

**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, May 21, 2001  
5:15**

**Present**

John Beckstead  
Robert Burton, Chairperson  
Gary Chrystler  
Karma Dixon  
Steven Johnson  
Kent Roche  
Paula Smith  
Billy Walker  
Earl Wunderli

**Excused**

Commissioner Thomas N. Arnett  
Matty Branch  
William Hyde  
Hon. Ronald Nehring  
Gary Sackett

**Guests**

Esther Chelsea-McCarty

**Staff**

Alicia Davis, Staff Attorney

---

**I. Welcome and Approval of Minutes**

Bob Burton welcomed the Committee members to the meeting. He introduced Alicia Davis from the Administrative Office of the Courts, who will be staffing the meetings. He read a note from Peggy Gentles expressing her appreciation for the Committee's gift. Mr. Burton indicated that Norm Johnson was not present due to illness. Mr. Johnson will prepare a written report on the SEC regulations and an accountant's duty to disclose in light of Multidisciplinary Practice (MDP). Mr. Johnson will submit the report as soon as his health allows, and will also be available for discussion. Earl Wunderli moved that the minutes of the April 16, 2001 meeting be approved subject to correction of typographical errors. Karma Dixon seconded the motion. The motion passed unanimously.

**II. Multidisciplinary Practice (MDP)**

The Committee reviewed Judge Nehring's draft response to the Supreme Court on the Bar's Task Force Report on MDP. Karma Dixon presented an outline to review the rules in relation to the core values of the profession previously identified by the Committee. Steven Johnson suggested that the Committee evaluate the rule changes proposed by the Task Force and indicate specifically how the changes interfered with core values, similar to Gary Sackett's memo. Mr. Johnson

suggested that the Committee also consider whether any modification of the advertising or fee sharing rules were appropriate to permit lawyers to participate in certain types of business enterprises. Karma Dixon added that there may be some rules, not mentioned in Task Force, that may need to be evaluated. The Committee's response would caution against the risk to core values presented by the Bar's proposed rule changes, but not necessarily against MDP. Bob Burton suggested that perhaps certain rules could be modified to allow MDP in some circumstances. Mr. Burton proposed that the Committee's report include such suggestions without formally sanctioning MDP.

Bob Burton felt the Committee must report: 1) The Committee's position on MDP 2) If the Committee favored MDP, what changes must be made to the Rules? Billy Walker agreed: MDP may in fact be beneficial to lawyers, and the Supreme Court wants to know whether or not it is a good idea. John Beckstead inquired if the Committee were empowered to act as a policy setting body. Bob Burton stated that in other contexts, the Committee's role has been to review the rules in light of public policy.

Bob Burton appreciated Judge Nehring's draft response. Mr. Burton was hesitant to propose rule amendments in the Committee's response. Steve Johnson suggested that Judge Nehring's draft be used as an opening statement to the response, that the response also evaluate the Bar's proposed rule changes, and identify the risk that the changes pose to core values. John Beckstead suggested that the overall tone of the Committee's response should be a detached and objective investigation of MDP as proposed by the Task Force Report. Billy Walker stated that the language of the Response needs to be strong because the language of the Task Force Report is strong.

Karma Dixon recognized that some forms of MDP are already occurring. As long as attorneys engaging in MDP comply with the rules and core values, the Committee need not concern itself. John Beckstead noted that no one disagreed with the concept of MDP, just with the Report's starting premise. Mr. Beckstead analogized the Committee members' varying viewpoints to standards of proof: 1) Unless the Task Force could demonstrate a compelling need for MDP, it should not be allowed; 2) MDP is advantageous and should be allowed, barring a demonstration of potential harm; or 3) Because MDP can be employed with no demonstrated harm, it should be allowed without a demonstration of potential benefits. Mr. Beckstead opined that because the rest of the report would flow from that premise, the Committee needed to decide which premise to employ.

Gary Chrystler stated that the Bar had not presented any evidence that MDP would serve a valuable purpose, nor evidence that MDP would not disturb core values. Mr. Chrystler suggested that the Task Force should present such evidence. In his presentation, Professor Harris, a professor of Ethics, could not guarantee that MDP would not disturb core values. Paula Smith agreed that the Bar had failed to provide substantial evidence of MDP's potential benefits, nor of safeguards to potential harm. Ms. Smith illustrated that the proposed rule changes did not restrict ownership at all; for example, in Arizona and Colorado, MDP rules require that an attorney must own more than fifty percent of the entity. Ms. Smith would like to see an actual problem, aided by a proposal.

Mr. Burton questioned if anyone favored MDP as proposed by the Bar, but no members voiced approval. Mr. Burton stated that because the Committee had until October to submit its report to the Supreme Court, the Committee could spend time drafting its response. Steven Johnson moved that two committees be formed to draft the response. The first committee would be chaired by Judge Nehring, and would include Bob Burton and John Beckstead. Mr. Burton volunteered to assist in editing the introductory portion, supplied by Judge Nehring. The second committee would analyze the rules in light of core values. These two committees would then put together one document, to be discussed at the next meeting, asking that the Court not modify the rules to allow MDP as presented by the Bar. Gary Chrystler seconded the motion, and it passed unanimously. Bob Burton appointed Steven Johnson, Karma Dixon, Earl Wunderli, Gary Sackett, and Kent Roche (as available) to the second committee. Karma Dixon moved that Steven Johnson chair the second committee. The motion was seconded, and passed unanimously. Both committees will submit their reports to Alicia Davis no later than July 2 for distribution to the Committee.

Mr. Chrystler stated that the report should clarify that the Committee did not oppose MDP as a concept, just as proposed by the Bar. Earl Wunderli suggested that the report provide the historical context of MDP: what states allowed MDP, what model of MDP, and their relative success. This suggestion was met with general approval. Mr. Burton suggested that Bruce Hafen's consideration of Professionalism and other reports be attached as addendum.

### **III. Comments**

A letter requesting re-consideration of Rule 11-301 of the Supreme Court Rules of Professional Practice was erroneously attached to the Committee's materials. Mr. Burton determined that the Committee lacked jurisdiction to review the comment, thus the letter was not considered. Mr. Burton stated that he had received a letter from a lawyer suggesting amendment to Rule 4, and Mr. Burton may ask that that letter be considered at the next meeting.

### **III. Adjourn**

Mr. Burton announced that the next committee meeting would be Monday, July 16 at 5:15 p.m. There being no further business, the meeting adjourned.