

MINUTES

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

Administrative Office of the Courts  
450 South State Street  
Salt Lake City, Utah 84114

November 15, 1999 - 5:15 p.m.

**ATTENDEES**

Commissioner Tom Arnett  
Robert Burton  
Gary Chrystler  
Karma Dixon  
Royal Hansen  
Steven Johnson  
Judge Ronald Nehring  
Kent Roche  
Gary Sackett  
Paula Smith  
Billy Walker  
Earl Wunderli

**EXCUSED**

John Beckstead  
William Hyde

**STAFF**

Peggy Gentles  
Matty Branch

**I. WELCOME AND APPROVAL OF MINUTES**

Bob Burton welcomed the Committee members to the meeting. With two typographical corrections, Earl Wunderli moved that the minutes of the August 23, 1999, meeting be approved. Kent Roche seconded the motion. The motion passed unanimously.

**II. PRINCIPLES OF CIVILITY**

In response to a question from Bob Burton, Matty Branch informed the Committee that the Supreme Court had met with the Bar Commission concerning a number of issues, including the proposed adoption of principles of civility. Ms. Branch stated that the court's discussion centered on the perceived problem of a lack of civility rather than a specific proposal to adopt principles of civility. The attendees were concerned that adopting principles of civility, with nothing else, would not sufficiently address the problem. Ms. Branch informed the Committee that at this time the Court had not requested the Committee to do anything further. Judge Nehring moved that the issue of principles of civility be tabled until raised again with the Committee. Gary Sackett seconded the

motion. The motion passed unanimously.

### **III. RECOMMENDATIONS TO SUPREME COURT CONCERNING REMOVAL OF CODE COMPARISONS**

Peggy Gentles reminded the Committee that it had published for comment the proposed removal of the code comparisons from all the Rules of Professional Conduct. She informed the Committee that no comments were received on the Committee's proposal. Commissioner Arnett moved that the Committee recommend to the Supreme Court that all code comparisons be deleted from the Rules of Professional Conduct. Gary Chrystler seconded the motion. The motion passed unanimously.

### **IV. RECOMMENDED CHANGES BY "ETHICS 2000" COMMITTEE**

Peggy Gentles reminded the Committee that it had asked to see all the proposed changes that the "Ethics 2000" Committee was considering. She had provided those rules to the Committee. She also stated that she had recently spoken to the staff person to the Ethics 2000 Committee. Within the last week the committee had released further proposed changes to Rules 1.5, 1.8, proposed new 1.18, 4.4, 5.1, 5.2, and 5.3. She informed the Committee that these proposed rules dealt with fees issues, a new rule on prospective clients, responsibilities related to receiving misdirected facsimile communications, and the responsibilities of supervisory attorneys. Ms. Gentles stated that she has been told that the Ethics 2000 Committee expected to make recommendations to the ABA House of Delegates in a report released in October, 2000.

Robert Burton reminded the Committee that its consideration of these rules had started with a request focusing on e-mail. Gary Sackett stated that although the proposed changes to Rule 1.6 did address e-mail it also addressed many other issues. Mr. Sackett stated that it did not make sense to single-out the proposed change to Rule 1.6 without seeing the entire package of proposed amendments coming from the Ethics 2000 Committee. In his opinion, a request should be submitted to the Ethics Advisory Opinion Committee. Commissioner Arnett stated that it appeared that the proposals were about a year away from even going to the ABA House of Delegates. When the Greene Committee was convened, it had the full benefit of the recommendations from the Kutak Commission and the information that had been developed through that process. He suggested that the Committee wait and take advantage of the material that the ABA will generate in its consideration of the proposals. Karma Dixon moved that the issue of the proposed changes to Rule 1.6 be tabled until the full report of the Ethics 2000 Committee was available or until information was brought to the Committee indicating that the issue of e-mail specifically needed to be addressed in a more expedited fashion. Gary Sackett moved that the motion be amended to reject Toby Brown's request. He did not want to mislead Mr. Brown into thinking that the Committee would be considering the issue again. Paula Smith stated that she was concerned that the Committee would foreclose consideration of changes related to e-mail should the need arise. Gary Sackett withdrew his motion to amend Ms. Dixon's motion. Royal Hansen seconded Ms. Dixon's motion. The motion passed unanimously.

## **V. OTHER BUSINESS**

Robert Burton noted that Commissioner Arnett had chaired the Rules Subcommittee for a number of years and had indicated at a previous meeting that the time may have come to put new members on the subcommittee. He noted that, if the Ethics 2000 Committee generated a number of proposed changes, a great deal of work would be involved. Mr. Burton stated that Commissioner Arnett had served the Committee and the Subcommittee tirelessly and deserved many thanks. In response to a question from Mr. Burton, Commissioner Arnett stated that he thought it was appropriate to appoint a new chair of the rules subcommittee. Judge Nehring made a motion to not have a standing rules subcommittee and instead create ad hoc committees for each proposal. Earl Wunderli seconded the motion, stating that he thought it was a good idea. The motion passed unanimously.

Billy Walker reminded the Committee that it had recently declined to adopt his suggestion to look at the advertising rules. He noted that, if the Committee does not have significant items on the agenda, it should consider looking at those rules. Judge Nehring asked if Mr. Walker could summarize the kinds of cases that stimulate his office's feeling that the advertising rules are inadequate. Robert Burton asked that, additionally, the applicable law be indicated. Judge Nehring stated that advertising by attorneys, if not done properly, damages the view that the public has of the profession and should be a concern of the Committee. Gary Sackett stated that the longest ethics advisory opinion in the last few years had dealt with advertising and permissible contacts between a lawyer and prospective clients. He noted that some provisions of the advertising rules may not be applicable to Internet advertising. Robert Burton suggested that the Committee create its first ad hoc committee to make proposals concerning the advertising rules. The Committee named John Beckstead, Royal Hansen, Steve Johnson and Paula Smith with Billy Walker as chair to be on the ad hoc committee. Gary Sackett stated that he would be available to help the subcommittee if needed.

Billy Walker said that one of his concerns is that the Rules of Professional Conduct are not annotated with the Ethics Advisory Opinion Committee opinions. After discussion, the Committee asked Peggy Gentles to check with Lexis about its willingness to annotate the rules.

The Committee canceled its December meeting and rescheduled its January meeting to January 10, 2000 due to a holiday.

## **VI. ADJOURN**

There being no further business, the meeting adjourned.