

# 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

September 15, 1997

#### **PRESENT**

John Beckstead  
Karma Dixon  
Robert Burton  
Gary Sackett  
Kent Roche  
Earl Wunderli  
Thomas Kay  
Commr. Tom Arnett  
Carol Stewart

#### **ABSENT**

Steve Trost  
Bill Hyde  
Gary Chrystler  
Hon. Ronald Nehring

#### **STAFF**

Peggy Gentles

### **I. WELCOME AND APPROVAL OF MINUTES**

In Steve Trost's absence, Commissioner Arnett called the meeting to order. Following a substantive amendment by Karma Dixon, and typographical changes, Earl Wunderli moved that the minutes of the August 18, 1997, meeting be approved. Karma Dixon seconded the motion. The motion passed unanimously.

### **II. AMENDING RULES TO PROVIDE FOR SUSPENSION OF LICENSE FOR FAILURE TO PAY CHILD SUPPORT**

Carol Stewart from the Office of Attorney Discipline referred the committee to the materials that were faxed out to the members prior to the meeting. Ms. Stewart stated that the Office of Attorney Discipline did not have the resources to re-litigate the issue of nonpayment of child support following a determination by a district court that a Bar member's license should be suspended. The rules as proposed do not contemplate any involvement by the Office of Attorney Discipline. Instead, any order by a district court suspending a license to practice law would be sent to the membership records department of the Utah State Bar which handles suspensions for failure to comply with payment of dues and CLE requirements. Robert Burton asked what would happen if the district court's order suspending the license was appealed following the action by the Bar to suspend the license. Ms. Stewart replied that the attorney would follow the usual rules for staying judgments during appeal.

John Beckstead inquired whether the rule should include the court's power to stay the suspension pending appeal. Ms. Stewart replied that she thought that the rule should avoid infringing on the district court process. Earl Wunderli inquired whether a Bar rule could confer jurisdiction on the district court. Mr. Wunderli stated since the Legislature cannot regulate the practice of law, the statute cannot confer the power to suspend the license. Ms. Stewart replied that Supreme Court has given its power to regulate the practice of law in part to the Bar and the district court.

Ms. Dixon inquired into the usual requirement that provisions be established for "purging" civil contempt. Carol Stewart stated that the district court presumably would order that if the attorney became current on the child support the court would issue an order lifting the suspension. Gary Sackett asked what protections there were for lawyers from judges who were not quick to respond to a request for reinstatement. Commissioner Arnett stated that he did not think that would be a problem; judges want people to pay their child support and would realize that by suspending a license a person's income potential would be limited. Mr. Sackett responded that there should be some safeguards for the person's livelihood. The rule should say how a person could have the suspension lifted. Robert Burton pointed out that the ultimate victim of nonpayment of support is the child. The judge has every reason to reinstate a person. Mr. Burton stated that a paragraph (d) should be added to address reinstatement.

Ms. Dixon asked that the rule be clarified to indicate that it applies only when the lawyer is the nonpaying party. Mr. Wunderli suggested to address Ms. Dixon's concerns that rule include the language "order against a lawyer." Ms. Dixon suggested language "proceeding to which attorney is a party." Mr. Wunderli pointed out that if the rule was to track the statute, instead of paragraph (d) as suggested by Mr. Burton, the district court order suspending should impose conditions of reinstatement. Mr. Burton suggested an additional change to paragraph (a) to make the structure parallel. Mr. Beckstead stated that he still had a concern about the license suspension during an appeal of the district court order. Commissioner Arnett replied that when the bar discipline system was changed from screening panels to the district court, it was expressly contemplated that the district court proceeding would use the general civil rules, including provisions for stays of judgments. Carol Stewart said she would bring the rule back to the committee next month with the changes suggested by the committee.

### **III. ACCOUNTING STANDARDS**

Carol Stewart stated that since the NSF rule had been implemented in April of 1997, the Office of Attorney Discipline had received approximately sixty reports of bounced trust checks. Some number of those were the result of bookkeeping errors. However, she was willing to table the issue of the accounting standards until further statistics about the types of problems causing the NSF reports could be compiled. Commissioner Arnett agreed that he would like to know the extent of the problem before discussing further and asked if there was any objection to tabling the accounting standards for the time being. Gary Sackett inquired into whether the proposal was to make the accounting standards a rule of professional conduct. Commissioner Arnett stated that California has adopted a rule including such a standards. John Beckstead stated he would like to see a compelling

reason before imposing the not-insignificant burden proposed in the standards on members of the bar. Ms. Stewart stated there may be other ways to implement the standards. For instance, the Office of Attorney Discipline has recently had a half day CLE session on client trust accounts.

#### **IV. OTHER BUSINESS**

Commissioner Arnett referred the committee to the letter from Bruce Baird that had been faxed out to the committee prior to the meeting. Mr. Baird has petitioned for adoption of a rule requiring malpractice insurance or in the alternative requiring disclosure of uninsured status. Commissioner Arnett noted that Tom Kay had written a law review article a number of years ago about requiring malpractice coverage. He felt that the committee would benefit from having the entire article and asked staff to provide copies to the committee for the next meeting. Carol Stewart asked if such a requirement had ever been discussed by the Utah State Bar before. Mr. Kay noted that when he wrote the article no one had talked about it and he does not recall any discussion since he had been a member of the bar. Karma Dixon would like to know why the petition requested insurance at \$250,000. Mr. Kay suggested that it was probably about the lowest coverage that an attorney could buy. Carol Stewart asked if the ABA had ever done a survey on this matter. Mr. Kay responded that as far as he knew Oregon was the only state which had imposed any kind of similar requirement. That state requires every person to pay into a pool that is self-insured. Robert Burton stated that he did not think it was the committee's province to discuss large policy issues like those presented in Mr. Baird's petition. Carol Stewart stated that Mr. Baird's petition was on the Bar Commission's agenda at its next meeting.

Commissioner Arnett stated that Steve Trost had written the small firm practice group as requested by the committee at the August meeting. The chair of that committee's response was equivocal. In addition, Mr. Trost has received material about other jurisdictions in inacting similar rules. Commissioner Arnett stated that he would like the rule's subcommittee to consider this further material to see if it would change the recommendation of the committee. In addition, Commissioner Arnett will call the small firm practice group chair to see if the group will be having any kind of formal vote on support for proposed Rule 1.17.

#### **V. ADJOURN**

There being no further business, the meeting adjourned at 6:30 p.m.