

Agenda

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

October 30, 2017
5:00 to 7:00 p.m.

Administrative Office of the Courts
Scott M. Matheson Courthouse
450 South State Street
Salt Lake City
Judicial Council Room, Suite N31

Welcome, introductions, and approval of minutes.	Tab 1	Steve Johnson, Chair
Military attorney admissions Rules 14-804, 14-806	Addenda 1, 2	Phil Lowry (subcommittee chair), Paul Burke, and Tim Conde; Admissions: Joni Sekko, Steve Waterman, Dan Jensen
Rule 8.4(g) comments and discussion	Discussion	Simón Cantarero (subcommittee chair), Billy Walker, Vanessa Ramos, Joni Jones, and Trent Nelson
Next meeting		Steve Johnson

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

Tab 1

**MINUTES OF THE SUPREME COURT'S
ADVISORY COMMITTEE ON THE RULES OF PROFESSIONAL CONDUCT**

September 25, 2017

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The meeting commenced at 5:05 p.m.

Committee Members Attending:

Steven G. Johnson, Chair
John Bogart
Thomas B. Brunker
J. Simon Cantarero
Timothy Conde
Joni Jones
Phillip E. Lowry
Judge Darold J. McDade
Timothy Merrill
Judge Trent D. Nelson
Vanessa M. Ramos
Austin Riter
Cristie Roach
Gary G. Sackett
Billy Walker
Donald Winder
Katherine Venti (recording secretary)

Guests:

Paul Burke, Dan Jensen, John Bogart

Members Excused:

Padma Veeru-Collings

Staff:

Nancy Sylvester

Welcome

Steve Johnson welcomed new members to the Committee.

Rule 14-804 Special admission exception for military lawyers and Rule 14-806 Admission Rule for Military Spouses

Phil Lowry and Paul Burke led a discussion concerning the Utah Bar Admissions Rule for Military Lawyers and Military Spouse Lawyers and this Committee's work on the two separate rules.

The Military Spouse Rule's aim is to give lawyer spouses accompanying their military spouses to Utah the ability to practice in Utah during the spouse's service in this state. The rule does not require a bar exam for at least the following reasons: (1) it will disproportionality affect younger lawyers, who are not likely to become permanent members of the Utah State Bar; and (2) the burden of preparing and sitting for the Bar would be prohibitive. The basis of the rule is to balance reciprocal admission with the needs of military families.

Steve Johnson queried whether the Admissions Committee had signed off on the proposed Rules. Paul Burke indicated they have not yet done so. The committee discussed whether, for efficiency, this Committee should wait for the Admissions Committee rule and/or send this committee's rule to the Supreme Court for review. Phil Lowry reported that the proposed rule has been adopted by numerous other jurisdictions, which had already worked through some of the concerns the Bar had about adopting this kind of rule.

Paul Burke reported that the Admissions Committee had reviewed this Committee's proposed rule. Dan Jensen reported from the Admissions Committee that there is a military lawyer rule in place in Admissions, but to his knowledge, it has not been utilized. The Admissions Committee does not have major disagreements with the military lawyer rule.

Dan Jensen reported that the military spouse rule was possibly more problematic for the Admissions Committee. There is no such rule currently in place in the Admissions process. The Admissions Committee is concerned about the balance of helping military spouses with the concern about ensuring qualifications to practice.

Steve Johnson stated that the Supreme Court would like to see a joint submission from this Committee and the Admissions Committee. He also suggested a revision to the military spouse rule: the committee either needed to define "Military Spouse" or "military spouse" needed to be in lower case.

The following were two other suggested revisions:

- 1) Refer specifically to Article 5 of the Rules Governing the Utah State Bar;
- 2) Add a specific reference to the Bar's New Lawyer Training requirement to clarify that it is applicable to all new Utah lawyers, including military spouses.

The committee consented to the suggested revisions.

Paul Burke said he would make the revisions and present the rules to the Admissions Committee. He, Dan Jensen, and Phil Lowry will report back with any concerns.

Motion by Phil Lowry: Table the military rules and have the subcommittee work with the Admissions Committee on a joint proposal. A committee member seconded the motion. The motion passed without objection.

The committee briefly continued its discussion on issues such as numbering and regarding the scope of practice of JAG attorneys and military legal assist attorneys in the JAG Corps. The subcommittee will also consider language regarding the Court's ability to expand the scope of practice in Rule 14-804.

Paul Burke and Dan Jensen were excused from meeting.

Rule 8.4(g)

Steve Johnson then discussed his conversation with the Supreme Court regarding Rule 8.4(g). The Supreme Court would like clear guidance from the committee given the controversy during the comment period. Mr. Johnson discussed possible alternative steps this Committee could take. Simón Cantarero confirmed that the most current subcommittee recommendation was found in the May 15, 2017 draft of the rule. Proposed subsection (g) discussed "fitness to practiced law" and added "unlawful" to the language of the proposed rule.

Steve Johnson read the language in the May 15, 2017 version of 8.4(g): "It is professional misconduct for a lawyer to: (g) engage in conduct that the lawyer knows or reasonably should know is unlawful harassment or unlawful discrimination based on race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status, or socioeconomic status, and that reflects adversely on the lawyer's fitness to practice law. This paragraph does not limit the ability of the lawyer to accept representation or to decline or withdraw from a representation in accordance with Rule 1.16. This paragraph does not preclude advice pursuant to Rule 2.1, or limit a lawyer's full advocacy on behalf of a client."

Billy Walker said there were three possible options: (1) propose the Model Rule; (2) re-submit the proposed rule from the subcommittee; and (3) hold on to the rule and wait to see how the adoption of the Model Rule and similar rules in other states proceeds before recommending further action.

Discussion was had on the various options and the following motions were made:

Motion by Thomas Bruner: Resubmit May 15, 2017 proposed rule to Supreme Court. Discussion was had on the Motion. Second: Judge Darold McDade. Further discussion was had on the motion. Hand-count aye: 6. Hand count nay: majority. The motion did not pass.

Motion by Joni Jones: Subcommittee revisits the original proposed March 6, 2017 rule together with supporting memorandum, policy briefing, and comments and bring that material to the full Committee at the October 30, 2017 meeting. Discussion was had on the motion. Second: Thomas Bruner. The motion passed.

Approval of Minutes from May 15, 2017

Motion by Thomas Bruner: To approve. Second: Judge Nelson. The motion passed without objection.

Approval of Minutes from August 28, 2017

Motion by Joni Jones: To approve. Second: Thomas Bruner. The motion passed without objection.

Next Meeting

The next meeting is scheduled for Monday, October 30, 2017 at 5:00.

Adjournment

The meeting adjourned at 6:37 p.m.