THE STATE OF NEW HAMPSHIRE

SUPREME COURT OF NEW HAMPSHIRE

O R D E R

Pursuant to Part II, Article 73-a of the New Hampshire Constitution and Supreme Court Rule 51, the Supreme Court of New Hampshire adopts the following amendments to court rules.

I. CODE OF JUDICIAL CONDUCT

1. Repeal Supreme Court Rule 38, Code of Judicial Conduct, and adopt in its place new Supreme Court Rule 38 as set forth in Appendix A.

II. MEDICAL MALPRACTICE SCREENING PANEL RULES

1. Adopt new Superior Court Medical Malpractice Screening Panel Rules 1 to 13 as set forth in Appendix B.

III. WITHDRAWAL OF COUNSEL IN CRIMINAL CASES

1. Amend Superior Court Rule 14, regarding withdrawal of counsel in criminal cases, as set forth in Appendix C.

2. Amend District Court Rule 1.3 I(3), regarding withdrawal of court-appointed counsel in criminal cases, as set forth in Appendix D.

3. Amend District Court Rule 1.3 I(4), regarding withdrawal of court-appointed counsel in delinquency and children in need of services cases, as set forth in Appendix E.

4. Adopt new Family Division Rule 3.11, regarding withdrawal of court-appointed counsel, as set forth in Appendix F.

IV. NOTICE OF DEPOSITIONS

1. Amend Superior Court Rule 40, regarding notice of the taking of depositions, as set forth in Appendix G.

2. Amend District Court Rule 1.9 D, regarding notice of the taking of depositions, as set forth in Appendix H.

3. Amend Probate Court Rule 40, regarding notice of the taking of depositions, as set forth in Appendix I.

4. Amend Family Division Rule 1.25 G, regarding notice of the taking of depositions, as set forth in Appendix J.

V. FAMILY DIVISION MANDATORY DISCOVERY RULE

1. Adopt new Family Division Rule 1.25-A, regarding mandatory initial self-disclosure, as set forth in Appendix K.

VI. PLEAS BY MAIL IN DISTRICT COURT

1. Amend District Court Rule 2.5A, regarding pleas by mail, as set forth in Appendix L.

VII. DISTRICT COURT – TOWN ORDINANCE VIOLATION RULES

1. Adopt new District Court Rules 6.1 to 6.7, regarding local ordinance citations, on a temporary basis, as set forth in Appendix M.

VIII. CUSTODY OF MATERIALS FILED IN CAMERA

1. Adopt new Supreme Court Rule 57-A, regarding custody and return of materials filed in camera in trial courts, as set forth in Appendix N.

IX. DUPLICATION OF AUDIO TAPES

1. Adopt new Superior Court Rule 78-B, regarding duplication of audio tapes, and reserve Superior Court Rule 78-A for future use, as set forth in Appendix O.

2. Amend Probate Court Rule 78-B, regarding duplication of audio tapes, as set forth in Appendix P.

X. FOREIGN LEGAL CONSULTANT RULES

1. Adopt new Supreme Court Rule 42D, regarding licensing and practice of foreign legal consultants, as set forth in Appendix Q.

2. Amend Supreme Court Rule 42A, regarding non-payment of bar dues, as set forth in Appendix R.

3. Amend Supreme Court Rule 50-A, regarding certification requirement, as set forth in Appendix S.

4. Amend Supreme Court Rule 55(1), regarding public protection fund, as set forth in Appendix T.

XI. RECUSAL RULES

1. Amend Supreme Court Rule 21A, regarding motions for recusal, as set forth in Appendix U.

2. Amend Superior Court Rule 50A, regarding motions for recusal, as set forth in Appendix V.

3. Amend District Court Rule 1.8-A(H), regarding motions for recusal, as set forth in Appendix W.

4. Amend Probate Court Rule 50-A, regarding motions for recusal, as set forth in Appendix X.

5. Amend Family Division Rule 1.10, regarding motions for recusal, as set forth in Appendix Y.

XII. SMALL CLAIMS RULES

1. Amend District Court Rule 4.2, regarding the amount of the claim in a small claims action, as set forth in Appendix Z.

2. Amend District Court Rule 4.8, regarding notice of small claims, and adopt said rule as amended on a permanent basis, as set forth in Appendix AA.

3. Repeal District Court Rule 4.22, regarding the small claims form, as set forth in Appendix BB.

XIII. TEMPORARY RULES CURRENTLY IN EFFECT

(The following rules, which have been in effect as temporary rules, are adopted on a permanent basis without any changes.)

1. Adopt Supreme Court Rule 12-A, regarding appellate mediation, on a permanent basis, as set forth in Appendix CC.

2. Adopt Superior Court Rule 170-A(G), regarding arbitration, on a permanent basis, as set forth in Appendix DD.

3. Adopt District Court Rule 3.3, regarding court fees, on a permanent basis, as set forth in Appendix EE.

4. Adopt District Court Rule 3.28, regarding district court civil writ mediation, on a permanent basis, as set forth in Appendix FF.

5. Adopt District Court Rule 4.8-A, regarding prejudgment attachment procedures in small claims, on a permanent basis, as set forth in Appendix GG.

6. Adopt District Court Rule 4.8-B, regarding post-judgment attachment procedures in small claims, on a permanent basis, as set forth in Appendix HH.

7. Adopt District Court Rule 4.8-C, regarding discharge of attachments in small claims, on a permanent basis, as set forth in Appendix II.

8. Adopt District Court Rule 4.29, regarding small claims mediation, on a permanent basis, as set forth in Appendix JJ.

9. Adopt Probate Court Rule 169, regarding court fees, on a permanent basis, as set forth in Appendix KK.

Effective Dates

The amendments in appendices Z, AA, and BB shall take effect immediately. The remaining amendments shall take effect on April 1, 2011. The amendments in appendix M shall be referred to the Advisory Committee on Rules for its recommendation as to whether they should be adopted on a permanent basis.

Date: January 19, 2011

ATTEST: _____
Eileen Fox, Clerk
Supreme Court of New Hampshire

APPENDIX A

Amend Supreme Court Rule 38 by deleting said rule in its entirety and replacing it with the following:

RULE 38. Code of Judicial Conduct

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CANON 3

A JUDGE SHALL CONDUCT THE JUDGE'S PERSONAL AND EXTRAJUDICIAL ACTIVITIES TO MINIMIZE THE RISK OF CONFLICT WITH THE OBLIGATIONS OF JUDICIAL OFFICE.

CANON 4

A JUDGE OR JUDICIAL CANDIDATE SHALL REFRAIN FROM INAPPROPRIATE POLITICAL ACTIVITY.

RULE 4.1 Political Conduct in General

RULE 4.2 Judicial Candidates

CODE OF JUDICIAL CONDUCT

PREAMBLE

[1] An independent, fair and impartial judiciary is indispensable to our system of justice. The United States legal system is based upon the principle that an independent, impartial, and competent judiciary, composed of men and women of integrity, will interpret and apply the law that governs our society. Thus, the judiciary plays a central role in preserving the principles of justice and the rule of law. Inherent in all the Rules contained in this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to maintain and enhance confidence in the legal system.

[2] Judges should maintain the dignity of judicial office at all times, and avoid both impropriety and the appearance of impropriety in their professional and personal lives. They should aspire at all times to conduct that ensures the greatest possible public confidence in their independence, impartiality, integrity, and competence.

[3] The Code of Judicial Conduct establishes standards for the ethical conduct of judges and judicial candidates. It is not intended as an exhaustive guide for the conduct of judges and judicial candidates, who are governed in their judicial and personal conduct by general ethical standards as well as by the Code. The Code is intended, however, to provide guidance and assist judges in maintaining the highest standards of judicial and personal conduct, and to provide a basis for regulating their conduct through disciplinary agencies.

SCOPE

[1] The Code of Judicial Conduct consists of four Canons, numbered Rules under each Canon, and Comments that generally follow and explain each Rule. Scope and Terminology sections provide additional guidance in interpreting and applying the Code. An Application section establishes when the various Rules apply to a judge or judicial candidate.

[2] The Canons state overarching principles of judicial ethics that all judges must observe. Although a judge may be disciplined only for violating a Rule, the Canons provide important guidance in interpreting the Rules. Where a Rule contains a permissive term, such as “may” or “should,” the conduct being addressed is committed to the personal and professional discretion of the judge or candidate in question, and no disciplinary action should be taken for action or inaction within the bounds of such discretion.

[3] The Comments that accompany the Rules serve two functions. First, they provide guidance regarding the purpose, meaning, and proper application of the Rules. They contain explanatory material and, in some instances, provide examples of permitted or prohibited conduct. Comments neither add to nor subtract from the binding obligations set forth in the Rules. Therefore, when a Comment contains the term “must,” it does not mean that the Comment itself is binding or enforceable; it signifies that the Rule in question, properly understood, is obligatory as to the conduct at issue.

[4] Second, the Comments identify aspirational goals for judges. To implement fully the principles of this Code as articulated in the Canons, judges should strive to exceed the standards of conduct established by the Rules, holding themselves to the highest ethical standards and seeking to achieve those aspirational goals, thereby enhancing the dignity of the judicial office.

[5] The Rules of the Code of Judicial Conduct are rules of reason that should be applied consistent with constitutional requirements, statutes, other court rules, and decisional law, and with due regard for all relevant circumstances. The Rules should not be interpreted to impinge upon the essential independence of judges in making judicial decisions.

[6] Although the black letter of the Rules is binding and enforceable, it is not contemplated that every transgression will result in the imposition of discipline. Whether discipline should be imposed should be determined through a reasonable and reasoned application of the Rules, and should depend upon factors such as the seriousness of the transgression, the facts and circumstances that existed at the time of the transgression, the extent of any pattern of improper activity, whether there have been previous violations, and the effect of the improper activity upon the judicial system or others.

[7] The Code is not designed or intended as a basis for civil or criminal liability. Neither is it intended to be the basis for litigants to seek collateral remedies against each other or to obtain tactical advantages in proceedings before a court.

TERMINOLOGY

"Appropriate authority" means the authority having responsibility for initiation of disciplinary process in connection with the violation to be reported.

"Compensation" denotes remuneration for personal services.

"Contribution" means both financial and in-kind contributions, such as goods, professional or volunteer services, advertising, and other types of assistance, which, if obtained by the recipient otherwise, would require a financial expenditure.

"Court personnel" does not include the lawyers in a proceeding before a judge.

"De minimis," in the context of interests pertaining to disqualification of a judge, means an insignificant interest that could not raise a reasonable question regarding the judge's impartiality.

"Domestic partner" means a person with whom another person maintains a household and an intimate relationship, other than a person to whom he or she is legally married, but including parties who have entered into a civil union.

"Economic interest" means ownership of more than a de minimis legal or equitable interest. Except for situations in which the judge participates in the management of such a legal or equitable interest, or the interest could be substantially affected by the outcome of a proceeding before a judge, it does not include:

(1) an interest in the individual holdings within a mutual or common investment fund;

(2) an interest in securities held by an educational, religious, charitable, fraternal, or civic organization in which the judge or the judge's spouse, domestic partner, parent, or child serves as a director, an officer, an advisor, or other participant;

(3) a deposit in a financial institution or deposits or proprietary interests the judge may maintain as a member of a mutual savings association or credit union, or similar proprietary interests; or

(4) an interest in the issuer of government securities held by the judge.

"Fiduciary" includes relationships such as executor, administrator, trustee, or guardian.

"Impartial," "impartiality," and **"impartially"** mean absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintenance of an open mind in considering issues that may come before a judge.

"Impending matter" is a matter that is imminent or expected to occur in the near future.

"Impropriety" includes conduct that violates the law, court rules, or provisions of this Code, and conduct that undermines a judge's independence, integrity, or impartiality.

"Independence" means a judge's freedom from influence or controls other than those established by law.

"Integrity" means probity, fairness, honesty, uprightness, and soundness of character.

"Judicial candidate" means any person, who has been nominated for judicial office.

"Knowingly," "knowledge," "known," and **"knows"** mean actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

"Law" encompasses court rules as well as statutes, constitutional provisions, and decisional law.

"Member of the candidate's family" means a spouse, domestic partner, child, grandchild, parent, grandparent, or other relative or person with whom the candidate maintains a close familial relationship.

"Member of the judge's family" means a spouse, domestic partner, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship.

"Member of a judge's family residing in the judge's household" means any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge's family, who resides in the judge's household.

"Nonpublic information" means information that is not available to the public. Nonpublic information may include, but is not limited to, information that is sealed by statute or court order

or impounded or communicated in camera, and information offered in grand jury proceedings, presentencing reports, dependency cases, or psychiatric reports.

"Part time judge" is a judge who serves on a continuing or periodic basis but is permitted by law to devote time to some other profession or occupation and whose compensation for that reason is less than that of a full time judge.

"Pending matter" is a matter that has commenced. A matter continues to be pending through any appellate process until final disposition.

"Political organization" means a political party or other group sponsored by or affiliated with a political party or candidate, the principal purpose of which is to further the election or appointment of candidates for political office.

"Require." The rules prescribing that a judge "require" certain conduct of others are, like all of the rules in this Code, rules of reason. The use of the term "require" in that context means a judge is to exercise reasonable direction and control over the conduct of those persons subject to the judge's direction and control.

"Third degree of relationship" includes the following persons: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew, and niece.

APPLICATION

A. Anyone, whether or not a lawyer, who is an officer of a judicial system and who performs judicial functions, including an officer such as a magistrate, court commissioner, marital master, special master or referee, is treated as a judge within the meaning of this Code. All judges shall comply with this Code except as provided below.

B. All retired judges who have elected to take senior active status or who wish to serve as judicial referees or temporary justices of the supreme court shall comply with the provisions of this Code governing part time judges, except that they shall also comply with the provisions of Rule 3.9 if they wish to serve as a private mediator or arbitrator for compensation. A retired judge who does not take senior active status and who does not desire to serve as a judicial referee or a temporary justice of the supreme court is not subject to Rule 3.9 of this Code.

C. Part time Judge. A part time judge:

(1) is not required to comply

(a) except while serving as a judge, with Rule 2.10(A);

(b) at any time, with Rules 3.1(B), 3.4, 3.7(A)(6), 3.8, 3.9, 3.10, 3.11(B), 3.11(C), 3.13(A), 3.14 and 3.15;

(c) at any time, with Rule 3.2 but only to the extent that it prohibits appearances before administrative bodies in adjudicatory proceedings; otherwise, a part time judge shall comply with Rule 3.2.

(2) shall not practice law in the court on which the judge serves, in any other court of the same level (e.g., a part time district court judge shall not practice law in any other district court), any court subject to the appellate jurisdiction of the court on which the judge serves, and shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto.

(3) may serve as counsel to the town wherein the judge's court is located or a town within the judicial district of the judge's court, provided that:

(a) the judge may give no advice to the police of such town and may give no advice to any other officer or employee of the town that could reasonably be expected to influence the exercise of discretion by the police in the performance of their duties;

(b) the judge may give no advice to any officer or employee of the town on a matter that could reasonably be expected to be the subject of any action or suit before the judge's court; and

(c) the judge shall recuse him or herself from sitting as judge on any case in which the judge's advice to the town is directly called into question or in which a ruling could directly affect the interests of the town.

(4) Notwithstanding anything above to the contrary, a part time marital master shall be governed by all of the canons of the Code of Judicial Conduct as provided in Superior Court Administrative Rule 12-7.

D. Clerks, Deputy Clerks, Registers of Probate, Deputy Registers of Probate, any persons performing the duties of a Clerk or Register, and Court Stenographers, Monitors and Reporters shall comply with Rules 2.1, 2.2, 2.3, 2.5, 2.8, 2.10, 2.12, 2.15, and 2.16.

E. Time for Compliance. A person to whom this Code becomes applicable shall comply immediately with all provisions of this Code except Sections 4D(2), 4D(3), and 4E, and shall comply with these sections as soon as reasonably possible and shall do so in any event within the period of one year.

COMMENT

[1] When a person who has been a part time judge is no longer a part time judge (no longer accepts appointments), that person may act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto only with the express consent of all parties pursuant to Rule 1.12(a) of the N.H. Rules of Professional Conduct.

[2] If serving as a fiduciary when selected as a judge, a new judge may, notwithstanding the prohibitions in Section 4E, continue to serve as fiduciary but only for that period of time necessary to avoid serious adverse consequences to the beneficiary of the fiduciary relationship and in no event longer than one year. Similarly, if engaged at the time of judicial selection in a business

activity, a new judge may, notwithstanding the prohibitions in Section 4D(3), continue in that activity for a reasonable period but in no event longer than one year.

[3] In recent years many jurisdictions have created what are often called "problem solving" courts, in which judges are authorized to act in nontraditional ways. For example, judges presiding in drug courts and monitoring the progress of participants in those courts' programs may be authorized and even encouraged to communicate directly with social workers, probation officers, and others outside the context of their usual role as independent decision makers on issues of fact and law. When local practices and/or protocols specifically authorize conduct not otherwise permitted under these Rules, they take precedence over the provisions set forth in the Code. Nevertheless, judges serving on "problem solving" courts shall comply with this Code except to the extent local practices and/or protocols provide and permit otherwise.

CANON 1

A JUDGE SHALL UPHOLD AND PROMOTE THE INDEPENDENCE, INTEGRITY, AND IMPARTIALITY OF THE JUDICIARY, AND SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY.

RULE 1.1 *Compliance with the Law*

A judge shall comply with the law, including the Code of Judicial Conduct.

RULE 1.2 *Promoting Confidence in the Judiciary*

A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

COMMENT

[1] Public confidence in the judiciary is eroded by improper conduct and conduct that creates the appearance of impropriety. This principle applies to both the professional and personal conduct of a judge.

[2] A judge should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens, and must accept the restrictions imposed by the Code.

[3] Conduct that compromises or appears to compromise the independence, integrity, and impartiality of a judge undermines public confidence in the judiciary. Because it is not practicable to list all such conduct, the Rule is necessarily cast in general terms.

[4] Judges are encouraged to participate in activities that promote ethical conduct among judges and lawyers, support professionalism within the judiciary and the legal profession, and promote access to justice for all.

[5] Actual improprieties include violations of law, court rules or provisions of this Code. The test for appearance of impropriety is whether the conduct would create in the mind of a reasonable,

disinterested person fully informed of the facts a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired.

[6] A judge is encouraged to initiate and participate in community outreach activities for the purpose of promoting public understanding of and confidence in the administration of justice. In conducting such activities, the judge must act in a manner consistent with this Code.

RULE 1.3 *Avoiding Abuse of the Prestige of Judicial Office*

A judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so.

COMMENT

[1] It is improper for a judge to use or attempt to use his or her position to gain personal advantage or deferential treatment of any kind. For example, it would be improper for a judge to allude to his or her judicial status to gain favorable treatment in encounters with traffic officials. Similarly, judicial letterhead must not be used for conducting a judge's personal business.

[2] A judge may provide a reference or recommendation for an individual based upon the judge's personal knowledge. The judge may use official letterhead if the judge indicates that the reference is personal and if there is no likelihood that the use of the letterhead would reasonably be perceived as an attempt to exert pressure by reason of the judicial office.

[3] Judges may participate in the process of judicial selection by cooperating with appointing authorities and screening committees, and by responding to inquiries from such entities concerning the professional qualifications of a person being considered for judicial office. Testifying as to the qualifications of a judicial nominee at a confirmation hearing is not to be construed as a violation of this rule.

[4] Special considerations arise when judges write or contribute to publications of for-profit entities, whether related or unrelated to the law. A judge should not permit anyone associated with the publication of such materials to exploit the judge's office in a manner that violates this Rule or other applicable law. In contracts for publication of a judge's writing, the judge should retain sufficient control over the advertising to avoid such exploitation.

CANON 2

A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY, COMPETENTLY, AND DILIGENTLY.

RULE 2.1 *Giving Precedence to the Duties of Judicial Office*

The duties of judicial office, as prescribed by law, shall take precedence over all of a judge's personal and extrajudicial activities.

COMMENT

[1] To ensure that judges are available to fulfill their judicial duties, judges must conduct their personal and extrajudicial activities to minimize the risk of conflicts that would result in frequent disqualification. See Canon 3.

[2] Although it is not a duty of judicial office unless prescribed by law, judges are encouraged to participate in activities that promote public understanding of and confidence in the justice system.

RULE 2.2 *Impartiality and Fairness*

(A) A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.

(B) A judge may make reasonable efforts, consistent with the law and court rules, to facilitate the ability of all litigants, including self-represented litigants, to be fairly heard.

COMMENT

[1] To ensure impartiality and fairness to all parties, a judge must be objective and open-minded.

[2] Although each judge comes to the bench with a unique background and personal philosophy, a judge must interpret and apply the law without regard to whether the judge approves or disapproves of the law in question.

[3] When applying and interpreting the law, a judge sometimes may make good-faith errors of fact or law. Errors of this kind do not violate this Rule.

[4] The growth in litigation involving self-represented litigants and the responsibility of courts to promote access to justice warrant reasonable flexibility by judges, consistent with the law and court rules, to ensure that all litigants are fairly heard.

RULE 2.3 *Bias, Prejudice, and Harassment*

(A) A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.

(B) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, and shall not permit court staff, court officials, or others subject to the judge's direction and control to do so.

(C) A judge shall require lawyers in proceedings before the court to refrain from manifesting bias or prejudice, or engaging in harassment, based upon attributes including but not limited to race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, against parties, witnesses, lawyers, or others.

(D) The restrictions of paragraphs (B) and (C) do not preclude judges or lawyers from making legitimate reference to the listed factors, or similar factors, when they are relevant to an issue in a proceeding.

COMMENT

[1] A judge who manifests bias or prejudice in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute.

[2] Examples of manifestations of bias or prejudice include but are not limited to epithets; slurs; demeaning nicknames; negative stereotyping; attempted humor based upon stereotypes; threatening, intimidating, or hostile acts; suggestions of connections between race, ethnicity, or nationality and crime; and irrelevant references to personal characteristics. Even facial expressions and body language can convey to parties and lawyers in the proceeding, jurors, the media, and others an appearance of bias or prejudice. A judge must avoid conduct that may reasonably be perceived as prejudiced or biased.

[3] Harassment, as referred to in paragraphs (B) and (C), is verbal or physical conduct that denigrates or shows hostility or aversion toward a person on bases such as race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation.

[4] Sexual harassment includes but is not limited to sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that is unwelcome.

RULE 2.4 *External Influences on Judicial Conduct*

(A) A judge shall not be swayed by public clamor or fear of criticism.

(B) A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment.

(C) A judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge.

COMMENT

[1] An independent judiciary requires that judges decide cases according to the law and facts, without regard to whether particular laws or litigants are popular or unpopular with the public, the media, government officials, or the judge's friends or family. Confidence in the judiciary is eroded if judicial decision making is perceived to be subject to inappropriate outside influences.

RULE 2.5 *Competence, Diligence, and Cooperation*

(A) A judge shall perform judicial and administrative duties, competently and diligently.

(B) A judge shall cooperate with other judges and court officials in the administration of court business.

COMMENT

[1] Competence in the performance of judicial duties requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary to perform a judge's responsibilities of judicial office.

[2] Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to take reasonable measures to ensure that court officials, litigants, and their lawyers cooperate with the judge to that end.

[3] In disposing of matters promptly and efficiently, a judge must demonstrate due regard for the rights of parties to be heard and to have issues resolved without unnecessary cost or delay. A judge should monitor and supervise cases in ways that reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs.

RULE 2.6 *Ensuring the Right to Be Heard*

(A) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.

(B) A judge may encourage parties to a proceeding and their lawyers to settle matters in dispute but shall not act in a manner that coerces any party into settlement.

COMMENT

[1] The right to be heard is an essential component of a fair and impartial system of justice. Substantive rights of litigants can be protected only if procedures protecting the right to be heard are observed.

[2] The judge plays an important role in overseeing the settlement of disputes, but should be careful that efforts to further settlement do not undermine any party's right to be heard according to law. The judge should keep in mind the effect that the judge's participation in settlement discussions may have, not only on the judge's own views of the case, but also on the perceptions of the lawyers and the parties if the case remains with the judge after settlement efforts are unsuccessful. Among the factors that a judge should consider when deciding upon an appropriate settlement practice for a case are (1) whether the parties have requested or voluntarily consented to a certain level of participation by the judge in settlement discussions, (2) whether the parties and their counsel are relatively sophisticated in legal matters, (3) whether the case will be tried by the judge or a jury, (4) whether the parties participate with their counsel in settlement discussions, (5) whether any parties are unrepresented by counsel, and (6) whether the matter is civil or criminal.

[3] Judges must be mindful of the effect settlement discussions can have, not only on their objectivity and impartiality, but also on the appearance of their objectivity and impartiality.

Despite a judge's best efforts, there may be instances when information obtained during settlement discussions could influence a judge's decision making during trial, and, in such instances, the judge should consider whether disqualification may be appropriate. See Rule 2.11(A)(1).

[4] Court-ordered mediation is not considered coercion.

RULE 2.7 *Responsibility to Decide*

A judge shall hear and decide matters assigned to the judge, except when disqualification is required by Rule 2.11 or other law.

COMMENT

[1] Although there are times when disqualification is necessary to protect the rights of litigants and preserve public confidence in the independence, integrity, and impartiality of the judiciary, judges must be available to decide matters that come before the courts. Unwarranted disqualification may bring public disfavor to the court and to the judge personally. The dignity of the court, the judge's respect for fulfillment of judicial duties, and a proper concern for the burdens that may be imposed upon the judge's colleagues require that a judge not use disqualification to avoid cases that present difficult, controversial, or unpopular issues.

RULE 2.8 *Decorum, Demeanor, and Communication with Jurors*

(A) A judge shall require order and decorum in proceedings before the court.

(B) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, court staff, court officials, and others subject to the judge's direction and control.

(C) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding.

COMMENT

[1] The duty to hear all proceedings with patience and courtesy is not inconsistent with the duty imposed in Rule 2.5 to dispose promptly of the business of the court. Judges can be efficient and businesslike while being patient and deliberate.

[2] Commending or criticizing jurors for their verdict may imply a judicial expectation in future cases and may impair a juror's ability to be fair and impartial in a subsequent case.

[3] A judge who is not otherwise prohibited by law from doing so may meet with jurors who choose to remain after trial but should be careful not to discuss the merits of the case.

RULE 2.9 *Ex Parte Communications*

(A) A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending or impending matter, except as follows:

(1) When circumstances require it, ex parte communication for scheduling, administrative, or emergency purposes, which does not address substantive matters, is permitted, provided:

(a) the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication; and

(b) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication, and gives the parties an opportunity to respond.

(2) A judge may obtain the written advice of a disinterested expert on the law applicable to a proceeding before the judge, if the judge gives advance notice to the parties of the person to be consulted and the subject matter of the advice to be solicited, and affords the parties a reasonable opportunity to object and respond to the notice and to the advice received.

(3) A judge may consult with court staff and court officials whose functions are to aid the judge in carrying out the judge's adjudicative responsibilities, or with other judges, provided the judge makes reasonable efforts to avoid receiving factual information that is not part of the record, and does not abrogate the responsibility personally to decide the matter.

(4) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to settle matters pending before the judge.

(5) A judge may initiate, permit, or consider any ex parte communication when expressly authorized by law to do so.

(B) If a judge inadvertently receives an unauthorized ex parte communication bearing upon the substance of a matter, the judge shall make provision promptly to notify the parties of the substance of the communication and provide the parties with an opportunity to respond.

(C) A judge shall not investigate facts in a matter independently, and shall consider only the evidence presented and any facts that may properly be judicially noticed.

(D) A judge shall make reasonable efforts, including providing appropriate supervision, to ensure that this Rule is not violated by court staff, court officials, and others subject to the judge's direction and control.

COMMENT

[1] To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge.

[2] Whenever the presence of a party or notice to a party is required by this Rule, it is the party's lawyer, or if the party is unrepresented, the party, who is to be present or to whom notice is to be given.

[3] The proscription against communications concerning a proceeding includes communications with lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted by this Rule.

[4] A judge may initiate, permit, or consider ex parte communications expressly authorized by law, such as when serving on therapeutic or problem-solving courts, mental health courts, or drug courts. In this capacity, judges may assume a more interactive role with parties, treatment providers, probation officers, social workers, and others.

[5] A judge may consult with other judges on pending matters, but must avoid ex parte discussions of a case with judges who have previously been disqualified from hearing the matter, and with judges who have appellate jurisdiction over the matter.

[6] The prohibition against a judge investigating the facts in a matter extends to information available in all mediums, including electronic.

[7] A judge may consult ethics advisory committees, outside counsel, or legal experts concerning the judge's compliance with this Code. Such consultations are not subject to the restrictions of paragraph (A)(2).

RULE 2.10 *Judicial Statements on Pending and Impending Cases*

(A) A judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court, or make any nonpublic statement that might substantially interfere with a fair trial or hearing.

(B) A judge shall not, in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

(C) A judge shall require court staff, court officials, and others subject to the judge's direction and control to refrain from making statements that the judge would be prohibited from making by paragraphs (A) and (B).

(D) Notwithstanding the restrictions in paragraph (A), a judge may make public statements in the course of official duties, may explain court procedures, and may comment on any proceeding in which the judge is a litigant in a personal capacity.

(E) Subject to the requirements of paragraph (A), a judge may respond directly or through a third party to allegations in the media or elsewhere concerning the judge's conduct in a matter.

COMMENT

[1] This Rule's restrictions on judicial speech are essential to the maintenance of the independence, integrity, and impartiality of the judiciary.

[2] This Rule does not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity. In cases in which the judge is a litigant in an official capacity, such as a writ of mandamus, the judge must not comment publicly.

[3] Depending upon the circumstances, the judge should consider whether it may be preferable for a third party, rather than the judge, to respond or issue statements in connection with allegations concerning the judge's conduct in a matter.

RULE 2.11 *Disqualification*

(A) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to the following circumstances:

(1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding.

(2) The judge knows that the judge, the judge**'**s spouse or domestic partner, or a person within the third degree of relationship to either of them, or the spouse or domestic partner of such a person is:

(a) a party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party;

(b) acting as a lawyer in the proceeding;

(c) a person who has more than a de minimis interest that could be substantially affected by the proceeding; or

(d) likely to be a material witness in the proceeding.

(3) The judge knows that he or she, individually or as a fiduciary, or the judge's spouse, domestic partner, parent, or child, or any other member of the judge's family residing in the judge's household, has an economic interest in the subject matter in controversy or in a party to the proceeding.

(4) The judge, while a judge or a judicial candidate, has made a public statement, other than in a court proceeding, judicial decision, or opinion, that commits or appears to commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy.

(5) The judge:

(a) served as a lawyer in the matter in controversy, or was associated with a lawyer who participated substantially as a lawyer in the matter during such association;

(b) served in governmental employment, and in such capacity participated personally and substantially as a lawyer or public official concerning the proceeding, or has publicly expressed in such capacity an opinion concerning the merits of the particular matter in controversy; or

(c) was a material witness concerning the matter.

(B) A judge shall keep informed about the judge's personal and fiduciary economic interests, and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse or domestic partner and minor children residing in the judge's household.

(C) A judge subject to disqualification under this Rule, other than for bias or prejudice under paragraph (A)(1), may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, outside the presence of the judge and court personnel, whether to waive disqualification. If, following the disclosure, the parties and lawyers agree, without participation by the judge or court personnel, that the judge should not be disqualified, the judge may participate in the proceeding. The agreement shall be incorporated into the record of the proceeding.

COMMENT

[1] Under this Rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific provisions of paragraphs (A)(1) through (6) apply. In many jurisdictions, the term "recusal" is used interchangeably with the term "disqualification."

[2] A judge's obligation not to hear or decide matters in which disqualification is required applies regardless of whether a motion to disqualify is filed.

[3] The rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute, or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. In matters that require immediate action, the judge must disclose on the record the basis for possible disqualification and make reasonable efforts to transfer the matter to another judge as soon as practicable.

[4] The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not itself disqualify the judge. If, however, the judge's impartiality might reasonably be questioned under paragraph (A), or the relative is known by the judge to have an interest in the law firm that could be substantially affected by the proceeding under paragraph (A)(2)(c), the judge's disqualification is required.

[5] A judge should disclose on the record information that the judge believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification, even if the judge believes there is no basis for disqualification.

[6] "Economic interest," as set forth in the Terminology section, means ownership of more than a de minimis legal or equitable interest. Except for situations in which a judge participates in the management of such a legal or equitable interest, or the interest could be substantially affected by the outcome of a proceeding before a judge, it does not include:

(1) an interest in the individual holdings within a mutual or common investment fund;

(2) an interest in securities held by an educational, religious, charitable, fraternal, or civic organization in which the judge or the judge's spouse, domestic partner, parent, or child serves as a director, officer, advisor, or other participant;

(3) a deposit in a financial institution or deposits or proprietary interests the judge may maintain as a member of a mutual savings association or credit union, or similar proprietary interests; or

(4) an interest in the issuer of government securities held by the judge.

RULE 2.12 *Supervisory Duties*

(A) A judge shall require court staff, court officials, and others subject to the judge's direction and control to act in a manner consistent with the judge's obligations under this Code.

(B) A judge with supervisory authority for the performance of other judges shall take reasonable measures to ensure that those judges properly discharge their judicial responsibilities, including the prompt disposition of matters before them.

COMMENT

[1] A judge is responsible for his or her own conduct and for the conduct of others, such as staff, when those persons are acting at the judge's direction or control. A judge may not direct court personnel to engage in conduct on the judge's behalf or as the judge's representative when such conduct would violate the Code if undertaken by the judge.

[2] Public confidence in the judicial system depends upon timely justice. To promote the efficient administration of justice, a judge with supervisory authority must take the steps needed to ensure that judges under his or her supervision administer their workloads promptly.

RULE 2.13 *Administrative Appointments*

(A) In making administrative appointments, a judge:

(1) shall exercise the power of appointment impartially and on the basis of merit; and

(2) shall avoid nepotism, favoritism, and unnecessary appointments.

(B) A judge shall not approve compensation of appointees beyond the fair value of services rendered.

COMMENT

[1] Appointees of a judge include assigned counsel, officials such as referees, commissioners, special masters, receivers, and guardians, and personnel such as clerks, secretaries, and bailiffs. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by paragraph (A).

[2] Unless otherwise defined by law, nepotism is the appointment or hiring of any relative within the third degree of relationship of either the judge or the judge's spouse or domestic partner, or the spouse or domestic partner of such relative.

RULE 2.14 *Disability and Impairment*

A judge having a reasonable belief that the performance of a lawyer or another judge is impaired by drugs or alcohol, or by a mental, emotional, or physical condition, shall take appropriate action, which may include a confidential referral to a lawyer or judicial assistance program.

COMMENT

[1] "Appropriate action" means action intended and reasonably likely to help the judge or lawyer in question address the problem and prevent harm to the justice system. Depending upon the circumstances, appropriate action may include but is not limited to speaking directly to the impaired person, notifying an individual with supervisory responsibility over the impaired person, or making a referral to an assistance program.

[2] Taking or initiating corrective action by way of referral to an assistance program may satisfy a judge's responsibility under this Rule. Assistance programs have many approaches for offering help to impaired judges and lawyers, such as intervention, counseling, or referral to appropriate health care professionals. Depending upon the gravity of the conduct that has come to the judge's attention, however, the judge may be required to take other action, such as reporting the impaired judge or lawyer to the appropriate authority, agency, or body. See Rule 2.15.

RULE 2.15 *Responding to Judicial and Lawyer Misconduct*

(A) A judge having knowledge that another judge has committed a violation of this Code that raises a substantial question regarding the judge's honesty, trustworthiness, or fitness as a judge in other respects shall inform the appropriate authority.

(B) A judge having knowledge that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question regarding the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the appropriate authority.

(C) A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this Code shall take appropriate action.

(D) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct shall take appropriate action.

COMMENT

[1] Taking action to address known misconduct is a judge's obligation. Paragraphs (A) and (B) impose an obligation on the judge to report to the appropriate disciplinary authority the known misconduct of another judge or a lawyer that raises a substantial question regarding the honesty, trustworthiness, or fitness of that judge or lawyer. Ignoring or denying known misconduct among

one's judicial colleagues or members of the legal profession undermines a judge's responsibility to participate in efforts to ensure public respect for the justice system. This Rule limits the reporting obligation to those offenses that an independent judiciary must vigorously endeavor to prevent.

[2] A judge who does not have actual knowledge that another judge or a lawyer may have committed misconduct, but receives information indicating a substantial likelihood of such misconduct, is required to take appropriate action under paragraphs (C) and (D). Appropriate action may include, but is not limited to, communicating directly with the judge who may have violated this Code, communicating with a supervising judge, or reporting the suspected violation to the appropriate authority or other agency or body. Similarly, actions to be taken in response to information indicating that a lawyer has committed a violation of the Rules of Professional Conduct may include but are not limited to communicating directly with the lawyer who may have committed the violation, or reporting the suspected violation to the appropriate authority or other agency or body.

RULE 2.16 *Cooperation with Disciplinary Authorities*

(A) A judge shall cooperate and be candid and honest with judicial and lawyer disciplinary agencies.

(B) A judge shall not retaliate, directly or indirectly, against a person known or suspected to have assisted or cooperated with an investigation of a judge or a lawyer.

COMMENT

[1] Cooperation with investigations and proceedings of judicial and lawyer discipline agencies, as required in paragraph (A), instills confidence in judges' commitment to the integrity of the judicial system and the protection of the public.

CANON 3

A JUDGE SHALL CONDUCT THE JUDGE'S PERSONAL AND EXTRAJUDICIAL ACTIVITIES TO MINIMIZE THE RISK OF CONFLICT WITH THE OBLIGATIONS OF JUDICIAL OFFICE.

RULE 3.1 *Extrajudicial Activities in General*

(A) A judge may engage in extrajudicial activities, except as prohibited by law or this Code. However, when engaging in extrajudicial activities, a judge shall not:

(1) participate in activities that will interfere with the proper performance of the judge's judicial duties;

(2) participate in activities that will lead to frequent disqualification of the judge;

(3) participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality;

(4) engage in conduct that would appear to a reasonable person to be coercive; or

(5) make use of court premises, staff, stationery, equipment, or other resources, except for incidental use for activities that concern the law, the legal system, or the administration of justice.

COMMENT

[1] To the extent that time permits, and judicial independence and impartiality are not compromised, judges are encouraged to engage in appropriate extrajudicial activities. Judges are uniquely qualified to engage in extrajudicial activities that concern the law, the legal system, and the administration of justice, such as by speaking, writing, teaching, or participating in scholarly research projects. In addition, judges are permitted and encouraged to engage in educational, religious, charitable, fraternal or civic extrajudicial activities not conducted for profit, even when the activities do not involve the law. See Rule 3.7.

[2] Participation in both law-related and other extrajudicial activities helps integrate judges into their communities, and furthers public understanding of and respect for courts and the judicial system.

[3] Discriminatory actions and expressions of bias or prejudice by a judge, even outside the judge's official or judicial actions, are likely to appear to a reasonable person to call into question the judge's integrity and impartiality. Examples include jokes or other remarks that demean individuals based upon their race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, or socioeconomic status. For the same reason, a judge's extrajudicial activities must not be conducted in connection or affiliation with an organization that practices invidious discrimination. See Rule 3.6.

[4] While engaged in permitted extrajudicial activities, judges must not coerce others or take action that would reasonably be perceived as coercive. For example, depending upon the circumstances, a judge's solicitation of contributions or memberships for an organization, even as permitted by Rule 3.7(A), might create the risk that the person solicited would feel obligated to respond favorably, or would do so to curry favor with the judge.

(B) Avocational Activities. A judge may speak, write, lecture, teach and participate in other extra-judicial activities concerning the law, the legal system, the administration of justice and non-legal subjects, subject to the requirements of this Code.

(1) A judge who intends to enter into a teaching contract shall obtain written approval, in advance, from the chief justice of the supreme court.

(2) A judge who is otherwise in compliance with the provisions of Canon 2 relating to the precedence of his or her judicial duties and the timely and competent disposition of the business of the court may, in any calendar year derive income from such activities not to exceed 15% of the judge's salary. For good cause shown and in extraordinary

circumstances, exceptions to this limitation may be approved, in advance by formal and unanimous vote of the supreme court. Such approval shall be in writing and shall state the reasons for and terms of the exception.

COMMENT

[1] As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice. To the extent that time permits, a judge is encouraged to do so, either independently or through a bar association, judicial conference or other organization dedicated to the improvement of the law. Judges may participate in efforts to promote the fair administration of justice, the independence of the judiciary and the integrity of the legal profession and may express opposition to the persecution of lawyers and judges in other countries because of their professional activities.

[2] The 15% income limitation is consistent with Title VI of the Ethics Reform Act of 1989, 5 U.S.C. app. 4, sections 501-505, which limits the income that federal judges may receive from quasi-judicial activities.

[3] In this and other sections of Canon 3, the phrase "subject to the requirements of this Code" is used, notably in connection with a judge's governmental, civic or charitable activities. This phrase is included to remind judges that the use of permissive language in various sections of the Code does not relieve a judge from the other requirements of the Code that apply to the specific conduct.

RULE 3.2 *Appearances before Governmental Bodies and Consultation with Government Officials*

A judge shall not appear voluntarily at a public hearing before, or otherwise consult with, an executive or a legislative body or official, except:

(A) in connection with matters concerning the law, the legal system, or the administration of justice;

(B) in connection with matters about which the judge acquired knowledge or expertise in the course of the judge's judicial duties; or

(C) when the judge is acting pro se in a matter involving the judge's legal or economic interests, or when the judge is acting in a fiduciary capacity.

COMMENT

[1] Judges possess special expertise in matters of law, the legal system, and the administration of justice, and may properly share that expertise with governmental bodies and executive or legislative branch officials.

[2] In appearing before governmental bodies or consulting with government officials, judges must be mindful that they remain subject to other provisions of this Code, such as Rule 1.3, prohibiting

judges from using the prestige of office to advance their own or others' interests, Rule 2.10, governing public comment on pending and impending matters, and Rule 3.1(C), prohibiting judges from engaging in extrajudicial activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.

[3] In general, it would be an unnecessary and unfair burden to prohibit judges from appearing before governmental bodies or consulting with government officials on matters that are likely to affect them as private citizens, such as zoning proposals affecting their real property. In engaging in such activities, however, judges must not refer to their judicial positions, and must otherwise exercise caution to avoid using the prestige of judicial office.

RULE 3.3 *Testifying as a Character Witness*

A judge shall not testify as a character witness in a judicial, administrative, or other adjudicatory proceeding or otherwise vouch for the character of a person in a legal proceeding, except when duly summoned.

COMMENT

[1] A judge who, without being subpoenaed, testifies as a character witness abuses the prestige of judicial office to advance the interests of another. See Rule 1.3. Except in unusual circumstances where the demands of justice require, a judge should discourage a party from requiring the judge to testify as a character witness.

[2] Testifying as to the qualifications of a judicial nominee at a confirmation hearing is not to be construed as a violation of this rule.

RULE 3.4 *Appointments to Governmental Positions*

A judge shall not accept appointment to a governmental committee, board, commission, or other governmental position, unless it is one that concerns the law, the legal system, or the administration of justice. A judge may, however, represent a country, state or locality on ceremonial occasions or in connection with historical, educational or cultural activities.

COMMENT

[1] Rule 3.4 implicitly acknowledges the value of judges accepting appointments to entities that concern the law, the legal system, or the administration of justice. Even in such instances, however, a judge should assess the appropriateness of accepting an appointment, paying particular attention to the subject matter of the appointment and the availability and allocation of judicial resources, including the judge's time commitments, and giving due regard to the requirements of the independence and impartiality of the judiciary.

[2] A judge may represent his or her country, state, or locality on ceremonial occasions or in connection with historical, educational, or cultural activities. Such representation does not constitute acceptance of a government position.

RULE 3.5 *Use of Nonpublic Information*

A judge shall not intentionally disclose or use nonpublic information acquired in a judicial capacity for any purpose unrelated to the judge's judicial duties.

COMMENT

[1] In the course of performing judicial duties, a judge may acquire information of commercial or other value that is unavailable to the public. The judge must not reveal or use such information for personal gain or for any purpose unrelated to his or her judicial duties.

[2] This rule is not intended, however, to affect a judge's ability to act on information as necessary to protect the health or safety of the judge or a member of a judge's family, court personnel, or other judicial officers if consistent with other provisions of this Code.

RULE 3.6 *Affiliation with Discriminatory Organizations*

(A) A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation.

(B) A judge shall not use the benefits or facilities of an organization if the judge knows or should know that the organization practices invidious discrimination on one or more of the bases identified in paragraph (A). A judge's attendance at an event in a facility of an organization that the judge is not permitted to join is not a violation of this Rule when the judge's attendance is an isolated event that could not reasonably be perceived as an endorsement of the organization's practices.

COMMENT

[1] A judge's public manifestation of approval of invidious discrimination on any basis gives rise to the appearance of impropriety and diminishes public confidence in the integrity and impartiality of the judiciary. A judge's membership in an organization that practices invidious discrimination creates the perception that the judge's impartiality is impaired.

[2] An organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation persons who would otherwise be eligible for admission. Whether an organization practices invidious discrimination is a complex question to which judges should be attentive. The answer cannot be determined from a mere examination of an organization's current membership rolls, but rather, depends upon how the organization selects members, as well as other relevant factors, such as whether the organization is dedicated to the preservation of religious, ethnic, or cultural values of legitimate common interest to its members, or whether it is an intimate, purely private organization whose membership limitations could not constitutionally be prohibited.

[3] When a judge learns that an organization to which the judge belongs engages in invidious discrimination, the judge must resign immediately from the organization.

[4] A judge's membership in a religious organization as a lawful exercise of the freedom of religion is not a violation of this Rule.

[5] This Rule does not apply to national or state military service.

RULE 3.7 Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities

(A) Subject to the requirements of Rule 3.1, a judge may participate in activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice, and those sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit, including but not limited to the following activities:

(1) assisting such an organization or entity in planning related to fund-raising, and participating in the management and investment of the organization's or entity's funds;

(2) soliciting contributions for such an organization or entity, but only from members of the judge's family, or from judges over whom the judge does not exercise supervisory or appellate authority;

(3) soliciting membership for such an organization or entity, even though the membership dues or fees generated may be used to support the objectives of the organization or entity, but only if the organization or entity is concerned with the law, the legal system, or the administration of justice;

(4) appearing or speaking at, receiving an award or other recognition at, being featured on the program of, and permitting his or her title to be used in connection with an event of such an organization or entity, but if the event serves a fund-raising purpose, the judge may participate only if the event concerns the law, the legal system, or the administration of justice;

(5) making recommendations to such a public or private fund-granting organization or entity in connection with its programs and activities, but only if the organization or entity is concerned with the law, the legal system, or the administration of justice; and

(6) serving as an officer, director, trustee, or nonlegal advisor of such an organization or entity, unless it is likely that the organization or entity:

(a) will be engaged in proceedings that would ordinarily come before the judge; or

(b) will frequently be engaged in adversary proceedings in the court of which the judge is a member, or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

(B) A judge may encourage lawyers to provide pro bono publico legal services.

COMMENT

[1] The activities permitted by paragraph (A) generally include those sponsored by or undertaken on behalf of public or private not-for-profit educational institutions, and other not-for-profit organizations, including law-related, charitable, and other organizations.

[2] Even for law-related organizations, a judge should consider whether the membership and purposes of the organization, or the nature of the judge's participation in or association with the organization, would conflict with the judge's obligation to refrain from activities that reflect adversely upon a judge's independence, integrity, and impartiality.

[3] Mere attendance at an event, whether or not the event serves a fund-raising purpose, does not constitute a violation of paragraph 4(A). It is also generally permissible for a judge to serve as an usher or a food server or preparer, or to perform similar functions, at fund-raising events sponsored by educational, religious, charitable, fraternal, or civic organizations. Such activities are not solicitation and do not present an element of coercion or abuse the prestige of judicial office.

[4] Identification of a judge's position in educational, religious, charitable, fraternal, or civic organizations on letterhead used for fund-raising or membership solicitation does not violate this Rule. The letterhead may list the judge's title or judicial office if comparable designations are used for other persons.

[5] In addition to appointing lawyers to serve as counsel for indigent parties in individual cases, a judge may promote broader access to justice by encouraging lawyers to participate in pro bono publico legal services, if in doing so the judge does not employ coercion, or abuse the prestige of judicial office. Such encouragement may take many forms, including providing lists of available programs, training lawyers to do pro bono publico legal work, and participating in events recognizing lawyers who have done pro bono publico work.

RULE 3.8 *Appointments to Fiduciary Positions*

(A) A judge shall not accept appointment to serve in a fiduciary position, such as executor, administrator, trustee, guardian, attorney in fact, or other personal representative, except for the estate, trust, or person of a member of the judge's family, and then only if such service will not interfere with the proper performance of judicial duties.

(B) A judge shall not serve in a fiduciary position if the judge as fiduciary will likely be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which the judge serves, or one under its appellate jurisdiction.

(C) A judge acting in a fiduciary capacity shall be subject to the same restrictions on engaging in financial activities that apply to a judge personally.

(D) If a person who is serving in a fiduciary position becomes a judge, he or she must comply with this Rule as soon as reasonably practicable, but in no event later than one year after becoming a judge.

COMMENT

[1] A judge should recognize that other restrictions imposed by this Code may conflict with a judge's obligations as a fiduciary; in such circumstances, a judge should resign as fiduciary. For example, serving as a fiduciary might require frequent disqualification of a judge under Rule 2.11 because a judge is deemed to have an economic interest in shares of stock held by a trust if the amount of stock held is more than de minimis.

RULE 3.9 *Service as Arbitrator or Mediator*

(A) Except as provided in subsection B below, a judge shall not provide services as a private arbitrator or mediator or otherwise perform judicial functions in a private capacity unless expressly authorized by law.

(B) A judge who is in senior active service pursuant to RSA 493-A:1 or who has reached age 70 but continues to sit as a judicial referee pursuant to RSA 493-A:1-a may serve as a private mediator or arbitrator, and may be privately compensated for such services in accordance with this subsection. To the extent the senior judge or judicial referee provides mediation services pursuant to Superior Court Rule 170 or 170-B, he or she shall comply with the certification requirements of those rules.

(1) A senior judge or judicial referee may be associated with entities that are solely engaged in offering mediation or other alternative dispute resolution services but that are not otherwise engaged in the practice of law. However, such senior judge or judicial referee shall not associate with a law firm, or advertise or solicit business in a manner that identifies his or her position as a senior active judge or judicial referee or prior service as a judge, but he or she may include the fact of prior service as a judge, along with other background and experience, in a resume or curriculum vitae.

(2) A senior judge or judicial referee who serves as a mediator or arbitrator shall disclose to the parties to the mediation or arbitration whether he or she has presided over a case involving any party to the mediation or arbitration within the past three years. A senior judge or judicial referee shall not solicit service as a mediator or arbitrator is any case in which he or she is or has presided or in which he or she has ruled upon any issues other than routine scheduling matters, but he or she may serve as a mediator or arbitrator in such a case if requested to do so by all parties to the case; provided, however, that once a senior judge or judicial referee serves as a mediator or arbitrator in such a case, he or she shall not thereafter preside over any aspect of the case or rule upon any issue in the case in a judicial capacity.

(3) A senior judge or judicial referee shall disclose if he or she is being utilized or has been utilized as a mediator or arbitrator by any party, attorney or law firm involved in the case pending before the senior judge or judicial referee. Absent express consent from all parties, a senior judge or judicial referee is prohibited from presiding over any case involving any party, attorney or law firm that is utilizing or has utilized the senior judge or judicial referee as a

mediator within the previous three years. A senior judge or judicial referee also shall disclose any negotiations or agreements for the provision of mediation or arbitration services between the senior judge of judicial referee and any of the parties or counsel to the case.

(C) The provisions of subsections (B)(2) and (B)(3) above do not apply when a judge, senior judge or judicial referee is performing mediation services for the judicial branch and without private compensation pursuant to Superior Court Rules 170 or 170-B.

COMMENT

[1] This rule does not prohibit a judge from participating in arbitration, mediation or settlement conferences performed as part of judicial duties.

RULE 3.10 *Practice of Law*

A judge shall not practice law. A judge may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family, but is prohibited from serving as the family member's lawyer in any forum.

COMMENT

[1] A judge may act pro se in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with governmental bodies. A judge must not use the prestige of office to advance the judge's personal or family interests. See Rule 1.3.

RULE 3.11 *Financial, Business, or Remunerative Activities*

(A) A judge may hold and manage investments of the judge and members of the judge's family.

(B) A judge shall not serve as an officer, director, manager, general partner, advisor, or employee of any business entity except that a judge may manage or participate in:

(1) a business closely held by the judge or members of the judge's family; or

(2) a business entity primarily engaged in investment of the financial resources of the judge or members of the judge's family.

(C) A judge shall not engage in financial activities permitted under paragraphs (A) and (B) if they will:

(1) interfere with the proper performance of judicial duties;

(2) lead to frequent disqualification of the judge;

(3) involve the judge in frequent transactions or continuing business relationships with lawyers or other persons likely to come before the court on which the judge serves; or

(4) result in violation of other provisions of this Code.

COMMENT

[1] Judges are generally permitted to engage in financial activities, including managing real estate and other investments for themselves or for members of their families. Participation in these activities, like participation in other extrajudicial activities, is subject to the requirements of this Code. For example, it would be improper for a judge to spend so much time on business activities that it interferes with the performance of judicial duties. See Rule 2.1. Similarly, it would be improper for a judge to use his or her official title or appear in judicial robes in business advertising, or to conduct his or her business or financial affairs in such a way that disqualification is frequently required. See Rules 1.3 and 2.11.

[2] As soon as practicable without serious financial detriment, the judge must divest himself or herself of investments and other financial interests that might require frequent disqualification or otherwise violate this Rule.

RULE 3.12 *Compensation for Extrajudicial Activities*

Subject to Rule 3.1(B), a judge may accept reasonable compensation for extrajudicial activities permitted by this Code or other law unless such acceptance would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.

COMMENT

[1] Subject to Rule 3.1(B), a judge is permitted to accept honoraria, stipends, fees, wages, salaries, royalties, or other compensation for speaking, teaching, writing, and other extrajudicial activities, provided the compensation is reasonable and commensurate with the task performed. The judge should be mindful, however, that judicial duties must take precedence over other activities. See Rule 2.1.

[2] Compensation derived from extrajudicial activities may be subject to public reporting. See Rule 3.15.

RULE 3.13 *Acceptance and Reporting of Gifts, Loans, Bequests, Benefits, or Other Things of Value*

(A) A judge shall not accept any gifts, loans, bequests, benefits, or other things of value, if acceptance is prohibited by law or would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.

(B) Unless otherwise prohibited by law, or by paragraph (A), a judge may accept the following without publicly reporting such acceptance:

(1) items with little intrinsic value, such as plaques, certificates, trophies, and greeting cards;

(2) gifts, loans, bequests, benefits, or other things of value from friends, relatives, or other persons, including lawyers, whose appearance or interest in a proceeding pending or impending before the judge would in any event require disqualification of the judge under Rule 2.11;

(3) ordinary social hospitality;

(4) commercial or financial opportunities and benefits, including special pricing and discounts, and loans from lending institutions in their regular course of business, if the same opportunities and benefits or loans are made available on the same terms to similarly situated persons who are not judges;

(5) rewards and prizes given to competitors or participants in random drawings, contests, or other events that are open to persons who are not judges;

(6) scholarships, fellowships, and similar benefits or awards, if they are available to similarly situated persons who are not judges, based upon the same terms and criteria;

(7) books, magazines, journals, audiovisual materials, and other resource materials supplied by publishers on a complimentary basis for official use; or

(8) gifts, awards, or benefits associated with the business, profession, or other separate activity of a spouse, a domestic partner, or other family member of a judge residing in the judge's household, but that incidentally benefit the judge.

(C) Unless otherwise prohibited by law or by paragraph (A), a judge may accept the following items, and must report such acceptance to the extent required by Rule 3.15:

(1) gifts incident to a public testimonial;

(2) invitations to the judge and the judge's spouse, domestic partner, or guest to attend without charge:

(a) an event associated with a bar-related function or other activity relating to the law, the legal system, or the administration of justice; or

(b) an event associated with any of the judge's educational, religious, charitable, fraternal or civic activities permitted by this Code, if the same invitation is offered to nonjudges who are engaged in similar ways in the activity as is the judge; and

(3) gifts, loans, bequests, benefits, or other things of value, if the source is a party or other person, including a lawyer, who has come or is likely to come before the judge, or whose interests have come or are likely to come before the judge.

COMMENT

[1] Whenever a judge accepts a gift or other thing of value without paying fair market value, there is a risk that the benefit might be viewed as intended to influence the judge's decision in a case. Rule 3.13 imposes restrictions upon the acceptance of such benefits, according to the magnitude of the risk. Paragraph (B) identifies circumstances in which the risk that the acceptance would appear to undermine the judge's independence, integrity, or impartiality is low, and explicitly provides that such items need not be publicly reported. As the value of the benefit or the likelihood that the source of the benefit will appear before the judge increases, the judge is either prohibited under paragraph (A) from accepting the gift, or required under paragraph (C) to publicly report it.

[2] Gift-giving between friends and relatives is a common occurrence, and ordinarily does not create an appearance of impropriety or cause reasonable persons to believe that the judge's independence, integrity, or impartiality has been compromised. In addition, when the appearance of friends or relatives in a case would require the judge's disqualification under Rule 2.11, there would be no opportunity for a gift to influence the judge's decision making. Paragraph (B)(2) places no restrictions upon the ability of a judge to accept gifts or other things of value from friends or relatives under these circumstances, and does not require public reporting.

[3] Businesses and financial institutions frequently make available special pricing, discounts, and other benefits, either in connection with a temporary promotion or for preferred customers, based upon longevity of the relationship, volume of business transacted, and other factors. A judge may freely accept such benefits if they are available to the general public, or if the judge qualifies for the special price or discount according to the same criteria as are applied to persons who are not judges. As an example, loans provided at generally prevailing interest rates are not gifts, but a judge could not accept a loan from a financial institution at below-market interest rates unless the same rate was being made available to the general public for a certain period of time or only to borrowers with specified qualifications that the judge also possesses.

[4] Rule 3.13 applies only to acceptance of gifts or other things of value by a judge. Nonetheless, if a gift or other benefit is given to the judge's spouse, domestic partner, or member of the judge's family residing in the judge's household, it may be viewed as an attempt to evade Rule 3.13 and influence the judge indirectly. Where the gift or benefit is being made primarily to such other persons, and the judge is merely an incidental beneficiary, this concern is reduced. A judge should, however, remind family and household members of the restrictions imposed upon judges, and urge them to take these restrictions into account when making decisions about accepting such gifts or benefits.

RULE 3.14 *Reimbursement of Expenses and Waivers of Fees or Charges*

(A) Unless otherwise prohibited by Rules 3.1 and 3.13(A) or other law, a judge may accept reimbursement of necessary and reasonable expenses for travel, food, lodging, or other incidental expenses, or a waiver or partial waiver of fees or charges for registration, tuition, and similar items, from sources other than the judge's employing entity, if the expenses or charges are associated with the judge's participation in extrajudicial activities permitted by this Code.

(B) Reimbursement of expenses for necessary travel, food, lodging, or other incidental expenses shall be limited to the actual costs reasonably incurred by the judge and, when appropriate to the occasion, by the judge's spouse, domestic partner, or guest.

(C) A judge who accepts reimbursement of expenses or waivers or partial waivers of fees or charges on behalf of the judge or the judge's spouse, domestic partner, or guest shall publicly report such acceptance as required by Rule 3.15.

COMMENT

[1] Educational, civic, religious, fraternal, and charitable organizations often sponsor meetings, seminars, symposia, dinners, awards ceremonies, and similar events. Judges are encouraged to attend educational programs, as both teachers and participants, in law-related and academic disciplines, in furtherance of their duty to remain competent in the law. Participation in a variety of other extrajudicial activity is also permitted and encouraged by this Code.

[2] Not infrequently, sponsoring organizations invite certain judges to attend seminars or other events on a fee-waived or partial-fee-waived basis, and sometimes include reimbursement for necessary travel, food, lodging, or other incidental expenses. A judge's decision whether to accept reimbursement of expenses or a waiver or partial waiver of fees or charges in connection with these or other extrajudicial activities must be based upon an assessment of all the circumstances. The judge must undertake a reasonable inquiry to obtain the information necessary to make an informed judgment about whether acceptance would be consistent with the requirements of this Code.

[3] A judge must assure himself or herself that acceptance of reimbursement or fee waivers would not appear to a reasonable person to undermine the judge's independence, integrity, or impartiality. The factors that a judge should consider when deciding whether to accept reimbursement or a fee waiver for attendance at a particular activity include:

(a) whether the sponsor is an accredited educational institution or bar association rather than a trade association or a for-profit entity;
(b) whether the funding comes largely from numerous contributors rather than from a single entity and is earmarked for programs with specific content;
(c) whether the content is related or unrelated to the subject matter of litigation pending or impending before the judge, or to matters that are likely to come before the judge;
(d) whether the activity is primarily educational rather than recreational, and whether the costs of the event are reasonable and comparable to those associated with similar events sponsored by the judiciary, bar associations, or similar groups;
(e) whether information concerning the activity and its funding sources is available upon inquiry;
(f) whether the sponsor or source of funding is generally associated with particular parties or interests currently appearing or likely to appear in the judge's court, thus possibly requiring disqualification of the judge under Rule 2.11;
(g) whether differing viewpoints are presented; and
(h) whether a broad range of judicial and nonjudicial participants are invited, whether a large number of participants are invited, and whether the program is designed specifically for judges.

RULE 3.15 *Reporting Requirements*

(A) For each calendar year up to and including calendar year 2006, a judge shall report on or before April15 of each year, with respect to the preceding calendar year, whether or not the judge has received any compensation other than judicial salary, and, if so, the nature of the activity for which the compensation was received, the name of the payor and the amount of the compensation so received. The report shall be filed as a public document in the office of the clerk of the New Hampshire Supreme Court.

(B) For calendar year 2007, and each calendar year thereafter, a judge shall file a fully-completed New Hampshire Judicial Branch Financial Disclosure Statement on or before April15 of each year, with respect to the preceding calendar year. The New Hampshire Judicial Branch Financial Disclosure Statement shall be filed as a public document in the office of the clerk of the New Hampshire Supreme Court. The form of the New Hampshire Judicial Branch Financial Disclosure Statement shall be approved, by order, by the New Hampshire Supreme Court, and shall require at a minimum that a judge report whether or not the judge has received any compensation other than judicial salary, and, if so, the nature of the activity for which the compensation was received. Blank forms may be obtained by request from the clerk of the New Hampshire Supreme Court, and shall also be available on the New Hampshire Judicial Branch website.

COMMENT

[1] Disclosure of a judge's income, debts, investments or other assets is required only to the extent provided in this Canon and in Rule 2.11, or as otherwise required by law.

CANON 4

A JUDGE OR JUDICIAL CANDIDATE SHALL REFRAIN FROM INAPPROPRIATE POLITICAL ACTIVITY.

RULE 4.1 *Political Conduct in General*

(A) A judge shall not:

(1) act as a leader or hold any office in a political organization:

(2) make speeches for a political organization or candidate or publicly endorse a candidate for public office;

(3) solicit funds for or pay an assessment or make a contribution to a political organization of candidate, attend political gatherings, or purchase tickets for political party dinners, or other functions.

(B) A judge shall resign form judicial office upon becoming a candidate either in a party primary or in a general election, except that the judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention or a moderator of any governmental unit, if the judge is otherwise permitted by law to do so.

(C) A judge shall not engage in any other political activity except on behalf of measures to improve the law, the legal system, or the administration of justice.

RULE 4.2 *Judicial Candidates*

(A) A candidate for judicial office:

(1) shall maintain the dignity appropriate for judicial office and act in a manner consistent with the impartiality, integrity and independence of the judiciary, and shall encourage members of the candidate's family to adhere to the same standards of political conduct in support of the candidate as apply to candidate; and

(2) shall not:

(a) with respect to cases, controversies, or issues that are likely to come before the court, make pledges, promises or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office; or

(b) knowingly misrepresent the identity, qualifications, present position or other fact concerning the candidate or any other candidate or potential candidate.

COMMENT

[1] Section 4.2(A) prohibits a candidate for judicial office from making statements that commit the candidate regarding cases, controversies or issues likely to come before the court. As a corollary, a candidate should emphasize in any public statement the candidate's duty to uphold the law regardless of his or her personal views. See also Section 2.10, the general rule on public comment by judges. Section 4.2(A)(2) does not prohibit a candidate from making pledges or promises respecting improvements in court administration. Nor does this Section prohibit an incumbent judge from making private statements to other judges or court personnel in the performance of judicial duties. This Section applies to any statement made in the process of securing judicial office, such as statements to commissions charged with recommending judicial selection and executive officials and bodies charged with nominating or confirming appointment. See also Rule 8.2 of the NH Rules of Professional Conduct.

[2] This section is not intended to prohibit a judge from attending a candidates' night to which all candidates for a particular office have been invited.

APPENDIX B

Adopt new Superior Court Medical Malpractice Screening Panel Rules as follows:

SUPERIOR COURT RULES
MEDICAL MALPRACTICE SCREENING PANELS (RSA 519-B)

Rule 1. At the time the Writ of Summons is entered with the Court, counsel for the plaintiff shall also provide a copy of the Writ to the Superior Court Center.

Rule 2. All physicians and lawyers who serve as panel members shall provide the Superior Court Center with a curriculum vitae and/or detailed summary of their educational and professional background and practice.

Rule 3. At least 10 days prior to the panel structuring conference, counsel shall submit to the appropriate Superior Court and directly to the Panel Chair, a proposed joint 519-B Scheduling Conference Order. If approved by the Panel Chair, the conference may be cancelled. If not approved, or if there remain unresolved issues, the conference will proceed as scheduled.

Rule 4. The Chair of the Panel has authority to extend deadlines and otherwise exercise discretion over pre-hearing and hearing matters to ensure a fair determination by the Panel.

Rule 5. 519-B Panel Hearing shall be scheduled within 6 months of the return date unless extended for good cause by the Chairperson as more particularly provided in RSA 519-B:4, II and VI.

Rule 6. Panel Hearing shall take place at least 90 days before the anticipated or scheduled trial date unless the parties agree otherwise, or for good cause shown.

Rule 7. Witness Lists

a. Within 10 days after the date identified for disclosure of defendant's experts, all parties shall send directly to each panel member and to the Superior Court Center, a list of all witnesses, including experts, who may offer testimony or evidence at the panel hearing, whether by live testimony, by report, by transcript, or otherwise. This list shall be provided to each panel member on the standard witness list form. Panel members will be required to identify any possible conflict(s) by completing the witness list and sending it to the Superior Court Center within 10 days of receipt.

b. The witness list provided to the panel shall include the names, addresses, and practice affiliations, if any, of all potential witnesses, with

sufficient detail to enable each panel member to determine whether he or she has any conflict of interest. This list shall not include any reference to substance of the witnesses' anticipated testimony.

Rule 8. Length of Panel Hearing

Expected length of proceeding (excluding deliberations): As a general rule, hearings shall be held to conclusion within one day unless at the structuring conference or at the hearing, the Chairperson in his or her discretion determines that justice and fairness require additional time.

Rule 9. Submissions 30 days prior to hearing:

a. Special procedural requests

b. Pre-hearing motions

c. Final witness list, expert and non-expert. The witness list shall include the witness's name, address, and whether the witness's testimony will be submitted by deposition, report, affidavit or live testimony.

d. Submissions shall be mailed to the Chairperson and all counsel of record and pro se parties, if any.

Rule 10. Submissions 10 days prior to the panel hearing:

a. A brief summary statement by each party

b. Medical records

c. Expert opinions submitted by deposition, signed written reports, affidavit, or pre-trial disclosures signed by the expert

d. Witness deposition transcripts

e. Submissions shall be mailed to the Chairperson, panel members all counsel of record and pro se parties, if any.

Counsel and parties are directed to coordinate their efforts to ensure that no more than one set of medical records and one deposition transcript for each deponent is provided to each of the panel members. In addition, each counsel shall be permitted to submit excerpted or highlighted portions of depositions.

Rule 11. Allocation of time at the Panel Hearing

a. In advance of the panel hearing, counsel and pro se parties, if any, shall attempt to reach agreement regarding the allocation of time among the parties for presentation at hearing. If the parties cannot agree, they may request

a conference in advance of the hearing with the Panel Chair to determine time allocation.

b. The Panel Chair will allocate fairly the time allowed for each presentation, which may include limitations on the time allowed for direct and cross-examination, taking into account factors such as, the nature of the witness' testimony, the number of parties, and the length of the hearing.

Rule 12. Offers of Proof and Expert Opinions

a. Offers of Proof – Except by agreement of the parties, offers of proof, including expert opinions offered by oral representations of counsel and written statements unsigned by the expert, are presumptively inadmissible as evidence.

b. Expert Opinions – Expert opinion evidence shall be permitted by live or video testimony, deposition transcript, written report, affidavit, or disclosure signed by the expert.

Rule 13. Waiver of Panel Hearing

Any agreement to waive the panel hearing shall be received by the Superior Court Center no later than 10 days prior to hearing except for good cause shown. Any notification of waiver less than 10 days may, in the discretion of the Panel Chair, on recommendation to the Chief Justice of the Superior Court, subject the party or parties responsible for the late notification to fines and/or expenses.

APPENDIX C

Amend Superior Court Rule 14 by adding new section 14(e) as follows:

(e) *Automatic Withdrawal of Court-Appointed Counsel in Criminal Cases.* In all criminal cases, the appearance of counsel for the defendant shall be deemed to be withdrawn thirty (30) days after sentence is imposed unless the sentence imposed was a deferred sentence or unless a post-sentencing motion is filed within said thirty (30) day period. Where a deferred sentence is imposed, the appearance of counsel for the defendant shall be deemed to be withdrawn thirty (30) days after the deferred sentence is brought forward or suspended. Where a post-sentencing motion is filed within thirty (30) days after imposition of sentence, the appearance of counsel for the defendant shall be deemed to be withdrawn thirty (30) days after the court rules on said motion. Provided, however, that in any criminal case in which an appeal to the supreme court is filed, trial counsel shall remain responsible for representing the defendant in the supreme court pursuant to Supreme Court Rule 32.

APPENDIX D

Amend District Court Rule 1.3 by adding new subsection 1.3 I(3), as follows:

(3) *Automatic Withdrawal of Court-Appointed Counsel in Criminal Cases.* In all criminal cases, the appearance of counsel for the defendant shall be deemed to be withdrawn thirty (30) days after sentence is imposed unless the sentence imposed was a deferred sentence or unless a post-sentencing motion is filed within said thirty (30) day period. Where a deferred sentence is imposed, the appearance of counsel for the defendant shall be deemed to be withdrawn thirty (30) days after the deferred sentence is brought forward or suspended. Where a post-sentencing motion is filed within thirty (30) days after imposition of sentence, the appearance of counsel for the defendant shall be deemed to be withdrawn thirty (30) days after the court rules on said motion. Provided, however, that in any criminal case in which an appeal to the supreme court is filed, trial counsel shall remain responsible for representing the defendant in the supreme court pursuant to Supreme Court Rule 32.

APPENDIX E

Amend District Court Rule 1.3 by adding new subsection 1.3 I(4), as follows:

(4) *Automatic Withdrawal of Court-Appointed Counsel in Delinquency and Children in Need of Services Cases.* In all Juvenile Delinquency and Children in Need of Services matters brought pursuant to RSA 169-B and RSA 169-D respectively, the appearance of counsel for the child shall be deemed to be withdrawn thirty (30) days after the date of the Clerk's notice of the dispositional order unless a post-dispositional motion is filed within that thirty (30) day period or the court otherwise orders representation to continue. Where a post-dispositional motion is filed within thirty (30) days, the appearance of counsel for the juvenile shall be deemed to be withdrawn thirty (30) days after the court rules on said motion. Where the court otherwise orders representation to continue, the order shall state the specific duration and purpose of the continued representation. Counsel for the juvenile shall be deemed to be withdrawn immediately at the end of the ordered duration.

APPENDIX F

Adopt new Family Division Rule 3.11 as follows:

3.11. Automatic Withdrawal of Court-Appointed Counsel: In all Juvenile Delinquency and Children in Need of Services matters brought pursuant to RSA 169-B and RSA 169-D respectively, the appearance of counsel for the child shall be deemed to be withdrawn thirty (30) days after the date of the Clerk's notice of the dispositional order unless a post-dispositional motion is filed within that thirty (30) day period or the court otherwise orders representation to continue. Where a post-dispositional motion is filed within thirty (30) days, the appearance of counsel for the juvenile shall be deemed to be withdrawn thirty (30) days after the court rules on said motion. Where the court otherwise orders representation to continue, the order shall state the specific duration and purpose of the continued representation. Counsel for the juvenile shall be deemed to be withdrawn immediately at the end of the ordered duration.

APPENDIX G

Amend Superior Court Rule 40 as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format):

40. When a statute requires notice of the taking of depositions to be given to the adverse party, it may be given to such party or the party's attorney of record. In cases where the action is in the name of a nominal party and the writ or docket discloses the real party in interest, notice shall be given either to the party in interest or that party's attorney of record. Notices given pursuant to this rule may be given by mail or by service in hand. **[If a subpoena duces tecum is to be served on the deponent, the notice to the adverse party must be served before service of the subpoena, and the materials designated for production, as set out in the subpoena, must be listed in the notice or in an attachment.]**

APPENDIX H

Amend District Court Rule 1.9 D as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format):

D. Where the statute requires notice of the taking of depositions to be given to the adverse party, it may be served on such party, or served in hand on the attorney of record of such party. In cases where the action is in the name of a nominal party, and the writ or docket discloses the real party in interest, service shall be made on the party in interest, or in hand on the attorney of record of such party. **[If a subpoena duces tecum is to be served on the deponent, the notice to the adverse party must be served before service of the subpoena, and the materials designated for production, as set out in the subpoena, must be listed in the notice or in an attachment.]**

APPENDIX I

Amend Probate Court Rule 40 as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format):

When a statute requires notice of the taking of depositions to be given to the adverse Party, it may be given to such Party or to the Party's Attorney of record. In cases where the action is in the name of a nominal Party and the Petition, Motion, Pleading, or docket discloses the real Party in interest, notice shall be given either to the real Party in interest or to the Attorney of record. Notices given pursuant to this Rule may be given by mail or by service in hand. **[If a subpoena duces tecum is to be served on the deponent, the notice to the adverse party must be served before service of the subpoena, and the materials designated for production, as set out in the subpoena, must be listed in the notice or in an attachment.]**

APPENDIX J

Amend Family Division Rule 1.25 G as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format):

G. Depositions.

Notice shall be provided to any person whose deposition is requested. Twenty (20) days notice is considered reasonable in all cases, unless otherwise ordered by the Court.

Every notice of a deposition to be taken within the State shall contain the name of the stenographer/professional proposed to record the testimony.

When a statute requires formal notice of the taking of depositions to be given to the adverse party, it may be given to such party or the party's attorney of record. Notices given pursuant to this rule may be given by mail or by service in hand. See RSA 517 et seq. **[If a subpoena duces tecum is to be served on the deponent, the notice to the adverse party must be served before service of the subpoena, and the materials designated for production, as set out in the subpoena, must be listed in the notice or in an attachment.]**

The questions and answers shall be taken in shorthand or other form of verbatim reporting approved by the Court and transcribed by a competent stenographer/professional agreed upon by the parties or their attorneys. In the absence of such agreement, the stenographer/professional shall be designated by the Court. Failure to object in writing to a stenographer in advance of the taking of a deposition shall be deemed agreement to the stenographer/professional recording the testimony.

No deposition, as transcribed, shall be changed or altered, but any alleged errors may be set forth in a separate document attached to the original and copies.

Upon motion, the Court may order the filing of depositions, and, upon failure to comply with such order, the Court may take such action as justice may require.

The signature of a person outside the State, acting as an officer legally empowered to take depositions or affidavits, with an appropriate seal affixed, where one is required, to the certificate of an oath administered by him in the taking of affidavits or depositions, will be prima facie evidence of this person’s authority.

The person being deposed shall ordinarily be required to answer all

questions not subject to privilege or excused by the statute relating to depositions, and it is not grounds for refusal to answer a particular question that the testimony would be inadmissible at the trial if the testimony sought appears reasonably calculated to lead to the discovery of admissible evidence and does not violate any privilege.

If any person being deposed refuses to answer any question asked in the deposition, the party asking the question may request an order of the Court compelling an answer. If the motion is granted, and if the Court finds that the refusal was without substantial justification or was frivolous or unreasonable, the Court may, and ordinarily will, require the person deposed and the party or attorney advising the refusal, or either of them, to pay the examining or requesting party the reasonable expenses incurred in obtaining the order, including reasonable attorneys fees. If the motion is denied and if the Court finds that the motion was made without substantial justification or was frivolous or unreasonable, the Court may, and ordinarily will, require the examining party or the attorney advising the motion, or both of them, to pay to the witness the reasonable expenses incurred in opposing the motion, including reasonable attorneys fees.

APPENDIX K

Adopt new Family Division Rule 1.25-A as follows:

Rule 1.25-A Mandatory Initial Self Disclosure:

A. APPLICATION.

This Mandatory Initial Self Disclosure Rule applies to all new actions in the family division for divorce, legal separation, annulment, or civil union dissolution. For parenting or child support petitions, or petitions to enforce or change court orders in parenting, divorce, legal separation, or civil union dissolution cases in the family division, sections B (1) (g) through (l) shall not apply.

This rule applies to parties engaged in mediation or other alternative dispute resolution processes once the petition invoking court involvement has been served/delivered. Parties involved in alternative dispute resolution before filing are not bound by the rule until they initiate court action.

B. INITIAL DISCLOSURES.

1. Except as otherwise agreed by the parties or ordered by the Court, each party shall deliver the following documents to the other no later than the earlier of (i) forty-five (45) days from the date of service/delivery of the petition or (ii) ten (10) days prior to the temporary hearing or initial hearing on the petition, not including the First Appearance required by rule 2.11:

(a) A current financial affidavit in the format required by family division rule 2.16, including the monthly expense form.

(b) The past three (3) years' personal and business federal and state income tax returns and partnership and corporate returns for any non-public entity in which either party has an interest, together with all tax return schedules, including but not limited to W-2s, 1099s, 1098s, K-1s, Schedule C, Schedule E and any other schedules filed with the IRS.

(c) The four (4) most recent pay stubs (or equivalent documentation) from each current employer, and the year-end pay stub (or equivalent documentation) for the calendar year that concluded prior to the filing of the action.

(d) For business owners or self-employed parties, all monthly, quarterly and year-to-date financial statements to include profit and loss, balance sheet and income statements for the year in which the action was filed; and all year-end financial statements for the calendar year that concluded prior to the filing of the action.

(e) Documentation confirming the cost and status of enrollment of employer provided medical and dental insurance coverage for:

i. The party,
ii. The party's spouse, and
iii. The party's dependent child(ren).

(f) For the twelve (12) months prior to the filing of the action, any credit, loan and/or mortgage applications, or other sworn statement of assets and/or liabilities, prepared by or on behalf of either party.

(g) For the twelve (12) months prior to the filing of the action, documentation related to employee benefits such as but not limited to stock options, retirement, pension, travel, housing, use of company car, mileage reimbursement, profit sharing, bonuses, commissions, membership dues, or any other payments to or on behalf of either party.

(h) For the twelve (12) months prior to the filing of the action, statements for all bank accounts held in the name of either party individually or jointly, or any business owned by either party, or in the name of another person for the benefit of the either party, or held by either party for the benefit of the parties' minor child(ren).

(i) For the twelve (12) months prior to the filing of the action, statements for all financial assets, including but not limited to all investment accounts, retirement accounts, securities, stocks, bonds, notes or obligations, certificates of deposit owned or held by either party or held by either party for the benefit of the parties' minor child(ren), 401K statements, individual retirement account (IRA) statements, and pension-plan statements.

(j) For the twelve (12) months prior to the filing of the action, any and all life insurance declaration pages, beneficiary designation forms and the most recent statements of cash, surrender and loan value.

(k) For the six (6) months prior to the filing of the action, statements for all credit cards held by either party, whether individually or jointly.

(l) Any written prenuptial or written postnuptial agreements signed by the parties.

2. The parties may redact all but the last four (4) digits of any account numbers and social security numbers that appear on any statements or documents.

3. The parties shall promptly supplement all disclosures as material changes occur while the action is pending.

4. A party may seek a protective order for information disclosed in response to these mandatory disclosures. Protective orders will ordinarily be available upon request. In the event of a dispute concerning the need for a protective order, the party seeking the order shall file a motion requesting that the Court conduct an *in camera* review of the materials in dispute. The Court will review the materials and determine if a protective order is necessary. From the date of the filing of the motion until such ruling, the materials shall be produced, but shall be disclosed by the parties only to their attorneys, staff, experts/consultants, in court, and as otherwise necessary in connection with the pending action. Materials submitted for *in camera* review shall be sealed in the Court's file until the Court determines the necessity of a protective order. If a protective order is issued, the Court shall seal the exhibits submitted in connection with the request for the protective order that remain in the Court's file.

C. UNAVAILABILITY OF DOCUMENTS.

1. In the event that either party does not have any or all of the documents required under this rule or has not been able to obtain them, that party shall state in writing, under oath, the specific documents which are not available, the reasons the documents are not available, and the efforts made by the party to obtain the documents. A statement of unavailability under this provision does not limit the filing party's duty to supplement disclosures and provide the other party with documentation as it becomes available.

2. When a statement of unavailability is filed or when it otherwise becomes apparent that documents required by this rule are unavailable, the party seeking the documents may prepare and submit to the other party appropriate authorizations or releases enabling the seeking party to retrieve the documents from their source. Upon receipt of such a release or authorization the party to whom documents were unavailable shall execute and immediately return to the seeking party the release or authorization. The seeking party may use the authorization or release to retrieve the unavailable documents covered by this rule, initially at their own expense, but that expense may be reallocated upon motion or at the final hearing.

D. FAILURE TO PROVIDE INITIAL DISCLOSURES.

1. Unless and until a party provides Initial Disclosures as required by section B and C above, the Court may impose sanctions, including, but not limited to prohibiting that party from: (a) introducing into evidence any document which was required under section B or C of this rule; (b) testifying or making an offer of proof regarding information or subject matter which is likely to be contained in or referred to in section documents required by section B and C; (c) filing requests for discovery as allowed under the family division rules; or (d) filing any discovery motions.

2. If a party's failure to provide Initial Disclosures prejudices access of a compliant party to requested substantive relief, such as the calculation and receipt of child support, the Court may, in addition to other sanctions, address the relief requested by the compliant party on the basis of reasonable estimates and assumptions, at least until such time as the documents are produced.

E. ADDITIONAL DISCOVERY.

If a party is in compliance with section B and C of this rule, that party may request further information as allowed under family division rules. This rule is not intended to limit the scope of discovery as provided under family division rule 1.25.

F. COURT ORDERED COMPLIANCE

Notwithstanding any agreement by the parties for limited applicability, the Court may, at any time, order full compliance with this rule.

APPENDIX L

Amend District Court Rule 2.5A. as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format):

Rule 2.5A. Plea by mail – Time for filing complaint

In any and all cases whereby the defendant may enter a plea by mail and a summons has been issued to the defendant **[and in which the defendant has entered a plea of "not guilty" with the Division of Motor Vehicles, if the Division of Motor Vehicles has not received the complaint directly from the police agency and has forwarded the defendant's "not guilty" plea to the designated court]**, the complaint must be filed with the designated court not later than fifteen days from the date of ~~the issuance of the summons~~ **[the court's written notice to the law enforcement agency directing that the complaint be filed]**.

Any complaint filed with the court after the filing date has passed shall be summarily dismissed by the court unless good cause is shown.

APPENDIX M

Adopt new District Court Rules 6.1 to 6.7, on a temporary basis, as follows:

TOWN ORDINANCE VIOLATION RULES

Rule 6.1. A local official with authority to prosecute an offense under any municipal code, ordinance, bylaw, or regulation, if such offense is classified as a violation under applicable law, may issue and serve upon the defendant a Local Ordinance Citation and Summons. The form to be used shall be provided by the court.

Rule 6.2. A Local Ordinance Citation and Summons may be served upon the defendant by postpaid certified mail, return receipt requested. Return receipt showing that the defendant has received the citation and summons shall constitute an essential part of the service and shall be filed with the court prior to the arraignment. If service cannot be effected by certified mail, then the Court may direct that service on the defendant be completed as in other violation complaints.

Rule 6.3. The Local Ordinance Citation and Summons shall be filed with the court no less than five days prior to the date of arraignment. Absent a showing of accident, mistake or misfortune a complaint filed less than five days prior to the date of arraignment may be summarily dismissed by the Court.

Rule 6.4. Defendants who are issued a summons and local ordinance citation and who wish to plead guilty or nolo contendere shall enter their plea on the summons and return it with payment of the civil penalty, as set forth in the citation, to the Clerk of the Court prior to the arraignment date, or shall appear in court on the date of arraignment. A defendant who enters a plea of guilty or nolo contendere but who does not include payment of the civil penalty shall appear in court on the date of arraignment.

Rule 6.5. For cause, the Court in its discretion may refuse to accept a plea by mail and may impose a fine or penalty other than that stated in the local ordinance citation. The Court may order the defendant to appear personally in court for the disposition of the defendant's case.

Rule 6.6. The prosecuting official may serve additional local ordinance citations, without giving additional written notice, if the facts or circumstances constituting the violation continue beyond the date or dates of any prior citation. A plea of guilty or nolo contendere to the prior citation shall not affect the rights of the defendant with respect to a subsequent citation.

Rule 6.7. These rules shall not apply to offenses that are subject to enforcement under RSA 676, or to motor vehicle offenses under title XXI or any local law enacted thereunder. These rules are not intended in any way to abrogate other enforcement actions or remedies in the district or superior court, nor to require written notice as a prerequisite to other types of actions or remedies for violations of local codes, ordinances, bylaws, or regulations.

APPENDIX N

Adopt new Supreme Court Rule 57-A as follows:

RULE 57-A. Custody and Return of Documents and Materials Filed In Camera in Trial Courts

During the time a case is pending in the trial court, all documents and materials filed in camera with the court shall be maintained by the court.

Upon the final conclusion of a case in the trial court, documents and materials filed in camera will be held at the court until such time as the appeal period has expired. At that time, the clerk shall return the documents and materials filed in camera to the individual or organization that filed them with the court.

If an appeal is filed, the documents and materials filed in camera shall remain in the custody of the trial court pending resolution of the appeal unless the supreme court orders that they be transferred for purposes of the appeal. Upon receipt of the mandate from the supreme court, and if no further proceedings are required, the trial court clerk shall return the documents and materials filed in camera to the individual or organization that filed them with the court.

APPENDIX O

Adopt new Superior Court Rule 78-B, and reserve Superior Court Rule 78-A for future use, as follows:

Rule 78-A. [Reserved for future use].

Rule 78-B. Duplication Of Audio Tapes.

(a) Any person may request a copy of the audio recording of a hearing except when a case or proceeding is confidential by statute, court rule or order. The recording will be provided on CD or audiotape for a fee of $25.00 per audiotape or CD. A copy of the recording of a court proceeding shall not be deemed to be the official record of the proceeding.

(b) In the case of any superior court proceeding made CONFIDENTIAL by New Hampshire statute, case law, or court order, no duplicate audio tape shall be released, except to a party to the proceeding granted access by the court or to an attorney for a party to the proceeding. In such cases, the party or attorney shall sign a "Receipt for Duplicate Audio Tape of Confidential Superior Court Proceeding."

STATE OF NEW HAMPSHIRE

_____ COUNTY SUPERIOR COURT

CASE NAME _____

CASE NUMBER: _____

RECEIPT for DUPLICATE AUDIO TAPE or CD of
CONFIDENTIAL SUPERIOR COURT PROCEEDING

I acknowledge receipt of a duplicate audiotape or CD of a CONFIDENTIAL superior court proceeding in this case.

As a condition of the receipt of this duplicate audiotape or CD, I shall take all reasonable actions to ensure that the CONFIDENTIALITY of the proceeding, including the CONFIDENTIALITY of this audiotape or CD, is preserved. Those actions shall include the following:

I shall not reproduce this audiotape or CD in any form.

I shall not release this audiotape or CD, or a copy of this audiotape or CD, to anyone, except to a party in this proceeding.

I shall not allow anyone to listen to this audiotape or CD, except for a party to this proceeding, attorney for a party to this proceeding, or a person with a court order granting authorization to listen to this audiotape or CD.

DATE: _____ SIGNATURE _____

APPENDIX P

Amend Probate Court Rule 78-B as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format):

Rule 78-B. DUPLICATION OF AUDIO TAPES.

(a) ~~Upon receipt of a Motion to the Court for a duplicate audio tape of a recorded probate court proceeding, the probate judge or probate master who presided over the proceeding shall either (1) direct the Register to release a copy of the audio tape to the Person, or (2) deny the Motion. Any denial of a Motion for a duplicate audiotape shall include a statement of reason(s) supporting the denial.~~ Any person may request a copy of the audio recording of a hearing except when a case or proceeding is confidential by statute, court rule or order. The recording will be provided on CD or audiotape for a fee of $25.00 per ~~case~~ **[audiotape or CD]**. A copy of the recording of a court proceeding shall not be deemed to be the official record of the proceeding.

(b) In the case of any probate court proceeding made CONFIDENTIAL by New Hampshire statute, case law, or court order, no duplicate audio tape shall be released, except to a Party to the proceeding **[granted access by the court]** or to an Attorney for a Party to the proceeding. In such cases, the Party or Attorney shall sign a "Receipt for Duplicate Audio Tape of Confidential Probate Proceeding."

STATE OF NEW HAMPSHIRE

_____ COUNTY PROBATE COURT

~~IN RE:~~ CASE NAME _____

~~DOCKET~~ CASE NUMBER: _____

RECEIPT for DUPLICATE AUDIO TAPE or CD of
CONFIDENTIAL PROBATE PROCEEDING

I acknowledge receipt of a duplicate audiotape or CD of a CONFIDENTIAL probate proceeding in this case.

As a condition of the receipt of this duplicate audiotape or CD, I shall take all reasonable actions to ensure that the CONFIDENTIALITY of the proceeding, including the CONFIDENTIALITY of this audiotape or CD, is preserved. Those actions shall include the following:

I shall not reproduce this audiotape or CD in any form.

I shall not release this audiotape or CD, or a copy of this audiotape or CD, to anyone, except to a party in this proceeding.

I shall not allow anyone to listen to this audiotape or CD, except for a ~~P~~**[p]**arty to this proceeding, ~~A~~**[a]**ttorney for a ~~P~~**[p]**arty to this proceeding, or a ~~P~~**[p]**erson with a court order granting authorization to listen to this audiotape or CD.

DATE: _____ SIGNATURE _____

~~(c) The fee for each duplicate audiotape shall be $25.00, payable to the Register~~.

APPENDIX Q

Adopt new Supreme Court Rule 42D as follows:

RULE 42D. Licensing and Practice of Foreign Legal Consultants

(1) General Regulation as to Licensing

In its discretion, the supreme court may license to practice in this United States jurisdiction as a foreign legal consultant, without examination, an applicant who:

(a) is, and for at least five years has been, a member in good standing of a recognized legal profession in a foreign country, the members of which are admitted to practice as lawyers or counselors at law or the equivalent and are subject to effective regulation and discipline by a duly constituted professional body or a public authority;

(b) for at least five of the seven years immediately preceding his or her application, has been a member in good standing of such legal profession and has been lawfully engaged in the practice of law in the foreign country or elsewhere substantially involving or relating to the rendering of advice or the provision of legal services concerning the law of the foreign country;

(c) possesses the good moral character and general fitness requisite for a member of the bar of this State, as required by Rule 42(5); and

(d) intends to practice as a foreign legal consultant in this jurisdiction and to maintain an office in this jurisdiction for that purpose.

(2) Application

An applicant under this Rule shall file an application for a foreign legal consultant license, which shall include all of the following:

(a) a certificate from the professional body or public authority having final jurisdiction over professional discipline in the foreign country in which the applicant is admitted, certifying the applicant's admission to practice, date of admission, and good standing as a lawyer or counselor at law or the equivalent;

(b) a letter of recommendation from one of the members of the executive body of such professional body or public authority or from one of the judges of the highest law court or court of original jurisdiction in the foreign country in which the applicant is admitted;

(c) duly authenticated English translations of the certificate required by Section 2(a) of this Rule and the letter required by Section 2(b) of this Rule if they are not in English;

(d) other evidence as the supreme court may require regarding the applicant's educational and professional qualifications, good moral character and general fitness, and compliance with the requirements of Section 1 of this Rule*;*

(e) an application fee, which shall be equal to the fee set forth in Supreme Court Rule 49(I)(G), and a Character and Fitness investigation fee, which shall be equal to the fee set forth in Supreme Court Rule 49(I)(E)(2).

(3) Scope of Practice

A person licensed to practice as a foreign legal consultant under this Rule may render legal services in this jurisdiction but shall not be considered admitted to practice law in this jurisdiction, or in any way hold himself or herself out as a member of the bar of this jurisdiction, or do any of the following:

(a) appear as a lawyer on behalf of another person in any court, or before any magistrate or other judicial officer, in this jurisdiction (except when admitted *pro hac vice* pursuant to applicable court rule);

(b) prepare any instrument effecting the transfer or registration of title to real estate located in the United States of America;

(c) prepare:

(i) any will or trust instrument effecting the disposition on death of any property located in and owned by a resident of the United States of America, or

(ii) any instrument relating to the administration of a decedent's estate in the United States of America;

(d) prepare any instrument in respect of the marital or parental relations, rights or duties of a resident of the United States of America, or the custody or care of the children of such a resident;

(e) render professional legal advice on the law of this State or of the United States of America (whether rendered incident to the preparation of legal instruments or otherwise) except on the basis of advice from a person duly qualified and entitled (other than by virtue of having been licensed under this Rule) to render professional legal advice in this jurisdiction;

(f) carry on a practice under, or utilize in connection with such practice, any name, title, or designation other than one or more of the following:

(i) the foreign legal consultant's own name;

(ii) the name of the law firm with which the foreign legal consultant is affiliated;

(iii) the foreign legal consultant's authorized title in the foreign country of his or her admission to practice, which may be used in conjunction with the name of that country; and

(iv) the title "foreign legal consultant," which may be used in conjunction with the words "admitted to the practice of law in [name of the foreign country of his or her admission to practice]".

(g) render legal services in this State pursuant to Supreme Court Rule 42C (Temporary Practice by Foreign Lawyers).

(4) Practice by a Foreign Legal Consultant Licensed in Another United States Jurisdiction

A person licensed as a foreign legal consultant in another United States jurisdiction may provide legal services in this State on a temporary basis pursuant to Supreme Court Rule 42C (Temporary Practice by Foreign Lawyers). A person licensed as a foreign legal consultant in another United States jurisdiction shall not establish an office or otherwise engage in a systematic and continuous practice in this jurisdiction or hold out to the public or otherwise represent that the foreign legal consultant is licensed as a foreign legal consultant in this jurisdiction.

(5) Rights and Obligations

Subject to the limitations listed in Section 3 of this Rule, a person licensed under this Rule shall be considered a foreign legal consultant affiliated with the bar of this State and shall be entitled and subject to:

(a) the rights and obligations set forth in the New Hampshire Rules of Professional Conduct or arising from the other conditions and requirements that apply to a member of the bar of this jurisdiction under the supreme court rules governing members of the bar, including the obligation to comply with the requirements of an active member of the New Hampshire Bar Association to file an annual trust accounting certificate as set forth in Supreme Court Rule 50-A; provided, however, that a person licensed as a legal consultant under this Rule shall not be required to comply with the minimum continuing legal education requirements of an active member of the New Hampshire Bar Association as specified in Supreme Court Rule 53.1; and

(b) the rights and obligations of a member of the bar of this jurisdiction with respect to:

(i) affiliation in the same law firm with one or more members of the bar of this jurisdiction, including by:

(A) employing one or more members of the bar of this jurisdiction;

(B) being employed by one or more members of the bar of this jurisdiction or by any partnership or professional corporation that includes members of the bar of this jurisdiction or that maintains an office in this jurisdiction; and

(C) being a partner in any partnership or shareholder in any professional corporation that includes members of the bar of this jurisdiction or that maintains an office in this jurisdiction; and

(ii) attorney-client privilege, work-product privilege, and similar professional privileges.

(c) All persons licensed as foreign legal consultants shall notify the New Hampshire Bar Association immediately in writing of all changes of residence address and of all changes of address of office in this State.

(6) Discipline

A person licensed to practice as a foreign legal consultant under this Rule shall be subject to professional discipline in the same manner and to the same extent as members of the bar of this jurisdiction. To this end:

(a) Every person licensed to practice as a legal consultant under this Rule:

(i) shall be subject to the jurisdiction of the supreme court and to censure, suspension, removal, or revocation of his or her license to practice by the supreme court and/or the attorney discipline system, and shall otherwise be governed by Supreme Court Rules 37 and 37A; and

(ii) shall execute and file with the supreme court, in the form and manner as the court may prescribe:

(A) a commitment to observe the New Hampshire Rules of Professional Conduct and the supreme court rules governing members of the bar to the extent applicable to the legal services authorized under Section 3 of this Rule;

(B) a written undertaking to notify the supreme court of any change in the foreign legal consultant's good standing as a member of the foreign legal profession referred to in Section 1(a) of this Rule and of any final action of the professional body or public authority referred to in Section 2(a) of this Rule imposing any disciplinary censure, suspension, or other sanction upon the foreign legal consultant; and

(C) a duly acknowledged instrument in writing, providing the foreign legal consultant's address in this State and designating the clerk of the supreme court as his or her agent for service of process. The foreign legal consultant shall keep the New Hampshire Bar Association advised in writing of any changes of address in this State. In any action or proceeding brought against the foreign legal consultant and arising out of or based upon any legal services rendered or offered to be rendered by the foreign legal consultant within or to residents of this State, service shall first be attempted upon the foreign legal consultant at the most recent address filed with the New Hampshire Bar Association. Whenever after due diligence service cannot be made upon the foreign legal consultant at that address, service may be made upon the clerk. Service made upon the clerk in accordance with this provision is effective as if service had been made personally upon the foreign legal consultant.

(b) Service of process on the clerk under Section 6(a)(ii)(C) of this Rule shall be made by personally delivering to the clerk's office, and leaving with the clerk or with a deputy or assistant authorized by the clerk to receive service, duplicate copies of the process together with a fee of $10.00. The clerk shall promptly send one copy of the process to the foreign legal consultant to whom the process is directed, by certified mail, return receipt requested, addressed to the foreign legal consultant at the most recent address provided to the New Hampshire Bar Association in accordance with Section 6(a)(ii)(C).

(7) Annual Fee

A person licensed as a foreign legal consultant shall pay an annual fee equal to the fees, bar dues, and assessments, including assessments for the public protection fund, as are required of an active member of the New Hampshire Bar Association by the Constitution and By-Laws of the New Hampshire Bar Association or Supreme Court Rule, other than any fees related to Rule 53 (continuing legal education requirements).

(8) Revocation of License

If the supreme court determines that a person licensed as a foreign legal consultant under this Rule no longer meets the requirements for licensure set forth in Section 1(a) or Section 1(b) of this Rule, it shall revoke the foreign legal consultant's license.

(9) Admission to Bar

If a person licensed as a foreign legal consultant under this Rule is subsequently admitted as a member of the bar of this jurisdiction under the Rules governing admission, that person's foreign legal consultant license shall be deemed

superseded by the license to practice law as a member of the bar of this jurisdiction.

(10) Application for Waiver of Provisions

The supreme court, upon written application, may waive any provision or vary the application of this Rule where strict compliance will cause undue hardship to the applicant. An application for waiver shall be in the form of a verified petition setting forth the applicant's name, age, and residence address; the facts relied upon; and a prayer for relief.

APPENDIX R

Amend Supreme Court Rule 42A as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format):

RULE 42A. Non-Payment of Bar Dues [or Foreign Legal Consultant Annual Fees]

[(I) Bar Dues.]

(A) Whenever the bar membership of a person admitted to the bar of this State shall have been suspended for non-payment of dues under the Constitution and By-Laws of the New Hampshire Bar Association and not have been reinstated within six (6) months, an order shall be issued suspending that person from the practice of law in this State. Reinstatement thereafter shall be only by order, upon petition to this court following reinstatement to membership in the Bar Association in accordance with the provisions of said Constitution and By-Laws.

(B) (1) If the petition to this court is filed more than one year after the date of the order suspending the person from the practice of law in this State, then the petition shall be accompanied by evidence of continuing competence and learning in the law, and evidence of continuing moral character and fitness. If the evidence of continuing competence and learning in the law, and evidence of continuing moral character and fitness, are satisfactory to the court, the court may order reinstatement upon such conditions as it deems appropriate.

(2) If the evidence of continuing competence and learning in the law is not satisfactory to the court, the court shall refer the motion for reinstatement to the professional conduct committee for referral to a panel of the hearings committee. The hearing panel shall promptly schedule a hearing at which the attorney shall have the burden of demonstrating by a preponderance of the evidence that he or she has the competency and learning in law required for reinstatement. At the conclusion of the hearing, the hearing panel shall promptly file a report containing its findings and recommendations and transmit same, together with the record, to the professional conduct committee. The professional conduct committee shall review the report of the hearings committee panel, the record and the hearing transcript and shall file its own recommendations and findings, together with the record, with the court. Following the submission of briefs, if necessary, and oral argument, if any, the court shall enter a final order.

(3) If the evidence of continuing moral character and fitness is not satisfactory to the court, the court shall order the applicant to file with the committee on character and fitness and with the clerk of the supreme court the

petition and questionnaire referred to in Supreme Court Rule 42(5)(e). Further proceedings shall be governed by Rule 42.

[(II) Foreign Legal Consultant Annual Fees.

Whenever the annual fee under Rule 42D(7) has not been paid for a period of six months after the date upon which it was due, an order shall be issued suspending that person's foreign legal consultant's license. Reinstatement of the license thereafter shall be only by order, upon petition to this court.]

APPENDIX S

Amend Supreme Court Rule 50-A as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format):

RULE 50-A. Certification Requirement

(1) In order to assure compliance with the requirements of Rule 50 and in order to ascertain that the records and accounts described in Rule 50 are properly maintained, all attorneys **[and foreign legal consultants]** licensed to practice in the State of New Hampshire, whether in private practice or not, other than those in inactive status, shall individually or through their firm organizations file an annual Trust Accounting Certificate of Compliance on or before August 1st of each year. For purposes of this rule, an attorney shall not be considered to be "in inactive status" if the attorney's New Hampshire Bar Association membership status was active at any time during the one-year period beginning on June 1 of the year preceding the reporting year and ending on May 31 of the reporting year. The Trust Accounting Certificate of Compliance shall certify to one of three things:

A. That the attorney **[or foreign legal consultant]** does not maintain a trust account and does not possess any assets or funds of clients;

B. That client funds maintained by the attorney **[or foreign legal consultant]** are held in accounts in full compliance with the requirements of Rule 50; or

C. That the attorney **[or foreign legal consultant]** is willing to submit to a spot compliance audit of the attorney's **[or foreign legal consultant's]** trust accounts at the attorney's **[or foreign legal consultant's]** own expense.

A prescribed Trust Accounting Certificate of Compliance form will be sent to the attorney **[or foreign legal consultant]** annually by the New Hampshire Bar Association with the attorney's annual dues and court fees assessments **[or foreign legal consultant's annual dues and court fees assessments]**. The self-certification may be completed by the attorney **[or foreign legal consultant]** or by a private accountant employed for this purpose by the attorney **[or foreign legal consultant]**. The completed Trust Accounting Certificate of Compliance forms shall be filed with the New Hampshire Supreme Court by delivery to the New Hampshire Bar Association by August 1st of each year. The self-certification procedure shall be supplemented by

annual compliance checks by an accountant selected by the Supreme Court. The accountant's purpose in conducting a compliance check will be to determine whether the minimum standards set forth in Rule 50 are being maintained. All information obtained by the accountant shall remain confidential except for purposes of transmitting notice of violations to the Professional Conduct Committee or the Supreme Court. The information derived from such compliance checks shall not be disclosed by anyone in such a way as to violate the attorney-client privilege except by express order from the Supreme Court. The certification requirements of this rule shall not apply to any full-time judge, full-time marital master, or full-time supreme, superior, and district court clerk or deputy clerk, except that the certification requirement shall apply where such judge, marital master, clerk, or deputy clerk was in the active practice of law at any time during the twelve (12) months immediately preceding August 1st of any year.

(2) An attorney **[or foreign legal consultant]** who fails to comply with the requirements of Rule 50 with respect to the maintenance, availability, and preservation of accounts and records, who fails to file the required annual Trust Accounting Certificate of Compliance, or who fails to produce trust account records as required shall be deemed to be in violation of Rule 1.15 of the Rules of Professional Conduct and the applicable Supreme Court Rule. Unless upon petition to the Supreme Court an extension has been granted, failure to file the required annual Trust Accounting Certificate of Compliance by August 1st shall, in addition, subject the attorney **[or foreign legal consultant]** to one or more of the following penalties and procedures:

A. A fine of $100 for each month or fraction thereof after August 1st in which the Trust Accounting Certificate of Compliance remains unfiled; in addition, an attorney **[or foreign legal consultant]** who has been fined $300 or more under this section may be suspended from the practice of law in this State;

B. Audit of the attorney's **[or foreign legal consultant's]** trust accounts and other financial records at the expense of the attorney **[or foreign legal consultant]**, if the certificate remains unfiled on December 1st; and

C. Based upon results of the audit, initiation of proceedings for further sanctions, including suspension.

Any check, draft or money order received as payment of any fine imposed pursuant to this rule, which is returned to the court as uncollectable, shall be returned to the sender and shall not constitute payment of the fine. Whenever any check, draft or money order issued in payment of any fine imposed pursuant to this rule is returned to the court as uncollectable, the court shall charge a fee of $25, plus all

protest and financial institution fees, in addition to the amount of the check, draft or money order to the person presenting the check, draft or money order to cover the costs of collection. The fine shall not be considered paid until the fine plus all fees have been paid.

Reinstatement following a suspension ordered pursuant to Rule 50-A(2)(A) above shall be only by order of the Supreme Court, upon petition to the court following the filing of the Trust Accounting Certificate of Compliance and payment of the fine. If the petition is filed more than one year after the date of the order suspending the person from the practice of law in this State, then the petition shall be accompanied by evidence of continuing competence and learning in the law, and evidence of continuing moral character and fitness.

If the evidence of continuing competence and learning in the law, and evidence of continuing moral character and fitness, are satisfactory to the court, the court may order reinstatement upon such conditions as it deems appropriate.

If the evidence of continuing competence and learning in the law is not satisfactory to the court, the court shall refer the motion for reinstatement to the Professional Conduct Committee for referral to a panel of the hearings committee. The hearing panel shall promptly schedule a hearing at which the attorney shall have the burden of demonstrating by a preponderance of the evidence that he or she has the competency and learning in law required for reinstatement. At the conclusion of the hearing, the hearing panel shall promptly file a report containing its findings and recommendations and transmit same, together with the record, to the Professional Conduct Committee. The Professional Conduct Committee shall review the report of the hearings committee panel, the record and the hearing transcript and shall file its own recommendations and findings, together with the record, with the court. Following the submission of briefs, if necessary, and oral argument, if any, the court shall enter a final order.

If the evidence of continuing moral character and fitness is not satisfactory to the court, the court shall order the applicant to file with the committee on character and fitness and with the clerk of the supreme court the petition and questionnaire referred to in Supreme Court Rule 42(5)(e). Further proceedings shall be governed by Rule 42.

(3) Except for requirements of Rule 50, subparagraph (2)A, requiring the inclusion of probate accounts in the index of trust accounts, the provisions of Rule 50, paragraph (2), and of this Rule 50-A shall not apply to probate accounts (including estate, testamentary trusts, guardian, and conservator accounts).

(4) The Supreme Court may at any time order an audit of such

financial records or trust accounts of an attorney **[or foreign legal consultant]**, and take such other action as it deems necessary to protect the public.

APPENDIX T

Amend Supreme Court Rule 55(1) as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format):

RULE 55. Public Protection Fund

(1) **Purpose**. The purposes of the Public Protection Fund are to provide a public service and to promote public confidence in the administration of justice and the integrity of the legal profession by providing some measure of reimbursement to victims who have lost money or property caused by the defalcation of lawyers admitted to practice law in this jurisdiction occurring in New Hampshire and in the course of the client-lawyer or fiduciary relationship between the lawyer and the claimant.

[For the purposes of this rule, the term "lawyer" shall include foreign legal consultants licensed pursuant to Rule 42D.]

APPENDIX U

Amend Supreme Court Rule 21A as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format):

RULE 21A. Motions for Recusal

A motion for recusal shall: (1) be made in writing, (2) state clearly and concisely in separately numbered paragraphs each ground relied upon as a basis for recusal together with the facts alleged in support thereof and, if applicable, citations to any pertinent provision of Supreme Court Rule 38, The Code of Judicial Conduct, (3) contain a verification by affidavit of any facts upon which the motion is grounded, unless the facts are apparent from the record or from the papers on file in the case, or are agreed to and stated in a writing signed by the parties or their attorneys, (4) except for good cause shown, be filed with the court by the appealing party with the notice of appeal or by another party within twenty (20) days of the filing of the appeal, and (5) certify the date or dates when the movant first became aware of the facts set forth in the motion.

Except for good cause shown, failure to file a timely motion for recusal shall be deemed a waiver of the movant's right to request recusal.

The Court's ruling on the motion shall issue promptly**[. If the motion is denied, the Court's ruling shall]** ~~and~~ be supported by findings of fact with respect to the allegations contained in the motion.

[A motion for recusal shall be decided by the justice whose recusal is being sought. A motion to reconsider any such order shall be referred to the court for decision.]

APPENDIX V

Amend Superior Court Rule 50A as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format):

50-A. All grounds for recusal that are known or should reasonably be known prior to trial or hearing shall be incorporated in a written motion for recusal and filed promptly with the Court. Grounds for recusal that first become apparent at the time of or during the hearing shall be immediately brought to the attention of the judge. Failure to raise a ground for recusal shall constitute a waiver as specified herein of the right to request recusal on such ground. If a record of the proceedings is not available, the trial judge shall make a record of the request, the Court's findings, and its order. **[The Court's ruling on the motion shall issue promptly. If the motion is denied, the Court's ruling shall be supported by findings of fact with respect to the allegations contained in the motion.]**

APPENDIX W

Amend District Court Rule 1.8-A(H) as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format):

H. All grounds for recusal that are known or should reasonably be known prior to trial or hearing shall be incorporated in a written motion for recusal and filed promptly with the Court. Grounds for recusal that first become apparent at the time of or during the hearing shall be immediately brought to the attention of the judge. Failure to raise a ground for recusal shall constitute a waiver as specified herein of the right to request recusal on such ground. If a record of the proceedings is not available, the trial judge shall make a record of the request, the Court's findings, and its order. **[The Court's ruling on the motion shall issue promptly. If the motion is denied, the Court's ruling shall be supported by findings of fact with respect to the allegations contained in the motion.]**

APPENDIX X

Amend Probate Court Rule 50-A as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format):

Rule 50-A. RECUSAL

All grounds for recusal that are known or should reasonably be known prior to trial or hearing shall be incorporated in a written Motion for recusal and filed promptly with the Court. Grounds for recusal that first become apparent at the time of or during the hearing shall be immediately brought to the attention of the Court. Failure to raise a ground for recusal shall constitute a waiver as specified herein of the right to request recusal on such ground. If a record of the proceedings is not available, the trial judge shall make a record of the request, the Court's findings, and its order. **[The Court's ruling on the motion shall issue promptly. If the motion is denied, the Court's ruling shall be supported by findings of fact with respect to the allegations contained in the motion.]**

APPENDIX Y

Amend Family Division Rule 1.10 as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format):

1.10 RECUSAL: All grounds for recusal that are known or should reasonably be known prior to trial or hearing shall be incorporated in a written motion for recusal and filed promptly with the court. Grounds for recusal shall be immediately brought to the attention of the court. Failure to raise a basis for recusal shall constitute a waiver of the right to request recusal on such ground. If a record of the proceedings is not available, the Court shall make a record of the request, the Court's findings, and its order. **[The Court's ruling on the motion shall issue promptly. If the motion is denied, the Court's ruling shall be supported by findings of fact with respect to the allegations contained in the motion.]**

APPENDIX Z

Amend District Court Rule 4.2 as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format):

4.2 The amount of the claim cannot exceed ~~$5,000~~ **[$7,500]**, exclusive of interest and costs. If the claim exceeds that amount, the plaintiff must indicate on the form that s/he waives the right to claim the amount over ~~$5,000~~ **[$7,500]**; or s/he must proceed not in a small claim action but by regular civil writ, which is more easily done through an attorney. **[Claims in excess of $5000 are subject to mandatory mediation.]**

APPENDIX AA

Amend District Court Rule 4.8 as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format), and adopt said rule as amended on a permanent basis:

4.8. (a) The clerk shall send a copy of the claim to the defendant by first class mail addressed to the defendant's last known post office address. The defendant will be required to indicate in writing within 30 days of the date the notice is mailed whether the defendant wants to be heard ~~and shall be notified that failure to respond in writing shall result in service of the claim on the defendant by the sheriff at the defendant's expense~~. **[If the defendant fails to respond to the notice and the notice is not returned as undelivered, a default judgment will be entered in favor of the plaintiff, who shall be notified by the court.]**

(b) If the notice is returned as undelivered ~~or the defendant does not respond in writing within 30 days~~, then the court shall direct the plaintiff to complete service on the defendant, at the expense of the plaintiff, as in all other actions at law (See RSA 510). The defendant will be required to indicate in writing the defendant's desire to be heard on or before the return date selected by the court, which shall be at least 30 days from the date of filing. If, upon proof of proper service, the defendant fails to respond on or before the return date, judgment shall be entered for the plaintiff.

(c) If the defendant responds to the notice indicating a desire to be heard, the case shall be scheduled for hearing shortly thereafter. Both parties shall be notified by mail of the date and time of the hearing at least 14 days in advance of the hearing.

APPENDIX BB

Repeal District Court Rule 4.22 in its entirety.

APPENDIX CC

Adopt on a permanent basis Supreme Court Rule 12-A, which was adopted on a temporary basis by Supreme Court order dated April 30, 2009, as follows (no changes are being proposed to the temporary rule now in effect):

RULE 12-A. Mediation

(1) Cases pending at the supreme court may be referred to the Office of Mediation and Arbitration (OMA) for mediation as set forth in this rule. All mediation will be conducted by a retired full-time judge.

(2) With the exception of cases listed in the following paragraph, cases accepted by the court may be referred to the Office of Mediation and Arbitration (OMA) for mediation upon the agreement of all parties.

The following cases are not eligible for mediation: criminal cases; domestic violence cases; election cases; guardianship cases; involuntary commitment cases; juvenile cases, including abuse and neglect, CHINS, delinquency, and termination of parental rights cases; cases brought by a prisoner in the custody of a correctional institution; and stalking cases.

(3) When an acceptance order is issued in a case that appears to be eligible for mediation under this rule, the clerk shall provide the moving party with a mediation agreement form. If all parties agree to mediation, the moving party shall submit the completed mediation agreement form to the court within 15 days of the date of the acceptance order, and shall send a copy of the completed form to all parties. In a case in which more than one appeal has been filed, the order shall indicate who will be considered the moving party for the purpose of submitting the mediation agreement form.

(4) Upon receipt of a completed mediation agreement form, an order will be issued by the clerk referring the case to the OMA for mediation.

(5) Any order referring a case to the OMA for mediation shall impose a fee of $200.00 per party to be paid to the OMA. This fee will be used by the OMA to pay mediator compensation, and is not refundable. On its own motion, or upon motion of the parties, the court may order an individual $200.00 fee to apply to multiple plaintiffs or defendants, if under the circumstances of the case, the court determines that the per party fee would cause undue hardship if it were

applied to individual parties, or if one fee for multiple parties on the same side is deemed equitable by the court. Parties who are indigent may petition the court for waiver of the $200.00 fee.

(6) Unless the order referring a case for mediation provides otherwise, when a case is referred to the OMA for mediation, further processing of the case by the court will be suspended for a period of 90 days. If the director of the OMA or the mediator believes that additional time is needed to complete the mediation, the director or mediator may file a notice with the court of an automatic extension of no more than 30 days. Upon filing of the notice, further processing of the case shall be suspended for the additional time without further order of the court. Extensions of time of more than 30 days may be requested only by motion to the court and are not favored.

(7) After a case has been referred to the OMA for mediation, the OMA shall be responsible for selecting a mediator and scheduling a mediation session. The parties shall comply with the OMA rules for appellate mediation. All communications and filings of the parties related to the mediation session shall be sent to the OMA and shall not be filed with the court, with the exception of filings relating to whether the case should be remanded to the court to resume processing of the case or requesting an extension of time to complete mediation.

(8) If the director of the OMA determines at any time after a case has been referred that the case should not be mediated, the director shall notify the clerk in writing. Thereafter, an order will be issued indicating that processing of the case will resume in accordance with Supreme Court rules.

(9) Within 15 days after the conclusion of a mediation, the mediator or the director of the OMA shall file a written report with the court of the results of the mediation. The report shall state whether a full or partial settlement was reached and describe the effect of the settlement on the pending case. The report shall not disclose the mediator's assessment of any aspect of the case or confidential matters discussed during the session or sessions.

(10) If the director of the OMA reports that there has not been a full settlement of a case referred for mediation, or upon expiration of the period during which processing of the case was suspended, the court ordinarily will resume processing the case in accordance with Supreme Court rules unless circumstances would make this inappropriate.

(11) Mediation proceedings and information relating to those proceedings shall be confidential. Information submitted or discussed during mediation shall not be disclosed or used in any subsequent proceeding. Statements made and documents prepared by a party, attorney, or other participant in aid of such proceeding shall be privileged and shall not be disclosed to any court or arbitrator or construed for any purpose as an admission against interest. Mediation proceedings under this rule are deemed settlement conferences consistent with the Rules of Evidence. Parties shall not introduce into evidence,

in any subsequent proceeding, the fact that there was a mediation or any other material concerning the conduct of the mediation except as required by the Rules of Professional Conduct or the Mediator Standards of Conduct. Evidence that would otherwise be admissible in another proceeding shall not be rendered inadmissible as a result of its use in mediation.

(12) The OMA may adopt procedural rules to govern the appellate mediation process.

APPENDIX DD

Adopt on a permanent basis Superior Court Rule 170-A(G), which was adopted on a temporary basis by Supreme Court order dated April 30, 2009, as follows (no changes are being proposed to the temporary rule now in effect):

(G) ***Arbitrator's Disclosure.***

Upon receipt of notice of appointment in a case, an arbitrator shall disclose any circumstances likely to create a conflict of interest, the appearance of a conflict of interest, a reasonable inference of bias, or prevent the process from proceeding as scheduled.

In cases where arbitration is selected after suit is filed, if an arbitrator withdraws, has a conflict of interest and there is an unresolved issue concerning recusal or if the arbitrator is otherwise unavailable, another shall be agreed to by the parties or the issue shall be referred to the Court if the issue of recusal cannot be resolved by the parties and the arbitrator.

In cases where arbitration is selected pre-suit, if an arbitrator withdraws, has a conflict of interest and there is an unresolved issue concerning recusal or if the arbitrator is otherwise unavailable, another shall be agreed to by the parties or the issue shall be referred to the Office of Mediation and Arbitration if the issue of recusal cannot be resolved by the parties and the arbitrator.

APPENDIX EE

Adopt on a permanent basis District Court Rule 3.3, which was adopted on a temporary basis by Supreme Court order dated December 10, 2009, as follows (no changes are being proposed to the temporary rule now in effect):

Rule 3.3. Court fees

(I) Fees

(A) **Original Entries:**

Civil Writ of Summons or Counterclaim (including set-off, recoupment, cross-claims and third-party claims)	$130.00
Replevin	$ 120.00
Landlord/Tenant entry	$ 100.00
Registration of Foreign Judgment	$ 150.00
Small Claims Entry and Counterclaim, $5000 or less (including set-off, recoupment, cross-claims and third-party claims)	$ 72.00
Small Claims Transfer Fee	$ 108.00
Small Claims Entry and Counterclaim, $5001 to $7500 (including set-off, recoupment, cross-claims and third-party claims)	$ 127.00

(B) **General and Miscellaneous**

Motion for Periodic Payments	$ 25.00
Petition to annul criminal record	$ 100.00
Original writ	$ 1.00
Writ of Execution	$ 25.00
Petition for Ex Parte Attachment, or Writ of Trustee Process	$ 25.00
Reissued Orders of Notice	$ 25.00
Application to Appear *Pro Hac Vice*	$ 225.00

(C) **Certificates & Copies**

Certificate of Judgment	$ 10.00
Exemplification of Judgment	$ 25.00
Certified Copies	$ 5.00
All copied material (except transcripts)	$ .50/page
Computer Screen Printout	$ .50/page

(II) Surcharge

Pursuant to RSA 490:26-a, II, the sum of $25.00 shall be added to each civil filing fee set forth in paragraph (I)(A) above, except for the following types of cases which pursuant to RSA 490:26-a, II(b) are exempt from the surcharge:

(A) Actions relating to children under RSA 169-B, RSA 169-C, and RSA 169-D.

(B) Domestic violence actions under RSA 173-B.

(C) Small claims actions under RSA 503.

(D) Landlord/tenant actions under RSA 540, RSA 540-A, RSA 540-B, and RSA 540-C.

(E) Stalking actions under RSA 633:3-a.

(III) Records Research Fees

(A) Records Research Fees. Record information must be requested in writing and include the individual's full name and, if available, the individual's date of birth. A fee of $20 per name will be assessed per name for up to 5 names. Additional names will be assessed $5 per name. Record information must be requested in writing and include the individual's full name and, if available, the individual's date of birth.

(B) The Clerk may waive the records research fee when a request for record information is made by a member of the media consistent with the public's right to access court records under the New Hampshire Constitution.

APPENDIX FF

Adopt on a permanent basis District Court Rule 3.28, which was adopted on a temporary basis by Supreme Court order dated December 10, 2009, as follows (no changes are being proposed to the temporary rule now in effect):

Rule 3.28. District Court Civil Writ Mediation Rules.

(A) Purpose. The District Court establishes these Civil Writ mediation rules to increase access to justice; to increase parties' satisfaction with the outcome; to reduce future litigation by the same parties; to make more efficient use of judicial resources; and to expand dispute resolution resources available to the parties.

(B) Definitions. For the purpose of this rule, the following definitions apply.

(1) Mediation. Mediation is a process in which a mediator facilitates settlement discussions between parties.

a. The mediator has no authority to make a decision or impose a settlement upon the parties.

b. The mediator attempts to focus the attention of the parties upon their needs and interests rather than upon their rights and positions.

c. Any settlement is entirely voluntary.

d. In the absence of settlement, the parties lose none of their rights to a resolution of their dispute through litigation.

Mediation is based upon principles of communication, negotiation, facilitation and problem solving that emphasize:

a. The needs and interest of the parties

b. Fairness

c. Procedural flexibility

d. Privacy and confidentiality

e. Full disclosure

f. Self determination

(2) Mediator. An impartial person who facilitates discussions between the parties to a mediation. The role of the mediator includes but is not limited to assisting the parties in identifying issues, reducing obstacles to communication, and providing the parties an opportunity for each to be heard in a dignified and thoughtful manner. The mediator's focus will be on encouraging and supporting the parties' presentations to and reception from one another allowing them to find a resolution that is appropriate.

(3) Party. Any person whose name is designated on the record as plaintiff or defendant and their attorney or any other person who has filed an appearance.

(C) Mediator Qualifications. Mediators shall satisfy the qualifications and criteria specified by the Supreme Court. Minimum qualifications include: completion of a 20-hour mediation process training; two years experience as a mediator or equivalent experience, and an understanding of civil and landlord/tenant law is helpful.

All mediators serving as civil writ mediators shall contract with the Administrative Office of the Courts for a term of one year.

(D) Referral of cases to mediation. The Civil Writ mediation program is voluntary. Cases may be referred to mediation where parties have not filed an "opt-out" notice with the Court and all remaining parties indicate that they desire to proceed with mediation.

(E) Continuances. If a party files a Motion to Continue Mediation for good cause, the Court has discretion to continue the mediation and set a new mediation date if no prior Motions to Continue Mediation have been granted. The Court will not grant multiple requests to continue mediation.

(F) Failure to Attend Mediation. If either party fails to attend mediation without good cause and without providing sufficient notice to the other party(ies) and to the Court, the parties shall lose the opportunity to participate in the mediation program. Under those circumstances the matter shall not be rescheduled for mediation and the matter shall be returned to the trial docket.

(G) Mediator Assignment. The Administrative Judge of the District Court, in consultation with the Office of Mediation and Arbitration, shall determine the mediation needs for each District Court in the Civil Writ program. Assignment of mediators shall be based on the mediator needs of each Court.

Each District Court shall schedule civil writ cases and allocate mediator(s) in a manner that accommodates the case load of the Court.

(H) Payment of mediator fees. Civil writ mediators shall be paid on a per case fee set by the Supreme Court. Payments shall be made out of the Office of

Mediation and Arbitration ("OMA") Fund established under RSA 490-E:4. No additional fees or reimbursements shall be made.

(I) Disclosure of Conflict. Upon receipt of a notice of appointment in a case, the mediator shall disclose any circumstances likely to create a conflict of interest, the appearance of conflict of interest, a reasonable inference of bias or other matter that may prevent the process from proceeding as scheduled.

(1) If the mediator withdraws, has a conflict of interest or is otherwise unavailable, another mediator shall be appointed by the Court.

(2) The burden of disclosure rests on the mediator. After appropriate disclosure, the mediator may serve if both parties so desire. If the mediator believes or perceives that there is a clear conflict of interest, he or she should withdraw, irrespective of the expressed desires of the parties.

(J) Impartiality. Impartiality shall be defined as freedom from favoritism or bias in word, action and appearance.

(1) Impartiality implies a commitment to aid all parties, as opposed to an individual party, when moving toward an agreement. A mediator shall be impartial and shall advise all parties of any circumstances bearing on possible bias, prejudice or impartiality.

(2) A mediator shall maintain impartiality while raising questions for the parties to consider as to the reality, fairness, equity, and feasibility of the proposed options for settlement.

(3) A mediator shall withdraw from mediation if the mediator believes the mediator can no longer be impartial.

(4) A mediator shall not give or accept a gift, request, favor, loan, or any other item of value to or from a party, attorney or any other person involved and arising from the mediation process.

(K) Prohibitions. A mediator shall not provide counseling or therapy to any party during the mediation process nor shall a mediator who is an attorney represent either party, or give legal advice during or after the mediation.

The mediator shall not use the mediation process to solicit or encourage future professional services with either party.

(L) Self determination. A mediator shall assist the parties in reaching an informed and voluntary settlement. Decisions are to be made voluntarily by the parties.

(1) A mediator shall not coerce or unfairly influence a party into a settlement agreement and shall not make a substantive decision for any party to a mediation process.

(2) A mediator shall not intentionally or knowingly misrepresent material facts or circumstances in the course of conducting a mediation.

(3) A mediator shall promote consideration of the interest of persons affected by actual or potential agreements who are not present during a mediation.

(4) The mediator shall promote mutual respect amongst the parties throughout the process.

(M) Professional Advice. A mediator shall only provide information the mediator is qualified by training or experience to provide.

(1) When a mediator believes a non represented party does not understand or appreciate how an agreement may adversely affect legal rights or obligations, the mediator shall advise the participants to seek independent legal counsel.

(2) While a mediator may point out a possible outcome of the case, under no circumstances may a mediator offer a personal or professional opinion as to how the Court in which the case is filed will resolve the dispute.

(N) Confidentiality. A mediator shall preserve and maintain the confidentiality of all mediation proceedings. Any communication made during the mediation which relates to the controversy mediated, whether made to the mediator or a party, or to any other person present at the mediation is confidential.

(1) A mediator shall keep confidential from the other parties any information obtained in an individual caucus unless the party to the caucus permits disclosure.

(2) All memoranda, work products and other materials contained in the case file of a mediator are confidential. The mediator shall render anonymous all identifying information when materials are used for research, training or statistical compilations.

(3) Confidential materials and communications are not subject to disclosure in any judicial or administrative proceedings except for any of the following:

a. Where the parties to the mediation agree in writing to waive the confidentially.

b. When a subsequent action between the mediator and a party to the mediation for damages arises out of the mediation.

c. Where there are threats of imminent violence to self or others.

d. Where reporting is required by state law.

(O) Inadmissibility of Mediation Proceeding. Mediation proceedings under this rule are non-binding and shall not impair the right of the litigants to demand a trial. Any settlement reached at mediation shall be binding on the parties and entered as a judgment. Information, evidence or the admission of any party shall not be disclosed or used in any subsequent proceeding.

(1) Statements made and documents prepared by a party, attorney, or other participant in the aid of such proceedings shall be privileged and shall not be disclosed to any Court or construed for any purpose as an admission against interest.

(2) All mediation proceedings are deemed settlement conferences as prescribed by Court rule and the Rules of Evidence. In addition, the parties shall not introduce into evidence in any subsequent proceeding the fact that there has been a mediation proceeding.

(3) Evidence that would otherwise be admissible at trial shall not be rendered inadmissible as a result of its use in a mediation proceeding under this rule.

(4) A mediator shall not be called as a witness in any subsequent proceeding relating to the parties' negotiation and participation except as set forth in Section N of this rule.

(P) Concluding Mediation. If an agreement is reached during the mediation process, the parties shall reduce their agreement to a written memoranda on the points on which agreement has been reached, and the memoranda shall be reviewed and signed by all parties before the mediation ends, unless the parties otherwise agree that additional time is necessary to ensure that the parties have time to consult with counsel about their agreement if unrepresented at the time of the mediation. In that case, the parties shall submit the written agreement to the Court within thirty days of the mediation session. Within 48 hours of the mediation session, the mediator shall submit an ADR report indicating the status of the agreement either attaching it to the ADR report, or, indicating that it will be filed with the Court within the next thirty days.

If an agreement is not reached during the mediation process, the mediator shall notify the Court via the ADR report that the mediation failed to resolve the issue in conflict or if the mediation successfully resolved part of the matter, the ADR report will so indicate.

(Q) Immunity. The mediator will not be acting as legal advisor or legal representative. The parties should recognize that, because the mediator is performing quasi-judicial functions and is performing under the auspices of the District Court, each such mediator has immunity from suit, and shall not be

called as a witness in any subsequent proceeding relating to the parties' negotiations and participation except as set forth in Section N of this rule.

(R) Removal from list of Civil Writ mediators. Appointment to the Civil Writ roster in the District Court confers no vested rights to the mediator, but is a conditional privilege that is revocable.

(1) At any time during the one year rostering period, upon notice and opportunity to be heard, a civil writ mediator who is found to have engaged in conduct that reflects adversely on his/her impartiality or in the performance of his/her duties as a mediator, or is found to have persistently failed to carry out the duties of a mediator, or is found to have engaged in conduct prejudicial to the proper administration of justice, shall be removed from the list of civil writ mediators.

(2) All complaints regarding a mediator's performance shall be forwarded to the NH Judicial Branch Director of the Office of Mediation and Arbitration and the Administrative Judge of the District Court. The Director of the OMA will investigate the complaint and will make recommendations to address the complaint to the Administrative Judge of the District Court.

(3) All civil writ mediators must inform the Director of the Judicial Branch Office of Mediation and Arbitration and the Administrative Judge of the District Court within 30 days of a change in circumstances such as a conviction of a felony or loss of professional license. Civil writ mediators who are convicted of a felony or misdemeanor involving moral turpitude, or who have a professional license revoked, shall be denied certification.

APPENDIX GG

Adopt on a permanent basis District Court Rule 4.8-A, which was adopted on a temporary basis by Supreme Court order dated April 30, 2009, as follows (no changes are being proposed to the temporary rule now in effect):

4.8-A. Prejudgment Attachment Procedure

If the plaintiff seeks a prejudgment attachment prior to or after the filing of the small claim complaint and with or without notice to the defendant, the process and procedure set forth in RSA 511-A and District Court Rule 3.4 shall be followed, except that the words "Writ" and "Writ of Summons" shall refer to the Small Claim Complaint. Service upon the defendant in such cases may not be accomplished by first class mail and shall be completed as in all other actions at law at the expense of the plaintiff, but service in a small claims matter must take place after filing with the court.

APPENDIX HH

Adopt on a permanent basis District Court Rule 4.8-B, which was adopted on a temporary basis by Supreme Court order dated April 30, 2009, as follows (no changes are being proposed to the temporary rule now in effect):

4.8–B. Post-Judgment Attachment Procedure

Upon motion, a judgment creditor may obtain a writ of attachment to secure payment of a final judgment for money damages. The writ shall state the name of the court rendering the judgment, the docket number of the case in which judgment has been issued, the date of entry of judgment, the amount thereof, including interest and costs. Attachments made pursuant to this Rule may be served and recorded in the same manner and shall have the same effect as a pre-judgment attachment and shall remain in effect until the judgment is satisfied or until the attachment expires by operation of law. A judgment entered in a small claims matter may also be secured by real estate by recording, or re-recording at any time during the duration of the judgment, a certified copy of the judgment with the registry of deeds of the county in which the real estate is located.

APPENDIX II

Adopt on a permanent basis District Court Rule 4.8-C, which was adopted on a temporary basis by Supreme Court order dated April 30, 2009, as follows (no changes are being proposed to the temporary rule now in effect):

4.8-C. Discharge of Attachments

When a small claims judgment secured by real estate is satisfied, the plaintiff shall deliver a discharge directly to the defendant within 30 days. It shall be the responsibility of the defendant to record said discharge.

If the plaintiff fails to deliver a discharge within 30 days of a request to do so, or if exigent circumstances require an immediate discharge, the defendant may petition the court in which the judgment was issued for a court ordered discharge. The burden shall be on the defendant to establish that the judgment has been satisfied pursuant to RSA 503:12.

APPENDIX JJ

Adopt on a permanent basis District Court Rule 4.29, which was adopted on a temporary basis by Supreme Court order dated December 10, 2009, as follows (no changes are being proposed to the temporary rule now in effect):

Rule 4.29. District Court Small Claims Mediation Rules.

(A) Purpose. The District Court establishes these small claims mediation rules to increase access to justice; to increase parties' satisfaction with the outcome; to reduce future litigation by the same parties; to make more efficient use of judicial resources; and to expand dispute resolution resources available to the parties.

(B) Definitions. For the purpose of this rule, the following definitions apply.

(1) Mediation. Mediation is a process in which a mediator facilitates settlement discussions between parties.

a. The mediator has no authority to make a decision or impose a settlement upon the parties.

b. The mediator attempts to focus the attention of the parties upon their needs and interests rather than upon their rights and positions.

c. Any settlement is entirely voluntary.

d. In the absence of settlement, the parties lose none of their rights to a resolution of their dispute through litigation.

Mediation is based upon principles of communication, negotiation, facilitation and problem solving that emphasize:

a. The needs and interest of the parties

b. Fairness

c. Procedural flexibility

d. Privacy and confidentiality

e. Full disclosure

f. Self determination

(2) Mediator. An impartial person who facilitates discussions between the parties to a mediation. The role of the mediator includes but is not limited to assisting the parties in identifying issues, reducing obstacles to communication, and providing the parties an opportunity for each to be heard in a dignified and thoughtful manner. The mediator's focus will be on encouraging and supporting the parties' presentations to and reception from one another allowing them to find a resolution that is appropriate.

(3) Party. Any person whose name is designated on the record as plaintiff or defendant and their attorney or any other person who has filed an appearance.

(C) Mediator Qualifications. Mediators shall satisfy the qualifications and criteria specified by the Supreme Court. Minimum qualifications include: completion of a 20-hour mediation process training; two years experience as a mediator or equivalent experience, and an understanding of civil and landlord/tenant law is helpful.

All mediators serving as small claims mediators shall contract with the Administrative Office of the Courts for a term of one year.

(D) Referral of cases to mediation. Small Claims cases of less than $5,000 may be referred to mediation where requested by any party and all remaining parties indicate that they desire to proceed with mediation. In small claims cases where the jurisdictional amount is over $5,000, mediation is mandatory and shall be scheduled for mediation in advance of, or on, the hearing date.

(E) Default and dismissal in mandatory mediation small claims cases:

(1) Default. If the case is scheduled for mandatory mediation in accordance with RSA 503:1 and if only one party is in attendance for the scheduled mediation session, the matter shall be subject to Rule 4.14 of the District Court Small Claims Rules.

(2) Dismissal. If the case is scheduled for mandatory mediation in accordance with RSA 503:1 and if neither party attends the mediation session, then the matter shall be subject to Rule 4.23 of the District Court Small Claims Rules.

(3) Payment to Mediator if a case is defaulted or dismissed. If a mediation is scheduled in accordance with RSA 503:1 but does not occur due to a default or dismissal, then the mediator shall be entitled to payment for the mediation session, even if does not go forward due to the failure of either one or both parties to attend.

(F) Mediator Assignment. The Office of Mediation and Arbitration in consultation with the Administrative Judge of the District Court shall determine

the mediation needs for each District Court. Assignment of mediators shall be based on the needs of each court.

Each District Court shall schedule small claims cases and allocate mediator(s) in a manner that accommodates the small claims case load of the court.

(G) Payment of mediator fees [in non-mandatory cases. Small Claims mediators shall be paid on a per case fee set by the Supreme Court. Payments shall be made out of the Mediator Fund established by the court. No additional fees or reimbursements shall be made.

(H) Disclosure of Conflict. Upon receipt of a notice of appointment in a case, the mediator shall disclose any circumstances likely to create a conflict of interest, the appearance of conflict of interest, a reasonable inference of bias or other matter that may prevent the process from proceeding as scheduled.

(1) If the mediator withdraws, has a conflict of interest or is otherwise unavailable, another mediator shall be appointed by the court.

(2) The burden of disclosure rests on the mediator. After appropriate disclosure, the mediator may serve if both parties so desire. If the mediator believes or perceives that there is a clear conflict of interest, he or she should withdraw, irrespective of the expressed desires of the parties.

(I) Impartiality. Impartiality shall be defined as freedom from favoritism or bias in word, action and appearance.

(1) Impartiality implies a commitment to aid all parties, as opposed to an individual party, when moving toward an agreement. A mediator shall be impartial and shall advise all parties of any circumstances bearing on possible bias, prejudice or impartiality.

(2) A mediator shall maintain impartiality while raising questions for the parties to consider as to the reality, fairness, equity, and feasibility of the proposed options for settlement.

(3) A mediator shall withdraw from mediation if the mediator believes the mediator can no longer be impartial.

(4) A mediator shall not give or accept a gift, request, favor, loan, or any other item of value to or from a party, attorney or any other person involved and arising from the mediation process.

(J) Prohibitions. A mediator shall not provide counseling or therapy to any party during the mediation process nor shall a mediator who is an attorney represent either party, or give legal advice during or after the mediation.

The mediator shall not use the mediation process to solicit or encourage future professional services with either party.

(K) Self determination. A mediator shall assist the parties in reaching an informed and voluntary settlement. Decisions are to be made voluntarily by the parties.

(1) A mediator shall not coerce or unfairly influence a party into a settlement agreement and shall not make a substantive decision for any party to a mediation process.

(2) A mediator shall not intentionally or knowingly misrepresent material facts or circumstances in the course of conducting a mediation.

(3) A mediator shall promote consideration of the interest of persons affected by actual or potential agreements who are not present during a mediation.

(4) The mediator shall promote mutual respect amongst the parties throughout the process.

(L) Professional Advice. A mediator shall only provide information the mediator is qualified by training or experience to provide.

(1) When a mediator believes a non represented party does not understand or appreciate how an agreement may adversely affect legal rights or obligations, the mediator shall advise the participants to seek independent legal counsel.

(2) While a mediator may point out a possible outcome of the case, under no circumstances may a mediator offer a personal or professional opinion as to how the court in which the case is filed will resolve the dispute.

(M) Confidentiality. A mediator shall preserve and maintain the confidentiality of all mediation proceedings. Any communication made during the mediation which relates to the controversy mediated, whether made to the mediator or a party, or to any other person present at the mediation is confidential.

(1) A mediator shall keep confidential from the other parties any information obtained in an individual caucus unless the party to the caucus permits disclosure.

(2) All memoranda, work products and other materials contained in the case file of a mediator are confidential. The mediator shall render anonymous all identifying information when materials are used for research, training or statistical compilations.

(3) Confidential materials and communications are not subject to disclosure in any judicial or administrative proceedings except for any of the following:

a. Where the parties to the mediation agree in writing to waive the confidentially.

b. When a subsequent action between the mediator and a party to the mediation for damages arises out of the mediation.

c. Where there are threats of imminent violence to self or others.

d. Where reporting is required by state law.

(N) Inadmissibility of Mediation Proceeding. Mediation proceedings under this rule are non-binding and shall not impair the right of the litigants to demand a trial. Any settlement reached at mediation shall be binding on the parties and entered as a judgment. Information, evidence or the admission of any party shall not be disclosed or used in any subsequent proceeding. Partial settlements may occur and are subject to these rules. Please see section O below for additional information on partial settlements.

(1) Statements made and documents prepared by a party, attorney, or other participant in the aid of such proceedings shall be privileged and shall not be disclosed to any court or construed for any purpose as an admission against interest.

(2) All mediation proceedings are deemed settlement conferences as prescribed by court rule and the Rules of Evidence. In addition, the parties shall not introduce into evidence in any subsequent proceeding the fact that there has been a mediation proceeding.

(3) Evidence that would otherwise be admissible at trial shall not be rendered inadmissible as a result of its use in a mediation proceeding under this rule.

(4) A mediator shall not be called as a witness in any subsequent proceeding relating to the parties' negotiation and participation except as set forth in Section N of this rule.

(O) Concluding Mediation. If an agreement is reached during the mediation process, the parties shall reduce their agreement to a written memoranda, and the memoranda shall be reviewed and signed by all parties before the mediation ends.

If a partial settlement is reached the parties shall reduce to a written memoranda the points on which agreement has been reached. The mediator shall indicate on the ADR Report that the matter has been partially resolved and those issues that shall remain unresolved shall return to the trial docket for resolution by the Court. As in the case of a full settlement, all mediation proceedings resulting in a partial settlement are deemed settlement conferences as prescribed by court rule and the Rules of Evidence. In addition, the parties shall not introduce into evidence in any subsequent proceeding the fact that there has been a mediation proceeding. Evidence that would otherwise be admissible at

trial shall not be rendered inadmissible as a result of its use in a mediation proceeding under this rule resulting in a partial settlement.

If an agreement is not reached during the mediation process, the mediator shall notify the court that the mediation failed to resolve the issue in conflict.

(P) Immunity. The parties must recognize that the mediator will not be acting as legal advisor or legal representative. They must further recognize that, because the mediator is performing quasi-judicial functions and is performing under the auspices of the District Court, each such mediator has immunity from suit, and shall not be called as a witness in any subsequent proceeding relating to the parties' negotiations and participation except as set forth in Section N of this rule.

(Q) Implementation. The Office of Mediation and Arbitration in consultation with the Administrative Judge of the District Court shall be responsible for designating an implementation schedule for the expanded small claims mediation program.

(R) Removal from list of small claims mediators. Certification to mediate Small Claims Cases in the District Court confers no vested rights to the mediator, but is a conditional privilege that is revocable.

(1) At any time during the period of certification, upon notice and opportunity to be heard, a small claims mediator who is found to have engaged in conduct that reflects adversely on his/her impartiality or in the performance of his/her duties as a mediator, or is found to have persistently failed to carry out the duties of a mediator, or is found to have engaged in conduct prejudicial to the proper administration of justice, shall be removed from the list of certified small claims mediators.

(2) All complaints regarding a mediator's performance shall be forwarded to the Director of the NH Judicial Branch Office of Mediation and Arbitration who will inform the Administrative Judge of the District Court about the complaint. The Director of the OMA will investigate the complaint, and will make recommendations to address the complaint to the Administrative Judge of the District Court.

(3) All Small Claims mediators must inform the Judicial Branch Office of Mediation and Arbitration within 30 days of a change in circumstances such as a conviction of a felony or loss of professional license. Small Claims mediators who are convicted of a felony or misdemeanor involving moral turpitude, or who have a professional license revoked, shall be denied certification.

APPENDIX KK

Adopt on a permanent basis Probate Court Rule 169, which was adopted on a temporary basis by Supreme Court order dated December 10, 2009, as follows (no changes are being proposed to the temporary rule now in effect):

Rule 169. FEES.

(I) ENTRY FEES:

(a) Original Entry of any Equity Action or Counterclaim (including set-off, recoupment, cross-claims and third-party claims)	$ 185.00
(b) Petition File and Record Authenticated Copy of Will, Foreign Wills; Petition Estate Administration for estates with a gross value greater than $25,000; Petition Administration of Person Not Heard From; Petition Guardian, Foreign Guardian or Conservator (RSA 464-A)	$ 155.00
(c) Petition Termination of Parental Rights; Petition Involuntary Admission; Petition Guardian Minor Estate and Person and Estate (RSA 463); Petition Guardian of Incompetent Veteran (RSA 465)	$ 125.00
(d) Petition Adoption, includes one certificate (no entry fee when accompanied by a Petition for termination); Motion to Reopen (estate administration); Motion to Bring Forward	$ 95.00
(e) Petition Estate Administration for estates having a gross value of $25,000 or less; Petition Change of Name (includes one certificate); Petition Guardian Minor Person (RSA 463)	$ 65.00
(f) Marriage Waiver	$ 60.00
(g) Motion Prove Will in Common and/or Solemn Form (administration required); Motion to Re-examine Will	$ 125.00
(h) Petition Appoint Trustee	$ 125.00

(i) Motion Successor Trustee, Administrator, Executor, or Guardian of Estate and Person and Estate (RSA 463) (RSA 464-A); All Executor/Administrator Accounting for estates with a gross value greater than $25,000; Trustees Accounting; Guardian/Conservator Accounting; Motion for Summary Administration $ 65.00

(j) Petition Change of Venue (includes authenticated copy fee); Motion Successor Guardian of Person (RSA 463) (RSA 464-A); Motion Sue on Bond; Motion Remove Fiduciary; Motion Fiduciary to Settle Account $ 40.00

(k) Landlord Tenant Entry pursuant to ancillary jurisdiction under RSA 547:3-l $ 100.00

(l) Small Claim Entry and Counterclaim, $5000 or less (including set-off, recoupment, cross-claims and third-party claims) pursuant to ancillary jurisdiction under RSA 547:3-l $ 72.00

(m) Small Claim Transfer Fee pursuant to ancillary jurisdiction under RSA 547:3-l $ 108.00

(n) Civil Writs of Summons and Counterclaims (including set-off, recoupment, cross-claims and third-party claims) pursuant to ancillary jurisdiction under RSA 547:3-l $ 130.00

(o) Replevin pursuant to ancillary jurisdiction under RSA 547:3-l $ 120.00

(p) Small Claim Entry and Counterclaim, $5001 to $7500 (including set-off, recoupment, cross-claims and third-party claims) pursuant to ancillary jurisdiction under RSA 547:3-l $ 127.00

(q) Pursuant to RSA 490:26-a, II, the sum of $25.00 shall be added to each civil filing fee set forth in subsections (a), (b), (c), (d), (e), (f), (h), (n), and (o) above.

(II) ENTRY FEES INCLUDE:

Preparation and issuance of Original Orders of Notice, Notice, Copies of Decrees, mailing costs, certificate to discharge surety.

(III) ENTRY FEES DO NOT INCLUDE:

Notice by publication. The Party or the Attorney for the Party from whom the notice is required shall pay this fee. The Register of each county shall determine

the cost of publication. The request may require that payment be made directly to the publisher of the notice.

In-hand service. If service by a law enforcement officer is required, the Party or the Attorney for the Party from whom the notice is required shall pay the cost of service to the appropriate county sheriff's department.

Additional copies. If additional copies of any document, or additional certificates are requested beyond those included in normal processing as indicated above, the Party or the Attorney for the Party requesting the additional copies shall pay the costs in advance as indicated under "Certificates & Copies."

(IV) OTHER:

Defaults (RSA 548:5-a) occurrence	$ 25.00/each
Citations/show cause (RSA 548:5-a and 550:2) occurrence	$ 50.00/each
Duplicate Audio CD	$ 25.00/each tape or
Application to Appear *Pro Hac Vice*	$ 225.00
Ex Parte Petition for Attachment, Ex Parte Petition for Writ of Trustee Process	$ 25.00
Motion for Periodic Payments	$ 25.00
Reissued Orders of Notice	$ 25.00
Writ of Execution	$ 25.00

(V) CERTIFICATES & COPIES:

Certificates	$ 5.00
Certification	$ 5.00 plus copy fee
Photocopy of Will	$ 1.00/page
All other copied material	$ .50/page
Original writ (form)	$ 1.00
Authenticated Copy of Probate	$ 25.00/each

Certificate of Judgment	$ 10.00
Exemplification of Judgment	$ 25.00

"Certificates & Copies" shall apply to individual requests for the above services, requests for additional certificates beyond those provided with the original entries and requests for additional copies beyond those provided with the original entry fees.

(VI) RECORDS RESEARCH FEES:

Records Research Fees. Record information must be requested in writing and include the individual's full name and, if available, the individual's date of birth. A fee of $20 per name will be assessed for up to 5 names. Additional names will be assessed $5 per name.

The Register may waive the records research fee when a request for record information is made by a member of the media consistent with the public's right to access court records under the New Hampshire Constitution.