

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, May 20, 2002
5:15 p.m.

ATTENDEES

Robert Burton
Gary Chrystler
Karma Dixon
Royal Hansen
Nayer Honorvar
Steven Johnson
Kent Roche
Gary Sackett
Kate Toomey for Billy Walker

GUESTS

John Adams
Clark Arnold
Matty Branch
Debra Moore
Dane Nolan
James Lee

EXCUSED

John Beckstead
William Hyde
Hon. Ronald Nehring
Paula Smith
Earl Wunderli

STAFF

Alicia Davis

1. WELCOME AND APPROVAL OF MINUTES

Bob Burton welcomed everyone to the meeting. Gary Sackett moved that the minutes be approved. Royal Hansen seconded the motion, and it passed by unanimous vote.

**2. CONSIDERATION OF RULES OF LAWYER DISCIPLINE AND
DISABILITY**

Bob Burton welcomed Kate Toomey, a representative of the Office of Professional Conduct, attending for Billy Walker. The subcommittee (Royal Hansen, Kent Roche, and Nayer Honorvar) reported on their work with the RLDD. Following the April 22 meeting, Alicia Davis had made changes to the redline draft based on the committee's comments in yellow highlighting. The subcommittee took this draft, and made additional changes (in pink). The subcommittee presented the recommended changes to the OPC, Jim Lee, and Katherine Fox of the Utah State Bar. The Bar representatives did not object to the changes.

Royal Hansen presented 5 specific substantive areas that the subcommittee focused on:

p. 34, RLDD 30: Reciprocity of attorneys' fees. The committee had indicated that inclusion of the rule would lead one to believe that URCP 11 did not apply. Ms. Toomey indicated that the Bar did not want to make itself subject to a large award of attorneys' fees. The compromise position was to delete the reference, and allow that costs could be recovered, as under the original draft.

Royal Hansen informed the committee that 36 states currently award attorney's fees to the Bar with no reciprocal provision, so that Utah's provision of costs only would be more fair than other states.

p. 22 (RLDD 19): Definition of "crime." The subcommittee incorporated the definition used by RPC 8.3 and 8.4 because this gives an established standard, and body of law that fleshes out the definition. Gary Sackett indicated concern that the reporting requirement of 19(a) imposes an affirmative duty. The RPC committee had previously worked to remove all obligations imposed by the RLDD, and the unwitting attorney could be snagged by this obligation. Karma Dixon established that the committee did not object to the concept, just the placement of the rule. Ms. Toomey agreed that lawyers were often unaware of the RLDD. After consideration of various restructurings of the rule, the committee resolved to remove 19(a), to approve the definition of misdemeanor as written, and that the RLDD and RPC committees further evaluate a possible placement for the rule.

p. 15 (RLDD 10(b)(5)(E), Screening panel determination. After considering the rule in depth, the subcommittee made no changes. Ms. Toomey indicated that there are three processes in attorney discipline: admonition (private), public reprimand (public), and suspension/disbarment (public). Ms. Toomey explained that the assumption is that once a case goes to district court, it becomes more complicated, and there is some hesitation in sending it on. Often times, the OPC goes through the substantial work of filing a compliant, serving, the complaint, etc., when the only difference it makes is in releasing the attorney's name or not. Royal Hansen stated that the subcommittee had received the information it needed with regards to the amendment.

p. 17 (RLDD 13(b), Immunity from criminal prosecution. The subcommittee struck this provision, because none of the parties felt this language was relevant or necessary.

p. 20 (RLDD 16(b), USB publication. The subcommittee recommended continued publication, and the Bar representatives agreed.

p. 8 (RLDD 12), Expungement. Mr. Sackett questioned why seven years were required to expunge a complaint. Royal Hansen recommended that this issue be studied at a later date.

p. 35 (RLDD 32), Failure to appear. Mr. Sackett expressed concern that an attorney who failed to appear should be deemed to have conceded to recommendations considered at such appearance. Mr. Burton indicated that 1) these were attorneys, not laypeople, and should know the consequences of failing to appear; 2) the rule clearly spells out the consequences, and 3) the attorney would have received actual notice. As a point of compromise, the committee struck the language "and/or concession to any motion or recommendations to be considered at such appearance."

moved

Royal Hansen[^] that the RLDD rules, as amended by the subcommittee and the committee, be submitted to the Supreme Court for consideration. Steve Johnson seconded the motion, and it passed unanimously.

Kent Roche will further amend the annotated amended petition in light of the committee's discussion. Karma Dixon moved that Kent Roche be given editorial discretion. Steve Johnson seconded the motion, and it passed unanimously. The RLDD will show the USB redline version, and the committee's pink and yellow amendments. Royal Hansen and Nayer Honorvar will also review the final copy of the amended RLDD. The committee's version of the amended RLDD will be submitted to the Court, along with a cover letter which sets forth the process undertaken to amend the rules.

3. REORGANIZATION OF THE CODE OF JUDICIAL ADMINISTRATION

Ms. Davis presented a memo written by Earl Wunderli, the RPC's representative in the Ad Hoc Committee for the Reorganization of the Code of Judicial Administration. Several months ago, Ms. Davis had informed RPC that rules that are procedural or practical in nature are being removed from the Code of Judicial Administration. Ms. Davis asked the committee to consider whether those extracted rules should be reincorporated into existing bodies of rules, i.e. Rules of Civil Procedure, Appellate Procedure, etc., or grouped into a new body of rules, titled "Rules of Practice." If these rules were incorporated into existing bodies of rules, they could take the form of a "100 series", or they could be attached to a particular rule in some form. Mr. Wunderli's memo identified two procedural rules that touch upon the RPC, 4-505, Affidavits in support of attorney's fees, and 4-506, Withdrawal of counsel. Steven Johnson moved that the committee adopt Mr. Wunderli's recommendation that neither provision be reincorporated into the RPC. Gary Chryster seconded the motion, and it passed unanimously. The committee stated that procedural rules would not be properly placed in the RPC. In general, the committee favored a Rules of Practice over incorporation, but had not had the opportunity to study the issue in depth.

4. ADJOURN

Mr. Burton announced that the next Committee meeting would be **Monday, June 17 at 5:15 p.m.** Rule 8.4 will be first on the agenda. The committee may not meet in July and August. There being no further business, the meeting adjourned.