

**MINUTES**

**Supreme Courts Advisory Committee  
on Rules of Professional Conduct**

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

October 20, 1997

**PRESENT**

Commissioner Arnett  
William Hyde  
Thomas Kay  
Earl Wunderli  
Gary Chrystler  
Kent Roche  
Robert Burton  
Judge Nehring  
Steve Trost  
Carol Stewart  
Karma Dixon  
John Beckstead

**EXCUSED**

Gary Chrystler  
Gary Sackett

**STAFF**

Peggy Gentles

**I. WELCOME AND APPROVAL OF MINUTES**

Steve Trost welcomed the Committee members to the meeting. Robert Burton moved that the minutes of the September 15, 1997 meeting be approved. Tom Kay seconded. The motion passed unanimously.

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

Carol Stewart of the Office of Attorney Discipline referred the Committee to the faxed materials from her office on proposed Rule 31 of the Rules of Lawyer Discipline and Disability. She pointed out that the rule as proposed contained a paragraph that defined being held in contempt under Utah Code Ann. § 78-32-17 as "professional misconduct." She pointed out that possibly the Committee should consider removing that paragraph because it was not necessary. The concern was that by defining the contempt as professional misconduct the full disciplinary process of the Bar would be implicated. The intent of the process is to allow for the quick suspension and reinstatement of licenses similar to failure to pay Bar dues and failure to comply with CLE requirements. Earl Wunderli moved to delete

Paragraph (a). Robert Burton seconded the motion. The motion passed unanimously. The Committee discussed the provisions of proposed Paragraph (b) which states that a district court "may" suspend a license and "shall" impose conditions of the reinstatement. Karma Dixon pointed out that civil contempt requires conditions for purging be contained in the order. The Committee then discussed the fact that the rule should clearly only apply to situations in which the lawyer is the party who is not paying the child support. The Committee added the word "lawyer's" before "noncompliance" to clarify. Earl Wunderli moved that the Committee recommend to the Supreme Court that it adopt the rule as amended on an emergency basis and publish the rule for comment. Commissioner Arnett seconded the motion. The motion passed unanimously.

### **III. ABA MODEL RULE 1.17**

Commissioner Arnett reported that the rules subcommittee had met on October 8, 1997. The committee's consensus was that a lawyer should be able to sell his or her practice and, in the subcommittee's opinion, nothing currently prevents that sale. The rules subcommittee suggested that the full Committee refer the issue to the Bar's Ethics Advisory Committee and request an opinion. The subcommittee drafted a proposed letter from Steve Trost to the Ethics Advisory Committee asking whether the practice must be sold as an entity and the appropriateness of restricting a person's continuation in practice after selling. The letter was signed by Mr. Trost.

### **IV. STATUS OF THE ADVERTISING RULE**

Commissioner Arnett stated that the rules subcommittee was interested in determining the current status of any proposed changes to the advertising rule. Carol Stewart reported that Helen Christian, the new chair of the Bar's Advertising Committee, had inquired into the status of the rule. Peggy Gentles reported that she had reviewed the minutes of previous meetings and that they indicated that there were discussions last fall with the Bar's then-chair, who stated that the Bar Committee had a proposed rule that was going to go to the Bar Commission. However, no such rule has appeared before the Commission to the Committee's knowledge. Commissioner Arnett inquired whether the Office of Attorney Discipline was receiving complaints about advertising. Carol Stewart responded that there had been some complaints about direct mail solicitation. Steve Trost said he would call Helen Christian and thanked Carol Stewart for her coordination.

### **V. REQUEST FOR RULE, RE. MALPRACTICE INSURANCE**

The Committee referred to the request from Bruce Baird that it began to consider last meeting. Mr. Baird has requested that a rule be adopted that would require either an attorney to carry malpractice insurance or disclose that the attorney does not have malpractice insurance to each client. The Committee discussed Mr. Baird's petition and referred to a law review article by Tom Kay discussing the issue. Carol Stewart reported that California has a rule which requires that an attorney either carry malpractice insurance or disclose that the attorney does not have it. John Beckstead asked about compliance data from other states. Steve Trost suggested that the ABA may have some material. Mr. Beckstead stated that he thought that this issue was a policy decision that should be

initiated elsewhere. The Committee thought that the matter had been on the Bar Commission's agenda. However, the Committee had not received any information about the Bar Commission meeting. The Committee asked Peggy Gentles to call Charlotte Miller at the Bar and ask if the Bar had any recommendations on this issue. Steve Trost asked that Tom Kay, Karma Dixon, and Carol Stewart gather information and report back to the Committee by the end of the year.

## **VI. OTHER BUSINESS**

There being no other business the Committee adjourned. The next meeting is scheduled for November 17, 1997.