

MINUTES OF THE SUPREME COURT'S
ADVISORY COMMITTEE ON THE
RULES OF PROFESSIONAL CONDUCT

Law and Justice Center
645 South 200 East
Salt Lake City, UT
September 28, 2009
5:00 pm

ATTENDEES

Robert Burton, Chair
Matty Branch
Nayer Honarvar
Steve Johnson
Judge Mark May
Kent Roche
Judge Stephen Roth

Gary Sackett
Stuart Schultz
John Soltis
Paula Smith
Leslie Van Frank
Billy Walker
Earl Wunderli

EXCUSED

Gary Chrystler
Judge Paul Maughan
Paul Veasy

1. WELCOME AND APPROVAL OF MINUTES

Mr. Burton welcomed the members of the committee. He asked if there were any corrections to the minutes of the June 1, 2009, meeting. Mr. Wunderli moved to approve the minutes. Ms. Van Frank seconded the motion, and it passed unanimously.

2. RULE 1.10

Mr. Sackett advised the committee that in February, 2009, the ABA added a screening provision to Model Rule 1.10 and has now recently amended the rule further to make clear that the screening provision applies only when lawyers move from one private law firm to another. Mr. Sackett distributed copies of Utah's Rule 1.10 redlined to show the addition of the ABA amendments.

Following review of the ABA amendments, several members of the committee expressed concern that the ABA's notice provisions were unduly burdensome and might invite clients to question the screening process. Mr. Walker advised that the current form of Utah Rule 1.10 had not been problematic.

Mr. Schultz moved that no amendments should be made to Rule 1.10 at the present time, with the ABA version of the rule being put on hold pending consideration of other rule amendments in the future. Mr. Roche seconded the motion, and it passed unanimously.

3. LAWYER ADVERTISING

Mr. Burton reminded the committee of its previous consideration of the lawyer advertising rules in the spring of 2008. At that time, a subcommittee was formed to evaluate the advertising issue and to make a recommendation to the committee as to whether it should pursue further rulemaking. The subcommittee consisted of Mr. Burton, Mr. Schultz, Mr. Veasy, and Ms. Van Frank. At the committee meeting on May 10, 2008, after considering the subcommittee's report, the committee approved a motion to table further consideration of the lawyer advertising issue until there was a clear indication from Bar leadership that Bar members thought there was a problem with lawyer advertising.

Subsequent to that committee meeting, the Bar Commission surveyed Bar members as to what issues/areas they thought OPC should focus upon. The survey indicated that lawyer advertising was the second most important issue to lawyers for OPC to focus upon. Nate Alder and Mr. Burton met with the Supreme Court on August 6, 2009, and asked the Court to consider asking its Advisory Committee on the Rules of Professional Conduct to review the current lawyer advertising rules. By letter, dated August 12, 2009, Chief Justice Durham directed the advisory committee to undertake a review of the lawyer advertising rules and to recommend any amendments it thought advisable. In her letter, Chief Justice Durham stated that the Court was particularly concerned about lawyer advertising that maligned the court system.

Mr. Burton advised that Florida and Texas have amended their advertising rules to require attorneys to submit proposed ads for approval. Several members of the committee questioned the constitutionality of such rules on "prior restraint" grounds. Mr. Walker said that at the ABA level, the advertising issue focuses on whether advertising should be policed as an ethics issue or as a consumer issue.

Mr. Burton reactivated the advertising subcommittee, and asked it to focus on the following:

1. Whether the current advertising rules should be amended to prohibit advertising that unfairly maligns the court system and/or to provide more specifics regarding misleading advertising.
2. If the advertising rules governing Utah lawyers were amended to provide some sort of screening of advertisements for ethical violations, how would a constitutional challenge proceed, what would be the potential costs of defending such a challenge, and what entity would take on the defense.
3. Current ads and web sites of Utah lawyers.

4. Whether Bar commissioners who favor amendment of the lawyer advertising rules have an action plan.

The subcommittee was asked to make a report at the next committee meeting.

4. NEXT MEETING

The next committee meeting will be held on Monday, January 11, 2010 at 5:00 p. m. at the Law and Justice Center.