

**SUMMARY OF MINUTES OF SEPTEMBER 15, 2014 MINUTES OF THE RULES OF  
PROFESSIONAL CONDUCT COMMITTEE**

**Approved 11/3/2014**

Note: The minutes of the September 15, 2014, meeting were destroyed in a catastrophic computer failure. This constitutes a summary of minutes as recollected by the secretary and as gathered from other contemporaneous notes at the time.

Ms. Van Frank moves to approve minutes with one change: page 3, changing Mr. to Ms., so they now read, "Ms. Van Frank moves." A member seconded the motion, and it carried.

It was decided to put the approved minutes and agendas on the Courts website.

The discussion then moved to Changes to the Advertising Rules. It was noted that the Supreme Court considered advertising rules at end of a July meeting on rules. Several suggestions were discussed in that meeting.

The committee then discussed particular text changes. All of the amendments to the rules discussed in this summary accompany these minutes as Appendix 1 to these minutes. The manner of approval of these amendments follows.

A motion was made to add the word "achieve" after "can" in the first of the rules to be considered. The motion carried.

Attention then turned to Comment 4a. A motion was made to take out reference to (d), and this carried. Thus, Rule 7.1 (d) has now become (c).

Next there was a discussion of the term "Advertisement." The question arose of whether a conversation could be false or misleading. Ms Van Frank moved that the committee remove the definition of "advertisement" (lines 2-4). This motion carried.

Mr. Walker then made comments about what is "public."

[minutes truncate at this point. Please refer to Appendix A for the results of the committee's actions]

# APPENDIX A

**From Tab 2 of the 9/15 Meeting:**  
**Advertising Rules**

Here are the Advertising Rules sections that the justices found to be problematic:

**Rule 7.1**

- Rule 7.1(b): They would add the word "achieve" after "expectation about the results the lawyer can..." **APPROVED.**
- Rule 7.1(c): Justice Lee asked, "What about puffing?" I have in my notes that we may want to be more specific here, but that that could be problematic, too. **MOVE TO TAKE (C) OUT. PASSES WITH 1 OPPOSED.**
- (From Tim's notes) Rule 7.1(d): substitute "which" with "that": **APPROVED.**
- (From Tim's notes) Rule 7.1, Comment [4a]: Definition of "false or misleading": private vs. public context, puffing exception. **RESOLVED BY TAKING (C) OUT, ALSO MODIFIED TO TAKE (D) OUT OF SENTENCE.**

**Rule 7.2**

- Rule 7.2: They suggested that the definition of "advertisement" may be overly broad. They suggested reconsidering the breadth of the definition and to give thought to whether private statements could be considered to be "advertisements." A distinction may need to be drawn between broadcasting and personal communications. **TAKE OUT THIS SENTENCE: MOTION PASSED.**
- Comment 5 to Rule 7.2, line 67: They said that rule 1.5(e) only applies to attorneys. They asked, does the committee want non-lawyer client referrals to continue? Justice Lee and other justices said they assume that the committee doesn't want to foreclose this business model by completely keeping out all non-lawyers (who are not subject to rule 1.5(e)) from offering referrals, so it will need to be re-worded. **MODIFIED: SEE COPY**
- Comment 6 to Rule 7.2, lines 78-80: The justices understood that this section addressed the concern about attorneys potentially profiting from the referral process and getting, essentially, double fees. They suggested changing "a" to "the" where it reads, "or who is employed by a legal referral service...." **OK: CHANGED, AND ALSO IN NEXT LINE. (ALSO CHANGED: SUPPOSED TO BE LAWYER REFERRAL SERVICE, NOT LEGAL REFERRAL SERVICE)**

The justices requested that the advertising rules come back to them in an amended version rather than a petition.

## Model Rules

With respect to the Model Rules, the justices had just a couple of edits, and these do not need to go back before the Supreme Court:

**GARY SACKETT:**

### Rule 1.0

- Line 123: change “has” to “have.”: **OK PASSED**
- **Comment [10]**, “definitions” should be plural. **PASSED**

### Rule 1.6

- Rule 1.6(b)(7): add “To the limited extent necessary to resolve conflicts of interest,” and take out “to detect and resolve conflicts of interest.” **OK LEFT AS IS. THIS WAS NOT GRAMMATICALLY CORRECT AND REST OF SENTENCE ANSWERED THIS CONCERN.**
  - **Steve: we determined *not* to include the “to the limited extent necessary” language because of the limiting language already found in the first part of 1.6(b), in the “but only if” language of (b)(7), and in Rule 1.6(c). Also, the guidance in Comment [13] and Comment [14] helps lawyers to understand the limited disclosures allowed.**
- Rule 1.6(b)(2): Justice Durham had a concern with the language “and in furtherance of which the client has used or is using the lawyer’s services” but no one else seemed to share her concern. This can probably be left as is. **OK LEFT AS IS.**

### Rule 1.17

- Rule 1.17, comment [2], line 33: change “Judiciary” to “judicial.” : **OK PASSED**

**GARY SACKETT:**

### Rule 8.5:

- Line 30: change back to “that”: **OK PASSED.**