

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
December 6, 2010
5:00 pm

ATTENDEES

Steve Johnson, Chair

Diane Abegglen
Nayer Honarvar
Judge Paul Maughan
Trent Nelson
Kent Roche
Judge Stephen Roth

EXCUSED

Gary Sackett

Stuart Schultz
Paula Smith
Paul Veasy
Billy Walker
Earl Wunderli

ABSENT

Gary Chrystler
Judge Mark

May
John Soltis

Leslie Van Frank

1. WELCOME AND APPROVAL OF MINUTES

Mr. Johnson welcomed the members of the committee and asked if there were any corrections to the minutes of the August 30, 2010 meeting. Mr. Johnson suggested that the heading "Guests" be added to the list of attendees and that the first sentence of Section 1 be revised to read: "Mr. Johnson welcomed the members of the committee **and guests** and introduced the new committee members." With this correction, Earl Wunderli moved to approve the minutes. Kent Roche seconded the motion and it passed unanimously.

Mr. Johnson informed the committee that the proposed amendment to Rule 14-802 (which permits a non-lawyer to represent a party in small claims court) has been approved by the Supreme Court.

2. DISCUSSION OF ABA'S NEW MODEL RULES FOR CLIENT TRUST ACCOUNT RECORDS

Mr. Johnson introduced the topic to committee members. The ABA House of Delegates adopted new rules for record keeping of client trust accounts when it met in August 2010 during the annual meeting. The Model Rules for Client Trust Account Records ("Model Rules") were promulgated by the ABA for potential adoption in the states as practical guidance for compliance with Rule of Professional Conduct 1.15.

Rule 1.15 of the Utah Rules of Professional Conduct requires lawyers to keep complete records of their client trust accounts and, upon request by a client or third person, to promptly render a full accounting regarding trust account property. Rule 1.15 requires lawyers to preserve the records for a period of five years after termination of representation.

After a discussion of the Model Rules and OPC's history with client trust account problems, the committee determined that Utah's current rules are adequate and do not need to be expanded. They not only give lawyers guidance as to how they should care for client properties in their control or possession, but also provide protections for clients regarding their account funds and property. The committee also felt that the Model Rules would be a significant burden on solo and small firm attorneys.

Gary Sackett made a motion that the Model Rules not be adopted in Utah. Judge Roth seconded the motion and it passed unanimously. Mr. Johnson will prepare a letter advising the Supreme Court of the committee's recommendation.

3. SUBCOMMITTEE REPORT: DISQUALIFICATION OF COLLABORATIVE LAWYERS UNDER THE UTAH UNIFORM COLLABORATIVE LAW ACT

Mr. Johnson introduced the topic to committee members. During the 2010 legislative session, the Utah Uniform Collaborative Law Act ("the Act") was passed. Prior to its enactment, a procedural provision of the Act concerning disqualification of collaborative lawyers and their law firms under certain circumstances was removed at the recommendation of the Administrative Office of the Courts.

Specifically, the following language was removed from the Act prior to its passage:

78B-19-109. Disqualification of collaborative lawyer and

lawyers in associated law firm.

(1) Except as otherwise provided in Subsection (3) a collaborative lawyer is disqualified from appearing before a tribunal to represent a party in a proceeding related to the collaborative matter.

(2) Except as otherwise provided in Subsection (3) and Sections 78B-19-110 and 78B-19-111, a lawyer in a law firm with which the collaborative lawyer is associated is disqualified from appearing before a tribunal to represent a party in a proceeding related to the collaborative matter if the collaborative lawyer is disqualified from doing so under Subsection (1).

(3) A collaborative lawyer or a lawyer in a law firm with which the collaborative lawyer is associated may represent a party: (a) to ask a tribunal to approve an agreement resulting from the collaborative law process; or (b) to seek or defend an emergency order to protect the health, safety, welfare, or interest of a party, or designated household member if a successor lawyer is not immediately available to represent that person. In that event, Subsections (1) and (2) apply when the party, or designated household member is represented by a successor lawyer or reasonable measures are taken to protect the health, safety, welfare, or interest of that person.

In October 2010, the Supreme Court asked this committee to consider whether the Rules of Professional Conduct should be amended to include similar language (possibly as a new subsection to Rule of Professional Conduct 1.16). Mr. Johnson appointed a subcommittee, consisting of Stuart Schultz, Trent Nelson and Earl Wunderli, to consider the question and report back to the committee as a whole.

Mr. Schultz reported that the subcommittee debated whether the proposed language belongs in the Rules of Professional Conduct or some other body of rules. After review of the issue, the committee determined that the

proposed disqualification rules do not fit well in the Rules of Professional Conduct and may be better placed in a body of rules which provides for disqualification of attorneys before a tribunal.

Gary Sackett made a motion that the Rules of Professional Conduct not be amended to provide for disqualification of collaborative lawyers, and that disqualification rules may be better placed in a body of rules which provides for disqualification of attorneys before a tribunal. Judge Maughan seconded the motion and it passed unanimously. Mr. Johnson will prepare a letter advising the Supreme Court of the committee's recommendation.

4. OTHER BUSINESS

Mr. Johnson stated that there are no assignments or issues presently pending before the committee and that no future meeting will be scheduled at this time.