

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 20, 1998 - 5:15 p.m.

PRESENT

Commissioner Tom Arnett
John Beckstead
Robert Burton
Gary Chrystler
Karma Dixon
Kent Roche
Gary Sackett
Steven Trost
Billy Walker
Earl Wunderli

EXCUSED

Tom Kay
Judge Ronald Nehring
William Hyde

STAFF

Peggy Gentles

1. WELCOME AND APPROVAL OF MINUTES

Steve Trost welcomed the Committee members to the meeting. The Committee considered the minutes to the January 26, 1998, meeting. With changes, Robert Burton moved that the minutes be approved. Karma Dixon seconded the motion. The motion passed unanimously. Earl Wunderli moved that the minutes of the February 23, 1998, meeting, with changes, be approved. Gary Sackett seconded the motion. The motion passed unanimously.

11. REVIEW OF RULES RE. SALE OF LAW PRACTICE FOR PUBLICATION FOR COMMENT

Peggy Gentles indicated that the rules that the Committee considered at its February meeting had inadvertently been left out of the mailing. She would circulate the rules by fax to the Committee members the next day for final consideration before publication for comment.

III. BRUCE BAIRD REQUEST

Kent Roche reported to the Committee that he had been asked to serve on an ad hoc task force appointed by the Bar Commission to consider Bruce Baird's petition for either mandatory malpractice

insurance or mandatory disclosure of whether an attorney has malpractice insurance. Also serving with Mr. Roche on that ad hoc task force are Mr. Baird, Scott Daniels and Debra Moore. Mr. Roche reported that the Committee had had one meeting. Mr. Roche reported to the ad hoc task force that the Committee had deferred the issue in Mr. Baird's petition to the Bar Commission and explained the Committee's rationale. It was Mr. Roche's impression after the first meeting that the hoc task force was leaning towards recommending that lawyers be asked to voluntarily disclose whether they have malpractice coverage. In addition, the task force discussed requiring coverage for lawyers participating in the lawyer referral service. Mr. Roche stated that the task force was leaning toward rejecting Mr. Baird's request that advertising materials contain disclosure. The task force also was considering proposing amendments to the fee disclosure rule to require disclosure of whether an attorney has malpractice insurance. Gary Sackett asked whether Mr. Roche was on the ad hoc task force as a representative of the Rules Professional Conduct Committee or as an individual member of the Bar. Steve Trost responded that Mr. Roche would communicate with the Committee what the task force was doing.

The Committee discussed its earlier decision to defer to the Bar Commission the policy question underlying Mr. Baird's petition. Given that earlier deferral, the Committee discussed what its proper role in consideration of any suggestions coming from the ad hoc task force should be. In addition, the Committee discussed whether such rules would belong in the Rules of Professional Conduct or in the Rules of Integration and Management of the Bar. Steve Trost pointed out that if the rules are in the Rules of Integration and Management and administrative process is available to enforce reporting requirements that is much less cumbersome than the formal disciplinary process. Karma Dixon stated that she was concerned that if a lawyer failed to disclose that the lawyer did not have malpractice insurance and then committed malpractice, that should be actionable.

Gary Sackett made a motion that the Committee take a position that the ad hoc task force's recommendations would be better not placed in the Rules of Professional Conduct. However, if the ad hoc task force did wish to recommend inclusion in the Rules of Professional Conduct that Mr. Roche communicate to the task force that the Committee would be happy to formulate a rule to be included in the Rules of Professional Conduct. Robert Burton seconded the motion. After discussion, the motion passed unanimously.

IV. LIAISON TO ABA ETHICS 2000 COMMITTEE

Steve Trost reported that former Chief Justice Michael Zimmerman had asked if the Committee would like to have a liaison to the ABA's Ethics 2000 Committee. The liaison would be involved in reviewing minutes of the meeting and passing on any comments to the Committee. Following discussion, Karma Dixon agreed that she would act as the liaison to the Ethics 2000 Committee.

V. RULES OF INTEGRATION AND MANAGEMENT OF THE BAR

At the Committee's request, the Rules of Integration and Management of the Bar had been distributed to Committee members. Gary Sackett said that he was surprised that the Rules of Integration and

Management prescribed attorney conduct, especially Section 21. These rules are not published anywhere and he thought those provisions that purported to control attorney's conduct should be extracted to the Rules of Professional Conduct. Steve Trost suggested that a letter be written to the Bar Commission. Mr. Trost added that the Rules of Integration and Management of the Bar were promulgated as an order of the Supreme Court. However, they are not regularly published in any of the court rules volumes. Karma Dixon moved that the chair draft a letter to the Bar Commission and express that the Committee has a concern that the rules are not published and that they purport to control attorney conduct and therefore would be more appropriately placed in the Rules of Professional Conduct. Gary Sackett made a motion to amend Karma Dixon's motion to state that the Committee recommends that a group undertake an analysis of the Rules to Integration and Management to remove references to governing conduct from those rules and, if necessary, put corresponding requirements in the Rules of Professional Conduct. Gary Chrystler seconded the amended motion. Robert Burton amended the amendment to ask that the letter also suggest that the rules be disseminated to all Bar members. Commissioner Arnett seconded the second amendment. Robert Burton's amendment passed unanimously. Gary Sackett's amendment passed unanimously. Karma Dixon's motion, as amended, passed unanimously.

RULE VI. RULE 6.1

Peggy Gentles referred the Committee to the order signed by Chief Justice Howe asked that the Bar Commission publish proposed Rule 6.1 dealing with pro bono reporting for comment. The Committee discussed the dates for making comment which were not clear at the time of the meeting. John Beckstead made a motion that Peggy Gentles find the dates for comment and report back to the Committee at its next meeting. Earl Wunderli seconded. The motion passed unanimously.

VII. OTHER BUSINESS

Steve Trost informed the Committee that he had resigned from the Committee due to pressures of other business. Gary Sackett asked that Peggy Gentles contact the new chair and ensure that any business left unfinished by Mr. Trost's resignation be picked up by the new chair. For instance, Mr. Sackett referred to the letter to the Chief Justice dealing with proposed Rule 4.2 and the letter to the Bar Commission that this Committee requested to be drafted at this meeting. The Committee thanked Mr. Trost for his service. The next meeting of the Committee is scheduled for May 18, 1998 at 5:15 p.m. There being no further business, the Committee adjourned.