

MINUTES

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

Tuesday, April 28, 1992, 3:30 p.m.
Administrative Office of the Courts

Bert L. Dart, Presiding

PRESENT:

Bert L. Dart
Stephen A. Trost
G. Richard Hill
Stephen F. Hutchinson
J. Frederic Voros
Lee Dever
Stuart H. Schultz
Barbara K. Polich
Clark Nielsen
Hon. Lynn W. Davis
Jo Carol Nessel-Sale

EXCUSED:

Hon. John A. Rokich
Thomas N. Arnett, Jr.
F. John Hill
Danny C. Kelly
John K. Morris
John W. Palmer

STAFF:

Colin R. Winchester

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

MOTION: Mr. Hutchinson made a motion to approve the Minutes of the April 14 meeting as distributed.

SECOND: Mr. Trost seconded the motion.

VOTE: The Committee voted unanimously to approve the motion.

2. **RULES OF ATTORNEY DISCIPLINE.**

Rule 11(b)(3).

The Committee discussed Mr. John Hill's proposed amendment to Rule 11(b)(3) which was distributed at the beginning of the meeting.

MOTION: Mr. Hutchinson made a motion to approve the amendment but to give the complainant equal right to be present during the presentation of evidence.

SECOND: A Committee member seconded the motion.

VOTE: The Committee voted unanimously to approve the motion.

MOTION: Mr. Dever made a motion to treat the John Hill amendment as separate paragraph 11(b)(4) and to renumber the remaining paragraphs of Rule 11(b).

SECOND: A Committee member seconded the motion.

VOTE: The Committee voted unanimously to approve the motion.

Rule 12(a).

Mr. Voros asked whether the respondent should also be entitled to immunity in disciplinary proceedings. Mr. Dever suggested that immunity should not extend to malicious or fraudulent statements. Ms. Polich suggested that the rule be rewritten to simply provide for the same immunity as is available in the district courts. She also suggested that the Committee's phrase "new civil lawsuit" be changed to "new cause of action." The Committee discussed Ms. Polich's latter suggestion and determined not to adopt the amendment.

MOTION: Mr. Voros made a motion to adopt 12(a) by changing the order of the parties referenced therein, changing "lawsuit" to "civil lawsuit", adding the respondent as a party entitled to immunity, and deleting the reference to the Board.

SECOND: Ms. Polich seconded the motion.

MOTION TO AMEND: Mr. Hutchinson made a motion to amend Mr. Voros' motion by deleting the respondent as a person entitled to immunity.

SECOND: A committee member seconded the motion to amend.

VOTE ON MOTION TO AMEND: The Committee voted to approve the motion to amend, seven in favor and two opposed.

VOTE ON ORIGINAL MOTION: The Committee voted unanimously to approve the original motion.

Rule 12(b).

MOTION: A Committee member made a motion to approve 12(b) as drafted but deleting the phrase "or the Court."

SECOND: A Committee member seconded the motion.

VOTE: The Committee voted unanimously to approve the motion.

Rule 13(a).

Mr. Nielsen noted that the proposed 13(a) allows service of a formal complaint by mail, in addition to personal service as otherwise required by the Rules of Civil Procedure.

MOTION: A motion was made to approve Rule 13(a) as drafted and including the following amendments:

1. Change "complaint" to "formal complaint" throughout.
2. Delete the phrase "by personal service."

SECOND: A Committee member seconded the motion.

VOTE: The Committee voted unanimously to approve the motion.

Rule 13(b).

MOTION: A Committee member made a motion to approve Rule 13(b) as follows:

Service of Other Papers. Service of any other papers or notices required by these rules shall be made in accordance with the Utah Rules of Civil Procedure.

SECOND: A Committee member seconded the motion.

VOTE: The Committee voted unanimously to approve the motion.

Rule 14(a).

The Committee discussed whether a waiver of confidentiality as provided in the rule needs to be in writing and concluded that it does not.

MOTION: A motion was made to approve Rule 14(a) as drafted and incorporating the following amendments:

1. Change the phrase "and service of formal charges" to "of formal complaint" in the first sentence.
2. Change the introductory portion of the second sentence to read as follows:

The proceedings shall not be deemed confidential to the extent:

3. Add new paragraph (a)(3) to read as follows:

the information is required in a subsequent sanctions hearing.

SECOND: A Committee member seconded the motion.

VOTE: The Committee voted unanimously to approve the motion.

Rule 14(b).

MOTION: A Committee member made a motion to approve Rule 14(b) as follows:

Public proceedings. Upon filing of the formal complaint in a discipline matter, or filing of a petition for reinstatement, the proceeding is public except as provided in (d) below.

SECOND: A Committee member seconded the motion.

VOTE: The Committee voted unanimously to approve the motion.

Rule 14(c).

MOTION: A Committee member made a motion to approve 14(c) as drafted.

SECOND: A Committee member seconded the motion.

VOTE: The Committee voted unanimously to approve the motion.

Rule 14(d).

The subcommittee had recommended deleting Rule 14(d) regarding protective orders.

MOTION: Mr. Dever made a motion to reinstate Rule 14(d) changing the phrase "the Hearing Committee to which a matter is assigned" to "the district court."

SECOND: Mr. Kelly seconded the motion.

VOTE: The Committee voted unanimously to approve the motion.

Rule 14(e).

Rule 14(e) deals with requests for nonpublic information.

MOTION: Mr. Kelly made a motion to approve Rule 14(e) as

drafted.

SECOND: Mr. Schultz seconded the motion.

VOTE: The Committee voted to approve the motion, seven in favor and two abstaining.

Rule 14(f).

Rule 14(f) provides for notice to a lawyer when a party requests otherwise nonpublic information.

MOTION: A Committee member made a motion to approve Rule 14(f) with the following amendments:

1. Change the phrase "Board or disciplinary counsel" to "Committee".

2. Change the phrase "nonpublic information requested" to "nonpublic information requested pursuant to (e)".

SECOND: A Committee member seconded the motion.

VOTE: The Committee voted unanimously to approve the motion.

Rule 14(g).

Rule 14(g) provides for release of nonpublic information without notice in certain circumstances.

MOTION: A Committee member made a motion to approve Rule 14(g) as drafted.

SECOND: A Committee member seconded the motion.

VOTE: The Committee voted unanimously to approve the motion.

Rule 14(h).

Rule 14(h) requires the Supreme Court to notify the National Discipline Data Bank of all discipline orders.

MOTION: A Committee member made a motion to delete Rule 14(h) because it is duplicative of Rule 15(a).

SECOND: A Committee member seconded the motion.

VOTE: The Committee voted unanimously to approve the motion.

Rule 14(i).

MOTION: A Committee member made a motion to approve Rule 14(i) as drafted and to renumber it as Rule 14(h).

SECOND: A Committee member seconded the motion.

VOTE: The Committee voted unanimously to approve the motion.

Rule 15(a).

MOTION: A Committee member made a motion to approve Rule 15(a) as drafted.

SECOND: A Committee member seconded the motion.

VOTE: The Committee voted unanimously to approve the motion.

Rule 15(b).

The subcommittee had recommended deleting the requirement that the Administrative Office of the Courts cause notices of disciplinary orders to be published in the *Utah Bar Journal* and in a newspaper of general circulation in the district in which the disciplined lawyer practiced.

MOTION: Ms. Nasset-Sale made a motion to reinstate the publication requirement.

SECOND: Mr. Trost seconded the motion.

VOTE: The Committee voted to approve the motion, seven in favor and three opposed.

MOTION: A Committee member made a motion to approve Rule 15(b) as amended.

SECOND: A Committee member seconded the motion.

VOTE: The Committee voted unanimously to approve the motion.

Rule 15(c).

The subcommittee had recommended deletion of 15(c).

MOTION: Judge Davis made a motion to reinstate 15(c) and to separate notice to the courts from notice to the public as originally proposed by the prior subcommittee.

SECOND: Mr. Hutchinson seconded the motion.

VOTE: The Committee voted unanimously to approve the motion.

Rules 16(a), 16(b), 16(c) and 16(d).

MOTION: A Committee member made a motion to approve Rules 16(a), 16(b), 16(c) and 16(d) as drafted.

SECOND: A Committee member seconded the motion.

VOTE: The Committee voted unanimously to approve the motion.

Rule 16(g).

The subcommittee had recommended deletion of Rule 16(g).

MOTION: A Committee member made a motion to reinstate Rule 16(g) as 16(e), as follows:

Related Pending Litigation. Upon a showing of good cause, the processing of a disciplinary matter may be stayed because of substantial similarity to the material allegations of pending criminal or civil litigation or disciplinary action.

SECOND: A Committee member seconded the motion.

VOTE: The Committee voted unanimously to approve the motion.

Rule 16(f).

Paragraph 16(f) deals with the unwillingness of a complainant to prosecute a discipline matter.

MOTION: A Committee member made a motion to approve Rule 16(f) with the following amendments:

1. Delete the words "nor neglect".
2. Delete the words "sign a complaint or".
3. Amend the phrase "prosecute a charge" to "prosecute an informal or formal complaint".

SECOND: A Committee member seconded the motion.

VOTE: The Committee voted unanimously to approve the motion.

Rule 17.

The Committee discussed the phrase "serious crime" and its corresponding definition found in 17(c). Mr. Trost suggested that the requirement in Rule 17(a) that a clerk notify disciplinary counsel when a lawyer is convicted of a serious crime should be

expanded to include sanctions for Rule 11 violations or other findings of violations of Rules of Professional Conduct.

MOTION: Mr. Voros moved to delete the reference to "serious crime" and to replace it with a reference to crimes which adversely reflect upon the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, as provided in Rule of Professional Conduct 8.4.

SECOND: Judge Davis seconded the motion.

VOTE: The Committee voted unanimously to approve the motion.

Rule 17(a).

MOTION: A Committee member made a motion to approve Rule 17(a) changing the references to "serious crimes" to those crimes identified in Rule of Professional Conduct 8.4.

SECOND: A Committee member seconded the motion.

VOTE: The Committee voted unanimously to approve the motion.

Rule 17(b).

MOTION: A Committee member made a motion to approve Rule 17(a) changing the references to "serious crimes" to those crimes identified in Rule of Professional Conduct 8.4.

SECOND: A Committee member seconded the motion.

VOTE: The Committee voted unanimously to approve the motion.

Mr. Winchester was asked by the Committee to redraft Rule 17(b) to incorporate the Committee's amendments and to transmit the same via facsimile to Mr. Trost for review prior to the Committee mailing.

4. **FUTURE MEETING.** The Committee determined to meet on Saturday, May 9 at 9:00 a.m. at the Administrative Office of the Courts. If necessary, the Committee will also meet at 5:30 p.m. on May 12.

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