

APPROVED MINUTES

**MINUTES
SUPREME COURT'S ADVISORY COMMITTEE
ON THE
RULES OF PROFESSIONAL CONDUCT
Administrative Office of the Courts
450 South State Street, N31
Salt Lake City, Utah 84114-0241
Monday, March 19, 2001
5:15 p.m.**

Present

John Beckstead
Robert Burton
Karma Dixon
William Hyde
Steven Johnson
Kent Roche
Gary Sackett
Paula Smith
Billy Walker
Earl Wunderli

Excused

Commissioner Thomas N. Arnett
Gary Chrystler
Hon. Ronald Nehring

Staff

Matty Branch, Appellate Court Administrator

I. Welcome and Approval of Minutes

Bob Burton welcomed the Committee members to the meeting. He noted that Peggy Gentles had resigned her position with the Utah Administrative Office of the Courts and had taken a court administrator position in Lincoln, Nebraska. Mr. Burton moved that the Committee express its thanks to Ms. Gentles for her exceptional service to the Committee. The motion was seconded and passed unanimously. The Committee determined that it wanted to send a small gift to Ms. Gentles as an expression of the Committee's appreciation. Bill Hyde volunteered to collect monies and purchase an appropriate gift and card for signing by the next Committee meeting. Earl Wunderli moved that the minutes of the February 12, 2001, meeting be approved. Steven Johnson seconded the motion. The motion passed unanimously.

II. Status of Rules 1.7, 7.2 and 7.3

Bob Burton advised the Committee that Rules 1.7 and 7.2 will be published for comment in the current cycle. The Committee was earlier provided with a copy of a memo from Tim Shea indicating that the Supreme Court adopted the amendments proposed by the Committee to Rule 7.3 and issued its order on February 20, 2001, making the amendments effective April 1, 2001.

III. Multidisciplinary Practice (MDP)

Bob Burton stated that Fran Wikstrom had called him and expressed concern about the adoption of MDP. Mr. Wikstrom indicated that he would like to appear before the Committee to voice his concerns. Steven Johnson reported that Norm Johnson had spoken with him and expressed a similar interest in discussing MDP issues with the Committee. Mr. Wikstrom and Mr. Johnson will be invited to present their views at the Committee meeting on April 16, 2001. If these gentleman are unable to appear on that date, they will be invited to attend the May 21, 2001 meeting.

Various Committee members voiced opinions as to whether proponents of MDP should be invited to be present at Committee meetings where opponents of MDP are making presentations. The consensus of the group was that both sides did not need to be present at the same Committee meeting, but that the Committee may want to hear from proponents of MDP again to specifically address the Committee's concerns about how core values, such as confidentiality and conflicts, could be protected under MDP. Committee members expressed fairly unanimous concern that neither the MDP task force report or subsequent presentations by MDP proponents addressed protection of core values. Karma Dixon stated that she believed the charge to the Committee was a different charge than that given to the MDP task force, and that this Committee was required to be concerned about ethical values not economics. Mr. Burton stated that Dave Nuffer had called him and expressed concern over the communication about MDP that had occurred at the Mid-year Bar Meeting in St. George last week. Both Karma Dixon and Steven Johnson, who attended the MDP presentation, expressed concern that the presentation had been very one-sided in favor of MDP.

Paula Smith stated that she wanted to think that MDP deals with an existing problem, and that it was not clear to her that there was really a problem to be solved. Ms. Smith suggested that she would be interested in hearing from Bar members who had endorsed the task force report and who wanted to incorporate MDP in their practice. Bob Burton stated that he would review the comments from Bar members to the task force report and determine those lawyers that fit in this category. He then indicated that he would prepare a letter to be sent to these lawyers inviting them to provide the Committee with specifics about the type of MDP venture each would like to pursue. These lawyers would also be invited to respond to how the profession's core values could be protected in the type of business relationship they contemplated. Steven Johnson stated that he would like Mr. Burton's letter to be sent to David Wood, Lynn Larsen, Pete Corroon, Mike Leveridge, Laura Gray, Randy Lish and David Glazier. Mr. Burton invited all Committee members to direct names to him of other lawyers that they would like contacted.

Kent Roche stated that he felt that the prohibition on fee-splitting was a rule that was essential to the protection of core values. Steven Johnson stated that he was less concerned about fee-sharing but had a bigger problem with MDP's threat to such rules as confidentiality, conflict of interest, and independence. Karma Dixon suggested that the Committee needed to define what it thinks the core values of the profession are. Gary Sackett stated that he believed the primary core values were loyalty independence, and confidentiality. John Beckstead suggested that the adversarial nature of the law was an essential element to be considered. Mr. Beckstead

also felt that the fact that attorneys are officers of the court was connected to the core values. Ms. Dixon stated that she felt that what sets the legal profession apart is that it is in the business of the administration of justice, and that unlike any other business or profession, it derives its authority from the judicial branch of government. Bill Hyde questioned whether competency was a core value. Ms. Dixon wondered whether it's really competency or protection of the public. Earl Wunderli raised the question as to where pro bono work fit in a listing of core values.

After much discussion, Mr. Burton summarized by listing the following items which one or more committee members suggested were core values:

- Independence
- Client confidences
- Officers of the court
- Client loyalty
- Professional competence
- High moral character
- Protection of public (protect the rule of law)
- Adversarial system

Mr. Burton indicated that he would like all future presenters to the Committee to analyze MDP in terms of this list of core values. John Beckstead stated that he would like more dialogue on the issue of the urgency of implementing MDP. He questioned why it is so important that Utah be in the forefront on this issue.

Steve Johnson stated that he thought the Annual Meeting in Sun Valley in July would be an appropriate forum to discuss both the pros and cons of MDP. He opined that the corporate counsel section would be willing to sponsor such a breakout session and would have the funds to bring in an outside presenter to articulate the arguments against MDP. John Beckstead moved that Steve Johnson act as the moderator for any panel, and that he take the lead in organizing the presentation. Karma Dixon seconded the motion. The motion passed unanimously. Gary Sackett indicated that he was willing to assist Mr. Johnson in organizing the presentation. Mr. Johnson agreed to be in touch with the corporate counsel section and with the Annual Meeting planners as to this type of breakout session.

IV. Adjourn

There being no further business the meeting adjourned.