

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

Matheson Courthouse
450 So. State
Salt Lake City, UT
February 23, 2005
4:30 p.m.

ATTENDEES

EXCUSED/ABSENT

Robert Burton, chair
Gary Chrystler
Judge Royal Hansen
Judge Fred Howard
Steven Johnson
Judge Paul Maughan
Kent Roche

Judge Stephen Roth
Gary Sackett
Paula Smith
Billy Walker
Earl Wunderli
Matty Branch

Nayer Honarvar
Stuart Schultz

1. WELCOME AND APPROVAL OF MINUTES

Mr. Burton welcomed the members of the committee. Mr. Wunderli moved to approve the minutes of the January 24, 2005, meeting. Steve Johnson seconded the motion, and the minutes were approved unanimously.

2. OUTSTANDING ISSUES RELATED TO ETHICS 2000 PROPOSED AMENDMENTS

Rule 1.8

Steve Johnson reviewed with the committee the new Comment [19a] that he had drafted to show the distinction between the Utah Rule and the ABA Model Rule. It was moved and seconded that Comment [19a] be added to Rule 1.8, and the motion passed unanimously.

Rule 1.10(c)(1)

It was moved and seconded that the word "directly" should precede the word "apportioned" in subparagraph (c)(1). The motion failed.

Rule 1.10(c)(2)

It was moved and seconded that subparagraph (c)(2) be amended to read "written notice is promptly given to any affected former client," and that the phrase "to enable it to ascertain compliance with the provisions with this Rule" be deleted. The motion passed on a six-to-five vote.

Rule 1.12(c) (2)

It was moved and seconded that the phrase “to enable them to ascertain compliance with the ~~privileges~~ ^{provisions} of this rule” be deleted from subparagraph (c)(2). The motion was approved.

Rule 1.13

It was moved and seconded that the phrase “under generally prevailing law” at the beginning of Comment [12] be deleted. The motion passed unanimously.

Rule 1.17

It was moved and seconded that the parts of Comment [1] which relate to the differences between Utah’s Rule and the ABA Model Rule be pulled out of Comment [1] and become Comments 15 (a) through 15(e), and that Comment [8] be amended to read “Omitted as unnecessary.” The motion passed unanimously.

Rule 5.5

It was moved and seconded that the last sentence of Comment [13] be deleted and that Comment [21a] be approved in the form recommended by Mr. Sackett. The motion passed unanimously.

Rule 7.2

It was moved and seconded that the amendments to Comment [6] recommended by Mr. Sackett be approved. The motion passed on a 8-to-3-vote.

It was additionally moved and seconded that the new Comment [7a] proposed by Mr. Sackett be adopted. The motion passed unanimously.

Rule 7.3

It was moved and seconded that the new Comment [7a] proposed by Mr. Johnson be approved. The motion passed unanimously.

Rule 3.3

It was moved and seconded that the last sentence of Comment [10] be deleted as unnecessary, and that no new Comment [10a] be added. The motion passed unanimously.

Rule 1.7

It was moved and seconded that the Comment proposed by Judge Hansen be approved. The motion passed unanimously.

Rule 3.4

It was moved and seconded that the second sentence of Comment [3] be deleted. The motion passed unanimously.

Rule 1.6

It was moved and seconded that no additional Comments were needed to the Rule, and that the Comment should not be renumbered. The motion passed unanimously.

Rule 5.4

It was moved and seconded that subparagraph (a)(2)(i) and paragraph (a)(2) (ii) be reversed. The motion passed unanimously.

Additionally, it was moved and seconded that a new Comment [2a] be added to Rule 5.4, to read as follows: “Paragraph 4 of the ABA Model Rule was not adopted because it is inconsistent with Rule 7.2(c) which prohibits the sharing of attorney’s fees.”¹ The motion passed unanimously.

Rule 6.1

It was moved and seconded that the following phrase found in the second sentence of Comment [9a] be deleted: “or produce the ultimate desired result that is, a significant maximum increase in the quantity and quality of pro bono legal services provided.” The motion passed unanimously.

Further it was moved and seconded that Comment [11] be renumbered to Comment [11a] and [11b]. The motion passed unanimously.

Finally, it was moved and seconded that Comment [12] read as follows: “The responsibility set forth in this Rule is not intended to be enforced through disciplinary process.” The motion passed unanimously.

Rule 8.2

It was moved and seconded that the language proposed by Mr. Sackett to be added to Comment [3a] be approved. The motion passed unanimously.

Rule 4.2

It was moved and seconded that Mr. Sackett’s proposed amendments to Comment [1] of the Rule be approved. The motion passed unanimously.

3. OTHER MATTERS RELATED TO ETHICS 2000 PROPOSED AMENDMENTS

Ms. Branch advised that as soon as she completes the final edits to the rules, she will forward them to Tim Shea in the Administrative Office of the Courts for publication. It is anticipated that the rules will go out for comment relatively soon after they are forwarded to Mr. Shea. There will then be a 45-day comment period. Mr. Sackett agreed to write an article for the Bar Journal as to the proposed Ethics 2000 amendments and the committee's work.

4. NEXT MEETING

April 18, 2005, 4:30 p.m. at the Law and Justice Center.