

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

Agenda

January 2, 2024

4:00 to 6:00 p.m.

Utah Law and Justice Center with [Zoom](#) available

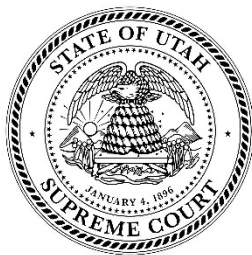
Welcome; approval of minutes.	Tab 1	Cory Talbot (chair)
Discussion: Update Judicial Council's Committee on Fairness & Equity; Next steps for Rules 8.4 and 14-301 (historical memo attached to August materials)	--	Beth Kennedy (staff)
Discussion: Report from Supreme Court conference discussion of Rule 7.1 with ACLU representative; discuss possible amendments referencing "pecuniary gain" - For reference: ABA Model Rule 7.3	Tab 2	Cory Talbot (chair)
Discussion: Report from Supreme Court conference discussion on referral fees rules	--	Cory Talbot (chair)

Meetings are held at the Utah Law and Justice Center, usually on the first Tuesday of the month from 4 to 6 p.m.

2024 Meeting Schedule: Jan 2 • Feb 6 • Mar 5 • April 2 • May 7 • June 4 • Aug 6 • Sep 3 • Oct 1 • Nov 5 • Dec 3

<http://www.utcourts.gov/committees/RulesPC/>

Tab 1



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

[Draft] Meeting Minutes

November 7, 2023, 2023

Utah Law and Justice Center & Zoom

4:00 pm Mountain Time

Cory Talbot, Chair

Attendees:

Ashley Gregson
Jurhee Rice
Adam Bondy
Ian Quiel
Alyson McAllister
Robert Gibbons
Hon. Amy Oliver
Hon. Craig Hall
Hon. James Gardner
Julie J. Nelson
Gary Sackett (emeritus)
Hon. Trent Nelson (emeritus)
Christine Greenwood (ex officio)
Billy Walker (ex officio)
Hon. M. Alex Natt, Recording
Secretary

Staff:

Beth Kennedy

Guests:

Excused: Chair Corey Talbot, Mark
Nickel, Jacqueline Carlton, Austin
Riter, Prof. Dane Thorley, Mark Hales.

1. Welcome, Approval of the September 5, 2023 meeting minutes (Beth Kennedy)

Chair Talbot was excused and Ms. Kennedy conducted the meeting. She recognized the existence of a quorum and called the meeting to order at 4:05. Ms. Kennedy asked for a Motion to approve the September 5, 2023 meeting

minutes. Mr. Gibbons moved for approval. Ms. McAllister seconded. The Motion passed unanimously.

2. Requested Input on Virtual Hearings

The Committee discussed whether it had any jurisdiction to provide the Supreme Court with input on whether and how hearings should be held virtually. The perspective of the Committee was that the Rules of Professional Conduct govern all attorney conduct regardless of the setting but that the Committee was not prepared to give additional input at this time. Mr. Bondy made a motion to that effect. Judge Oliver seconded the motion. The Committee voted unanimously.

3. Judicial Council's Committee on Fairness and Equity and Rule 8.4

The Committee discussed the request of the Fairness and Equity Committee that the RPC Committee review 8.4 again. The Committee recounted the history of its review of 8.4 and recalled that the Supreme Court had wanted input from OFA on this Committee's proposed revisions to 8.4 and that is where the matter stands at present. The Committee noted that it believed that the Court's charge to OFA was to review the proposed rule and give feedback to the Court at which point the Court could take additional steps. The Committee suggested that OFA might consult the Supreme Court regarding next steps.

The next meeting of the Committee is December 5, 2023.

The meeting adjourned at 4:19 pm.

Tab 2

1 **Rule 7.1. Communications Concerning a Lawyer's Services.**

2 (a) A lawyer shall not make a false or misleading communication about the lawyer or the
3 lawyer's services. A communication is false or misleading if it:

4 (1) contains a material misrepresentation of fact or law, or omits a fact necessary to
5 make the statement considered as a whole not materially misleading;

6 (2) is likely to create an unjustified or unreasonable expectation about results the
7 lawyer can achieve or has achieved; or

8 (3) contains a testimonial or endorsement that violates any portion of this Rule.

9 (b) A lawyer shall not interact with a prospective client in a manner that involves
10 coercion, duress, or harassment.

11 (c) A lawyer shall not directly communicate with a prospective client for the purpose of
12 obtaining professional employment if the communication concerns a disaster or an action
13 for personal injury or wrongful death, unless:

14 (1) the disaster, injury, or death occurred more than 30 days prior to the
15 communication;

16 (2) the prospective client is a person who has a familial, close personal, or prior
17 professional relationship with the lawyer or law firm; or

18 (3) the communication is initiated by the prospective client or at the request of a third
19 party who has a familial or close personal relationship with the prospective client.

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21 **Comments**

22 [1] This Rule governs all communications about a lawyer's services. Whatever means are
23 used to make known a lawyer's services, statements about them must be truthful.

24 [2] Truthful statements that are misleading are also prohibited by this Rule. A truthful
25 statement is misleading if it omits a fact necessary to make the lawyer's communication
26 considered as a whole not materially misleading. A truthful statement is also misleading
27 if there is a substantial likelihood that it will lead a reasonable person to formulate a
28 specific conclusion about the lawyer or the lawyer's services for which there is no
29 reasonable factual foundation.

30 [3] By way of example, this Rule permits the following, so long as they are not false or
31 misleading: public dissemination of information concerning a lawyer's name or firm
32 name, address, email address, website, and telephone number; the kinds of services the
33 lawyer will undertake; the basis on which the lawyer's fees are determined, including
34 prices for specific services and payment and credit arrangements; the use of actors or
35 dramatizations to portray the lawyer, law firm, client, or events; the courts or
36 jurisdictions where the lawyer is permitted to practice, and other information that might
37 invite the attention of those seeking legal assistance.

38 [4] An advertisement that truthfully reports a lawyer's achievements on behalf of clients
39 or former clients may be misleading if presented so as to lead a reasonable person to form
40 an unjustified expectation that the same results could be obtained for other clients in
41 similar matters without reference to the specific factual and legal circumstances of each
42 client's case. Similarly, an unsubstantiated comparison of the lawyer's services or fees
43 with the services or fees of other lawyers may be misleading if presented with such
44 specificity as would lead a reasonable person to conclude that the comparison can be
45 substantiated. The inclusion of an appropriate disclaimer or qualifying language may
46 preclude a finding that a statement is likely to create unjustified expectations or otherwise
47 mislead the public.

48 [5] A lawyer can communicate practice areas and can state that he or she "specializes" in
49 a field based on experience, training, and education, subject to the "false or misleading"
50 standard set forth in this Rule. A lawyer shall not state or imply that the lawyer is certified
51 as a specialist in a particular field unless the lawyer has been certified as a specialist by
52 an objective entity and the name of the entity is clearly identified in the communication.

53 [6] In order to avoid coercion, duress, or harassment, a lawyer should proceed with
54 caution when initiating contact with someone in need of legal services, especially when
55 the contact is "live," whether that be in-person, face-to-face, live telephone and other real-
56 time visual or auditory person-to-person communications, where the person is subject to
57 a direct personal encounter without time for reflection.

58 [7] Firm names, letterhead and professional designations are communications concerning
59 a lawyer's services. A firm may be designated by the names of all or some of its current

60 members, by the names of deceased or retired members where there has been a
61 succession in the firm's identity or by a trade name if it is not false or misleading. A
62 lawyer or law firm also may be designated by a distinctive website address, social media
63 username or comparable professional designation that is not misleading. A law firm
64 name or designation is misleading if it implies a connection with a government agency,
65 with a deceased lawyer who was not a former member of the firm, with a lawyer not
66 associated with the firm or a predecessor firm, with a nonlawyer or with a public or
67 charitable legal services organization. If a firm uses a trade name that includes a
68 geographical name such as "Springfield Legal Clinic," an express statement explaining
69 that it is not a public legal aid organization may be required to avoid a misleading
70 implication.

71 [8] A law firm with offices in more than one jurisdiction may use the same name or other
72 professional designation in each jurisdiction.

73 [9] Lawyers may not imply or hold themselves out as practicing together in one firm
74 when they are not a firm, as defined in Rule 1.0(d), because to do so would be false and
75 misleading.

76 [10] It is misleading to use the name of a lawyer holding public office in the name of a
77 law firm, or in communications on the law firm's behalf, during any substantial period
78 in which the lawyer is not practicing with the firm. A firm may continue to use in its firm
79 name the name of a lawyer who is serving in Utah's part-time legislature as long as that
80 lawyer is still associated with the firm.

81 [11] See Rules 5.3 (duties of lawyers and law firms with respect to the conduct of non-
82 lawyers); Rule 8.4(a) (duty to avoid violating the Rules through the acts of another); and
83 Rule 8.4(e) (prohibition against stating or implying an ability to influence improperly a
84 government agency or official or to achieve results by means that violate the Rules of
85 Professional Conduct or other law).

86 [12] This Rule differs from the ABA Model Rule.

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