

Approved
1/28/92

MINUTES

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

Tuesday, January 14, 1992, 5:30 p.m.
Administrative Office of the Courts

Bert L. Dart, Presiding

PRESENT:

Bert L. Dart
Stephen Trost
Danny Kelly
Hon. Lynn Davis
Stephen F. Hutchinson
J. Frederic Voros, Jr.
Lee Dever
Stuart Schultz
G. Richard Hill

EXCUSED

F. John Hill
Jo Carol Nessel-Sale
Clark Nielsen
Tom Arnett
John Palmer
Barbara Polich
John Morris
Hon. John Rokich

STAFF:

Colin R. Winchester

1. **WELCOME AND MINUTES.** Mr. Dart welcomed the Committee members to the meeting.

MOTION: Mr. Voros made a motion to approve the Minutes of the December 10 meeting as drafted.

SECOND: Steve Trost seconded the motion.

VOTE: The Committee voted unanimously to approve the motion.

Regarding the December 17 Minutes, Mr. Kelly noted that although his subcommittee was to refer to resignation with discipline pending in Sanction Standard 2.11, the procedures regarding that sanction should have been directed back to the subcommittee on the Rules of Attorney Discipline for drafting. The December 17 Minutes should be amended to reflect that clarification.

MOTION: Mr. Schultz made a motion to approve the December 17 Minutes as amended by Mr. Kelly's concern.

SECOND: Mr. Kelly seconded the motion.

VOTE: The Committee voted unanimously to approve the motion.

2. **SANCTIONS STANDARDS.** Mr. Voros directed the Committee members to the drafts of Standards 4.0 and 8.0 which had been distributed prior to the meeting. He noted that subparagraphs (a) of Standards 4.1, 4.2, 4.3 and 4.4 are based on the matrix which was discussed at the last meeting. Subparagraphs (b) of those four standards is Mr. Voros' attempt to deal with situations not covered by the previously distributed matrix.

The Committee discussed subparagraphs (a) of Standards 4.1, 4.2, 4.3 and 4.4. The Committee generally agreed that "neglect" of a lawyers' practice can be intentional and knowing, thus allowing the sanctions of disbarment or suspension.

Regarding Standard 4.1(b), the Committee noted that the definition of "serious criminal conduct" differs from the definition of "serious crime" in Rule of Attorney Discipline 19C.

MOTION: Mr. Dever made a motion to refer Standard 4.1(b) back to the subcommittee for reconciliation with Rule of Attorney Discipline 19C.

SECOND: Mr. Hill seconded the motion.

VOTE: The Committee voted unanimously to approve the motion.

Mr. Voros noted that the reference to the "importation of controlled substances" in Standard 4.1(b) implies that the offense is a violation of Rule of Professional Conduct 8.4, and that Rule 8.4, Rule of Attorney Discipline 19C and Standard 4.1(b) should all be consistent.

MOTION: Mr. Kelly made a motion to include Rule of Professional Conduct 8.4 in the review of Standard 4.1(b) and Rule of Attorney Discipline 19C.

SECOND: Mr. Voros seconded the motion.

VOTE: The Committee voted unanimously to approve the motion.

The Committee then discussed other issues in subparagraphs (b).

MOTION: Mr. Voros made a motion to refer subparagraphs (b) back to the subcommittee for further development consistent with the following general scheme:

1. Misconduct which constitutes criminal conduct and

which seriously adversely reflects upon the attorney's ability to practice law should generally result in disbarment.

2. Misconduct which constitutes non-criminal dishonest conduct and which seriously adversely reflects upon the attorney's ability to practice law should generally result in suspension.

3. Misconduct which constitutes criminal conduct and which adversely reflects upon the attorney's ability to practice law should generally result in reprimand.

4. Misconduct which constitutes non-criminal dishonest conduct and which adversely reflects upon the attorney's ability to practice law should generally result in an admonition.

SECOND: Mr. Kelly seconded the motion.

VOTE: The Committee voted unanimously to approve the motion.

3. **RULE OF PROFESSIONAL CONDUCT 3.8.** Mr. Richard Hill suggested that Rule of Professional Conduct 3.8(f) not be adopted as an ethical rule, but rather, that it be forwarded to the Supreme Court's Advisory Committee on the Rules of Criminal Procedure for consideration as a procedural rule.

Mr. Trost agreed with Mr. Hill, indicating that only three jurisdictions have enacted Rule 3.8(f) to date.

Mr. Dart noted that because state procedural rules do not apply in federal court, adoption of the rule by the Supreme Court will not affect federal practice, and that the rule addresses federal criminal procedures. He directed that Mr. Hill's suggestion be referred to the subcommittee for recommendation and that it be placed on the next Committee meeting agenda for final disposition.

4. **FUTURE MEETINGS.** On January 28, the Committee will deal with Rules of Professional Conduct 1, 3.8 and 7, and complete its work on the Sanctions Standards. On February 11, the Rules of Attorney Discipline Subcommittee will present its re-draft of the rules as mandated by the Committee's decision to use district courts as the forums for public discipline.

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