



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

### Meeting Minutes

September 5, 2023

Utah Law and Justice Center & Zoom

4:00 pm Mountain Time

*Cory Talbot, Chair*

#### Attendees:

Cory Talbot, Chair  
Jurhee Rice  
Ian Quiel  
Eric Weeks  
Alyson McAllister  
Robert Gibbons  
Mark Hales  
Hon. Trent Nelson  
Hon. Amy Oliver  
Adam Bondy  
Christine Greenwood  
Ashley Gregson  
Mark Nickel  
Sharadee Fleming (ex officio)  
Hon. James Gardner  
Hon. M. Alex Natt, Recording  
Secretary

#### Staff:

Beth Kennedy

#### Guests:

Nick Stiles

Excused: Julie J. Nelson, Gary Sackett

#### **1. Welcome, Approval of the August 8, 2023 meeting minutes (Chair Talbot)**

Chair Talbot recognized the existence of a quorum and called the meeting to order at 4:03. The Chair asked for a Motion to approve the August 8 meeting minutes. It is recognized that Joni Jones and Phillip Lowry have completed their terms on the Committee and should be removed from the list of excused

committee members. Judge Oliver moved for approval with that change. Ms. Rice seconded. The Motion passed unanimously.

## **2. Rule 1.0, 1.5, 5.4(b) 5.8 Referral Fees and Fee Sharing (Ms. McAllister)**

The Chair asked Ms. McAllister to update the Committee on the work of her subcommittee. Ms. McAllister walked through proposed amendments regarding the differing definitions of fee types and how that effects the concept of a fee share. The definition of referral fees in Rule 1.0 is clarified to ensure that a lawyer may continue to represent a client in different matters without running afoul of the prohibitions in the Rule. The fee sharing rule only applies to one particular representation of that client when the legal professional has withdrawn from actively representing the client in that matter only.

5.8 was discussed and definitions therein were harmonized with those that appear in Rule 1.0. The Committee debated the difference between when fees are “earned” vs. when fees are “payable,” or “paid.”

Judges Oliver and Gardner expresses their thanks and the thanks of the Committee for the subcommittee’s hard work on this project.

The Chair asked for a motion to approve the changes to 1.0, 1.5, 5.4, 5.8 as discussed and agreed upon at this meeting and send the proposal to the Supreme Court for its consideration. Judge Oliver made the Motion. Mark Hales seconded the motion. The motion passed unanimously, and Chair Talbot thanked Ms. McAllister and the subcommittee for their efforts.

## **3. Rule 1.16 (Ms. Gregson)**

Ms. Gregson updated the committee on a proposed ABA which would impose a due diligence responsibility on a lawyer taking on a representation to investigate whether the representation could involve possible money-laundering and terrorism matters. The Subcommittee recommended no action at the moment and the Committee agreed as the proposal is quite new. The subcommittee recommends that the Bar consider presenting or promoting a CLE on this topic. It was recognized that CLE resources on this topic already exist.

## **4. Rule 1.15 (Mr. Talbot)**

Chair Talbot updated the Committee about his subcommittee’s analysis of an Illinois rule which expressly forbids lawyers from using client funds held in their trust accounts in particular ways. The Subcommittee added clarifying language to 1.15 regarding how and when an attorney may or may not use client property. The Committee suggested that the agreement to permit a lawyer to use client property must be in written form.

Chair Talbot asked Ms. Fleming whether the OPC would have any concerns on the Committee’s proposed rule amendments and answered that it did not. Mr. Quiel made a motion to approve the text of the proposed rule and send it to the

Supreme Court for its consideration. Mr. Hales seconded the Motion. The Motion passed unanimously.

The Chair discussed projects in the pipeline as well as a new reported decision on Rule 8.4. That issue will be discussed next month.

The next meeting of the Committee is October 3, 2023.

The meeting adjourned at 5:45 pm.