

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

Law and Justice Center
645 South 200 East
Salt Lake City, UT
January 11, 2010
5:00 pm

ATTENDEES

Robert Burton, Chair
Matty Branch
Gary Chrystler
Steve Johnson
Judge Paul Maughan
Judge Mark May
Kent Roche

Judge Stephen Roth
Gary Sackett
Stuart Schultz
Paula Smith
Leslie Van Frank
Paul Veasy
Earl Wunderli

EXCUSED

Nayer Honarvar
John Soltis
Billy Walker

1. WELCOME AND APPROVAL OF MINUTES

Mr. Burton welcomed the members of the committee. He asked if there were any corrections to the minutes of the September 28, 2009, meeting. Mr. Wunderli moved to approve the minutes. Mr. Johnson seconded the motion, and it passed unanimously. Ms. Branch announced that she would be retiring from her position with the state courts as of April 23, 2010.

2. REPORT FROM ADVERTISING SUBCOMMITTEE

Mr. Burton advised that he had chaired the subcommittee made up of himself, Stuart Schultz, Paul Veasy, Leslie Van Frank and John Soltis. He stated that he had spoken with members of the Bar Commission as to whether they had developed any sort of action plan as to the advertising issue. Mr. Burton was advised that, other than undertaking a survey of Bar members that indicated a general concern as to lawyer advertising, the Bar Commission had not done any research or analysis as to the issue.

Mr. Burton said that the draft letter to Chief Justice Durham, dated January 11, 2010, which he earlier circulated to committee members, presents the review and analysis of the advertising subcommittee. He asked for any questions or comments from committee members as to the subcommittee's research and recommendations. Ms. Van Frank said the subcommittee felt that the current advertising rule is adequate

enough for the Office of Professional Conduct (“OPC”) to pursue misleading advertisements, but that OPC currently does not seem to have adequate manpower to initiate complaints on its own. Judge Roth suggested that neither the Bar offices nor OPC had the will or resources to enforce the existing rule.

Mr. Sackett expressed concern about the proposed changes to Rule 8.2 and questioned what the threshold is between an attorney’s opinion and a false statement. Judge Roth said he thinks criticism of government is appropriate, but because the judiciary is the weakest branch of government, and because judges are ethically precluded from defending themselves or explaining what their decisions mean, the prohibition as to certain public statements by attorneys is justified.

Ms. Van Frank recommended that proposed Rule 8.2(a) be amended to state as follows:

(a) A lawyer should not make a public statement that the lawyer knows to be false or with reckless disregard concerning the judicial system, or the qualifications or integrity of a judge, an adjudicating officer, or a candidate for election or appointment to a judicial office.

Mr. Johnson moved that subject to the changes suggested by Ms. Van Frank, the recommendations contained in Mr. Burton’s draft letter to Chief Justice Durham be approved and the letter sent. Judge Maughan seconded the motion, and it passed unanimously. Mr. Burton said he will make the necessary changes to his letter to Chief Justice Durham, and mail it.

3. OTHER BUSINESS

Ms. Branch advised that there are no assignments or issues presently pending before the committee, and that no future meeting will be scheduled at this time.