

**MINUTES**

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

Tuesday, September 22, 1992, 5:30 p.m.  
Administrative Office of the Courts

Bert L. Dart, Presiding

**PRESENT:**

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

**EXCUSED:**

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

**STAFF:**

Colin R. Winchester

**GUEST:**

Lisa J. Watts

1. **WELCOME.** Mr. Dart welcomed the Committee members to the meeting. The minutes of the Committee's previous meeting had been distributed earlier in the summer along with a draft of the proposed Rules of Lawyer Discipline and Disability. Consequently, there was no action on the minutes at this meeting.

2. **REVIEW OF PUBLIC COMMENTS RECEIVED.** The Committee reviewed public comments submitted during the comment period, and took the following action:

The Committee determined to take no action on Irving Biele's comment.

The Committee determined to take no action on Mr. McIntosh's comment regarding Rule 5(a). Mr. Voros was asked to draft an amendment to Sanction Standard 4.5(b) and to distribute it at the next Committee meeting for additional review and action.

The Committee determined to take no action on Mr. Kipp's comment.

The Committee determined to take no action on Mr. Nuffer's comment.

The Committee discussed Mr. Snuffer's recommendation that the reference "Rule 11(b)(6)" in Rule 28 be changed to "Rule 10(a)(6)." The Committee noted that the reference to "A informal complaint" in Rule 10(a)(6) should be "An informal complaint."

MOTION: Judge Davis made a motion to incorporate both changes.

SECOND: Mr. Voros seconded the motion.

VOTE: The Committee voted unanimously to approve the motion.

The Committee discussed Mr. Snuffer's recommendation that Rule 24 be expanded to include the consequences of a failure by disciplinary counsel to file a timely objection to a reinstatement petition. Mr. Snuffer also recommended that the permissible bases for an objection by disciplinary counsel be included in the rule. The Committee determined to take no action on these recommendations at the present time.

Mr. Boyden, Executive Director of the Statewide Association of Public Attorneys of Utah, recommended that Rule 13(b), which allows a district court to grant immunity from criminal prosecution to a witness in a discipline proceeding, be deleted. Mr. Boyden explained that the authority to grant immunity from criminal prosecutions has historically and statutorily rested with prosecutors, rather than with the court. Mr. Dever noted that he had received similar comments from several other prosecutors. Mr. Voros indicated that he had spoken with Mr. Boyden about the recommendation. Mr. Trost indicated that he had checked with the ABA and learned that 26 states have some type of rule dealing with immunity. However, he was unable to determine how many of those states had provisions authorizing disciplinary tribunals to grant immunity from criminal prosecutions. Mr. Trost and Ms. Nasset-Sale noted that they had rarely requested immunity in past disciplinary proceedings.

MOTION: Judge Davis made a motion to delete Rule 13(b) in its entirety, and to delete "(a) From Civil Suits." from the beginning of current Rule 13(a).

SECOND: A Committee member seconded the motion.

VOTE: The Committee voted unanimously to approve the motion.

The Committee determined to take no action on Mr. Smith's comment, and asked staff to delete the names of those attorneys referred to in Mr. Smith's letter prior to the time it is forwarded to the Supreme Court.

The Committee determined to take no action on Mr. Trost's comment, and asked staff to delete the names of those attorneys referred to in Mr. Smith's letter (attached as an exhibit) prior to the time it is forwarded to the Supreme Court.

The Committee discussed whether lawyer discipline trials should be given scheduling priority in the district courts. Several Committee members felt that priority was appropriate. However, Ms. Polich noted that civil litigants may be adversely affected by giving priority to discipline cases. Staff was asked to determine, district by district, the average period which passes from the date a trial is requested until a trial can be scheduled.

The Committee discussed the recommendation made by Mr. Huntsman and determined to take no action at the present time.

Mr. Dryer submitted several comments on behalf of the Bar Commission. Mr. Dart asked staff to invite Mr. Dryer to the next Committee meeting to discuss those comments.

The Committee discussed Mr. Ferrero's comment and determined to take no action at the present time.

The Committee discussed Mr. Slauch's recommendation that the references in the proposed rules to "verification" and "notarization" be uniform throughout.

MOTION: Ms. Polich made a motion to use "notarization" rather than "verification" throughout the proposals.

SECOND: Ms. Nessel-Sale seconded the motion.

VOTE: The Committee voted unanimously to approve the motion.

MOTION: Ms. Nessel-Sale made a motion to amend the last sentence of Rule 10(a)(3) as follows:

If it is not, disciplinary counsel shall seek additional facts from the complainant, which facts shall also be submitted in writing and signed ~~as in the case of the initial informal complaint~~ by the complainant.

SECOND: Mr. Trost seconded the motion.

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

MOTION: Mr. Voros made a motion to amend the second sentence of Rule 10(a)(4), as recommended by Mr. Slaugh, as follows:

If the informal complaint cannot be so resolved or if it sets forth facts which, by their very nature, should be brought before the screening panel or if good cause otherwise exists to bring the matter before the screening panel, disciplinary counsel shall cause to be served a Notice of Informal Complaint by regular mail upon the respondent at the address reflected in the records of the Utah State Bar.

SECOND: Ms. Polich seconded the motion.

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

MOTION: Mr. Voros made a motion to replace "said" with "the" throughout the rules, as recommended by Mr. Slaugh.

SECOND: A Committee member seconded the motion.

VOTE: The Committee voted unanimously to approve the motion.

The Committee discussed Mr. Slaugh's recommendation that a process be included in the rules whereby a complainant or respondent can challenge the composition of the screening panel or other tribunal.

MOTION: Mr. Hutchinson made a motion that the recommendation be deferred, and that staff write a letter to Mr. Slaugh asking for proposed language to incorporate the recommendation.

SECOND: A Committee member seconded the motion.

VOTE: The Committee voted unanimously to approve the motion.

The Committee discussed Mr. Slaugh's recommendation that Rule 11(f) be amended, and determined to make no change at the present time.

The Committee discussed Mr. Slauch's recommendation regarding the standards of proof required by Rules 17(c) and 25(g).

MOTION: Mr. Trost made a motion to reduce the standard of proof in Rule 25(g) to preponderance of the evidence, and to keep the standard of proof in Rule 17(c) at preponderance of the evidence.

SECOND: Mr. Voros seconded the motion.

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

The Committee discussed Mr. Slauch's recommendation that Rule 20(d)(6) be amended, and determined to take no action on the recommendation.

The Committee discussed Mr. Slauch's recommendation regarding the "oath or affirmation" requirement in Rule 25(b), and determined to replace the "oath or affirmation" requirement with a "notarization" requirement.

The Committee discussed Mr. Slauch's recommendation that the word "unauthorized" be deleted from the phrase "unauthorized practice of law" in Rule 25(e)(2). The Committee felt the word "unauthorized" was necessary because a lawyer might be a member of another state's bar and be authorized to practice in that state even though the lawyer may be suspended or disbarred in this state.

The Committee discussed Mr. Slauch's recommendation that the timing provisions set forth in Rule 25(g) be amended. The Committee determined to leave those provisions as is at the present time, and to review them in the future if they prove to be a problem.

The Committee discussed Mr. Slauch's recommendation that "respondent" be changed to "lawyer" in Rule 26(a), and determined to make the change.

The Committee discussed Mr. Slauch's recommendation that the discovery provisions in Rule 29 be expanded, and determined to take no action on the recommendation.

The Committee discussed Mr. Slauch's recommendation that the references to "Standard 3.0" in Standards 4.1 and 5.1 be changed to "Standard 3.1," and determined to make the changes.

The Committee discussed Mr. Slauch's recommendation that Standard 4.2(a) be amended to allow disbarment only where the lawyer "intended" the serious or potentially serious injury. The Committee determined not to make the change.

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