



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

Meeting Minutes

August 1, 2023

Utah Law and Justice Center & Zoom

16:00 Mountain Time

Cory Talbot, Chair

Attendees:

Cory Talbot, Chair
Adam Bondy
Hon. James Gardner
Robert Gibbons
Ashley Gregson
Christine Greenwood
Mark Hales
Alyson McAllister
Julie Nelson
Hon. Trent Nelson
Hon. Amy Oliver
Ian Quiel
Jurhee Rice
Gary Sackett
Dane Thorley
Mark Nickel

Staff:

Beth Kennedy

Excused:

Hon. Mike Edwards; Phillip Lowry;
Hon. M. Alex Natt, Recording Secretary;
Austin Riter; Billy Walker, Ex Officio

1. Welcome of new committee members and approval of the June 2023 meeting minutes (Chair Talbot)

Chair Talbot recognized the existence of a quorum, called the meeting to order at 16:05.

Chair Talbot asked the committee if everyone had an opportunity to review the minutes from the June 6 meeting.

Judge Oliver moved to approve the minutes; Mark Hales seconded. The motion passed by acclamation.

Chair Talbot welcomed two new members to the committee: Ashley Gregson and Mark Nickel. Each member of the Committee introduced themselves.

2. Rules 1.0, 5.4, and 5.8 (Ms. McAllister)

The Chair asked Ms. McAllister to update the Committee on her subcommittee's work proposing revisions the rules to define and address fee sharing and referral fees. Ms. McAllister addressed the purpose behind each of the proposed changes.

Ms. McAllister explained that the revisions to Rule 1.0 add a definition of "legal fees" to clarify that legal fees are fees that a lawyer is paid for legal services. The revisions also add a definition of "fee sharing" in an effort to distinguish that concept from "referral fees." The proposed definition of "fee sharing" refers to the division of legal fees, i.e., fees that have been earned.

Mr. Sackett noted additional inconsistencies in the definitions in Rule 1.0. Ms. Kennedy recommended adding the issue to the agenda for the September meeting; Chair Talbot agreed.

As to Rule 5.4, Ms. McAllister explained that the proposed revisions add "fee sharing" to the title to make it easier for practitioners to find the governing rule. The proposed revisions to the rule allow lawyers to share legal fees as long as each lawyer is providing legal services in the matter, and the total fee is reasonable.

The Committee discussed whether the rule should instead require lawyers to have a notice of appearance in the case to be able to share fees in the matter. The Committee discussed the various ways that lawyers may work on a case without entering an appearance, such as providing legal advice to the attorney of record, or conducting a moot oral argument. The Committee agreed that fee sharing should not be limited to lawyers who enter an appearance.

Ms. McAllister then discussed the proposed changes to Rule 5.8. The draft changes the use of the word "attorney" to "lawyer" to be consistent with the usage in other places in the Rules. Ms. McAllister noted that, although the Committee had previously discussed proposing a new rule concerning fee

sharing, the subcommittee believed that the concepts should be kept distinct in Rules 5.4 and 5.8.

The Committee discussed the proposed changes and their interaction with each other. Ms. McAllister noted that, under the proposed changes, “referral fees” addressed situations where the lawyer who initially worked on a case referred it to another lawyer. In those circumstances, the fees paid to the original lawyer are referral fees.

Judge Oliver suggested that “referral fees” might instead refer to a payment that a lawyer makes to someone who refers a case to them. Chair Talbot, Ms. Kennedy, Mr. Nickel, and Ms. Greenwood noted that this definition was more consistent with their understandings.

The Committee then discussed whether “referral fees” should instead refer to this type of payment to a person who has done no work on the case. Ms. McAllister answered that this definition would not address the concerns of the Supreme Court.

The Committee continued to discuss the two competing definitions but did not come to a resolution. Chair Talbot recommended that Ms. McAllister’s subcommittee continue to work on the issue and that the Committee would revisit it at the next meeting in September.

3. Subcommittee assignment on ABA’s proposed changes to Model Rule 1.16

Chair Talbot then turned the Committee’s attention to the American Bar Association’s proposed changes to Model Rule 1.16 (Tab 3 of the materials). The proposed changes seek to prevent lawyers from assisting clients in money laundering and financing terrorism.

Chair Talbot suggested that a subcommittee form to review the proposed changes and determine whether Utah’s Rule 1.16 should be amended. The Committee agreed.

The subcommittee for this issue will be Ashley Gregson (chair), Judge Oliver, Mark Nickel, and Jurhee Rice.

4. Subcommittee assignment on Illinois’ Rule 1.15

Chair Talbot next addressed the version of Rule 1.15 in place in Illinois (tab 4 of the materials). The Illinois version expressly forbids lawyers from using any client funds. It states that “A lawyer must not, even temporarily, use funds or property of clients or third persons for the lawyer’s own purposes without authorization.”

In an email to Chair Talbot, Ms. Sylvester noted that many disciplinary actions against lawyers arise out of Rule 1.15 violations. Chair Talbot proposed that the Committee evaluate whether to adopt similar changes. The Committee agreed.

The subcommittee for this issue will be Cory Talbot (chair), Alyson McAllister, Christine Greenwood, and Judge Nelson.

September 5, 2023 is the next meeting of the Committee.

The meeting adjourned at 5:54 pm.