

MINUTES

**SUPREME COURT'S ADVISORY COMMITTEE
ON THE
RULES OF PROFESSIONAL CONDUCT**

Administrative Office of the Courts
450 South State Street
Salt Lake City, Utah 84114
Monday, January 14, 2002
5:15 p.m.

ATTENDEES

Robert Burton
Gary Chrystler
Nayer Honorvar
Kent Roche
Earl Wunderli

EXCUSED

John Beckstead
Karma Dixon
Royal Hansen
William Hyde
Steven Johnson
Hon. Ronald Nehring
Gary Sackett
Paula Smith
Billy Walker

GUESTS

Matty Branch

STAFF

Alicia Davis

I. WELCOME AND APPROVAL OF MINUTES

Bob Burton welcomed everyone to the meeting. He was pleased to introduce the newest member to the committee, Nayer Honorvar. In addition to her practice, Ms. Honorvar does pro bono work as a Guardian ad Litem. Earl Wunderli moved that the minutes be approved without a quorum unless challenged by a non-present member. The motion was seconded, and it passed on the unanimous vote of those present.

II. MDP DEVELOPMENTS

Bob Burton read to the committee a letter from Chief Justice Howe expressing "deep appreciation" for the time, effort and thought that the committee dedicated to the MDP report. Mr. Burton informed the committee that he and Judge Nehring, along with representatives of the Bar, would meet with the Court on January 30 for a question and answer session. Mr. Burton informed that Gary Sackett had distributed the committee's report in conjunction with a CLE class.

Mr. Burton asked the committee whether any possible form of MDP could exist without conflicting with the professional rules, and 2) whether the committee imbued Judge Nehring and Bob Burton

with the power to “horse-trade.” Gary Chrystler felt that Judge Nehring and Mr. Burton should not engage in horse-trading; that it was not the charge of the committee to create a compromise form of MDP. This comment was met with general agreement. Because they could not be present at the meeting, both Steven Johnson and Paula Smith had submitted their comments to Mr. Burton prior to the meeting. Mr. Johnson did not feel that the delegates should horse-trade. Ms. Smith said that the recent news report that an attorney at Arthur Andersen had directed auditors to destroy all Enron audit material illuminated the need for attorney independence, that MDP poses a significant risk to core values, and should not be pursued lightly. Mr. Burton appreciated Mr. Johnson’s and Ms. Smith’s comments.

III. CONSIDERATION OF RULES OF LAWYER DISCIPLINE AND DISABILITY

The Committee reviewed amendments made to the rules of Lawyer Discipline and Disability. Matty Branch indicated that the Bar had not yet submitted their petition to amend the rules to the Supreme Court, giving the committee more time to comment on the rules. Ms. Branch will remind the Court that the committee would like to give input on the rules. Ms. Branch did not think that March was too late for the committee to submit comments.

Ms. Smith had earlier indicated that the amendments seemed acceptable to her. Mr. Chrystler indicated that amendments appeared to conform with existing practices, and clarify the procedure.

The following rules were discussed:

Rule 3: Mr. Burton questioned the current status of the subpoena power. Ms. Honorvar stated that she had previously served with what is now the Office of Professional Conduct (OPC). Ms. Honorvar stated that subpoenas were a good idea, to limit the investigation. Currently, attorneys will be as helpful as possible in providing information to the OPC to avoid going beyond an informal disciplinary review; which sometimes turns into a fishing expedition. Mr. Burton questioned whether an attorney shouldn’t be able to call witnesses who could testify positively on one’s behalf.

Rule 6(b): Mr. Burton opined that the rule should read: “... after leaving office, a judge who is subject to the lawyer disciplinary and disability proceedings for misconduct that occurred while the lawyer was a judge and if such conduct would have been grounds for lawyer discipline.”

Rule 10(b)(4)(D): Mr. Burton questioned whether ten days was enough time to respond.

Rule 13(b): Mr. Burton questioned whether this provision was necessary. Mr. Chrystler stated that this would give immunity to lawyers who failed to report ethical violations.

Rule 16: Mr. Burton felt that suspension notices should continue to be published in the Bar Journal. The Committee felt that this should be further discussed at the next meeting.

Rule 19(c): Mr. Burton noted that the Bar materials that had been distributed contained a typo that

appears to have been corrected, but should be checked again at the next meeting.

Rule 30: Mr. Johnson had commented that the Bar could recover fees, but an attorney could not. The Committee felt that this should be further discussed at the next meeting.

For the next meeting, all committee members are asked to comment on the rules, and to submit these comments to Alicia Davis by February 22. Ms. Davis will create an annotated version of the rules, and circulate this for the next meeting.

IV. INCORPORATION OF PROCEDURAL RULES

Ms. Davis had distributed a memo dated December 28, 2001 concerning the repeal of certain procedural rules from the Rules of Judicial Administration, and their concurrent reinstatement into the Supreme Court's bodies of procedural rules. Rules 4-506 and 4-604, dealing with withdrawal of counsel, were really the only rules that concerned the Rules of Professional Conduct. Earl Wunderli stated that whether or not the rules were in one body of rules or another made no difference. Ms. Davis will inform the committee if any changes to the rule affect RPC 1.16.

V. ADJOURN

Mr. Burton announced that the next Committee meeting would be Monday, March 18 at 5:15 p.m. The committee will discuss the annotated version of the Rules of Lawyer Discipline and Disability, and Mr. Burton and Judge Nehring will give a debriefing on the meeting with the Supreme Court. There being no further business, the meeting adjourned.