

Approved 8/23/91

MINUTES

SUPREME COURT ADVISORY COMMITTEE ON  
THE RULES OF PROFESSIONAL CONDUCT

Tuesday, July 23, 1991, 5:00 p.m.  
Administrative Office of the Courts

Bert L. Dart, Presiding

PRESENT:

Bert L. Dart  
Stuart Schultz  
John K. Morris  
Clark Nielsen  
Stephen Trost  
J. Frederick Voros, Jr.  
Tom Arnett  
Lee Dever  
Danny Kelly  
Jo Carol Nessel-Sale  
G. Richard Hill  
Hon. Lynn W. Davis  
Barbara Polich

EXCUSED:

Hon John Rokich  
John F. Hill  
John Palmer

STAFF:

Colin R. Winchester

1. WELCOME. Mr. Dart welcomed the Committee members to the meeting and indicated that the subcommittee chairs had met and discussed proposed changes in the meeting schedule. In order to enhance the Committee's progress, Mr. Dart suggested the following five policies:

1. A voluntary limitation of debate to new thoughts and concerns.
2. The subcommittee chair will act as spokesperson for presentation of subcommittee reports.
3. To the extent possible, items to be discussed are to be presented in writing in advance of the meeting.
4. As a matter of policy, changes to the Model shall be made only upon a substantial showing of good cause.

5. The meeting time will be moved back from 5:00 p.m. to 5:30 p.m. Sandwiches will be available at 5:15 p.m. Meetings will run from 5:30 p.m. to 7:30 p.m. If items on the agenda are not completed, the meeting will either be extended or an additional meeting, to be held on the second Tuesday of the following month, will be scheduled.

Mr. Dart also distributed a timetable which had been agreed upon by the subcommittee chairs. The timetable anticipates completion of the Committee's work for publication in April of 1992, as follows:

August 1991

Tom Arnett - 1/2 hr.  
Jo Carol Nasset-Sale - 1-1/2 hrs.

September 1991

Tom Arnett - 1/2 hr.  
Jo Carol Nasset-Sale - 1-1/2 hrs.

October 1991

Tom Arnett - 1/2 hr.  
Jo Carol Nasset-Sale - 1-1/2 hrs.

November 1991

Tom Arnett - 1/2 hr.  
Jo Carol Nasset-Sale - 1-1/2 hrs.

December 1991

Tom Arnett - 1/2 hr.  
Danny Kelly - 1-1/2 hrs.

January 1992

Danny Kelly - 2 hrs.

February 1992

Danny Kelly - 2 hrs.

March 1992

Review of total work

April 1992

Publish Proposed Rules of Discipline and Sanctions and any Professional Conduct changes.

Mr. Trost indicated that one review session, at the conclusion of the Committee's deliberations, is unrealistic.

Ms. Nessel-Sale indicated that her fourth session is scheduled as a review of her subcommittee's work.

**MOTION:** Mr. Arnett moved that the timetable be established as a goal for completion of the Committee's work.

**SECOND:** Mr. Morris seconded the motion.

**VOTE:** The Committee voted unanimously to approve the motion.

2. **APPROVAL OF MINUTES.**

**MOTION:** Judge Davis made a motion to approve the minutes as drafted.

**SECOND:** A Committee member seconded the motion.

**VOTE:** The Committee voted unanimously to approve the minutes as drafted.

3. **REVIEW OF TASK FORCE PRELIMINARY REPORT.** The Committee reviewed the Task Force's Preliminary Report which was distributed at the Annual Meeting in Sun Valley. The Committee noted that the proposal to create a review board which would review discipline, admissions, MCLE suspensions and other matters conflicts with the Committee's proposed Rules of Attorney Discipline.

**MOTION:** Ms. Nessel-Sale made a motion that Mr. Dart write a letter to the Supreme Court expressing concerns regarding the differences between the Task Force's Preliminary Report and this Committee's Rules of Attorney Discipline 2, 3 and 4.

Mr. Morris noted that the Task Force's Report dealing with discipline agree with the Committee's view, but that the Task Force's Recommendations differ with this Committee's proposals.

**SECOND:** Mr. Arnett seconded the motion.

**VOTE:** The Committee voted unanimously to approve the motion.

4. **CONFLICT BETWEEN SANCTION STANDARDS AND RULES OF ATTORNEY DISCIPLINE.** At the Committee's meeting on May 28, several of the Sanction Standards were referred back

to Mr. Kelly and Ms. Nasset-Sale for resolution of possible conflicts with the Rules of Attorney Discipline. Mr. Kelly and Ms. Nasset-Sale prepared a joint memorandum dated June 25, 1991, which was distributed to the Committee.

Section 1.1. Mr. Kelly reviewed Sanction Standard Section 1.1, noting that it closely tracks the language of Rule of Attorney Discipline 1A.

**MOTION:** Mr. Kelly made a motion to approve Section 1.1 of the Sanction Standards as set forth in the joint memorandum.

**SECOND:** Judge Davis seconded the motion.

**VOTE:** The Committee voted unanimously to approve the motion.

**MOTION:** Mr. Voros made a motion to delete the words "and public trust as attorneys and counselors" at the end of Rule of Attorney Discipline 1A.

**SECOND:** Judge Davis seconded the motion.

**VOTE:** The Committee voted unanimously to approve the motion.

Section 1.2. Mr. Kelly reviewed Section 1.2 of the Sanction Standards, as set forth in the joint memorandum.

Ms. Nasset-Sale noted that the provision states that admonitions should be non-public. She suggested that only admonitions by consent should be non-public. In such cases, the sanctions should be reported, though the names should remain anonymous.

Judge Davis stated that all admonitions should be non-public.

Mr. Trost noted that Bar members gain more insight from reading about anonymous examples of sanctions which are disposed of by admonition or reprimand than they gain by reading about examples which result in disbarment and suspension.

Mr. Dever stated that admonitions should be non-public and that the case files should be sealed.

Mr. Morris noted that a public proceeding with a non-public disposition is not necessarily inconsistent.

**MOTION:** Mr. Kelly made a motion to adopt Section 1.2 as set forth in the joint memorandum.

**SECOND:** Mr. Richard Hill seconded the motion.

**VOTE:** The Committee voted unanimously to approve the motion.

**Section 2.3.** Mr. Kelly discussed Sanction Standard Section 2.3 as set forth in the joint memorandum. He noted two typographical errors in the proposal. In subsection (1), Rule 25 should be changed to Rule 24. In subsection (2), Rule 26 should be changed to Rule 25.

Judge Davis questioned whether the word "minimum" in the first sentence of the proposal was necessary.

Mr. Arnett believes that the word "minimum" should be retained.

**MOTION:** Mr. Voros moved to adopt Section 2.3, with the typographical corrections, as set forth in the joint memorandum.

**SECOND:** Mr. Kelly seconded the motion.

**VOTE:** The Committee voted unanimously to approve the motion.

**Section 2.4.** Mr. Kelly discussed Sanction Standard Section 2.4 as set forth in the joint memorandum.

**MOTION:** Mr. Arnett made a motion to adopt Section 2.4 as set forth in the joint memorandum.

**SECOND:** Judge Davis seconded the motion.

**VOTE:** The Committee voted unanimously to approve the motion.

Mr. Kelly noted that his subcommittee will attempt to locate and deal with other differences between the Sanction Standards and the Rules of Attorney Discipline in advance of Committee meetings.

Mr. Voros noted that it might be more convenient for all drafts of all of the Committee's work to be produced in one office by staff, rather than have the drafts coming in from several different Committee members' offices. Mr. Winchester agreed, and indicated that with the AOC's anticipated move to WordPerfect, Mr. Voros' suggestion could and should be implemented.

Mr. Kelly again raised the question of whether to adopt commentary to the Sanction Standards.

Mr. Arnett noted that the ABA's Sanction comments are "time specific." They refer to cases that pre-date 1985.

Mr. Morris noted that there are no case citations in the Rules of Professional Conduct, but that there are multiple citations in the comments to the Federal Rules of Civil Procedure. This Committee needs to decide which approach to take.

Mr. Arnett noted that if the Committee adopts comments, it will have the responsibility to keep them updated.

Mr. Kelly noted that whatever approach is taken, the same approach should be used on all three of the Committee's products for consistency.

Judge Davis expressed general opposition to the inclusion of lengthy comments.

Mr. Morris suggested that where the Committee adopts a Model Rule, the only comment should be that the Model was followed. Where the Committee deviates from the Model, the Committee should explain, in commentary, the reasons for the deviation.

**MOTION:** Mr. Arnett made a motion that Mr. Kelly's subcommittee prepare brief commentary which is not case specific to explain differences between the Committee proposal and the Models from which the Sanction Standards were taken.

**SECOND:** Mr. Richard Hill seconded the motion.

Mr. Dever noted that all subcommittees should take the same approach.

**VOTE:** The Committee voted unanimously to approve the motion.

Ms. Polich suggested that the Committee only adopt comments which explain deviations from the Model Rules.

Mr. Morris noted that the Committee's decision should be driven by the audience to whom commentary is most helpful, i.e., those who know only a little about the disciplinary system. He also stated that his experience

on the Civil Procedure Advisory Committee leads him to believe that the adoption of comments will go rather quickly.

5. STANDARD OF REVIEW.

MOTION: Mr. Arnett made a motion to table the standard of review decision until the Committee's August meeting.

SECOND: Mr. Morris seconded the motion.

VOTE: The Committee voted unanimously to approve the motion.

6. SUMMARY OF RULES OF ATTORNEY DISCIPLINE ADDRESSED TO DATE. Mr. Winchester distributed a summary of the disciplinary rules which the Committee had considered to date. The summary was prepared by an intern in the AOC Office. The Committee should review the summary and be prepared to address it at the next Committee meeting.

7. ADJOURNMENT. There being no further business, the Committee was adjourned.

02541.88-94