

MINUTES

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

Administrative Office of the Court
230 South 500 East, Ste. 300
Salt Lake City, Utah 84102

January 13, 1997

PRESENT

Thomas Arnett
Kent Roche
Thomas Kay
Stephen Hutchinson
Gary Sackett
Carolyn McHugh
Robert Burton
Gary Chrystler

EXCUSED

Steve Trost
Earl Wunderli
Hon. Ronald Nehring
Steve Cochell

GUESTS

Kim Christy
Ron Gardner
Karen Owen

STAFF

Peggy Gentles

I. WELCOME AND APPROVAL OF MINUTES.

The Committee tabled approval of the minutes of the December meeting pending clarification by Peggy Gentles of the status of minutes of the Advisory Committee.

II. CONSIDERATION OF COMMENT FROM LEGAL CENTER FOR PEOPLE WITH DISABILITIES ON PROPOSED AMENDMENT TO RULE 1.14.

Commissioner Arnett introduced Ron Gardner and Karen Owen from the Legal Center for People with Disabilities. The Committee received a comment during the comment period from the Legal Center objecting to the addition of the comment to Rule 1.14.

Mr. Gardner thanked the Committee for allowing the Center to express its views. He noted that because a client is disabled does not mean that a lawyer should impose the lawyer's view of the client's best interest on that client. Ms. Owen began by pointing out a potential inconsistency between Paragraph (a) and Paragraph (b) of the rule. She noted that it is a difficult area to deal with and the rule should recognize those difficulties. However, the rule should not encourage lawyers to act as "de facto" guardians. Because a client is disabled does not mean that the client loses the autonomy granted to other clients. Even if a person makes irrational choices that person can still participate in the attorney/client relationship. Ms. Owen stated that she would like to see a comment

which gives guidance without encouraging lawyers to substitute their judgment for the clients'. Ms. Owen noted that the law presumes that every person is competent unless proven otherwise. An attorney does not have the ability or the facilities to make a competency decision. The appropriate decision maker in those circumstances is the court.

In response to a question from Gary Sackett, Ms. Owen responded that she would prefer to see a comment that was more similar to the disciplinary rules in the Model Code. Steve Hutchinson noted that this area is particularly problematic. Attorneys need guidance for determining when a client's ability to meaningfully participate in an attorney/client relationship is impaired. Carolyn McHugh noted that attorneys, especially those who do not deal with disabled clients often in the course of their practice, would feel bound to get a diagnosis. She noted that the rules may require an attorney to withdraw; however, this may be the worst scenario for the client. She expressed the desire for concrete guidelines for attorneys in these situations. Commissioner Arnett stated that he perceived a consensus of the Committee that it was not willing to go forward with the comment to Rule 1.14 at this time. He requested that Ms. Owen and Mr. Gardner prepare some proposed language for the next Committee meeting. Commissioner Arnett expressed the Committee's thanks to Ms. Owen and Mr. Gardner for their presentation.

III. OTHER BUSINESS.

Peggy Gentles pointed out that the Supreme Court had delayed implementation of the amendments to Rule 1.15 until April of 1997. Ms. Gentles reported that Steve Cochell is still working with the bankers on a uniform agreement. There being no further business the Committee adjourned at 6:35 p.m.