

MINUTES

**Supreme Court's Advisory Committee
on the Rules or Professional Conduct**

Administrative Office of the Courts
450 South State Street, N31
Salt Lake City, Utah 84114

Monday, April 16, 2001 - 5:15 p.m.

ATTENDANCE

Comm. Thomas N. Arnett
Robert Burton
Gary Chrystler
Karma Dixon
Steven Johnson
Hon. Ronald Nehring
Gary Sackett
Paula Smith
Billy Walker
Earl Wunderli

EXCUSED

Kent Roche
William Hyde

GUESTS

Esther Chelsea-McCarty
Fran Wikstrom
Todd Weiler

STAFF

Matty Branch, Appellate Court Administrator

I. WELCOME AND APPROVAL OF MINUTES

Bob Burton welcomed the Committee members to the meeting. He also welcomed Fran Wikstrom and Todd Weiler, who were there to present their views on MDP, as well as Esther Chelsea-McCarty from the Office of Legislative Research and General Counsel. Earl Wunderli moved that the minutes of the March 19, 2001 meeting be approved subject to the correction of the spelling of his name. Billy Walker seconded the motion. The motion passed unanimously.

II. MULTIDISCIPLINARY PRACTICE (MDP)

Bob Burton invited Fran Wikstrom to present his views on MDP. Mr. Wikstrom stated that he was representing himself and not the views of any other person or organization. Mr. Wikstrom began by stating that he felt the MDP model proposed by the Task Force would be a huge mistake for the profession. He stated that the "science of economics" cannot control everything and that what the so-called "professions" all have in common (clergy, doctors, lawyers) is that they are about something other than making money. He went on to state that he did not think MDP was a question of greed versus altruism, but rather he did not see how the profession's core values could survive in the MDP environment. Mr. Wikstrom also stated that while there was no question that the legal needs of the lower and middle classes are not currently being met, he did not believe that MDP would do anything

to solve that problem. He stated that the argument that “without MDP we can’t compete” is the MDP proponents way of saying they want to make more money. Mr. Wikstrom opined that creation of MDPs is going to make the unauthorized practice of law more difficult to enforce. He observed that although the Task Force report indicates that all lawyers practicing in an MDP will still be bound by the profession’s core values, he stated that he did not know how core values can be enforced or monitored in the MDP environment. Mr. Wikstrom stated that he could not imagine how the core values of independent judgment and undivided loyalty could be given the same scrutiny in the MDP environment where non-lawyers have no training or knowledge as to the profession’s ethical rules. Mr. Wikstrom also stated that there has always been tension between the Supreme Court and the Legislature as to who regulates lawyers, and he was concerned that approval of MDP may cause the Legislature to become more involved in the governance of lawyers. Finally, Mr. Wikstrom indicated that he thought that Utah attorneys had been asked to evaluate the advisability of MDP without a full presentation of the pros and cons.

Bob Burton asked Todd Weiler to address the Committee. Mr. Weiler had written an article in the April Bar Journal stating the case against MDPs. Mr. Weiler stated that he was an associate with Perry Anderson and Mansfield in Salt Lake City, and that he was a member of the Young Lawyer’s Division of the Utah State Bar. He stated that he had attended the ABA meeting in New York City last year where the MDP issue had been debated, and that the majority of lawyers there were strongly opposed to it. Mr. Weiler stated that he was shocked that Utah would be sticking its neck out on the issue and that he hoped Utah would be the last state, not the first, to approve MDPs so that we could learn from the mistakes made in other states. Mr. Weiler indicated that he thought the MDP movement was being driven by the accounting firms, not by lawyers’ clients. Mr. Weiler drew an analogy between insurance defense work and MDPs. He stated that in insurance work, frequently the lawyers cannot “call all the shots” because the lawyer is dependent upon the caseload being supplied by the insurance company. The insurance company tells the attorney how to handle the cases, and the attorney acquiesces in that arrangement. Mr. Weiler believes that the ethical issues surrounding independent judgment and undivided loyalty raised in insurance work would likely happen in the MDP environment.

Gary Sackett asked Mr. Wikstrom and Mr. Weiler what they believed the core values of the profession were. Mr. Wikstrom stated that he believed that confidentiality and the duty of undivided loyalty were the core values. Mr. Weiler stated that he was most concerned about the conflicts of interest area, and that he could not imagine dealing with a non-lawyer and getting that person to understand the lawyer’s position as to conflicts. Judge Nehring described the issues that the professions deal with: clergy with the afterlife; physicians with life; and lawyers with the law. Judge Nehring viewed these as higher callings, and that the making of money is not in the same rank. Gary Sackett stated that he preferred to not view lawyers as having any sort of elevated position over other professions but rather the requirements of loyalty and confidences to the client are what makes the work of lawyers different.

Bob Burton then asked the Committee whether they thought there could be a limited form of MDP that would be acceptable. Mr. Sackett suggested that some modification to the fee-sharing and

advertising rules might be appropriate. Paula Smith stated that while she was concerned about attorneys working for other professionals, she would not be opposed to some rule modifications that might permit "one stop shopping for clients." Steve Johnson updated the Committee on the proposed MDP presentation at the Annual Meeting. He indicated that Bar personnel had advised him that the Annual Meeting agenda was already set, and that there was no room for any sort of core values/MDP discussion. Mr. Johnson also advised that Norm Johnson was planning on attending the Committee meeting in May to comment as to his concerns about MDP in the securities environment.

Mr. Burton asked the Committee members how close they were to making a decision on the MDP issue and how they would like to proceed. After discussion, it was the consensus of the Committee that: it did not need any more presentations from proponents of MDP; that no one at the meeting was inclined to vote "yes" as to the Task Force version of MDP, and that the Committee was at the point to begin drafting a response to the Supreme Court as to the Bar's petition. Judge Nehring "volunteered" to take a stab at the first draft of the response. He indicated that he would be focusing on the Committee's concerns as to MDP. Gary Sackett agreed to get something in writing that focused on whether any modification of the advertising or fee sharing rules might be appropriate to permit lawyers to participate in certain types of business enterprises.

III. ADJOURN

Mr. Burton announced that the next Committee meeting would be May 21, 2001 at 5:15 p.m. There being no further business, the meeting adjourned.