

**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
March 26, 2012
5:00 pm

ATTENDEES

Steve Johnson, Chair
John Bogart
Tom Bruner
Nayer Honarvar
Trent Nelson
Gary Sackett
Stuart Schultz
Paula Smith
Kent Roche
Leslie Van Frank
Paul Veasy
Billy Walker
Earl Wunderli
Diane Abegglen, Staff

EXCUSED

Simon Cantarero
Gary Chrystler
Judge Mark May

1. WELCOME AND APPROVAL OF MINUTES

Steve Johnson welcomed the members of the committee. Mr. Johnson asked if there were any corrections to the minutes of the January 30, 2012 meeting. Earl Wunderli moved to approve the minutes. John Bogart seconded the motion and it passed unanimously.

2. DISCUSSION: WEB COMMENTS RECEIVED REGARDING PROPOSED
AMENDMENTS TO RULES 14-503, 14-510 AND 14-533

Mr. Johnson referred the committee to the web comments received in response to the proposed amendments to Rules 14-503, 14-510 and 14-533. The committee also considered the recently approved amendments to Rule 14-504 (the "Safe Harbor" rule).

With respect to Rule 14-504(d), the amended rule provides: “The OPC shall not prosecute a Utah lawyer for any act that was **expressly approved** by an ethics advisory opinion. . . .” Mr. Johnson indicated that the Supreme Court had not specifically solicited the committee’s comments on the Safe Harbor rule as adopted by the Court, but that the Court has generally been receptive to the committee’s suggestions and comments on the rules, even when not solicited. With the general consensus of the committee to learn more about Rule 14-504(d), Mr. Johnson invited Gary Sackett, who had submitted a detailed comment to the Court on Rule 14-504(d), to discuss the procedural background of the rule.

After a brief discussion of the origin of the rule, Mr. Sackett and Mr. Bogart suggested that the phrase “expressly approved” is ambiguous and problematic. Mr. Sackett argued that it is not clear from the phrase when an ethics opinion will apply. He suggested that “expressly approved” be deleted from the sentence and “in compliance with” be substituted. Leslie Van Frank made a motion that the committee study this issue further. Mr. Sackett seconded the motion and it passed by a vote of 4-3 with 1 abstention. After additional discussion, the committee asked Diane Abegglen to provide them with copies of amended Rule 14-504 and with Mr. Sackett’s written materials on the rule. Ms. Van Frank then made a motion that this topic be postponed until the next meeting. Mr. Wunderli seconded the motion and it passed unanimously.

The committee considered the comments received in response to the proposed amendments to Rules 14-503, 14-510 and 14-533. After discussing the comments, Mr. Bogart made a motion that the committee recommend the proposed amendments to the Supreme Court without any changes. Nayer Honarvar seconded the motion and it passed unanimously. Mr. Johnson will prepare a letter to the Supreme Court recommending that the proposed amendments to Rules 14-503 and 14-533 be adopted. The committee’s recommendations regarding Rule 14-510 will be made at a later date when the comment period for other proposed amendments to the rule has expired.

3. DISCUSSION: RULE 1.15(d)

The committee recently received a new assignment from the Court and Mr. Johnson provided background information related to the assignment. The primary issue is whether an attorney has an ethical obligation under the Rules of Professional Conduct to provide a client with an accounting upon request. It appears to the Court that there is no actual requirement in the Rules of Professional Conduct that a lawyer provide an accounting unless a client or third person has an interest in “funds or other property” pursuant to Rule 1.15(d). The Court believes that such a requirement is part of a lawyer’s fiduciary obligation and should be explicit in the rules. They have asked the committee to examine the question and discuss it with them.

After considering the issue, Mr. Sackett suggested that Rule 1.4 may address the Court's concerns. Specifically, Rule 1.4(a)(4) states: "A lawyer shall promptly comply with reasonable requests for information." The committee agreed that a request from a client for information about billing and services provided is a reasonable request (with the possible exception of contingency cases). The suggestion was made that a comment could be added to Rule 1.4 indicating that the rule covers requests from clients for an accounting. Mr. Johnson will meet with the Court to discuss the committee's recommendation.

4. UPDATE: LAWYER ADVERTISING COMMITTEE

Mr. Sackett and Stuart Schultz updated the committee on the Bar Commission's lawyer advertising committee. They indicated that the Bar committee has started drafting a proposed rule similar to the lawyer advertising rules in Nevada and Florida. The Bar committee is also trying to determine what the standard should be (i.e., something more than "false and misleading"). Mr. Sackett and Mr. Schultz will keep the committee apprised as the work progresses.

5. OTHER BUSINESS

The next meeting of the committee was set for May 21, 2012 at 5 p.m. at the Law & Justice Center