

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
June 1, 2009
5:00 pm

ATTENDEES

Robert Burton, Chair
Matty Branch
Gary Chrystler
Nayer Honarvar
Steve Johnson
Judge Paul Maughan
Judge Mark May
Kent Roche

Judge Stephen Roth
Gary Sackett
Stuart Schultz
John Soltis
Paula Smith
Leslie Van Frank
Paul Veasy
Earl Wunderli

EXCUSED

Billy Walker

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 December 15, 2008, meeting. Mr. Wunderli moved to approve the minutes. Mr. Roche seconded the motion, and it passed unanimously.

2. COMMITTEE MEMBERS DISCLOSURE OF NATURE OF LEGAL PRACTICE

Pursuant to the requirement of Rule 11-101(4) of the Supreme Court Rules of Professional Practice, and since the June 1, 2009, committee meeting was the committee's first meeting in 2009, Mr. Burton asked each member to briefly disclose the general nature of his or her legal practice. Each member present at the meeting made such a disclosure.

3. REVIEW AND DISCUSSION OF COMMENTS RECEIVED AS TO PROPOSED AMENDMENTS TO RULE 14-510

Mr. Burton advised the committee that he, Billy Walker, and Art Berger, chair of the Ethics and Discipline Committee, met with the Supreme Court on February 11, 2009, to present the proposed amendments to Rule 14-510. At that time, the Court approved publication of the amendments for comment.

Ms. Branch advised that only two comments were received following publication of the proposed amendments to Rule 14-510. Comments were received from David Pena and Susan Rose.

Mr. Burton said that Mr. Pena's objection to the proposed amendments was that the complainant should be given the right to take exception to a screening panel recommendation. Mr. Sackett said that giving the complainant such a right would turn the system upside down, and that it would be comparable to giving the victim in a criminal case the right to appeal if he or she did not like the court's ruling in the criminal case. Judge Roth said he believed Mr. Pena raised a legitimate complaint but that the right of review needs to be limited or the process becomes too burdensome. Ms. Honarvar said she had worked for OPC in the past, and during that time, somewhere around 25% of the complaints were frivolous, and that permitting complainants who submitted frivolous complaints to take an exception would definitely be burdensome. Judge Maughan made the motion that no changes be made to the rule based upon Mr. Pena's comment. Mr. Sackett seconded the motion, and it passed unanimously.

Mr. Burton asked the committee to review Ms. Rose's comments. Mr. Sackett said that her comments concerning 14-510(a)(2), (3) and (4) should not be considered because they dealt with aspects of the rule that the committee had not even addressed. Mr. Roche said that he thought Ms. Rose's comments were not balanced and should be rejected out of hand. Mr. Sackett said that he thought the only comment having any merit was the one concerning whether it was a conflict for OPC to act as secretary to the Ethics and Discipline Committee. After discussion, Mr. Johnson moved that the Committee take no action as to this comment. Mr. Roche seconded the motion, and it passed unanimously.

Mr. Burton said that he agreed with Ms. Rose's suggestion that the 21 days notice provision of (b)(2) be changed to 30 days, and he moved that the provision be amended accordingly. Mr. Johnson seconded the motion, and it passed unanimously.

The Committee discussed Ms. Rose's suggestion that the standard in attorney discipline cases should be clear and convincing. Judge Roth said that the Committee had considered the issue in its earlier deliberations and had rejected such a standard. Judge Maughan made the motion that other than the change in subsection (b)(2) from 21 days to 30 days, Rule 14-510 as published for comment should be recommended to the Supreme Court for adoption. Mr. Johnson seconded the motion, and it passed unanimously.

4. OTHER BUSINESS

Mr. Burton said there were no assignments currently pending before the committee, and that committee members would be notified when a future meeting needed to be scheduled.

6/1/09 Rules of Professional Conduct

Present

Kent Roche
Bob Burton
Paula Smith
Earl Wunderl
Steve Johns
Leslie VanFrank
Gary Sackett
Paul Weagy
Gay Chrystle
Judge May
Judge Maughan
Nayer Honarva
Judge Roth
Stuart Schultz
Salt's

Excused

Billy Walker

Agreed with requirements of new voluntary
rule

Earl moved to approve
Earl Kent Roche
approved unanimously

Bob ~~meet with~~ Billy Walker, Art Berger
meet with Court in

OPC have right of appeal - Ct approved
version without right of appeal -

Then Jim Gilson contacted Bob about
his special review of OPC

David Pera used to be sitting with office of OPC
thinks captain shall have right to
take exception to a screening panel
recommendation

quasi criminal - ~~from~~ defying their screening panel recommendation
Victim doesn't get to appeal in court
case it doesn't like

~~Secret~~
giving complainant right to review would ~~bring~~
system up & down

~~Public~~
if party thinks has a legitimate claim can bring
~~bring~~ legal action - policy issue
appearance issue
form

Roth - raised legitimate complaint - ~~Committee~~
but thinks need some limitations as it
changes nature of process too much

Neuper - worked for OPC years ago
25% of captives were very
involved - if all these
people can petition court
creates burden for court

~~Steve Johnson~~

~~Paula Smith~~

Maughan - ~~not~~ we given screening panel
presumpting irregularly -
that is ~~what~~ we've been doing
it

Sad Susan Rose has perdy ethical issues

Maughan moved not make any changes to
rule based upon Penn's consent

secret seen

unanimous

Susan Rose comment

Committee didn't deal with (a)(1)
(a)(2), (a)(3),
(a)(4) provisions

Wasn't part of charge

Roche - not a balanced comment -
frank we should reject
comment out of hand

Sackellay's comment might have merit

OPC is Sec. to Ethics & Discipline Committee
also prosecutor

~~thought~~ but not proposing charge under based on this
comment

Steve Johnson moved don't act up - that comment
Roche second
unanimous - disregard

Button move to extend 30 days (6X2)

Steno J. second

Unanimous change to 30 for

21

Meeting move that rule as ~~currently~~ ^{currently}
~~adopted~~ ~~kept~~ be recommended

Adopted with 30 day change

Steno J. second note

Unanimously approved

No other business

No pending assignments

Will contact as to future meeting schedule