

APPROVED MINUTES

MINUTES

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

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

April 21, 1997

PRESENT

Steve Trost, Chair
Commr. Tom Arnett
Carolyn McHugh
Earl Wunderli
Gary Chrystler
Tom Kay
Carol Stewart

EXCUSED

Steve Hutchinson
Gary Sackett
Kent Roche
Judge Nehring
Robert Burton
Bill Hyde

STAFF

Peggy Gentles

I. WELCOME AND APPROVAL OF MINUTES

Steve Trost welcomed the Committee members to the meeting. The Committee approved the minutes of the February 18, 1997 meeting.

II. BEGIN CONSIDERATION OF ABA MODEL RULE 1.17, SALE OF A LAW PRACTICE

Commissioner Arnett stated that the Rules Subcommittee has not recently considered Rule 1.17. After the ABA promulgated Model Rule 1.17 in 1990, the Subcommittee considered the rule. During its work in 1993, however, the Subcommittee was informed that the ABA was reconsidering the rule. Therefore, the Subcommittee discontinued its evaluation. Commissioner Arnett distributed a copy of Ethics Advisory Opinion 106 addressing the issue "Can good will be ethically brought or sold by a lawyer?" While the opinion does not give a definitive answer, it does discuss the number of rules implicated by allowing the sale of a law practice.

Steve Trost stated that in his opinion the rule is a step forward but some problems need to be addressed. The other rules implicated will need to be carefully identified. Also, the issue of whether a purchaser can force the seller's clients to accept a higher fee schedule should be investigated. Tom Kay requested that the rules governing other professions be gathered.

Earl Wunderli expressed concern about the covenant not to compete that is implicit in the rule.

Carolyn McHugh noted that the requirement that the seller cease private practice is similar to restrictions on retiring partners in firms. Mr. Wunderli felt that the ability of the practitioner to come back into practice should not be overly constrained. Ms. McHugh pointed out that the purchaser will be able to use the seller's name which would be problematic if the seller were to reenter practice in the same area. Mr. Wunderli advocated for a time frame for the covenant not to compete. Commissioner Arnett noted that the courts have only allowed covenants not to compete to be enforced for "a reasonable time."

Steve Trost pointed to another issue in the rule of *in camera* review of the files of clients who are unable to consent to the sale. The Committee expressed support for the rule in concept and asked that the following items be addressed prior to the next meeting.

1. list of other rules impacted (Steve Trost);
2. copies of other states' rules and comments (Steve Trost);
3. copies of Utah rules governing other professions (Peggy Gentles);
4. case law on covenants not to compete (Carolyn McHugh);
5. any material on issues of fees charged by the purchasers and *in camera* (Peggy Gentles).

III. OATH

Peggy Gentles distributed and presented a memorandum from Judge Nehring on the attorney oath. After discussion, the Committee deferred the issue to the next meeting when Judge Nehring will be able to attend.

IV. OTHER BUSINESS

At Steve Trost's request, Peggy Gentles will write a letter to Steve Kaufman inquiring into the Bar's work on Rule 7.2 (Advertising). Peggy Gentles distributed a list of Committee members' terms. She advised members that if their terms expire on July 1, 1997, and they wish to continue to serve, they must apply for reappointment pursuant to the notice in the April Bar Journal.

V. ADJOURN

There being no further business the meeting adjourned at 6:10 p.m.