

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  
September 20, 2004  
4:30 p.m.

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ATTENDEES

Robert Burton, chair  
Gary Chrystler  
Judge Royal Hansen  
Nayer Honarvar  
Steven Johnson  
Judge Paul Maughan  
Judge Stephen Roth

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

EXCUSED

Judge Fred Howard  
Kent Roche

1. WELCOME AND APPROVAL OF MINUTES

Mr. Burton welcomed the members of the committee. Mr. Wunderli moved to approve the minutes of the June 21, 2004, meeting subject to the assignment for Rule 7.2 being changed to show Judge Hansen rather than Judge Howard and some sort of notation to make clear that Rule 6.1 - Definition of the Practice of Law is not part of the Ethics 2000 rule amendments.

2. 6.1 DEFINITION OF THE PRACTICE OF LAW (NOT PART OF ETHICS 2000 PROPOSED AMENDMENTS)

Mr. Burton stated that the Supreme Court had asked him and the members of the subcommittee to meet with them on October 13, 2004, at 9:00 a.m. to discuss the pros and cons of adopting the proposed definition. Mr. Burton advised that the Supreme Court welcomed any other members of the committee who would like to attend. Mr. Sackett advised the committee of the Court's request that the committee review the Attorney General's late-filed comments as to subsections (c)(4) and (c)(9) of the proposed rule. Mr. Sackett reviewed the memo he had prepared on behalf of the subcommittee responding to the Attorney General's concerns. The subcommittee recommended no change to section (c)(4) because nothing in the proposed rule has anything to do with the issues raised in the Attorney General's memorandum and because the ultimate safeguard related to the provision is that the representation outlined in (c)(4) is subject to the court's approval. As to the Attorney General's concerns as to section (c)(9), Mr. Sackett suggested there was not any problem since the activities of the Attorney General's adjudicators do not involve the representation of another person and are, therefore, not considered the practice of law. Despite this view, the subcommittee recommended the addition of two sentences to the Comment to section (b)(1). These sentences would be as

follows: “Similarly, an employee of a business entity is not engaged in ‘the representation of the interests of another person’ when activities involving the law are a part of the employee’s duties solely in connection with the internal business operations of the entity and do not involve providing legal advice to another person. Further, a person acting in an official capacity as an employee of a government agency that has administrative authority to determine the rights of a person under the law is also not representing the interests of another person.” Mr. Sackett agreed to prepare a revised subcommittee memorandum and to send it to Ms. Branch for distribution to the justices prior to the October 13<sup>th</sup> meeting.

### 3. USE OF BOARD CERTIFICATION IN LETTERHEAD/LETTER FROM DON WINDER

Mr. Burton advised as to the request made by Mr. Winder in his letter to the Court. Mr. Burton stated that he thought it was helpful to the public to have information as to lawyers’ specialties, and that he thought the current Alaska Rule 7.4(b) seemed a good approach to follow. Several committee members wondered what criteria the ABA uses to certify an organization. Mr. Burton agreed to obtain additional information about the ABA accreditation process, as well as what entities are currently accredited by the ABA, and report back to the committee at the October meeting.

### 4. UNBUNDLING RULES

Mr. Burton indicated that the rules to facilitate the unbundling of legal services - Rules 1.2, 4.2, 4.3 and 6.5 - have not yet been sent out for official comment. Mr. Burton indicated that it was his understanding that the Supreme Court wanted to make its decision as to the definition of the practice of law before sending the unbundling rules out for comment.

### 5. ETHICS 2000 MODEL RULES

#### Rule 7.2

Consideration of the proposed amendments to Rule 7.2 were deferred to the October meeting. Judges Hansen and Maughan will present their recommendations at that time.

#### Rule 3.8

Mr. Schultz advised that he has received no further written materials from Dave Schwendimen in the U.S. Attorney’s Office. Mr. Schultz stated that he was opposed to the proposed new subsection (e) in the ABA rule as to the subpoena, and that his preference was that the Utah rule be kept in its present form. Mr. Soltis stated that he had sent information to Paul Boyden as to the ABA’s proposed rule, and that Mr. Boyden had presented the information to the Utah Prosecution Council, and that the council had unanimously voted to keep the Utah rule as it is. Mr. Schultz moved to retain Rule 3.8 as it presently exists including the existing comments.

Mr. Chrystler seconded the motion, and it passed unanimously. Mr. Schultz indicated that he will prepare a written comment as to why the committee did not recommend adoption of the ABA rule.

Rule 7.1

Mr. Walker stated that he and John Soltis had reviewed the proposed ABA Ethics 2000 rule, and that they disagreed with the ABA's approach and felt the current Utah rule was more definitive and provided better notice to lawyers because of its specificity. Mr. Walker also indicated that, although the subcommittee recommended that the Utah rule remain intact, it felt that the ABA model rule comments would be a good addition to the Utah rule. Mr. Sackett advised that he was in favor not only of the Ethics 2000 comments, but that he thought the proposed text of Rule 7.1 was an improvement on the Utah rule. Mr. Sackett moved to adopt Ethics 2000 Rule 7.1 and the comments. Mr. Johnson seconded the motion, and it passed on a 7 to 4 vote, with one abstention.

Rule 8.4

Mr. Johnson indicated that the subcommittee recommended adoption of the ABA model rule because the changes merely involved moving language from another existing rule to Rule 8.4 or moving aspects of the existing 8.4 rule to other rules. Mr. Johnson moved to adopt Ethics 2000 Rule 8.4. Judge Roth seconded the motion, and it passed unanimously.

6. AGENDA ITEMS FOR OCTOBER MEETING:

Board Certification/Don Winder - Mr. Burton

Rule 3.8 (red-line version of the approved rule with comment explaining why the Utah rule departs from the ABA model) - Ms. Honarvar and Mr. Schultz

Rule 7.2 Judge Hansen and Judge Maughan

Rule 6.1 (pro bono service) - Ms. Smith and Mr. Wunderli

Rule 7.6 - Judge Howard and Mr. Chrystler

Rule 8.1 - Mr. Walker and Mr. Soltis

Rule 8.3 - Judge Hansen and Judge Maughan

Preamble - Ms. Honarvar and Mr. Schultz

7. ADJOURN

The next meeting will be held on October 18, 2004, at 4:30 p.m. at the Law and Justice Center. There being no further business, the meeting was adjourned.