

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

Utah Law & Justice Center
645 South 200 East
Salt Lake City, UT 84111
July 19, 2004
4:30 p.m.

ATTENDEES

EXCUSED

Robert Burton, chair
Gary Chrystler
Judge Fred Howard
Steven Johnson
Kent Roche

Gary Sackett
Stuart Schultz
Paula Smith
Billy Walker
Earl Wunderli
Matty Branch

Judge Royal Hansen
Nayer Honarvar
Judge Paul Maughan
Judge Stephen Roth
John Soltis

1. WELCOME AND APPROVAL OF MINUTES

Mr. Burton welcomed the members of the committee. Mr. Johnson moved to approve the minutes of the June 21, 2004, meeting. Mr. Roche seconded the motion, and it passed unanimously.

2. RULE PUBLICATION DEADLINE

Ms. Branch distributed copies of the rulemaking schedule followed by the Supreme Court. Under the schedule, rules would have to be in final form and approved for comment by August 26, 2004. The committee agreed that this deadline could not be met as to the Ethics 2000 rules and decided that the goal should be to have all the rules finalized and ready to be sent for comment by the committee meeting in January 2005. Based upon that schedule, Mr. Burton decided that the August committee meeting would be cancelled, with the next meeting to be held on September 20, 2004, at 4:30 p.m. at the Law and Justice Center.

3. TRANSMISSION OF APPROVED RULES

Ms. Branch stated that after review of Ingrid Kelson's files, both electronic and hard copy, she had determined those rules for which she had an electronic, red-lined version, those rules for which she did not have an electronic red-lined version, and those rules that she believes are yet to be considered by the committee. Ms. Branch distributed copies of the results of her review to committee members. Mr. Burton advised that each subcommittee is responsible for getting Ms. Branch the final, red-lined version of the rules the subcommittee was assigned. He stated that the red-line should compare the current Utah rule and the proposed new Utah rule.

4. ETHICS 2000 MODEL RULES

Rule 3.8

Mr. Schultz advised that Dave Schwendiman from the U.S. Attorney's Office still did not have a response from the Washington, D.C. office as to their concerns as to Rule 3.8. Mr. Schultz believes that Mr. Schwendiman's concerns are very similar to those expressed in Paul Boyden's letter. It was suggested that John Soltis (a new member of the committee) would likely have an opinion as to the rule, and that it would be helpful to get his viewpoint at the next meeting. Mr. Wunderli moved to table discussion on Rule 3.8 until the September meeting. Ms. Smith seconded the motion, and it passed unanimously.

Rule 4.2(c)(3)

Mr. Sackett advised that section (c)(3) was the only part of Rule 4.2 that the committee had not yet taken final action on. Ms. Smith advised that Utah's existing Rule 4.2(c)(3) governs the communication between lawyers and governmental employees, parties, and officials, and that it allows lawyers to contact elected officials about policy matters with disclosure during litigation, but bars contacting governmental employees, parties and officials when litigation is pending or imminent. Mr. Sackett suggested that the current form of the rule was never considered by the committee, and that the Supreme Court had approved it without input from the committee. Various committee members shared their views as to whether the rules of litigation should be the same whether a governmental or private entity is being sued. Ms. Smith moved to retain the existing Utah Rule 4.2(c)(3) as proposed Rule 4.2(d)(3). Mr. Schultz seconded the motion, and it passed, 6 in favor, 4 opposed.

Unbundling Rules

Mr. Burton reminded the committee that the Rules of Professional Conduct affected by the Bar Commission's petition for the unbundling of legal services are Rules 1.2, 4.2, 4.3, and a new Rule 6.5. Mr. Burton asked the subcommittees that dealt with each of these rules to get the final red-line version of these rules to Ms. Branch by August 10th so that they can be sent to the Court for consideration separately from the other model rules.

Rule 4.1

In the absence of Judge Hansen and Judge Maughan, Mr. Burton reviewed the subcommittee's materials as to Rule 4.1. He stated that the subcommittee recommended adoption of the Ethics 2000 Rule 4.1 and Comment without revision. The subcommittee advised that the Ethics 2000 Rule 4.1 and Utah's current Rule 4.1 are identical and that the only changes are to the Comment. Mr. Johnson moved to adopt Ethics 2000 Rule 4.1 and the Comment. Mr. Chrystler seconded the motion, and it passed unanimously.

Rule 5.7

Mr. Chrystler reviewed the issues for consideration as outlined in his memo to the committee dated May 14, 2004. Mr. Chrystler explained that Utah currently does not have a Rule 5.7, that few states have adopted one, generally dealing with law-related services issues through ethics advisory opinions. Mr. Sackett moved to adopt the Ethics 2000 form of Rule 5.7 along with the Comment. Mr. Johnson seconded the motion, and it passed, 9 in favor, 1 opposed.

Rule 7.2

Mr. Burton stated that discussion of this rule would be deferred until the September meeting.

5. **RULE 6.1 - DEFINITION OF THE PRACTICE OF LAW**

Mr. Sackett distributed a revised form of Rule 6.1 that showed the revisions recommended by the subcommittee in response to the various public comments received. Mr. Sackett reviewed each proposed revision and indicated that the subcommittee was unanimously in favor of these revisions. Mr. Sackett moved to adopt the revisions to Rule 6.1 proposed by the subcommittee. Mr. Chrystler seconded the motion, and it passed unanimously.

6. **AGENDA ITEMS FOR SEPTEMBER MEETING**

Rule 3.8 - Ms. Honarvar and Mr. Schultz
Rule 7.1 - Mr. Walker and Mr. Soltis
Rule 7.2 - Judge Howard^{Hansen} and Judge Maughan
Rule 8.4 - Judge Roth and Mr. Johnson
Rule 6.1 - Ms. Smith and Mr. Wunderli
Rule 7.6 - Judge Howard and Mr. Chrystler

7. **ADJOURN**

The next meeting will be held on September 20, 2004, at 4:30 p.m. at the Law and Justice Center. There being no further business, the meeting was adjourned.