

**MINUTES**

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

Administrative Office of the Courts  
230 South 500 East, Ste. 300  
Salt Lake City, Utah 84102

June 17, 1996

**PRESENT**

Steven Trost  
Commissioner Tom Arnett  
Judge Ronald Nehring  
Gary Sackett  
Carolyn McHugh  
William Hyde  
Earl Wunderli

**ABSENT**

Stephen Hutchinson  
Thomas Kay  
Kent Roche  
Gary Chrystler  
Robert Burton  
Professor John Morris

**STAFF**

Brent Johnson

**GUESTS**

Kim Christy

**I. Welcome and Approval of Minutes.** Steven Trost welcomed the Committee members to the meeting. Earl Wunderli moved to approve the minutes of the May 20, 1996 meeting. Carolyn McHugh seconded the motion. The motion carried unanimously.

**II. Committee Membership.** Commissioner Arnett explained that he recently met with Carol Stewart, who is an assistant Bar Disciplinary Counsel. Ms. Stewart expressed a concern that the Office of Bar Disciplinary Counsel needs more input and access to the Advisory Committee. Mr. Trost stated that it is a good idea to have Bar Counsel be a member of the Advisory Committee. Gary Sackett suggested that the Supreme Court appoint the Office of Bar Disciplinary Counsel to be an ex officio member of the Committee, so that whoever occupies that position will automatically be a member. Mr. Sackett made a motion that the Committee recommend to the Supreme Court that this occur. Commissioner Arnett seconded the motion. The motion carried unanimously.

**III. Rules Subcommittee Report.** Commissioner Arnett explained that he had talked with Tom Kay concerning Rule 3.6. Mr. Kay had reviewed the ABA Model Rule and felt that the ABA proposal should be adopted, including the laundry list that is included in the comment. Mr. Sackett noted that the subcommittee could not find a reason to modify the language in the Model Rule. Commissioner Arnett moved to adopt the ABA Model Rule 3.6, its comment and code

comparison. Carolyn McHugh seconded the motion. The motion carried unanimously.

Commissioner Arnett noted that the subcommittee had reviewed the public comments to Rule 1.13. The Committee divided the comments into categories, and after much discussion, the subcommittee had voted to adopt one position and add the language "withdraw, as appropriate" in Paragraph(c). Commissioner Arnett noted that this would allow a lawyer to choose the appropriate course of action.

William Hyde questioned Commissioner Arnett about how the subcommittee had dealt with the Legislative Rules Committee comment. Commissioner Arnett stated that the rules only apply to a lawyer practicing law and therefore the Legislature's concerns are already covered.

Gary Sackett moved to adopt Rule 1.13 as amended by the Rules Subcommittee. Carolyn McHugh seconded the motion. The motion carried unanimously.

**IV. Rule 1.15.** Commissioner Arnett stated that the Rules Subcommittee proposed adding comment language to Rule 1.15 concerning lawyer trust accounts. The proposed comment language states that lawyers can anticipate that financial institutions may charge fees for reporting overdrafts to the State Bar. Commissioner Arnett stated that the Rules Subcommittee proposed adopting this language and then notifying those banks which had expressed concern during public comment, that this is how those concerns would be addressed.

Gary Sackett questioned whether the clause after "funds", in the black letter rule, was needed. Ms. McHugh stated that some persons may interpret "insufficient funds" as an instrument that is not honored, but Bar Counsel needs to know every time an account contains insufficient funds, whether the instrument is honored or not.

Mr. Sackett suggested changing the word "will" to "may" in the comment language. Mr. Sackett also noted that the new comment language includes the phrase "law firm", but that is the only place in the comment where a law firm is addressed, rather than simply a lawyer.

Mr. Trost stated that he will send a letter to representatives of the banks stating that the Committee had addressed the banking industry's concerns, and had adopted the proposed rule. The letter will state that if the banking industry has additional concerns, those may be addressed in writing to the Committee and the

Committee will discuss those concerns at its August meeting.

Mr. Hyde moved to adopt Rule 1.15 as proposed by the Rules Subcommittee and as amended by Gary Sackett. Earl Wunderli seconded the motion. The motion carried unanimously.

**V. Advertising Subcommittee.** Mr. Trost noted that at the May meeting, the Committee had discussed appointing an advertising subcommittee to look at changes to the advertising rule. Mr. Trost stated that he had talked with a representative of the Florida Bar who stated that the Florida cooling-off-rule had worked well in the aftermath of the Valujet Crash.

Commissioner Arnett suggested that before forming a subcommittee, that the Committee obtain input from the Bar. Ms. McHugh stated that she will have one of her firm's summer clerks research the current state of the law. This information will be reviewed at the August 19, 1996 meeting.

**VI. Legal Assistants Subcommittee Report.** Carolyn McHugh stated that a petition to form a legal assistants division of the Bar had been presented to the Supreme Court and the petition has been approved. Ms. McHugh noted that legal assistants have some contention with the definition of legal assistant as stated in the petition, because it is very broad. Ms. McHugh noted that the subcommittee is divided on the direction the subcommittee should be taking. Some subcommittee members desire licensing, while some are skeptical about the effects.

Mr. Trost reminded the subcommittee about the Sorensen case in which the Supreme Court set forth three factors for determining what constitutes the practice of law. Ms. McHugh noted that there is sentiment by some committee members to allow legal practice that would not fit within the Sorensen definition. Mr. Sackett questioned where the focus of the subcommittee fit within the purpose of the larger committee. Mr. Trost noted that the Chief Justice had asked the Committee to look at legal assistants issues. Mr. Trost stated that he will approach Chief Justice Zimmerman to obtain a more specific charge for the Committee. Judge Ronald Nehring noted that the Chief Justice's view about the focus of the Committee may be altered in light of the new information concerning the legal assistants division of the Bar. Judge Nehring suggested that the Committee should report to the Chief Justice with a request for clarification on how to proceed.

**VII. Adjourn.** There being no further business, the meeting adjourned at 6:40 p.m. The Committee will meet again Monday August 19, 1996 at 5:15 p.m.