

MINUTES

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

Tuesday, October 18, 1994, 5:30 p.m.
Administrative Office of the Courts

Fred Voros, Presiding

PRESENT:

Fred Voros
Gary Chrystler
Gary Sackett
Stephen Trost
Thomas Arnett, Jr.
Stephen Hutchinson
Stuart Schultz
William Hyde

EXCUSED:

Hon. Lynn Davis
Danny Kelly
John Morris

GUESTS:

Carol Clawson
Joel Marker
Karl Hendrickson
Kim Christy

STAFF:

Colin Winchester

I. WELCOME. Mr. Voros welcomed the Committee members and guests to the meeting.

II. MODEL RULE OF PROFESSIONAL CONDUCT 1.13(f). Mr. Marker distributed copies of In re Bonneville Pacific Corp., 147 BR 803 (1992). He noted that in that case, Judge Allen had determined that debtors' counsel had a fiduciary to all parties in a bankruptcy case, including creditors.

Mr. Sackett noted that model rule 1.13 does not create that fiduciary duty nor is the model rule effected by the Bonneville Pacific case. Rather, Bonneville Pacific affects conflicts of interest in general.

Mr. Voros asked the subcommittee to further study the Bonneville Pacific case to address any concerns it raises in connection with the conflict of interest rules.

Ms. Clawson reported that the Attorney General's agrees with the spirit of proposed paragraph (f), but indicated that the government lawyers' concerns could be addressed by a general exclusion in the comments or a free-standing rule addressing

government lawyers' duties.

Mr. Hyde suggested that the model rule will be confusing if the role of government lawyers is not specifically addressed therein.

Mr. Voros asked whether the model rule needs to specifically include government lawyers, or whether there are sufficient other provisions of law to guide government lawyers' conduct.

Ms. Clawson indicated that paragraph (f), as drafted, needs to be more precise. She suggested that model rule is not necessary, but that if it is adopted, the concerns of government lawyers need to be addressed also. Mr. Hendrickson agreed.

Mr. Hendrickson noted that county attorneys and state lawyers have their duties and obligations spelled out by statute or ordinance, and that municipal attorneys have much less guidance available. Mr. Hendrickson noted that model rule 1.13 may in fact contradict other laws defining government lawyers' duties, due to the government lawyer's obligation to serve the public as well as the governmental organization and the fact that many government lawyers also have prosecutorial duties.

Mr. Sackett asked the guests whether the first three sentences of proposed paragraph (f) are sufficient to address the concerns of government lawyers.

Ms. Clawson suggested that the first two sentences of proposed paragraph (f) be retained, and that several specific but non-inclusive examples be included in the comments.

Mr. Voros summarized the following five issues:

- (1) Government lawyers have a duty to act in the public's interest.
- (2) Government lawyers are bound by other laws.
- (3) Government lawyers cannot resign as easily from the representation as private lawyers.
- (4) Government lawyers have different remedies.
- (5) Government lawyers have different disclosure requirements.

Mr. Schultz and Mr. Arnett stated that perhaps government lawyers need a separate rule. Mr. Trost expressed concern with that suggestion because it creates different classes of lawyers. The Committee discussed whether the government lawyers' concerns should be addressed within the context of model rule 1.13 or as a free-standing rule, concluding that the model rule is a valuable tool, and that the subcommittee should attempt to shorten proposed paragraph (f), and return with a new draft for additional review.

In order to accomplish that assignment, Mr. Arnett invited the guests to provide additional comments to the subcommittee prior to the next meeting.

Mr. Hyde expressed concern that paragraph (b) restricts the lawyer's disclosure of criminal or fraudulent acts, while rule 1.6(b) allows such disclosure. Mr. Arnett reported that the subcommittee will look at that issue and report back at the next meeting.

III. NEXT MEETING. The Committee will meet again on November 15, and will attempt to resolve model rule 1.13 at that time. At it's following meeting, the Committee will address rule 4.2.

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