

MINUTES

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

Tuesday, May 26, 1992, 5:30 p.m.
Administrative Office of the Courts

Bert L. Dart, Presiding

PRESENT:

Bert L. Dart
Lee Dever
Jo Carol Nessel-Sale
Clark Nielsen
J. Frederic Voros
Hon. John A. Rokich
Stephen F. Hutchinson
G. Richard Hill
Stephen A. Trost
Stuart H. Schultz
Thomas N. Arnett, Jr.
John K. Morris

EXCUSED:

Hon. Lynn W. Davis
F. John Hill
Danny C. Kelly
Barbara K. Polich
John W. Palmer

STAFF:

Colin R. Winchester

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

MOTION: Mr. Dever made a motion to approve the Minutes of the Committee's May 12 meeting as distributed.

SECOND: Mr. Trost seconded the motion.

VOTE: The Committee voted unanimously to approve the motion.

2. **RULES OF ATTORNEY DISCIPLINE.**

Introduction. Mr. Trost distributed a proposed Introduction to the Rules of Attorney Discipline.

MOTION: Ms. Nessel-Sale made a motion that the content of the Introduction be incorporated into a transmittal letter to the Supreme Court, rather than incorporate the Introduction into Rule 1(e).

SECOND: Mr. Dever seconded the motion.

VOTE: Without a formal vote, the Committee determined to adopt Ms. Neseet-Sale's motion.

General Amendments.

1. Change "Board" to "Board of Bar Commissioners."
2. Re-examine use of "respondent" and "lawyer" throughout.
3. Spell out numbers one through nine. For numbers 10 and above, use numerals.
4. Change all references to "panels" to "screening panels."
5. Establish uniformity in use of capital letters. When in doubt, do not use capital letters.
6. Ensure that the proper name of the Client's Security Fund is used throughout the rules.
7. Double-check all references to specific rules within other rules to ensure that those references are correct in light of rule number changes which have been made.

Rule 1.

MOTION: Mr. Voros made a motion that 1(b) track the language of article VIII § 4 of the Utah Constitution.

SECOND: Mr. Arnett seconded the motion.

VOTE: The Committee voted to approve the motion, 10 in favor and one opposed.

Rule 2.

The Committee determined to delete the definition of "Board of Bar Commissioners" and to re-number the paragraphs within Rule 2. The Committee also determined not to include other definitions within Rule 2.

Rule 3.

MOTION: Mr. Dever made a motion to replace the first sentence of Rule 3(a) with the following sentence:

The Committee shall be appointed by the Supreme Court and consist of four public members, and 17 members of the Bar who have demonstrated a high standard of professional conduct.

SECOND: Mr. Morris seconded the motion.

VOTE: The Committee voted unanimously to approve the motion.

MOTION: Mr. Voros made a motion to replace the words "have the overall supervision of" with "supervise" in the first sentence of 3(b).

SECOND: Mr. Dever seconded the motion.

VOTE: The Committee voted unanimously to approve the motion.

MOTION: Ms. Nessel-Sale made a motion to delete "diversionary dispositions" from the second sentence of 3(g).

SECOND: A Committee member seconded the motion.

VOTE: The Committee was split, five in favor and five in opposition. Mr. Dart voted to break the tie by opposing the motion.

Ms. Nessel-Sale noted that there is no rule which provides for diversionary dispositions, and that such a rule should be drafted in the future.

Rule 4.

MOTION: Mr. Voros made a motion to delete the last sentence of 4(a).

SECOND: Mr. Schultz seconded the motion.

VOTE: The Committee voted unanimously to approve the motion.

Mr. Voros distributed a proposed amendment dealing with the separation of disciplinary counsel and general counsel functions. The Committee debated whether to include the amendment in the rules or simply to convey the Committee's vote to the Supreme Court.

MOTION: Mr. Voros made a motion to include his proposal at the end of 4(a).

SECOND: Ms. Nessel-Sale seconded the motion.

VOTE: The Committee voted to oppose the motion, four in favor and seven opposed.

Rule 6.

MOTION: Mr. Voros made a motion to re-write 6(c) as follows:

Incumbent Judges. Incumbent judges are ~~not~~ subject to the jurisdiction of the Office ~~except~~ only for conduct that occurred prior to the taking of office.

SECOND: Mr. Dever seconded the motion.

VOTE: The Committee voted unanimously to approve the motion.

Rule 7.

MOTION: Mr. Dever made a motion to delete the words "in any other jurisdiction" from 7(h).

SECOND: Mr. Morris seconded the motion.

VOTE: The Committee voted unanimously to approve the motion.

Rule 10.

The four references to the "Committee" in 10(a)(4), (5) and (6) should refer to "screening panels".

MOTION: Mr. Voros made a motion to delete 10(a)(7).

SECOND: Mr. Arnett seconded the motion.

VOTE: The Committee voted to approve the motion, 10 in favor and one opposed.

MOTION: Mr. Dever made a motion to amend the first sentence of 10(b)(5)(B) as follows:

~~That a letter of caution may be issued by the Committee to the respondent advising of Committee concern as to unprofessional conduct of a minor character.~~

SECOND: Mr. Voros seconded the motion.

VOTE: The Committee voted unanimously to approve the motion.

MOTION: Mr. Voros made a motion to amend 10(b)(5)(E) as follows:

~~That a formal complaint be filed against the respondent be prepared and filed by the disciplinary counsel, signed by the Chair.~~

SECOND: Mr. Arnett seconded the motion.

VOTE: The Committee voted unanimously to approve the motion.

MOTION: Mr. Dever made a motion to strike the word "Committee" from lines 5, 6 and 16 of 10(c).

SECOND: Mr. Hutchinson seconded the motion.

VOTE: The Committee voted unanimously to approve the motion.

Rule 11.

MOTION: Mr. Voros made several motions to amend Rule 11(a), resulting in the following changes:

In the event the panel finds probable cause ~~that there has been a violation of the Rules of Professional Conduct and to believe that there are grounds for public discipline and~~ that a formal complaint is merited, disciplinary counsel shall prepare and file with the district court a formal 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. The formal complaint shall be signed by the Committee Chair or, in the Chair's absence by any other Committee member. ~~Disciplinary counsel shall have the respondent served as per the Utah Rules of Civil Procedure.~~ Upon filing a formal complaint, the Bar Office shall pay a filing fee to the clerk of the district court identical to that charged for ~~the commencement of~~ filing a non-jury civil trials complaint. ~~These expenses shall be assessed to each respondent as costs pursuant to Rule 22.~~

SECOND: Various Committee members seconded the independent motions.

VOTE: The Committee voted unanimously to approve the motions.

Rule 15.

MOTION: Mr. Voros made a motion to delete the words "otherwise privileged or confidential" from 15(d).

SECOND: Ms. Nasset-Sale seconded the motion.

VOTE: The Committee voted unanimously to approve the motion.

Rule 16.

MOTION: Mr. Voros made a motion to amend the first sentence of 16(b) as follows:

~~The Supreme Court shall promptly notify the Administrative Office of the Courts which shall cause notices of suspension. . . .~~

SECOND: Mr. Morris seconded the motion

VOTE: The Committee voted unanimously to approve the motion.

MOTION: Mr. Hutchinson made a motion to change "requirement" to "requirements" in the second sentence of 16(b).

SECOND: Mr. Voros seconded the motion.

VOTE: The Committee voted unanimously to approve the motion.

MOTION: Mr. Voros made a motion to amend 16(c) as follows:

The Administrative Office of the Courts shall promptly transmit notices of suspension, disbarment, ~~and reinstatement~~ and readmission, and transfer to or from disability status to all state and federal courts in this state.

SECOND: Mr. Hutchinson seconded the motion.

VOTE: The Committee voted unanimously to approve the motion.

Rule 17.

MOTION: Ms. Nasset-Sale made a motion to add the following sentence at the conclusion of 17(c):

Motions for interim suspension pursuant to Rule 19 shall be established by clear and convincing evidence.

SECOND: Mr. Voros seconded the motion.

VOTE: The Committee voted unanimously to approve the motion.

MOTION: Mr. Dever made a motion to amend the second sentence of 17(d) as follows:

The burden of proof in proceedings seeking a reversal of a panel recommendation of private discipline,

reinstatement, readmission, or transfer from disability status is on the respondent.

SECOND: Mr. Voros seconded the motion.

VOTE: The Committee voted unanimously to approve the motion.

Rule 18.

MOTION: Mr. Dever made a motion to delete the phrase "subject to the disciplinary jurisdiction of the Supreme Court" from the first sentence of 18(b).

SECOND: Mr. Voros seconded the motion.

VOTE: The Committee voted unanimously to approve the motion.

MOTION: Mr. Voros made a motion to amend the last sentence of 18(b) as follows:

If an order for interim suspension is not obtained, the complaint shall be dismissed and disciplinary counsel shall process the matter like any other information coming to the attention of the Office.

SECOND: Mr. Morris seconded the motion.

VOTE: The Committee voted unanimously to approve the motion.

MOTION: Mr. Voros made a motion to move current Rule 19 (Interim Suspension for Threat of Harm) to Rule 18, and to move current Rule 18 (Lawyers Convicted of a Crime) to Rule 19.

SECOND: Ms. Nasset-Sale seconded the motion.

VOTE: The Committee voted unanimously to approve the motion.

Rule 20.

MOTION: Mr. Voros made a motion to amend the last sentence of 20(b) as follows:

If the ~~proposal is rejected by the district court or the Supreme Court,~~ district court rejects the proposal, the ~~and~~ admission shall be withdrawn and cannot be used against the lawyer in subsequent proceedings.

SECOND: A Committee member seconded the motion.

VOTE: The Committee voted unanimously to approve the motion.

Rule 21.

MOTION: Mr. Voros made a motion to amend the first sentence of 21(d) as follows:

Upon the expiration of 30 days from service of the notice pursuant to paragraph (b), the district court shall take such action as may be appropriate to cause the equivalent discipline to be imposed in this jurisdiction, unless ~~the lawyer demonstrates to the district court that~~ it clearly appears upon the face of the record from which the discipline is predicated that. . . .

SECOND: Mr. Dever seconded the motion.

VOTE: The Committee voted unanimously to approve the motion.

Rule 23.

MOTION: Mr. Voros made a motion to amend the last sentence of Rule 23 to read as follows:

Within 10 days, Ddisciplinary counsel may file an objection and thereafter the district court shall conduct a hearing.

SECOND: Mr. Morris seconded the motion.

VOTE: The Committee voted unanimously to approve the motion.

Rule 24.

MOTION: Mr. Voros made a motion to amend the second sentence of 24(d) as follows:

The notice shall inform members of the Bar about the application for reinstatement or readmission, and shall request that any individuals file notice of their opposition or concurrence with the district court within 30 days of the date of publication.

SECOND: Mr. Morris seconded the motion.

VOTE: The Committee voted unanimously to approve the motion.

MOTION: Mr. Voros made a motion to amend the third sentence of 24(d) as follows:

. . . . and shall inform each complainant that the complainant has 30 days from the date of mailing to raise objections. . .

SECOND: Mr. Arnett seconded the motion.

VOTE: The Committee voted unanimously to approve the motion.

MOTION: Mr. Voros made a motion to replace current 24(h) with the following:

Successive Petitions. Except for good cause shown, no lawyer should be permitted to reapply for reinstatement or readmission within one year following an adverse judgment upon a petition for reinstatement or readmission.

SECOND: Mr. Morris seconded the motion.

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

MOTION: Mr. Dever made a motion to amend the first sentence of 24(j), as follows:

~~If the district court or the Supreme Court has suspended or disbarred a lawyer~~ has been suspended or disbarred solely on the basis of discipline imposed. . . .

SECOND: Mr. Arnett seconded the motion.

VOTE: The Committee voted unanimously to approve the motion.

Rule 25.

MOTION: Mr. Dever made a motion to strike the words "by the Supreme Court" in the first and second sentences of 25(a).

SECOND: A Committee member seconded the motion.

VOTE: The Committee voted unanimously to approve the motion.

MOTION: Mr. Dever made a motion to amend the first sentence of 25(d) as follows:

If a lawyer is suspended for six months or less, either the district court or the

Supreme Court may impose conditions similar to those set out in paragraph (b).

SECOND: Mr. Voros seconded the motion.

VOTE: The Committee voted unanimously to approve the motion.

3. **FINAL APPROVAL OF PROPOSED RULES OF ATTORNEY DISCIPLINE.** It was decided that Mr. Winchester would incorporate the changes made at this meeting and send out a final draft of the Rules for Committee review. Rather than hold another meeting, Committee members were encouraged to submit proposed changes in writing. Those changes would be reviewed by Mr. Dart and Mr. Winchester, and if necessary, Committee members would be polled by telephone. Mr. Dart will then transmit the proposed Rules to the Supreme Court for publication and public comment. Mr. Voros delivered several non-substantive proposed changes to Mr. Winchester for inclusion in the final draft.

4. **FUTURE MEETINGS.** Barring unforeseen emergencies, the Committee will not meet again until the fall of 1992.

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