

SUPREME COURT ADVISORY COMMITTEE
ON THE RULES OF PROFESSIONAL CONDUCT

AGENDA

November 23, 1993
5:30 p.m.

Administrative Office of the Courts
Salt Lake City, Utah

J. Frederic Voros, Chair

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| 1. | Welcome and Introductions | Fred Voros |
| 2. | Proposed Amendments to Rules of
Lawyer Discipline and Disability | Steve Trost
Colin Winchester |
| 3. | Future Meetings | Fred Voros |
| 4. | Other Business | Fred Voros |
| 5. | Adjournment | Fred Voros |

Approved
1/18/94

MINUTES

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

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

J. Frederic Voros, Presiding

PRESENT:

J. Frederic Voros
John K. Morris
Stephen A. Trost
Stuart H. Schultz
Danny C. Kelly
Hon. Lynn W. Davis
Jo Carol Nessel-Sale
William R. Hyde

EXCUSED:

Thomas N. Arnett, Jr.
Gary L. Chrystler
Stephen F. Hutchinson
Gary G. Sackett

STAFF:

Colin R. Winchester

GUEST:

Kim S. Christy

1. **WELCOME AND APPROVAL OF MINUTES.** Mr. Voros welcomed the Committee members to the meeting and introduced new Committee member, Bill Hyde. The Committee last met on May 24, 1993. Those Minutes will be approved by the Committee at its next meeting.

2. **SUBCOMMITTEE ASSIGNMENTS.** Mr. Voros noted that the chairs of each of the three subcommittees had been reappointed to the Committee, and indicated that he would like to have them continue as the chairs of their respective subcommittees. New Committee members will also be assigned to subcommittees, and a new subcommittee roster will be distributed.

3. **PROPOSED AMENDMENTS TO RULES OF LAWYER DISCIPLINE AND DISABILITY.** The Committee reviewed Mr. Trost's Memorandum dated September 16, 1993, wherein Mr. Trost recommended several amendments to the recently adopted Rules of Lawyer Discipline and Disability. Mr. Trost indicated that there have been 37 district court filings to date, and as a whole, things are working rather well.

a. Rule 17(f). The present rule mandates the appointment of special counsel, by the Supreme Court, to investigate and prosecute charges of misconduct filed against OAD staff and Bar Commissioners. Mr. Trost indicated that because complaints against lawyers often spawn complaints against OAD staff and Bar Commissioners, only those complaints which are not frivolous, unintelligible, or unsupported by fact, or which do not raise the possibility of any unprofessional conduct should require the appointment of a special prosecutor. Mr. Trost recommends that the Chair of the Ethics and Discipline Committee make that initial determination, prior to seeking appointment of special counsel by the Supreme Court.

MOTION: Mr. Trost made a motion to amend Rule 17(f) as proposed in his Memorandum.

SECOND: Mr. Morris seconded the motion.

Ms. Nessel-Sale noted that all complaints against OAD staff and Bar Commissioners which are not found to be "frivolous, unintelligible, or unsupported by fact, or which do not raise the possibility of any unprofessional conduct" should result in the Chair's request for the appointment of special counsel. Mr. Trost's written proposal suggests that only "meritorious" complaints should result in the appointment of special counsel. Mr. Trost concurred in Ms. Nessel-Sale's concern.

Judge Davis and Mr. Morris suggested that the amendment to Rule 17(f) track the language of Rule 10(a)(6).

Mr. Voros noted that under Rule 10(a)(6), a complainant may appeal a dismissal of an informal complaint to the Chair of the Ethics and Discipline Committee. Under Mr. Trost's proposed amendment to Rule 17(f), there is no similar appellate right. Ms. Nessel-Sale suggested that the initial determination be made by a chair of a screening panel, and that the appeal to the Chair of the Ethics and Discipline Committee be preserved in Rule 17(f).

VOTE: With the amendments recommended by Judge Davis, Mr. Morris and Ms. Nessel-Sale, the Committee voted unanimously to approve the amendments to Rule 17(f).

Mr. Trost was requested to incorporate the amendments and distribute the final draft in the next Committee mailing for additional review.

b. Rule 3(a). Mr. Trost noted that reviews of dismissals by the Chair of the Ethics and Discipline Committee were taking a great deal of time by the Chair. He recommends that the

number of Committee members be increased from 17 to 18, allowing for the appointment of a Vice Chair to assist the Chair in his or her responsibilities.

MOTION: Mr. Trost made a motion to amend Rule 3(a) as proposed in his Memorandum.

SECOND: Mr. Schultz seconded the motion.

Mr. Trost's written proposal was amended by the Committee as follows:

(c) Vice chair. The vice chair shall act in the event of the chair's absence or resignation. The chair may call upon the vice chair to assist in any of the chair's duties provided that the chair remains ultimately responsible.

Current paragraphs (c) through (g) will be renumbered accordingly.

VOTE: The Committee voted unanimously to approve the proposal, as amended by the Committee.

MOTION: Judge Davis made a motion to strike the word "is" in the last sentence of new paragraph (d).

SECOND: Ms. Nessel-Sale seconded the motion.

VOTE: The Committee voted unanimously to approve the motion.

c. Rule 18. Mr. Trost noted that current Rule 18 requires the OAD to file a complaint with the Ethics and Discipline Committee after the judge has preliminarily suspended a respondent for threat of harm. Mr. Trost suggested that because a judge has already found sufficient evidence to suspend the lawyer, the OAD should not be required to start from scratch, but rather should be allowed to file the complaint directly with the district court.

MOTION: Mr. Trost made a motion to amend Rule 18 as set forth in his Memorandum.

SECOND: Mr. Kelly seconded the motion.

The Committee amended the proposed language to strike the words "with the presiding judge" in Rule 18(a), and strike the words "the necessity of" in Rule 18(b).

VOTE: With those amendments, the Committee voted unanimously to approve the proposal.

MOTION: Judge Davis made a motion to amend Rule 27(a) to delete the language that allows only the presiding judge to appoint a trustee when a lawyer has disappeared or died, or has been suspended or disbarred or transferred to disability status. The filing which brings that matter before the court should be assigned at random, as are all other filings in the district court. The Committee generally approved of the amendment, but requested that the subcommittee redraft the paragraph so that specific language could be reviewed at the next Committee meeting.

d. Rule 3(e). Mr. Trost expressed concern about the subpoena provisions of Rule (e). He noted that in the Third Judicial District, one miscellaneous "umbrella" case had been opened wherein all OAD subpoenas were requested. The Committee determined to refer those concerns back to the subcommittee for additional consideration and recommendation.

e. Rule 10(b)(5)(d). Mr. Trost noted that this rule provides for recommendations for admonitions to be forwarded to the Chair of the Ethics and Discipline Committee but that the rules do not specifically provide that the Chair has the authority to act upon such recommendations.

MOTION: Mr. Trost recommended that the rule be amended by adding the following language:

The chair shall accept the recommendation and enter an order admonishing the respondent if no exception has been filed within ten days of notice of the recommendation being provided to the respondent.

SECOND: Mr. Schultz seconded the motion.

Mr. Morris suggested that the words "accept the recommendation and" be stricken, and the Committee agreed to strike those words.

VOTE: The Committee voted unanimously to approve the proposal as amended by the Committee.

f. Standard Sanction 4. Mr. Trost expressed concern over the interpretation and application of Sanction 4.5(b). The Committee discussed those concerns, and determined that no amendment to the Sanction was required, but that there had likely been an error in the interpretation of that Sanction.

4. FUTURE MEETINGS. The Committee determined to hold all of its future meetings on the third Tuesday of each month, rather than the fourth Tuesday of each month.

5. OTHER BUSINESS. At the January 18 meeting, the Committee will review the final changes authorized by the Committee in this meeting. The Committee will then return the remainder of the meeting over to Mr. Arnett and his subcommittee. It was suggested by a Committee member that Rule of Professional Conduct 4.2 be added to the Arnett subcommittee's list of rules to review.

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