

APPROVED MINUTES

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
Monday, March 18, 2002
5:15 p.m.

ATTENDEES

John Beckstead
Robert Burton
Gary Chrystler
Karma Dixon
Royal Hansen
William Hyde
Steven Johnson
Kent Roche
Gary Sackett
Paula Smith
GUESTS
Matty Branch

EXCUSED

Nayer Honorvar
Earl Wunderli
Hon. Ronald Nehring
Billy Walker

STAFF

Alicia Davis

1. WELCOME AND APPROVAL OF MINUTES

Bob Burton welcomed everyone to the meeting. Royal Hansen moved that the minutes be approved with the subtraction of the word "proposal" from the 2nd paragraph. Kent Roche seconded the motion, and it passed on the unanimous vote of those present.

**2. AD HOC COMMITTEE ON REORGANIZATION OF THE CODE OF
JUDICIAL ADMINISTRATION**

Bob Burton informed the committee that Earl Wunderli will be serving on this committee. Ms. Davis had distributed a memo dated December 28, 2001 concerning the repeal of certain procedural rules from the Rules of Judicial Administration, and their concurrent reinstatement into the Supreme Court's bodies of procedural rules. The ad hoc committee will undertake that process.

3. MDP DEVELOPMENTS

Mr. Burton informed the committee that he and Judge Nehring, along with representatives of the Bar, met with the Court on January 30 for a question and answer session. Mr. Burton and Judge Nehring also spoke before the Delivery of Legal Services committee. Gary Sackett had distributed the committee's report in conjunction with a CLE class, the first public dissemination of the report. All presentations seemed to go well.

4. RULE 8.4

Mr. Burton briefed the committee. CIA attorney Michael Barrett, licensed to practice in the state of Utah, wrote to Chief Justice Howe of his concern that, in sting operations, he was often required to lie. He was afraid that in doing so, he was violating 8.4.

Mr. Chrystler expressed concern in creating "situational ethics."

Mr. Sackett read to the Committee the holding of an Ethics Advisory Opinion Committee Opinion issued March 18, 2002 (attached). The Ethics Advisory Committee concluded that "a governmental lawyer who participates in a lawful covert governmental operation that entails conduct employing dishonesty, fraud, misrepresentation, or deceit for the purpose of gathering relevant information does not, without more, violate the Rules of Professional Conduct." (Opinion No. 02-05). Mr. Sackett informed that this opinion gave Mr. Barrett safe harbor, but that the Committee could incorporate this into a rule revision. The committee could also address 4.1, "Truthfulness in statements to others." The committee discussed whether or not a rule revision should extend to civil attorneys. After significant discussion, Steven Johnson moved that a letter be written to the Supreme Court stating that the committee felt that some change to 8.4 should be implemented, but that the committee was divided as to what should be done in the civil context, both with governmental and non-governmental attorneys. Gary Chrystler seconded the motion, and it passed unanimously. Gary Sackett volunteered to write the letter.

5. CONSIDERATION OF RULES OF LAWYER DISCIPLINE AND DISABILITY

The Committee reviewed amendments made to the rules of Lawyer Discipline and Disability. Gary Chrystler believed that the committee would be better informed if Billy Walker were present to illuminate why some of the amendments were being proposed. Matty Branch indicated that the Supreme Court had not yet considered the amendments. Ms. Branch indicated that the Court was in no rush to consider the amendments, and that she could ask the Court to wait to receive the committee's input if necessary. Ms. Branch suggested that Jim Lee, one of the authors of the revised rules of Lawyer Discipline and Disability be invited to the next committee meeting. The committee discussed whether or not it was appropriate for the committee to comment on the rules. After significant discussion, Gary Sackett moved that, subject to Mr. Burton's verification with the Court on the committee's role, that the drafters be invited to share their impressions of the amendments

being proposed. Gary Chryster seconded the motion. Paula Smith stated that if the committee were indeed interested in the proposed amendments, perhaps the committee should inform the Court of the committee's affirmative interest. After discussion, the motion passed unanimously.

6. ADJOURN

Mr. Burton announced that the next Committee meeting would be Monday, April 22 at 5:15 p.m. There being no further business, the meeting adjourned.