



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

Meeting Minutes

May 9, 2023

Utah Law and Justice Center & Zoom

16:00 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. Trent Nelson
Hon. Amy Oliver
Ian Quiel
Julie J. Nelson
Phillip Lowry
Adam Bondy
Dane Thorley
Hon. James Gardner
Hon. M. Alex Natt, Recording
Secretary

Staff:

Nancy Sylvester

Guests:

Nick Stiles, Jacqueline Carlton

Excused: Billy Walker, Hon. Mike
Edwards, Austin Riter, Christine
Greenwood.

1. Welcome and approval of the April 11, 2023 meeting minutes (Chair Cantarero)

Chair Cantarero recognized the existence of a quorum, called the meeting to order at 16:04.

Chair Cantarero asked the committee if everyone had an opportunity to review the minutes from the April 11 meeting. Ms. McAllister moved to approve the minutes; Judge Oliver seconded. The Motion passed by acclamation.

2. Rule 7.1 (Mr. Gibbons)

The Chair asked Mr. Gibbons to update the Committee on the advertising rules. Mr. Gibbons referenced a Florida rule that survived Constitutional muster in *Fla. Bar v. Went for it, Inc.* The Florida case put a moratorium on personal injury cases alone. The Committee's recommendation was to reject the current version of the Rule and instead craft a focused rule similar to Florida's which limits solicitations within 30 days of the injury. The subcommittee recommended keeping 7.1(b).

Ms. McAllister suggested that recommendation would not alone address the concerns of the Supreme Court and Legislature in that not only written solicitations must be addressed but personal solicitations and telephone calls as well.

A question arose whether this rule would apply to probate attorneys and/or criminal defense attorneys as they can solicit clients in distress as well.

The Chair will ask the subcommittee to re-draft the Rule limiting the rule in scope and timing. Further the Chair appointed Judge Edwards and Jurhee Rice to the subcommittee to help in the next steps.

3. Referral Fees/Fee Sharing (McAllister)

Ms. McAllister presented an update of the subcommittee's attempt to further refine the rules. Significant discussion regarding the effect of the sandbox entities/professionals on a proposed rule was had.

Rule 1.0 was discussed. The definition of "legal fees" in proposed section (j) was discussed. It was reported that the public often calls the OPC to ask for a definition of legal fees. The Committee discussed the proposed definition and Ms. McAllister suggested she shorten the proposed definition and return the same to the Committee for its consideration.

After significant discussion the Chair asked the Committee to continue their good work and added Mr. Talbot and Ms. Nelson to the subcommittee for next steps.

Chair Cantarero referred to Rule 5.8 should start with a general rule about fee sharing. The Chair and Mr. Sackett advised not to cite to statutes in the rules. It was discussed that it is intended in essence as a practice pointer to alert attorneys

to serious criminal penalties associated with violations of the rule. It was suggested that rather than citing a particular code provision (which can be changed at each legislative session) rather state that “attorneys should be familiar with state laws governing referral fees” or words to that effect.

June 6 is the next meeting of the Committee.

The meeting adjourned at 5:15 pm.