

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

Law and Justice Center  
645 South 200 East  
Salt Lake City, UT  
June 16, 2008  
5:00 pm

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ATTENDEES

Robert Burton, Chair  
Matty Branch  
Nayer Honarvar  
Steve Johnson  
Judge Mark May  
Kent Roche  
Judge Stephen Roth  
Gary Sackett

Stuart Schultz  
John Soltis  
Paula Smith  
Leslie Van Frank  
Paul Veasy  
Billy Walker  
Earl Wunderli

EXCUSED

Gary Chrystler  
Judge Paul Maughan

1. WELCOME AND APPROVAL OF MINUTES

Mr. Burton welcomed the members of the committee. Ms. Branch advised the committee of changes to the minutes of the 5/19/08 meeting she had made in response to suggestions made by Mr. Sackett and Mr. Schultz. Mr. Wunderli moved for adoption of the minutes of the meeting held on May 19, 2008, as amended by Ms. Branch. Mr. Johnson seconded the motion, and it passed unanimously.

2. DISCUSSION - APPEAL OF DISCIPLINARY ORDERS OF THE ETHICS AND DISCIPLINE COMMITTEE

Mr. Sackett reviewed the changes he had made to proposed Rules 14-510 and 14-511 based upon comments that were made at the May 19<sup>th</sup> meeting. He stated that it was his opinion that the appeal of a final determination of admonition or public reprimand by the Ethics and Discipline Committee

should be conducted under the same trial procedures as those used for formal complaints filed by OPC at the request of the Ethics and Discipline Committee.

Mr. Burton asked the committee to focus on the threshold question of whether there should be a right of appeal from an informal disciplinary proceeding. Ms. Branch suggested to Mr. Burton that Mr. Walker be given an opportunity to explain the process currently in place for informal disciplinary proceedings before a screening panel of the Ethics and Discipline Committee. Mr. Burton asked Mr. Walker to provide this information.

Mr. Walker advised that in 1993, due to resources issues, the Supreme Court approved giving the chair of the Ethics and Discipline Committee the power to enter an order of public reprimand in connection with an informal complaint. Mr. Walker advised that the proceedings before the screening panel are recorded by both audio and video methods. He said a certified court transcriber is not present. He further advised that in most proceedings the complainant and respondent are present, and that the complainant testifies in response to questions posed by members of the screening panel. Mr. Walker said that there is no right of cross examination for the respondent and that the Supreme Court made clear in the Harding case that due process does not require the right of cross examination at the proceedings on informal complaints. He advised that the respondent is permitted to take the stand and rebut the complaint and to make a statement in his or her behalf.

Mr. Walker said that he thought it would be appropriate to “beef up” the administrative process used for informal complaint proceedings especially at the exception hearing stage and to provide some sort of limited appeal to the Supreme Court, but that he opposed granting a wide-open appeal right to the district court or the Supreme Court.

Ms. Smith stated that she thought a complainant should not be required to appear three times – at the initial screening panel hearing, at an exception hearing, and then at a judicial appeal proceeding. Mr. Walker said under the current rule it is not clear what the chair can do at an exception hearing, and that he believes the rule needs clarification.

Mr. Sackett said he thinks the respondent should have an option of taking an appeal outside of the Ethics and Discipline Committee, and that he or she should be able to pursue either an exception hearing before the chair of the Ethics and Discipline Committee or an appeal to the district court. Mr. Sackett said that if the record is good, he would be satisfied if the district court’s review was limited to the record rather than a de novo review.

Mr. Burton said that it appeared that everyone on the committee was in agreement that there ought to be a right of appeal somewhere from an informal disciplinary proceeding. He then asked the committee members whether the right of appeal should be to the Supreme Court or to the district court. Mr. Sackett suggested that the Supreme Court probably did not want to deal with appeals from informal disciplinary proceedings and would prefer they be routed to the Court of Appeals or the district court. Ms. Branch said that she questioned whether an appeal could be directed to the Court of Appeals in view of the Supreme Court's appellate jurisdiction over the lawyer discipline.

Judge May suggested that the committee ask the Supreme Court if it has a preference on whether the Supreme Court or the district court should hear initial appeals based on disciplinary orders issued by the Ethics and Discipline Committee. Ms. Van Frank moved that the procedures of the Ethics and Discipline Committee in an exception hearing be enhanced and that the rule specify the avenues for appeal and the grounds for an appeal. Mr. Walker seconded the motion. Judge Roth offered the following substitute motion:

1. there should be judicial review of an order of the Ethics and Discipline Committee through an appeal not by a petition for extraordinary relief;
2. the procedures of the Ethics and Discipline Committee should be enhanced in connection with creating a record and possibly on other matters;
3. judicial review should be on the record created by the Ethics and Discipline Committee;
4. the procedures for appeal should be detailed such as time frame, the grounds for appeal, and the filing process; and
5. the Supreme Court should be asked to provide guidance as to whether such review should take place in the Supreme Court or in the district court.

Mr. Schultz seconded the substitute motion. The substitute motion passed unanimously.

Ms. Smith agreed to prepare a draft letter to the Supreme Court describing the position of the committee and asking the Court for guidance as to the appeal route. She will forward the draft to Mr. Burton for his review, and he will finalize the letter and send it to Chief Justice Durham.

3. NEXT MEETING

After the Supreme Court responds to Mr. Burton's letter, Matty will email committee members to schedule the next committee meeting.

6/16/08

Present

Burton

Honora

Sadlett

Wunderli

walker

Solitis

May

Roche

VanFrank

Smith

Johnson

Excused

Chrystle

Maughan

Minutes as amended adopted

Wunderli - motion  
Star Seal

Unanimous

Discussion

Sadlett's redline version

~~that~~

Subcommittee recommended adding an appeal route for large who receives admonition or public reprimand

Sadlett - thinks process shouldn't be different that the formal complaint procedure  
see language in footnote 8

## Issues

① Should there be a right of appeal from an informal disciplinary proceeding

extract

st  
Billy said court was concerned about the  
didn't seem to be method to address  
certain issues at an administrative level  
if analyzed under ADA -

Dopple - workers comp goes directly to Court  
need to keep on table - another mechanism  
to satisfy Supreme Ct

record has audio & video - but not present  
certified Ct transcriber

Documents are submitted  
Billy Walker said parties appear together  
There is a record

complainant testifies

isn't right of cross examination

~~text~~

Harding - right of cross examination

Billy thinks admin process should be beefed up  
at some sort of appeal to Supreme Court

Pack Smith - there should be a transcript process

↳ should be just one heavy - either beef  
up administrative procedures or  
go to ~~to~~ directly to

Billy Walker says if goal is wide open  
attorneys will appeal admin. proceeding  
every time to S. Ct

if beef up procedures -

Thinks Supreme Court wants a solid process below

Everyone agrees there ought to be a right of appeal  
somewhere

Sackett - Thinks should be route to district court  
↳ complainant doesn't always appear - and  
there is always an opt for ~~attorneys to~~

Walker says complainant usually appears

S. Ct put administrative committee reported on different  
footy because of resources

1993

JPC possible case determinations

keep up -

have exception hearing - can consider  
issues not otherwise presented to screening panel

then speak to S. Ct - procedures  
were procedures followed  
are there constitutional issues

limit issues for appeal

Standards - from APA

Soltis - <sup>requested</sup> clarification

Sackett's committee - is doing factor confrontation  
& quality of review <sup>right to</sup>

~~Waller~~ ~~S.Ct.~~

asked Billy if there is  
generally right

Hardy decision

attorney discipline matters

case - exam not necessary

for purposes of the process

in quasi-admin. proceedings



Chair, members of panel examine parties  
~~but attorneys register~~

These attorneys are intimidating for complainant  
ask fully questions to complainant  
respondent

attorney/respondent can take stand at rebuttal  
make statement in ~~their~~ in his or her own behalf

Steve Johnson - fee dispute - both parties can  
ask each side questions - then  
panel asks questions

panels don't <sup>usually</sup> permit cross examination &  
reduce intimidation on complainant

on appeal to chair of ethics; Discipline Committee  
(exception hearing) permits complainant to be  
cross-examined  
has its own record

Both how good is record  
Billy said it's good - audio goes  
exception hearing - chair gets all docs &  
hears audio & sees video

Paulla

Smith — resource issue

↳ complainant shouldn't have to appear 3 times  
shouldn't be so much

not clear what chair can do at an exception  
hearing under rules — rule  
needs clarification

Sackett — thinks there should be an option  
to get outside, ethics + discipline

pick exception hearing or go to district ct

if record is good — Sackett ok if  
district ct reviews on the record,  
rather than de novo

Right to appeal to S. Ct or district court?

Nayer — concerned trying to protect complainant but  
not respondent

~~Smith~~

Judge May — ~~could~~ we ask S. Ct which  
direction wants committee to go?

Leslie's motion

second

best of legal rights in exception during

specifying what rights & appeal

Specifying what grounds appeal are

both subst. not - Billy Secant  
friendly amendment

agree their rights to judicial review

best of rule as

offer to exception has

narrow grounds for appeal - sub s.

but - Review on record

review on record rather than de novo

goes to District Ct or

Supreme Court

let bears ST Ct

principle - what

~~Nager~~

Paula - to write draft of letter  
judicial review through appeal  
best of po

review on record

refer case to sit at District Ct

Bob <sup>made</sup> ~~sent~~ letter to S. Ct

agreed that time should be  
pruned at admin level  
should be enhanced

as should be formalized  
agency of just review  
include the same

method of seeking review  
narrow

question we have at this pt is

review in 1st instance to

S. Ct or to

district Ct

anticipate review on the record

Stuart scandal

vote = unanimous —

~~Aug 19th~~ no wait to schedule  
meeting! Court reports  
to letter  
from Bob