

REVISED MINUTES

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

Tuesday, March 10, 1992, 5:30 p.m.
Administrative Office of the Courts

Bert L. Dart, Presiding

PRESENT:

Bert L. Dart
Stephen F. Hutchinson
Clark Nielsen
Hon. John Rokich
Hon. Lynn Davis
Stephen Trost
Stuart Schultz
Jo Carol Nessel-Sale
G. Richard Hill
F. John Hill
Lee Dever

EXCUSED:

Danny C. Kelly
Tom Arnett
J. Frederic Voros
Barbara Polich
John K. Morris
John W. Palmer

STAFF:

Colin R. Winchester

1. **WELCOME.** Mr. Dart welcomed the Committee members to the meeting. The Minutes of the Committee's February 11 meeting had not yet been prepared and will be distributed for approval prior to the next Committee meeting. The Committee's March 3 meeting was cancelled.

2. **RULES OF ATTORNEY DISCIPLINE.**

MOTION: Mr. Dever made a motion to specifically distinguish "Supreme Court" from "district court" throughout the proposals.

SECOND: Judge Davis seconded the motion.

VOTE: The Committee voted unanimously to approve the motion.

Rule 1. The Committee discussed Rule 1 and the amended

phrase "unable or likely to be unable to" to "unable or unlikely to". With that amendment, the Committee voted unanimously to approve Rule 1 as drafted.

Rule 2. The Committee discussed Rule 2 and made the following amendments:

1. All members of the Ethics and Discipline Committee should be appointed by the Supreme Court rather than the Bar Commission (vote: six for and five against).
2. Committee members should not be allowed to serve more than two consecutive three year terms (vote: unanimous).
3. Reference to the Board of Bar Commissioners should be changed to the Supreme Court throughout (vote: unanimous).
4. The last sentence of 2(b) should be deleted (vote: unanimous).
5. The reference to Bar Counsel should be changed to Disciplinary Counsel throughout.
6. The reference to Rule 11(b) in 2(b) should be changed to 11(b)(4).
7. The reference to U.C.A. § 77-22-1 in 2(e) should be changed to § 77-22-2.
8. The subpoena process in paragraph (e) should be rewritten to provide for the acquisition of district court subpoenas pursuant to the Rules of Civil Procedure (vote: unanimous).
9. Strike the words "the Committee or" from the first sentence of paragraph (e) (vote: two for and one opposed).
10. Provide in (f) that the respondent has a right to be present at any time when disciplinary counsel may be present (vote: unanimous).
11. Change reference from "lawyer" to "respondent" throughout.
12. Reserve the question of whether disciplinary counsel should report to the Court or the Bar Commission.

With these changes, the Committee voted to approve Rule

Rule 3. The Committee discussed proposed Rule 3 and amended the proposal as follows:

1. The first sentence of paragraph (a) should read as follows:

In the event the panel finds probable cause that there has been a violation of the Rules of Professional Conduct and that a formal Committee Complaint ("Complaint") is merited, Disciplinary Counsel shall prepare and file with the District Court said Complaint setting forth in plain and concise language the facts upon which the charge of unprofessional conduct is based and the specific applicable provisions of the Rules of Professional Conduct.

2. Paragraph (b) should read as follows:

Upon commencement of an action by filing of the Complaint the case shall be assigned in accordance with the procedures established in that judicial district, and the proceeding thereafter shall be conducted according to the rules of procedure and evidence, the Code of Judicial Administration and all other rules applicable to the conduct of non-jury civil actions.

3. Paragraph (c) should be stricken entirely.

4. New paragraph (c) should read as follows:

The action shall be brought and the trial shall be held in the county in which an alleged offense occurred or in the county where the respondent resides or practices law or last practiced law in Utah provided, however, that if the respondent is not a resident of Utah and if the alleged offense is not committed in Utah, the trial shall be held in a county designated by the chief justice.

5. New paragraph (e) should read as follows:

In all actions tried according to these rules the district court shall enter findings of fact and conclusions of law as to each allegation of misconduct of which the respondent is charged as prescribed in the Rules of Civil Procedure except that neither Masters nor Commissioners shall be utilized.

6. New paragraph (f) should read as follows:

Upon a finding of misconduct and as soon as reasonably practicable but not more than 30 days after the district court enters its Findings and Conclusions it shall hold a hearing to receive relevant evidence in aggravation and mitigation consistent with Rule 10 for imposing sanctions and shall, within 5 days, enter an Order sanctioning the respondent.

7. New paragraph (g) should read as follows:

All orders of public discipline shall be filed together with the record, with the Supreme Court and stayed pending an automatic review by the Supreme Court which shall enter a final written order approving, modifying or reversing the order unless notice of appeal has been filed.

3. With these changes, the Committee voted to approve Rule

3. NEXT MEETING. The Committee will meet again on March 24 and will complete its review of the proposed Rules of Attorney Discipline at that time.

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