

SUPREME COURT ADVISORY COMMITTEE
ON THE RULES OF PROFESSIONAL CONDUCT

AGENDA

September 20, 1994
5:30 p.m.

Administrative Office of the Courts
Salt Lake City, Utah

J. Frederic Voros, Chair

- | | | |
|----|--|------------|
| 1. | Welcome | Fred Voros |
| 2. | Proposed Amendments to Rules of Professional Conduct | Tom Arnett |
| | Model Rule 1.13 Organization As Client | |
| | Model Rule 1.14 Client Under A Disability | |
| | Rule 4.2 Communication With Person Represented by Counsel | |
| 3. | Other Business & Future Meetings | Fred Voros |
| 4. | Adjournment | Fred Voros |

AMENDED MINUTES

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

Tuesday, September 27, 1994
Administrative Office of the Courts

Fred Voros, Presiding

PRESENT:

Fred Voros
Thomas N., Arnett, Jr.
Stuart H. Schultz
Gary Chrystler
Stephen H. Hutchinson
Gary Sackett
Danny Kelly

EXCUSED:

William Hyde
Hon. Lynn Davis
John Morris
Stephen Trost

STAFF:

Colin Winchester

GUESTS:

Kim Christy

I. **WELCOME.** Mr. Voros welcomed the Committee members to the meeting.

II. **MISCELLANEOUS BUSINESS.** Mr. Voros reported that the American Bar Association is studying a proposed amendment to Rule 3.6. He asked Mr. Arnett's subcommittee to monitor that study. He also informed the subcommittee that the Utah State Bar had created an ad hoc committee to study the "Thornberg Memo." Finally, he asked Mr. Winchester to draft a proposed form to comply with the Committee's proposed amendments to Rule 1.13(a).

III. **RULES OF PROFESSIONAL CONDUCT.**

a. **Introduction.** Mr. Arnett proposed that the Committee continue its discussion of model rule 1.13 and rule 4.2, but that it table final decisions on both rules until other interested parties have had an opportunity to address the Committee concerning the proposals.

b. **Model Rule 1.14.** Mr. Arnett reminded the Committee that the model rule was not originally recommended by the Green Committee. It was proposed by this Committee last year, but the Supreme Court remanded it to this Committee for additional study.

Mr. Chrystler reported that the only proposed change from

the previous draft of the rule was the insertion of the word "best" into the phrase "client's own best interest" in paragraph (b). Mr. Arnett supports the change.

Mr. Schultz asked how this proposal affects U.R.C.P. 17. Mr. Arnett noted that U.R.C.P. 17 discusses "parties." This rule is much broader. Also, U.R.C.P. 17 sets forth a procedure for appointing guardians, while this proposal does not.

Mr. Shultz suggested that paragraph (b) too narrowly restricts the lawyer's ability to seek the appointment of a guardian. He would amend paragraph (b) by adding "or when otherwise required by law" to the end of paragraph (b). Mr. Arnett and Mr. Chryster suggested that the phrase "the client cannot adequately act" already covers Mr. Schultz's concern.

Mr. Hutchinson expressed concern that the proposal forces lawyers to act as clinicians. Mr. Arnett countered that the lawyer should have experts assist in making the decision, rather than making the decision on his or her own.

Mr. Voros noted that the legal standard for appointing a guardian is incapacity, and questioned how this rule differs from that standard. Mr. Arnett and Mr. Chryster suggested that the rule does not address mere self defeating behaviors or bad judgment, but that it requires much more significant impairments.

Mr. Kelly questioned whether an attorney has standing to seek the appointment of a guardian. The Committee discussed that question and concluded that an attorney has such standing.

Motion: Mr. Arnett made a motion to approve Rule 1.14 as drafted.

Second: A member of the Committee seconded the motion.

Vote: The Committee voted unanimously to approve the motion.

c. Model Rule 1.13. Organization as client. Mr. Arnett reminded the Committee that the original Green Committee did not recommend adoption of Model Rule 1.13. This Committee had recommended its adoption, but the Supreme Court remanded it to this Committee for further study. Although two versions of the rule had been distributed in the mailing, the Committee should concern itself only with Mr. Sackett's version. That version retains Mr. Hyde's proposed paragraph (f) and includes other changes proposed by Mr. Sackett.

Mr. Voros asked whether a lawyer must proceed through the steps outlined in paragraph (b) prior to resigning under paragraph (c). Mr. Sackett, Mr. Arnett and Mr. Hutchinson

explained that the procedures in paragraph (b) are not a prerequisite to a paragraph (c) resignation. The Committee agreed to amend paragraph(c) as follows:

"If, despite the lawyer's efforts in accordance with paragraph (b), the highest authority that can act on behalf of the organization insists upon action, or a refusal to act, that is clearly a violation of law ~~or~~ and is likely to result in substantial injury to the organization, the lawyer may resign in accordance with Rule ~~1.14~~ for good cause pursuant to Rule 1.16(b)(6).

Mr. Sackett explained the proposed changes to paragraph (e), and Committee members concurred.

Mr. Hyde's proposed paragraph (f) was tabled until the next Committee meeting.

Mr. Sackett reviewed his proposed amendments to the comments. It was agreed that the third sentence of the third paragraph should be stricken.

IV. NEXT MEETING. The Committee will meet again on October 18. At that time, representatives from the Salt Lake County Attorney's Office, the Attorney General's Office, the Utah State Bar's Bankruptcy Section, and SWAP, will be invited to address the Committee regarding Mr. Hyde's proposed paragraph (f).

V. ADJOURNMENT. There being no further committee business, the Committee meeting was adjourned.