

MINUTES

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

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

Bert L. Dart, Presiding

PRESENT:

Bert L. Dart
Danny C. Kelly
Lee Dever
J. Frederic Voros
Stuart H. Schultz
Stephen A. Trost
Thomas N. Arnett, Jr.
Stephen F. Hutchinson
G. Richard Hill
Clark Nielsen
John K. Morris

EXCUSED:

John W. Palmer
F. John Hill
Jo Carol Nessel-Sale
Hon. John A. Rokich
Hon. Lynn W. Davis
Barbara K. Polich

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 amended September 22 Minutes as distributed.

SECOND: Mr. Kelly seconded the motion.

VOTE: The Committee voted unanimously to approve the motion.

MOTION: Mr. Hill made a motion to approve the amended October 6 Minutes as distributed.

SECOND: Mr. Arnett seconded the motion.

Mr. Trost suggested that the last sentence of the first full paragraph on page two of the October 6 Minutes be deleted because it incorrectly summarizes a statement made by Mr. Barnard. He also suggested that the following sentence be added at the conclusion of the second full paragraph on page two of the October 6 Minutes:

Mr. Trost reported that the Division of Occupational and Professional Licensing uses a preponderance of the evidence standard.

VOTE: The Committee voted unanimously to approve the motion, incorporating the two changes suggested by Mr. Trost.

MOTION: Mr. Hutchinson made a motion to approve the October 27 Minutes as distributed.

SECOND: Mr. Trost seconded the motion.

VOTE: The Committee voted unanimously to approve the motion.

2. RULES OF LAWYER DISCIPLINE AND DISABILITY.

Preemptory Challenge of Judge. Mr. Trost distributed a proposed draft of the preemptory challenge rule, and noted that it was modeled after U.R.C.P. 63A with the following changes:

1. The time limit by which a Notice of Change of Judge must be filed is shortened.
2. Because the proposal is drafted so as to permit a change of judge without stipulation, the sentence in Rule 63A which prohibits a party from disclosing the party who initiated the change of judge has been deleted.

Several Committee members expressed concern about the use of the verb "change," but after discussion, determined not to make a change. The Committee did, however, determine to make the following changes:

1. Change "Notice" to "notice" throughout the proposal.
2. Amend the fourth sentence of the first paragraph as follows:

The party filing the notice may request reassignment to another district court judge from the same district or from another district, which request shall be granted.

3. Change the word "assign" to "reassign" in the second sentence of the third paragraph.
4. Change the fourth paragraph to read as follows:

Rule 63 and Rule 63A unaffected.
This rule does not affect any rights under Rule 63 or Rule 63A of the Utah Rules of Civil Procedure.

The Committee discussed whether a respondent or disciplinary counsel could, without stipulation, change a judge under this proposal and get yet another change of judge by stipulation under Rule 63A.

MOTION: Mr. Voros made a motion to disallow the use of Rule 63A if a party has previously changed a judge pursuant to this rule.

SECOND: Mr. Dever seconded the motion.

VOTE: The Committee voted five in favor of the motion and five opposed to the motion. Mr. Dart voted to break the tie by opposing the motion.

VOTE ON ORIGINAL MOTION: The Committee voted to approve Mr. Trost's motion, incorporating the above referenced amendments, nine in favor and one opposed.

Random Assignment of Informal Complaints to Screening Panels. Mr. Trost proposed language to amend Rule 3 to provide for the random assignment of informal complaints to screening panels.

MOTION: Mr. Dever made a motion to incorporate the language in the first sentence of Rule 3(d) as follows:

The screening panels may, and as to all informal complaints referred by disciplinary counsel, which shall be randomly assigned, shall, review, investigate, and hear all informal complaints charging unethical and/or unprofessional conduct against members of the bar.

Rule 13. Mr. Barnard submitted a comment suggesting that the district courts, Committee members, and disciplinary counsel not be immune from non-damage suits.

MOTION: Mr. Arnett made a motion to amend the last sentence of Rule 13 as follows:

The district courts, Committee members, and disciplinary counsel and staff shall be immune from suit, except as provided in Utah Rules of Civil Procedure 65A and 65B, for any conduct in the course of their official duties.

SECOND: Mr. Kelly seconded the motion.

VOTE: The Committee voted unanimously to approve the motion.

Rule 15(h). The Committee discussed Mr. Barnard's comment regarding Rule 15(h). There was no motion to adopt Mr. Barnard's comment.

Rule 17(g). Mr. Barnard submitted a comment suggesting that special counsel be appointed to represent Bar Commissioners who are the subject of disciplinary matters.

MOTION: Mr. Hill made a motion to adopt the comment.

SECOND: Mr. Arnett seconded the motion.

VOTE: The Committee voted unanimously to approve the motion.

Rules 18(d) and 19(d). Mr. Barnard submitted a comment noting that the procedure for dissolving an interim suspension under Rule 18 and the procedure for terminating interim suspension for lawyers convicted of a crime under Rule 19 should be the same. Mr. Nielsen suggested that Rule 19(d) be deleted and replaced with this sentence:

The interim suspension may be terminated as provided in Rule 18(d).

MOTION: Mr. Voros made a motion to adopt Mr. Nielsen's proposal.

SECOND: A Committee member seconded the motion.

VOTE: The Committee voted unanimously to adopt the motion.

Rules 19(b), 22, 24, 25(a), 25(b), 29 and 30. Mr. Barnard submitted comments on each listed rule. The Committee discussed the comments and determined not to adopt them.

3. STANDARDS FOR IMPOSING LAWYER SANCTIONS. Mr. Voros discussed revised Sanction 4, which had been distributed to Committee members prior to the meeting. Mr. Kelly indicated that Mr. Voros' proposal was the subcommittee's recommendation.

MOTION: Mr. Kelly made a motion to delete the word "knowingly" from Sanction 4.3(b) and 4.4(b).

SECOND: Mr. Hutchinson seconded the motion.

VOTE: The Committee voted unanimously to approve the motion.

MOTION: A Committee member made a motion to approve Sanction 4 as amended.

SECOND: A Committee member seconded the motion.

VOTE: The Committee voted unanimously to approve the motion.

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