

Approved as  
Amended  
1/14/92

**MINUTES**

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

Tuesday, December 17, 1991, 5:30 p.m.  
Administrative Office of the Courts

Bert L. Dart, Presiding

**PRESENT:**

Bert L. Dart  
Stuart Schultz  
Stephen Trost  
Hon. Lynn Davis  
Tom Arnett  
Danny Kelly  
J. Frederic Voros, Jr.  
Clark Nielsen  
Barbara Polich  
John Morris  
G. Richard Hill

**EXCUSED**

John Palmer  
F. John Hill  
Stephen F. Hutchinson  
Lee Dever  
Hon. John Rokich  
Jo Carol Nessel-Sale

**STAFF:**

Colin R. Winchester

1. **WELCOME AND APPROVAL OF MINUTES.** The Minutes of the Committee's December 10 meeting had not yet been prepared, and will be reviewed and approved at the Committee's next meeting.

2. **OVERVIEW OF STANDARDS SANCTIONS.** Mr. Kelly distributed a new draft of the subcommittee's recommended standard sanctions and reviewed the Committee's previous decisions.

Mr. Dart queried whether resignation with discipline pending is included in the current draft. Mr. Trost and Mr. Kelly indicated that although resignation with discipline pending is not yet included, it should be.

**MOTION:** Mr. Kelly made a motion to include resignation with discipline pending as sanction 2.11 and to refer the matter back to the subcommittee for drafting.

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

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

3. **STANDARDS SANCTION 2.** Mr. Kelly noted, under Sanctions 2.5 and 2.6, that a reprimand is proposed as public discipline and that an admonition is proposed as non-public discipline. There will no longer be a private reprimand.

Mr. Dart questioned whether a private reprimand is a valuable discipline tool. The Committee generally concluded that because an admonition remains as a non-public sanction, a private reprimand is unnecessary.

Regarding Sanction 2.7, Mr. Trost noted that probation can be imposed with other sanctions, and suggested that the second sentence of 2.7 be amended to read as follows:

Probation can be imposed alone or in conjunction with a ~~reprimand or an admonition~~ other sanctions; probation can also be imposed as a condition of readmission or reinstatement.

Regarding Sanction 2.8, Mr. Trost questioned why the subcommittee recommended deletion of subparagraph (g). Mr. Voros noted that the Committee as a whole had previously voted to delete that subparagraph, and Mr. Dart indicated that the subparagraph was too vague.

**VOTE ON SANCTION 2:** The Committee voted unanimously to adopt Sanction 2, as amended, including new Sanction 2.11 (resignation with discipline pending).

4. **STANDARDS SANCTION 3.** Mr. Morris questioned the use of the word "should" rather than "may" or "shall". The Committee discussed the terms, and determined to use "should".

**VOTE ON SANCTION 3:** THE Committee voted unanimously to approve Sanction 3 as drafted.

5. **STANDARDS SANCTIONS 4-7.** The Committee engaged in a philosophical discussion regarding the relative harshness of the sanctions to be imposed under Sanctions 4-7. Certain Committee members expressed concern that the sanctions are too harsh because they are applied irrespective of injury or potential injury to the victim.

Mr. Morris noted that the standards are too mechanical in their approach, and that a better approach may be to have one sanction address the situations when disbarment is generally appropriate, one sanction address the situations in which suspension is generally appropriate, and so forth.

Other Committee members preferred the specificity provided by the subcommittee's current draft.

**MOTION:** Mr. Morris made a motion to replace Sanctions 4-7 with a scheme which makes them non-incident specific and describes the mental state and injury required for each of the sanctions (disbarment, suspension, reprimand, admonition, etc.).

**SECOND:** Ms. Polich seconded the motion.

**VOTE:** The Committee voted to approve the motion, six in favor and four opposed.

6. **STANDARDS SANCTION 8.** Sanction 8 addresses violations of prior disciplinary orders and repeated conduct for which a lawyer has previously been disciplined. Committee members generally agreed that the disbarment sanction is too harsh.

Mr. Voros suggested that the sanction be re-written to provide for enhancements of one level of severity for repeated conduct, and to separate that issue from violations of discipline orders. Mr. Arnett agreed with Mr. Voros.

**MOTION:** Mr. Voros made a motion to have the subcommittee re-write Sanction 8 to provide for enhancements of one level of severity for repeated conduct and to separately address violations of prior disciplinary orders.

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

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

7. **AGENDA FOR NEXT MEETING.** It was determined that the Committee would complete its work on the standards sanctions at the next meeting, and that if time permits, the Committee would address Rule of Professional Conduct 3.8.

8. **ADJOURNMENT.** There being no further business, the meeting was adjourned.