

Approved 5/26/92

MINUTES

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

**Tuesday, May 12, 1992, 5:30 p.m.
Administrative Office of the Courts**

Bert L. Dart, Presiding

PRESENT:

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

EXCUSED:

Hon. John A. Rokich
F. John Hill
Danny C. Kelly
John K. Morris
John W. Palmer
Stephen F. Hutchinson

STAFF:

Colin R. Winchester

1. **WELCOME.** Mr. Dart welcomed the Committee members to the meeting. The minutes of the Committee's May 9 meeting had not yet been prepared.

2. **STRUCTURE OF LAWYER DISCIPLINE SYSTEM.** Mr. Trost reported that he had not yet drafted the paragraph providing an overview of the discipline system. The Committee discussed the assignment and determined to insert the provision as paragraph (e) in Rule 1.

3. **RE-NUMBERING OF PROPOSED RULES OF ATTORNEY DISCIPLINE.**

MOTION: Mr. Trost made a motion to re-number the existing rules by moving current Rule 11 between current Rules 9 and 10, and by moving current Rule 3 between current Rules 11 and 10.

SECOND: Mr. Arnett seconded the motion.

VOTE: The Committee voted unanimously to approve the motion.

4. **RULE 23(j).** Mr. Voros distributed a draft of his proposed 23(j) and explained the proposal. The Committee discussed the proposal and made the following amendments:

1. Delete the words "setting forth the case" from the second sentence.
2. Change "request" to "petition" in the fourth sentence.
3. Insert the word "substantial" before "procedural irregularities" in the fourth sentence.

MOTION: Mr. Voros made a motion to approve 23(j) as amended.

SECOND: Mr. Arnett seconded the motion.

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

Rule 28. Mr. Voros distributed his proposed Rule 28 and discussed the same. The proposal would replace the entire rule proposed by the subcommittee. The Committee discussed the proposal and made the following amendments:

1. The last sentence of (a) should read, "The respondent shall not be awarded costs."
2. Paragraph (c) should read, "Costs shall not be awarded in disability cases."

MOTION: Mr. Voros made a motion to approve Rule 28 as amended.

SECOND: A Committee member seconded the motion.

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

The Committee members who opposed the motion indicated that they were opposing it in part because it allows disciplinary counsel to recover costs. Mr. Dart indicated that at the Committee meeting on May 28, any issue could be the subject of a further motion and Committee debate.

5. **ADDITION TO 11(a)(7).** Mr. Trost distributed proposed

language to be added to the end of 11(a)(7). The Committee discussed the proposal and made the following amendments:

1. "Bar counsel" should be changed to "disciplinary counsel" throughout the language.
2. The first sentence should be amended to provide that the complainant may only appeal a summary dismissal within fifteen days after notification of the summary dismissal is mailed.

MOTION: Ms. Nasset-Sale made a motion to approve the additional language to 11(a)(7) as amended.

SECOND: A Committee member seconded the motion.

VOTE: The Committee voted unanimously to approve the motion.

6. SEPARATION OF GENERAL COUNSEL AND DISCIPLINARY COUNSEL FUNCTIONS. The Committee members present at the May 9 meeting had voted on the motion to separate the functions of disciplinary counsel and general counsel. The following members who were not present on May 9 voted to approve the separation: Ms. Polich, Mr. Nielsen, Mr. Dever, and Mr. Palmer (by telephone). Mr. Arnett opposed the separation of functions. Mr. Winchester was asked by the Committee to contact the remaining Committee members by telephone and record their votes.

7. DISTRICT COURT'S AUTHORITY TO ENTER FINAL ORDERS. Although Judge Rokich was not present for the meeting, he had telephoned Mr. Winchester prior to the meeting and reported his telephone conversation with Chief Justice Hall regarding whether the District Court should or could have authority to enter final orders in discipline matters. He reported that the Advisory Committee could propose that District Courts have the authority to enter final orders. The Supreme Court would then consider whether to adopt that proposal. Mr. Trost had also spoken with Chief Justice Hall and reported that Chief Justice Hall's personal inclination was to allow the District Courts to exercise final order authority.

MOTION: Mr. Dever made a motion that the District Courts be given the authority to enter final orders in discipline matters, and that stays and appeals of those orders be governed by the Rules of Civil and Appellate Procedure.

SECOND: Mr. Arnett seconded the motion.

Ms. Nasset-Sale suggested that there should at least be an automatic stay in disability proceedings.

Mr. Dever suggested that a stay be automatically granted upon the filing of appeal.

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

8. REVIEW OF 04/28 DRAFT OF RULES OF ATTORNEY DISCIPLINE.
The Committee reviewed the draft of the Rules of Attorney Discipline distributed at the beginning of the meeting and made the following changes:

1. Add the words "and disability" to the title of the rules.
2. Strike the Roman numerals and headings associated therewith.
3. Change the title of Rule 1 to "Purpose, Authority Scope and Structure of Attorney Disciplinary Proceedings."
4. Strike the words "matter of" from 1(d).
5. Add a new Rule 2 for definitions and re-number the rules accordingly. Mr. Winchester was assigned to draft new Rule 2.
6. Strike the last sentence from current Rule 2(d).
7. Change references to "the Board" to "the Board of Bar Commissioners" throughout the proposals.
8. Amend the caption set forth in Rule 3(d) to read as follows:

Style of Proceedings. All proceedings shall be styled "In the Matter of the Discipline of (name of respondent and respondent's bar number), Respondent.

9. Rewrite 3(g) to provide for appeals rather than review of district court recommendations.
10. Change the reference to felonies in current Rule 4(b)(10) to those crimes described in Rule of Professional Conduct 8.4.
11. Rewrite current Rule 9(c), referring to reciprocal discipline, to achieve grammatical correctness.
12. Insert the standard sanctions in current Rule 10.
13. Change the heading of current Rule 11(a) to

Informal Complaint of Unprofessional Conduct.

14. Amend the first sentence of current Rule 11(a)(8) to read as follows:

If a lawyer has received three disciplinary sanctions consisting of public reprimands, probation, suspension or disbarment within any consecutive 5 year period, ~~the Committee~~ disciplinary counsel may initiate an informal complaint. . . .

15. Amend the reference to Rule 28 in current Rule 15(b) to reflect the appropriate rule number.

16. Amend current Rule 16(b) to provide that in addition to the Rules of Civil Procedure and Evidence, the Appellate rules governing civil appeals also apply to disciplinary proceedings unless otherwise provided for in these rules.

9. COMPLAINANT'S RIGHTS AFTER FILING A FORMAL COMPLAINT.

Ms. Nasset-Sale suggested that the rules be amended to provide that a complainant must consent to a dismissal by disciplinary counsel after the filing of the formal complaint. Mr. Dart indicated that this issue could be raised at the next meeting, together with any other proposed amendments to the rules.

10. VIOLATIONS OF ETHICS ADVISORY COMMITTEE OPINIONS.

Mr. Trost suggested that the rules state whether a violation of an Ethics Advisory Committee opinion should be grounds for discipline. Mr. Arnett indicated that the issue is beyond the scope of this Committee's assignment. There was no further discussion on the issue.

- 11. TABLE OF CONTENTS.** Mr. Winchester was asked to include a table of contents in the next draft of the Rules.

- 12. NEXT MEETING.** Mr. Dart announced that the Committee would meet one more time on May 26 at 5:30 p.m. At that meeting, the Committee will consider "the final" draft of the rules and have one last opportunity to amend the proposals.

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