

**MINUTES****Supreme Court's Advisory Committee  
on the Rules of Professional Conduct**

Administrative Office of the Courts  
450 South Main Street  
Salt Lake City, Utah 84114-0241

May 18, 1998 - 5:15 p.m.

**PRESENT**

Billy Walker  
Gary Chrystler  
Commissioner Tom Arnett  
Kent Roche  
Tom Kay  
Robert Burton

**ABSENT**

Karma Dixon  
John Beckstead  
William Hyde  
Judge Ronald Nehring  
Earl Wunderli  
Gary Sackett

**STAFF**

Peggy Gentles

**I. WELCOME AND APPROVAL OF MINUTES**

Commissioner Arnett indicated that he had been asked to serve as interim chair while the Supreme Court appoints a new Committee chair. With typographical corrections Robert Burton moved that the minutes of the April 20, 1998 be approved. Gary Chrystler seconded the motion. The motion passed unanimously.

**II. PROPOSED RULE 6.1**

Commissioner Arnett asked if the Committee wished to comment on proposed Rule 6.1 during the public comment process. Peggy Gentles reported that Bar Counsel had informed her that the comment period would extend until June 10, 1998 not June 1, 1998 as indicated on the mailing from the Bar. Kent Roche stated that he did not think the Committee should comment on the rule. Gary Chrystler agreed. He stated that the Committee should not comment because the rule did not originate in the Committee. Robert Burton agreed that the Committee should have had a chance to review the rule. Commissioner Arnett suggested rather than writing a letter to that effect that the new chair talk to the supreme court liaison on the Committee, Justice Stewart. Commissioner Arnett stated that he thought that the Bar would receive significant number of comments and that the Supreme Court would probably either have a hearing or refer the matter for further review to the Committee. Kent Roche stated that the proposed rule contained a significant policy issue with which the Committee has no special expertise. He suggested allowing the process as set-up to take its

course. Robert Burton stated that his concern was that the Committee has been asked to consider issues beyond its purview but a rule of professional conduct has not been sent to the Committee for its consideration. Commissioner Arnett stated that he sensed a consensus in the Committee that the Committee as a whole not take any action on Rule 6.1 and that the new chair sit down with either the new chief justice or the supreme court liaison and discuss the Committee's role generally. Commissioner Arnett had one further concern about Rule 6.1. He pointed out that it purports to govern judges who are subject to a different set of ethical standards in the Code of Judicial Conduct. He stated that no other rule of professional conduct governs judges. He asked that Peggy Gentles let the Judicial Council and the Administrative Office of the Courts know of this issue so that those organizations can comment if they wish.

### **III. RULE 4.2**

Commissioner Arnett reminded the Committee that when it was first considering Rule 4.2 the rule was on a "fast track." Since then, however, the Committee has learned that the conference of chief justices has asked that the rule go out for comment through June. Tom Kay suggested that this was another situation in which the new chair should approach the Supreme Court about to get further direction and clarification of the Committee's role. Peggy Gentles reported that Bill Hyde, who was unable to attend the meeting, had left a message for her that he had an interest in the issues surrounding Rule 4.2. However, she was unable to discuss them with him before he went out of town. Commissioner Arnett suggested that the issue be put on the next meeting's agenda so that Mr. Hyde would be able to attend. Gary Chrystler made a motion that Rule 4.2 be put on the next meetings agenda. Tom Kay seconded the motion. The motion passed unanimously.

### **IV. MEETING SCHEDULE**

Commissioner Arnett stated that the Committee usually take a hiatus in the summer. However, the Committee has recommended that some rules be published for comment that would need to have recommendations made to the supreme court before Labor Day. Therefore, the Committee decided to not meet in June but meet on its regularly scheduled date and time on July 20, 1998.

### **V. OTHER BUSINESS**

Commissioner Arnett referred the Committee to the letter to the Bar on the Rules of Integration and Management that he had signed. Commissioner Arnett stated that the letter had been drafted by Gary Sackett. He suggested that the new chair follow-up with the Bar Commission if the Committee has not received a response in a reasonable time. Commissioner Arnett also reported that Kent Roche, who had been serving on a special committee appointed by the Bar on the issue of malpractice insurance disclosure/requirement, had reported that the committee did not recommend requiring malpractice insurance. However, the committee had recommended that a survey of Bar members be completed to determine the extent of the problem. Mr. Roche pointed out that the committee had split on the issue of requiring disclosure of no malpractice insurance to potential clients. He stated that the recommendation had been made to the Bar Commission at its May 15, 1998 meeting.

Commissioner Arnett asked that the report of the special committee on malpractice insurance recommendation be sent with the next meetings material.

**VI. ADJOURN**

There being no further business, the Committee meeting adjourned.