

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
August 21, 2006
5:00pm

ATTENDEES

Robert Burton, chair
Matty Branch
Gary Chrystler
Judge Royal Hansen
Nayer Honarvar
Judge Fred Howard
Steve Johnson
Kent Roche

EXCUSED

Judge Stephen Roth
Gary Sackett
Stuart Schultz
Paula Smith
John Soltis
Billy Walker
Earl Wunderli
Judge Paul Maughan

1. WELCOME AND APPROVAL OF MINUTES

Mr. Burton welcomed the members of the committee. Mr. Wunderli moved for adoption of the minutes subject to correction of certain typographical errors. Ms. Smith seconded the motion, and it passed unanimously.

2. REPORT AS TO SUPREME COURT'S ACTION AS TO IN-HOUSE COUNSEL RULE

Ms. Branch provided committee members with the court's order of May 10, 2006, approving the in-house counsel rule. She advised that the underscored provisions of the rule attached to the order were the amendments to the rule made by the court following its consideration of the comments submitted. Ms. Branch stated that the rule will be effective November 1, 2006.

3. REVIEW OF COMMENTS SUBMITTED AS TO PROPOSED

AMENDMENTS TO RULES 2.4 AND 1.12 OF THE UTAH RULES OF PROFESSIONAL CONDUCT

Mr. Burton stated that the committee would proceed to review each comment separately and determine if any changes should be made to the proposed rules based upon the comment. The first comment considered was the one submitted by Mr. Walker. Mr. Burton stated that he did not think the core value of attorney loyalty to the client was eroded by the proposed rules because the client is permitted to limit the scope of the attorney's role to that of drafting the documents necessary to complete the divorce and not to providing legal advice as to the issues presented by the settlement terms. Mr. Walker stated that the ethical rules do not allow clients to consent away their right to competent legal counsel and to being fully informed so they can make adequate decisions.

Mr. Johnson stated that he thinks the proposed amendments are acceptable, but that he believes the problem will be that attorneys won't get informed consent from their clients. Judge Howard said that the very choice of words the lawyer uses to reduce the settlement agreement to a writing may favor one party over the other, and that once the lawyer has moved from being a mediator to an advocate, he is acting as a lawyer and core values come into play.

Mr. Sackett offered that the proposed amendments created a situation that was not ideal, but that the committee had proposed the amendments as a compromise based on consumer economics and the world in which we live.

No motion was offered as to changes in the proposed amendments based upon Mr. Walker's comments.

The committee considered the comments submitted by Brian Florence. No one on the committee felt that it was necessary to amend subparagraphs 18 and 19 of Rule 1.7. While the committee thought that Mr. Florence's suggestions as to mediation training were wise, they did not believe it was the responsibility of the committee to make recommendations about training.

In response to Rick Schwermer's comment, Mr. Sackett moved that Rule 2.4(c)(3) be amended to provide that the consent must be "informed" and "in writing". Mr. Wunderli seconded the motion, and it passed with one "no" vote. The provision as approved by the committee is as follows:

(c)(3) with the informed consent of all parties, confirmed in

writing, may record or may file . . .

No motions were offered based upon the comments posted by Jerome Hamilton and Kathleen Phinney. The committee felt the addition to 2.4(c)(3) stated above adequately responded to the concerns expressed by Charles Bennett and Terry Cathcart.

Mr. Johnson moved that the committee recommend the changes to Rule 2.4(c)(3) agreed to by the committee to the Supreme Court, and, that subject to those changes, the court be asked to approve Rules 2.4 and 1.12. Mr. Schultz seconded the motion, and it passed on a vote of 11 in favor, 2 opposed.

4. NEXT MEETING

There are currently no assignments pending before the committee. Mr. Burton stated that no future meeting will be scheduled at this time. But, if an assignment is received, an email will be sent to arrange a meeting date.

8/21/06 Rules of Professional Conduct

Present

Burton Roth

~~Bar~~

Absent

~~REED~~

Chrysler

Hohanan

Johnson

Sackitt

Smith

walker

Wardell

Roche

Howard

Soltis

Hansen

Minutes

Earl made adoption/ Pala Smith - unanimous

repeated in - have counsel - changes can't
made prior to approval - due deal

Mediator/attorney Rule

review comments

Billy walker's comments

Bob

core value is loyalty - if client wants
to limit lawyer's duties to drafting -
is loyal to client = to do what clients want

Very choice of words may favor one party or the other

Johnson - think rules are OK - thanks to problem is that attorneys won't get informed consent from client

mandatory mediation

Judge Howard - move from mediator to advocate - you are acting like a lawyer

Sackett - this represents compromise based on economics - world we live in

Smith - there are conflicts that are not waivable

"informed consent" requires ^{att'ny} you to lay out all options

Soltis -
role of mediator -
is it giving advise / flagging issues
or just

~~lawyer~~

parties will expect lawyer to protect their interests

~~Rule 7 no amendment~~

Comments 18 & 19 - committee
no report

Fluence medical

Certification - good idea - but not decision of
this committee

Skwermer's comment

informed consent confirmed in writing

Sackett made
Winkler said

(C)(3) with the informed consent of
all parties, confirmed in writing.

~~B#~~ | No vote walker

Charles Bennett comment

that change to (C)(3) deals
adequately with Bennett's
comment

Rules as modified

Johnson - recommend 2.4(e) - no other changes
at approve

Smith - ~~Schultz~~
Securities

revised other comments -
despite comments recommend
cannot adopt ^{proposed} amendments

vote -

Opposed Walker; Smith

no meeting set - email when meeting needed