rules to the Supreme Court when they are ready.

4. Rule 1.2 (Chair Cantarero)

The committee welcomed J.D. Lauritzen and Hannah Follender and began discussing the so-called Cannabis Safe Harbor provision. The Chair related that there appeared to be a split of opinion amongst the Supreme Court justices regarding the necessity or appropriateness of the proposed safe harbor.

Chair Cantarero referenced a memo drafted by Mr. Lauritzen. The committee members did not receive the memo prior to the meeting but it was promptly circulated. Discussion ensued.

Chair Cantarero asked whether the Rohrabacher-Farr amendment, which does not permit the Department of Justice to utilize funds to interfere with the implementation of state cannabis laws and by extension to prosecute those

involved in state-legalized cannabis industry. Mr. Lauritzen responded that to his recollection it has been included in every omnibus spending bill since 2014.

Chair Cantarero asked Mr. Lauritzen and Ms. Follender to elaborate on section 2 of their memorandum regarding how lawyers in this industry represent cannabis businesses and the necessity of providing good legal advice prior to them getting into regulatory trouble. The attorneys advised the committee that it is their belief that as counsel they are charged with providing good legal advice to clients and since Utah has legalized medical cannabis, attorneys giving legal advice deserve protection from potential OPC prosecution.

The committee asked whether a rule change was necessary or whether an ethics opinion would be sufficient. It was agreed that a rule change would provide the highest level of protection, but an ethics opinion may suffice. Ms. Follender discussed how either would allow law firms to understand that by representing these types of clients they are not violating the ethical rules. She also mentioned the inability of lawyers advising this industry to obtain malpractice insurance without an ethical opinion at minimum.

Judge Nelson suggested that the best argument for a rule change is that this is the public policy of the State of Utah regardless of what the federal position is. He suggested not referring to cannabis as “legal” as it is still illegal under federal law.

Judge Oliver suggested that it is strange that the State of Utah allows legal medical use but practicing lawyers are exposed to potential ethical liability, nonetheless.

It was discussed that an ethics opinion prevents OPC from prosecuting lawyers, but no Court is bound by the ethics opinion. That assumes, of course that the ethics opinion supports the cannabis practitioner. An ethics opinion from the State of Maine did not.

Chair Cantarero asked the Committee how it would like to proceed. Mr. Sackett suggested that the Committee advise the Supreme Court that the Court take up the change to the Rule as described in 1.2 version 2.

Ms. Jones made a Motion supporting Mr. Sackett’s advice to refer Option 2 back to the Court for their action along with a suggested comment (12a) referring specifically to Utah’s cannabis statutes as an example.

Ms. Rice seconded the Motion. The Motion passed unanimously.

5. Rule 7.1 (Alyson McAllister)

Ms. McAllister informed the committee that the UAJ and the Legislature are concerned about direct solicitation of clients by lawyers and that there might be action this legislative session on the rule allowing it (as of 2020). She said she would work with Mr. Stiles to come up with proposed language to address the concerns. Chair Cantarero asked Joni Jones to assist them in their efforts. It was noted that their work product would not come back to the committee as time was of the essence and instead their advice would be given directly to the Court.

6. Adjournment.

The meeting adjourned at 18:05. The next meeting will be held on March 7, 2023.