

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

Matheson Courthouse
450 So. State
Salt Lake City, UT
May 16, 2005
4:30 p.m.

ATTENDEES

EXCUSED/ABSENT

Robert Burton, chair
Gary Chrystler
Judge Royal Hansen
Nayer Honavar
Judge Fred Howard
Steven Johnson
Judge Paul Maughan
Kent Roche

Judge Stephen Roth
Gary Sackett
Stuart Schultz
Paula Smith
John Soltis
Billy Walker
Earl Wunderli
Matty Branch

None

1. WELCOME AND APPROVAL OF MINUTES

Mr. Burton welcomed the members of the committee. Mr. Wunderli requested the following corrections to the minutes of the February 23, 2005, meeting
(a) as to Rule 1.12(c) (12), the phrase "privilege of this rule" should be changed to "provisions of this rule."

(b) as to Rule 5.4, quotation marks should be added at the end of the first sentence.

Mr. Soltis also pointed out that he had attended the February 23 meeting, but this was not reflected in the minutes. Subject to the above-described corrections, Mr. Wunderli moved to approve the minutes. Ms. Honarvar seconded the motion, and the minutes were approved unanimously.

2. PROPOSED AMENDMENTS TO PRO HAC VICE RULE

Mr. Chrystler advised that, after review of the relevant materials, he and Judge Howard recommended that Utah's pro hac vice rule, Rule 11-302(d) of the Supreme Court Rules of Professional Practice, be amended to allow waiver of the fee for out-of-state attorneys who are employees of the federal government representing the United States of America. Mr. Chrystler indicated that their recommendation was based upon the following:

1. The questionable constitutionality under the supremacy clause of the current rule.

2. The minimal loss of revenue to the Utah State Bar should the federal government attorney exemption be added.

3. The Utah State Bar's desire that an amendment be made to the existing rule to provide such an exemption.

The subcommittee also recommended that the current pro hac vice rule be amended to exempt out-of-state attorneys representing indigent clients on a pro bono basis from the fee. Judge Howard moved that Rule 11-302(d) be amended to add the following language:

“Attorneys who are employees of and representing the United States of America or any of its departments or agencies and attorneys representing indigent clients on a pro bono basis shall be exempt from the fee.”

Ms. Honarvar seconded the motion, and it passed unanimously.

3. PROPOSED AMENDMENT TO RULES OF PROFESSIONAL CONDUCT TO REQUIRE UTAH STANDARDS OF PROFESSIONALISM AND CIVILITY TO BE SENT TO CLIENTS WITH ENGAGEMENT LETTERS

Judge Hansen advised the committee that the Supreme Court's Advisory Committee on Professionalism, upon the recommendation of its liaisons, wanted this committee to consider an amendment to the Rules of Professional Conduct that would require the Utah Standards of Professionalism and Civility to be sent to clients with the engagement letters. Judge Hansen said he had conferred with Judge Maughan, Billy Walker, and Gary Sackett, and it was their view that such a requirement should not be included in a rule but might be referred to in a comment to a rule. Judge Hansen recommended that the following language be added as a final comment to Rule 1.2, Scope of Representation:

“Lawyers are encouraged to advise clients that their representations are guided by the Utah Standards of Professionalism and Civility and to provide a copy to their clients.”

Judge Maughan moved that the proposed language be added as the final comment to Rule 1.2. Mr. Johnson seconded the motion, and it passed 14 in favor, 1 opposed.

Mr. Walker questioned whether language referring to the Standards of Professionalism and Civility should be added to the Comment to Rule 8.4(d). Mr. Burton stated that since Rule 8.4 deals with misconduct, it seemed inappropriate to make a reference to the Standards which are aspirational in nature.

4. COMMENTS RECEIVED AS TO PROPOSED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

Ms. Branch distributed copies of all comments submitted to date to each member of the committee. She stated that the comment period extends through June 6, 2005, and that she will provide committee members with copies of any further comments received. Mr. Burton asked each subcommittee to review any comments submitted that relate to a rule the subcommittee worked on, and to come to the June 20th meeting prepared to respond to the comments.

5. NEXT MEETING

Monday, June 20, 2005, 4:30 p.m., Law and Justice Center.

5/16/05 Professional Conduct

Approved subject to changes

Check Rule 1.12(c)2 check with prisoner
privilege add John
Solthis
as attorney

Earl offered correction
w/ change now -

Pro Hac Vice Rule

Bar (Fox) would like
rule to be changed

Gay Chrylter

recommended adoption for 3 reasons
stated

usually occurs in common cases

possible further analysis & allow exempt out-of-state
attorneys to represent indigent clients on a pro bono basis

(some states permit - Model Rule does
as well

add "of any state agencies or departments"

include US attorneys; pro bono

J. Howard moved; Nayer seconded
agreement

Present

Maughan

Roth

Rabe

Sackett

Burton

Wendler

Smith

Howard

Chrylter

Nayer

Johnson

Walker

Schultz

covered

seconded

J. Hansen — recommendation from S. (T):
Committee on Professional Conduct

feet black folks rules are not plan
for school

Rule 1.2 — comment

with idea that would

no mandatory duty

help give
standards

wider

distribution:

awareness

AG's
Grand Jury later
/

Sol's ~~note~~ asked about mistreatment / revivability
to fact witnesses —

Gay Chrysler — would be helpful if you
have a difficult client — my provide as
out for clients
asked

why do we need comment — since can give
client copy of standards

Chrysler —

Burton — ~~asked~~ what's the downside?

opposed — Chrysler — all others approved (1.2) (1.2)

ANSW ^{secret}

Judge Magner adopt language for comment 1.2
amended by the committee

same comment

Rule 8.4(d) comments — Billy Waller raised idea of
add in language to comments

Barton P. 4 - deal with misconduct -
so don't think as possible
language shouldn't be

further comments distribute to all
committee members