

MINUTES

The Supreme Court's Advisory Committee on the Rules of Professional Conduct

Administrative Office of the Courts
230 South 500 East, Ste. 300
Salt Lake City, Utah 84102

November 18, 1996

PRESENT

Steve Trost, Chair
William Hyde
Thomas Kay
Earl Wunderli
Gary Chrystler
Kent Roche
Stephen Hutchinson
Gary Sackett
Steve Cochell

ABSENT

Commissioner Tom Arnett
Carolyn McHugh
Robert Burton
Judge Ron Nehring

STAFF

Peggy Gentles

I. WELCOME AND APPROVAL OF MINUTES.

Steve Trost welcomed the Committee members to the meeting. Having noted two typographical errors, Earl Wunderli moved to approve the minutes of June 17, 1996. William Hyde seconded the motion. The motion passed unanimously. Having noted one typographical error, Earl Wunderli moved to approve the minutes of September 16, 1996. Thomas Kay seconded. The motion passed unanimously.

Steve Trost followed up on issues raised in the September meeting. Peggy Gentles will contact Carolyn McHugh about her discussion with Michael Lawrence, Chair of the Advertising Committee for the Bar, concerning his committee's work on Rule 7.2. Steve Cochell indicated that he would also speak to the Bar's Advertising Committee to let them know of the Committee's interest in this issue. Peggy Gentles will write a letter to the litigation section of the Bar noting the Committee's conclusion that no conflict existed between Rule 2.2 and Rule of Court Annexed ADR 101. Kent Roche suggested that along with the letter a copy of the Poly Software Int'l case cited in the annotations to Rule 2.2 be sent. Peggy Gentles reported that she had contacted the publishers with the correction to Rule 1.13 which had been approved by the Supreme Court with an effective date of November 1, 1996.

II. LEGAL ASSISTANTS.

Steve Trost called to the Committee's attention the correspondence between Steve Trost, Steve Hutchinson, and the Chief Justice. In particular, the Committee discussed the Chief Justice's October 21, 1996 letter to Mr. Trost and Mr. Hutchinson. The Committee discussed at length the issue of the expansion of the definition of "practice of law" to include legal assistants. Many Committee members questioned whether the Committee was the correct body for such policy decisions. Many members felt that such a policy decision should be made in the context of the larger issues being addressed by the Bar's Access to Justice Task Force referenced in the Chief Justice's letter. Earl Wunderli was asked if he would be willing to write a report to the Committee summarizing his research on legal assistants in other states. Mr. Wunderli agreed. Steve Trost stated he would meet with Toby Brown, Coordinator of the Bar's Access to Justice Task Force. The Committee requested that this item be put back on the agenda for the next meeting at which time Mr. Wunderli and Mr. Trost will report on their progress.

III. ATTORNEY OATH.

Steve Trost referred the Committee to the October 16, 1996, letter from the Chief Justice related to the attorney oath of office. Specifically, the letter requested the Committee consider reshaping the oath to re-emphasize professional courtesy and the obligation to serve the poor. Mr. Trost noted that the ABA had passed a resolution that would require 50 hours of pro bono work per year by each lawyer. He suggested that the Committee consider the Chief Justice's request regarding the attorney oath in light of that resolution. Steve Trost will call Judge Nehring and ask him to form an ad hoc committee to look at this issue.

IV. UPDATE ON RULE 1.15.

Steve Cochell reported that he had requested and received from the Supreme Court an extension of the effective date for Rule 1.15 to January 15, 1997. Mr. Cochell has contacted banking institutions and credit union organizations concerning the reporting requirement in the new Rule 1.15. He noted that other states' experiences with similar reporting requirements lead him to expect about 100 reports from financial institutions in the first few months. However, he expects those to drop off precipitously as routine offenders are weeded out and lawyers learn the proper accounting practices. Mr. Cochell passed out a copy of an article that he has written for the December Bar Journal. He also noted that the Office of Attorney Discipline is sponsoring a trust account seminar in January at which he will educate members about the new requirement in Rule 1.15.

V. COMMENTS RECEIVED ON PROPOSED RULES.

A number of comments were received on the last day of the comment period (November 15, 1996). Because the Committee had not had the chance to read those comments and because the issues surrounding Rule 3.6 appeared quite complex, the Committee put off discussing the comments until the December meeting. Gary Sackett suggested that the Rules Subcommittee should be given the assignment to distill the issues addressed in Assistant Attorney General Scott Reed's letter. William Hyde noted that Rule 3.6 generated a great deal of discussion at the meeting of the Statewide

Association of Public Attorneys. Mr. Sackett said he would contact Commissioner Arnett with the Committee's assignment for Rule 3.6.

VI. OTHER BUSINESS.

The Committee scheduled a meeting in December to consider comments and any other business. That meeting is scheduled for December 16, 1996, 5:15 p.m. at the Administrative Office of the Courts.

VII. ADJOURN.

There being no further business, the meeting adjourned at 6:30 p.m.