

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

Utah Law & Justice Center  
645 South 200 East  
Salt Lake City, UT 84111  
January 24, 2005  
4:30 p.m.

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ATTENDEES

Robert Burton, chair  
Gary Chrystler  
Judge Fred Howard  
Steven Johnson  
Kent Roche  
Gary Sackett

Stuart Schultz  
John Soltis  
Earl Wunderli  
Matty Branch

EXCUSED/ABSENT

Judge Royal Hansen  
Nayer Honarvar  
Judge Paul Maughan  
Judge Stephen Roth  
Paula Smith  
Billy Walker

1. WELCOME AND APPROVAL OF MINUTES

Mr. Burton welcomed the members of the committee. Mr. Wunderli moved to approve the minutes of the November 15, 2004, meeting. Judge Howard seconded the motion, and the minutes were approved unanimously.

2. ETHICS 2000 MODEL RULES

Rule 8.2

Mr. Burton stated that he had changed his mind as to adopting the ABA Rule 8.2 since the last meeting. He advised that he had discovered that the text of ABA Rule 8.2 predated Ethics 2000, and that Ethics 2000 did not change the language of the existing rule. Various members of the committee questioned whether the words "public statement" in the current Utah rule needed to be defined if the Utah rule were retained. Mr. Chrystler questioned what was meant by "legal officers" in the ABA rule. Mr. Wunderli said he liked the ABA rule because it set a higher standard. Mr. Sackett urged the committee to approve the rule which solves the problem with the least amount of infringement on First Amendment rights. Mr. Chrystler moved to leave Utah Rule 8.2 as it is except for formatting the Comment section and adding a comment indicating that the ABA rule was not adopted because the Utah rule provided adequate protection to the judiciary. Mr. Schultz seconded the motion, and it passed on a 7 in favor, 1 against, and 1 abstention.

### Finalizing Rules

Ms. Branch stated that she planned to send the remaining rules for review to the committee members who had worked on them by February 1<sup>st</sup>. She asked committee members to review the rules as soon as possible after they receive them and to get any changes to her well before the February meeting. Mr. Sackett advised that he and Mr. Wunderli had reviewed the rules distributed to date for stylistic consistency and obvious mistakes and had submitted their edits to Ms. Branch. He said he had also noted some substantive issues in some of the rules and some rules that needed additional comments. Mr. Sackett agreed to provide Ms. Branch with these items so that she could follow-up with the appropriate committee members.

### 3. REVIEW OF RULE 1.8(c) PER LETTER FROM JUDGE NUFFER

Mr. Burton suggested that Mr. Johnson remind the committee as to what action the committee had taken as to the Ethics 2000 Rule 1.8. Mr. Johnson advised that the committee had earlier approved Ethics 2000 Rule 1.8, and that such rule was partially responsive to Judge Nuffer's concerns. He did state, however, that the Ethics 2000 rule was not entirely consistent with § 237 of the Restatement (Third) of the Law Governing Lawyers. Several committee members expressed concern as to the Restatement's use of "natural object of the client's generosity" in paragraph (2)(a). Mr. Johnson moved that Rule 1.8 remain in the same form (Ethics 2000 version) as was earlier approved by the committee. Mr. Chrystler seconded the motion, and it passed on an 8 to 1 vote. Mr. Burton indicated that he would write a letter to Judge Nuffer as to the committee's action.

### 4. ADJOURN

Mr. Burton indicated that the committee will not meet on February 21, 2005, in light of President's Day. The meeting will be moved to Wednesday, February 23, at 4:30 p.m. and **will be held at the Matheson Courthouse, Fifth Floor, Court of Appeals Conference Room.**

# Pro Conduct Committee Meeting 1/24/05

## Present

Howard  
Chrystle  
Wunderli  
Burton  
Rucke  
Soltis  
Johnson  
Schultz  
Sackett  
Brack

## Absent

Packag Smith  
Nayer  
Judge Roth  
Hansen  
Maughan  
Walker

## Minutes

Call opened unanimously approved  
Howard - second

## Rule 8.2

Bob indicated he had changed his mind five  
last minutes when he discovered that the ABA rule  
pre-dated Ethics 2000 — Ethics 2000  
did not change language of <sup>pre-existing</sup> ABA rule  
discussed what is a "public statement" under  
the current ABA rule

it bore public in - need to define in Comment  
Soltis - felt too broad without word "public"

Chrystle questioned what ABA rule means  
by "legal officer"

public = intent that it be disseminated <sup>beyond</sup> <sub>public</sub> to a private

Eare liked ABA rule because it set a higher standard

discussion as to opposing ABA rule but eliminating "public legal officer"

or keep uph rule & take out "public"

Section

what solves the problem with the least amount of infringement on 1st Amendment rights

Decline to adopt ABA rule because the rule delegates to private protection to Judiciary

Chapter <sup>more</sup> 8.2 as is  
Schultz - scale  
in favor  
| vote in opposition  
| absentent

Need to format Comment at all

Rule 1.8(c) Nuffer's Suggestion

Schuman - spoke to Nuffer's comment  
I said current rule contrary to  
restatement. Steve said ethics 2000 rule

... makes change

concern - is overreaching by attorney  
take advantage of an attorney-client  
relationship - situation ripe for undue  
influence

committee concerned as to recipient's use "natural object  
of the client's  
generosity"  
Co

Committee

Steve Johnson moved that  
as we earlier agreed ~~###~~ (Ethics 2000 version)  
Secreted by Chryotler

1.8  
Key R. 1.8.10

8 in favor  
1 opposed

edit - page's view

- ① obvious mistakes type
- ② stylistic consistencies
- ③ extra comments - trying to make look unified
- ④ more substantive issues

Steve - write <sup>additional</sup> comment to 1.8

next meeting - Wed Feb 23 4:30

see if  
room available