

ADVISORY COMMITTEE ON RULES OF PROFESSIONAL CONDUCT

ORGANIZATIONAL MEETING

October 7, 1988

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Liaison Member of the
Supreme Court:

The Honorable I. Daniel Stewart
Associate Chief Justice

Chairman:

Merlin R. Lybbert

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Subcommittee:

Review of Disciplinary Rules of
Procedure

(a) Procedural due process.

(b) 1985 ABA criticism for having
Board of Bar Commissioners in-
volved in attorney discipline.

Subcommittee Chair:

Jo Carol Nessel-Sale

Members:

John Palmer
Clark Nielsen
Barbara Polich

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Subcommittee:

Assessing and Improving Professional
Conduct

(a) Criminal cases

(b) Civil cases

(c) Involving the Judges

Subcommittee Chair:

Hon. Leonard H. Russon

Members:

John Hill
Stewart Schultz

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Subcommittee:

Developing Standard Sanction Guidelines

(a) Developing recommendations for
standard sanctions in cases involv-
ing professional misconduct.

Subcommittee Chair:

Danny C. Kelly

Members:

Hon. Lynn Davis
L. A. Dever
Fred Voros

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Subcommittee:

Review of Existing Professional Rules
of Conduct

- (a) Numbering of sections
- (b) Monitoring compliance
- (c) Public Relations
- (d) Seminars and teaching
- (e) Reassessing language for vagueness
- (f) Rule changes.

Subcommittee Chair:

Tom Arnett

Members:

John K. Morris
Richard Hill

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

October 7, 1988
Law Offices of Snow, Christensen & Martineau

Merlin R. Lybbert, Presiding

PRESENT:

Chair: Merlin R. Lybbert
John Hill
Christine Burdick
Thomas Arnett
Wanda Santiago for
 Judge Lynn Davis
Jo Carol Nessel-Sale
Fred Voros
Richard Hill
Lee Dever

EXCUSED:

Danny Kelly
John Morris
Clark Nielsen
John Palmer
Barbara Polich
Stuart Schultz

STAFF:

Carlie Christensen
Court Administrator's Office

1. Welcome and Introduction of Members. Mr. Lybbert welcomed the committee members to the meeting and asked them to introduce themselves. Mr. Lybbert indicated to the committee that he was extremely pleased with the breadth of the membership and the fact that Judge Davis and Judge Russon had been appointed to work with the committee. Mr. Lybbert also advised the committee that Carlie Christensen who is legal counsel for the Court Administrator's Office and Mary Noonan, the Clerk for the Court of Appeals would be providing legal and administrative assistance to the committee.

2. Court Liaison. Mr. Lybbert advised the Committee that Justice Stewart had been appointed by the Supreme Court to serve as the Court's liaison to the Committee. Justice Stewart's role is to provide general guidance and direction to the Advisory Committee and to assist the Committee in formulating its agenda. Mr. Lybbert further advised the Committee that Justice Stewart would not participate directly in the Committee's deliberations or participate as a voting member of the committee.

Mr. Lybbert indicated that he had met with Justice Stewart and they had identified four major areas for committee study and recommendations. Mr. Lybbert indicated that he would like to establish a subcommittee to study each of the proposed subjects and make recommendations, where appropriate.

3. Disciplinary Rules and Procedures. Mr. Lybbert suggested that the first area for study and discussion was the disciplinary rules and procedures of the bar. Specifically, Mr. Lybbert suggested that there was concern for their convenience of operation, as well as their legal aspects. He also advised the Committee members that in 1985, the American Bar Association had been critical of having the Board of Bar Commissioners involved in attorney discipline.

Mr. Lybbert indicated that he would like Ms. Nasset-Sale to serve as the Chair of the subcommittee and would like John Palmer, Clark Nielsen and Barbara Polich to serve as the members of the subcommittee.

4. Professional Conduct. The second area which Justice Stewart and Mr. Lybbert had identified for Committee study was professional conduct. Specifically, Mr. Lybbert indicated that Justice Stewart was concerned with professional conduct in criminal proceedings. Justice Stewart was concerned that attorneys overstated and misstated factual and legal arguments in front of jurors, resulting in questions of prejudice. Mr. Lybbert recommended that the area of professional conduct be studied and that judicial involvement, be included as part of that study. He indicated that the judiciary could play an important role in this area by promoting the "professional" rather than "slick" image as appropriate for handling cases.

Mr. Lybbert indicated that he had asked Judge Russon to serve as the Chair of the subcommittee to study professional conduct and would like John Hill and Stuart Schultz to work with Judge Russon on the subcommittee.

5. Standard Sanction Guidelines. Mr. Lybbert indicated that the next area which he and Justice Stewart had identified for committee study was the development of standard sanctions for cases involving professional misconduct. Mr. Lybbert indicated that this was a high priority of the Supreme Court.

Ms. Nasset-Sale indicated that the members of the Supreme Court had advised the bar, at one time, that they would like recommendations on standard sanctions submitted to them by March, 1988. She also indicated that the ABA had already developed some recommendations for standard sanctions and that many states had adopted the ABA's recommendations.

Mr. Lybbert indicated that he would like Danny Kelly to serve as the chair of the subcommittee appointed to study standard sanctions and would like Judge Davis, Lee Dever and Fred Voros to serve on the committee.

6. Review of Rules of Professional Conduct. Mr. Lybbert indicated that the final topic which he and Justice Stewart thought appropriate for committee study was a review of the

existing Rules of Professional Conduct. Mr. Lybbert indicated that with the revision of the Utah Rules of Professional Conduct, the numbering of the rules no longer conformed to the national reporting service and that research in the area was extremely difficult unless you were familiar with the history of the rules. He also suggested that other areas appropriate for consideration were the development of methods for monitoring compliance with the Rules, public relations, education and training, and a review of the rules for ambiguities and vagueness.

Mr. Lybbert asked Tom Arnett to serve as the chair of this subcommittee and asked John Morris, Richard Hill and Christine Burdick to serve on the committee.

7. Rulemaking Process. Mr. Lybbert asked Carlie Christensen to review the Supreme Court's rulemaking procedures with the committee and identify the relationship between the committee's work and the rulemaking process.

Ms. Christensen indicated that under the revised Judicial Article, the Supreme Court had responsibility for adopting rules of procedure and evidence and for regulating the practice of law. To assist the Court in this effort, the Court had established six Advisory Committees in the areas of criminal procedure, civil procedure, juvenile procedure, appellate procedure, evidence and professional conduct to review the existing rules and propose modifications and changes where appropriate.

She also indicated that the Court had established a formalized process for initiating, studying and approving rule changes. This procedure is set forth in the Code of Judicial Administration and provides that written petitions proposing rule modifications can be submitted to the appropriate Advisory Committee by September 1 of each year. At that time, the Advisory Committee will meet to review its petitions and finalize its agenda for the upcoming year. From September through April of each year, the committee will study the proposals, debate the advisability of the proposal and finalize its recommendations. In May of each year, the proposed changes will be published for a 45 day comment period, during which time, members of the bar, the legislature, the judiciary and the public will have the opportunity to provide comment concerning the proposed change. In August of each year, the Committees will meet to review the comment and finalize their recommendations and in September, they will be transmitted to the Supreme Court for final action.

Ms. Christensen indicated that although this Committee's proposals might not always take the form of a rule change, in those instances where the proposal involved a change to the Rules of Professional Conduct, the rulemaking process should be followed.

8. Subcommittee Work. Mr. Lybbert indicated that it was his view that the diversity and intensity of this committee's work would not be conducive to a large committee and therefore, the subcommittee's deliberations and work product would be very important. He indicated that the frequency of the subcommittee meetings would be left to the discretion of the subcommittee chair, but that he would like to meet with the subcommittee chairs on a monthly basis. He also indicated that he would like the Committee, as a whole, to meet at least quarterly for the purpose of receiving subcommittee reports.

Mr. Lybbert indicated to the Committee members that he would like to hold Committee meetings in different places, such as the Law and Justice Center, the Supreme Court, the Administrative Office of the Courts and in connection with the mid-year and annual meetings of the bar.

He also advised the Committee members that the subcommittee assignments were not intended as the Committee's full agenda but as suggestions for committee work and that after the subcommittees had had an opportunity to meet and review their assignments, they may determine that their task should be refined or broadened.

9. Timeframes for Projection Completion. Mr. Lybbert indicated that he would like the subcommittees to complete some portion of their project or achieve something definitive by June of 1989 and that the bulk of the committee's work should be completed in two years.

10. Committee Discussion. Mr. Voros commended Mr. Lybbert's effort in organizing the committee and making the subcommittee assignments. Other committee members questioned what type of assistance would be available to them as they undertook their assignments. Ms. Christensen indicated that the Administrative Office of the Courts could provide assistance with secretarial support, legal research or office space if the subcommittees needed any assistance. She indicated that the work of the Advisory Committees was a high priority for the Court and consequently, one of her primary responsibilities was to ensure that the Advisory Committees had the assistance they needed.

11. Adjournment. There being no further business, the meeting was adjourned.