

MINUTES

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

Tuesday, March 23, 1993, 5:30 p.m.
Administrative Office of the Courts

Bert L. Dart, Presiding

PRESENT:

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

EXCUSED:

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

STAFF:

Colin R. Winchester

GUEST:

Lisa J. Watts

1. **WELCOME.** In Mr. Dart's absence, Mr. Arnett welcomed the Committee members to the meeting. Mr. Arnett chaired the meeting until Mr. Dart arrived.

2. **STATUS REPORT.** Mr. Winchester distributed copies of the Rules of Lawyer Discipline and Disability, Standards for Imposing Lawyer Sanctions, and Rules of Professional Conduct, all of which have been filed with the Supreme Court.

Mr. Trost reported that he had met with the members of the Court in St. George regarding pending petitions. That meeting was followed up by an additional meeting in Salt Lake City last week. The Court expressed confidence in the constitutionality of using the district courts as the forum for resolving discipline matters. However, the Court expressed some concern that the jurisdiction of the district court over such matters may be in question, and asked the Committee to resolve that issue more clearly. After the meeting with the Court, Mr. Trost discussed the issue by telephone with Alan Sullivan, Chair of the Supreme Court's

Advisory Committee on the Rules of Civil Procedure, and Mr. Winchester. Mr. Winchester and Mr. Trost were concerned about using U.R.C.P. 1 to boot-strap jurisdiction.

Mr. Trost explained that proposed Rule 17(a) refers to discipline matters as "*sui generis*." He suggested that the Committee amend proposed Rule 17(a) to clearly indicate that formal discipline matters are "civil" in nature. The Committee discussed the issue at length.

MOTION: Mr. Voros made the following motion:

1. Delete proposed Rule 17(a) and re-number the remaining paragraphs of Rule 17.
2. Add a new second sentence to proposed Rule 1(c) as follows:

Formal disciplinary and disability proceedings are civil in nature.

3. In light of the amendments to Rule 17(a) and 1(c), delete all other conflicting or ambiguous provisions within the proposed rules.

SECOND: Mr. Trost seconded the motion.

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

Mr. Dart expressed concern that the Supreme Court had considered adopting the proposed rules without meeting with Committee members who had minority views. Mr. Trost stated that he saw no value in re-opening the discussion at this point. Mr. Arnett expressed concern that even slight changes to the structure of the system would require major changes to the specific provisions of the proposed rules.

MOTION: Mr. Voros made a motion that Committee members be invited, if they cared to do so, to contact the Court in writing within 14 days of the Committee meeting to express views in opposition to the proposed rules, but that additional meetings with the Court not be requested.

SECOND: Judge Davis seconded the motion.

VOTE: The Committee voted unanimously to approve the motion.

3. **RULES OF PROFESSIONAL CONDUCT.** Mr. Arnett distributed a document entitled "Rules Needing Attention." The document identifies several Rules of Professional Conduct which the Committee either should begin to review, is in the process of reviewing, or has completed reviewing. Mr. Arnett also distributed copies of Shapero v. Kentucky Bar Association, 486 U.S. 466 (1988); Baldwin v. Burton, 207 Utah Adv. Rep. 3 (1993); and State v. Brown, 201 Utah Adv. Rep. 4 (1992).

Mr. Trost noted that the most problematic rule referenced in Mr. Arnett's document is Rule 7. The next most problematic rule is Rule 1.5.

Ms. Nasset-Sale discussed a recent opinion of the Bar's Ethics Advisory Opinion Committee. That opinion discusses non-refundable retainers in criminal defense cases. A Committee member suggested that it would be beneficial to have a member of the Bar's Ethics Advisory Opinion Committee serve on this Committee.

It was determined that Mr. Arnett's subcommittee will continue its presentation on the Rules of Professional Conduct on April 27 and May 25.

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