

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

September 18, 2000 - 5:15 p.m.

ATTENDEES

Commissioner Tom Arnett
John A. Beckstead
Matty Branch
Gary Chrystler
Karma Dixon
Royal Hansen
Steve Johnson
Hon. Ronald Nehring
Kent Roche
Billy Walker
Earl Wunderli

EXCUSED

Robert Burton
Gary Sackett
William Hyde
Paula Smith

STAFF

Peggy Gentles

I. WELCOME AND APPROVAL OF MINUTES

Commissioner Arnett welcomed the Committee members to the meeting. He noted that Committee chair Bob Burton was out of town and had asked the Commissioner to conduct the meeting in his absence. Earl Wunderli moved that the minutes of the May 15, 2000, meeting be approved with typographical corrections. Kent Roche seconded the motion. The motion passed unanimously.

II. REVIEW OF ETHICS 2000 UPDATE

Commissioner Arnett referred the Committee to the report of the Ethics 2000 project that had been provided. Commissioner Arnett stated that, while the commentary stated that the proposed changes were "relatively minimalist," he thought that significant changes were being proposed including the addition of four rules and the deletion of two. He also noted that the Ethics 2000 project was still a work-in-progress and that when the Kutak Commission had proposed adoption of the model rules it took five years for adoption by the ABA House of Delegates. Steve Johnson noted that he has had a few conversations with people involved in the Ethics 2000 project and thought that it may be a couple of years before the ABA House of Delegates takes final action on the proposals. Earl Wunderli stated that the report indicated little changes related to e-mail and not many related to Rule

7.3. He noted that his general impression was that the proposed amendments would make the rules more stringent. Commissioner Arnett noted that on issues of confidentiality the proposals actually appeared to be less strict.

Kent Roche suggested that the Committee continue to monitor the proposals until the ABA House of Delegates took action. Commissioner Arnett asked if there were any proposals about which the Committee wanted to comment to the Ethics 2000 Commission. Earl Wunderli noted that the proposed rules would relax the provisions on fee splitting. Steve Johnson stated that he liked the proposal related to practicing in a jurisdiction in which you do not have a license. He thought that the change would be very helpful for corporate counsel. Billy Walker noted that, in order to effectuate the proposed changes to Rule 5.5 to which Mr. Johnson referred, the other states would need to adopt the proposed model rule as well as Utah. Earl Wunderli suggested that the Committee look at the proposals related to rules which the Committee had recently changed. Peggy Gentles stated that the materials indicated that the Commission was having its final meeting on September 15th -17th. She will follow-up on any action taken at that meeting.

III. OTHER BUSINESS

Peggy Gentles reported that Rule 7.3 would be published for comment. She reminded the Committee that two changes had been circulated by fax following the May meeting and had been approved via facsimile to be published for comment. She noted that Gary Sackett had contacted her with some concerns about the rule. She stated that she had told Mr. Sackett that because the Committee had already approved publication of the rule as written, she suggested that Mr. Sackett raise the issues at the end of the comment period. Steve Johnson noted that he believed that the civility conference about which he had talked with Dave Nuffer was still being considered. In response to a question from Judge Nehring, Billy Walker stated that the most frequent rules implicated by complaints his office receives are Rules 1.5 and Rule 8.4. Specifically, he is seeing more complaints regarding private conduct and whether that conduct fits under the prohibitions of Rule 8.4(c) and (d). Billy Walker noted that the Ethics Advisory Opinion Committee is considering the issue of the appropriateness of attorney liens in domestic cases. Karma Dixon stated that in her experience a lot of money is collected in domestic cases under the attorney lien statute. Billy Walker noted that the Committee could address the issue by outlining when attorney liens are appropriate in the Rules of Professional Conduct. Ms. Dixon noted that a 1932 Supreme Court case is often cited related to this issue. Karma Dixon moved that the Committee consider the issue of attorney liens in domestic cases. Gary Chrystler seconded the motion. The motion passed unanimously. Ms. Dixon stated that a recent Bar Journal article by Bart Johnson may be helpful.

IV. ADJOURN

There being no further business, the meeting adjourned.