

ADVISORY COMMITTEE ON RULES
December 17, 2003

Supreme Court Conference Room
Frank Rowe Kenison Supreme Court Building
Concord, New Hampshire

Honorable Linda S. Dalianis, Chairman, called the meeting to order at 12:26
p.m.

The following Committee members were present:

Robert L. Chase
Hon. Linda S. Dalianis
Hon. Robert L. Cullinane
Alice Guay
Martin P. Honigberg, Esquire
Hon. Philip Mangones
Emily G. Rice, Esquire
Raymond W. Taylor, Esquire

Also present were David S. Peck, Secretary to the Advisory Committee on
Rules, and Margaret Haskett, staff.

On motion of Judge Cullinane, seconded by Mrs. Guay, the Committee
approved the minutes of the September 3, 2003 meeting, as submitted.

In preparation for the public hearing at 1:00 p.m., Judge Dalianis noted that
Chief Justice Murphy's comments on Superior Court Rule 169 were forwarded to
Committee members on November 12, 2003.

With respect to action taken by the Supreme Court since the Committee's last
meeting, David Peck reported that the temporary rules adopted by the Supreme
Court since the last meeting are on today's agenda for the Committee's consideration.

The Committee next discussed the status of items pending before it and the
following action was taken:

Relative to administrative orders, various guidelines, protocols and procedures, Attorney Rice distributed the report of the Subcommittee on Lower Court Rules, Guidelines and Forms. She reported that the subcommittee decided, after reviewing the rules, guidelines and forms of the lower courts, that the practice of issuing administrative orders had diminished and that courts are doing a good job of informing the public of what rules, procedures and guidelines are available. Attorney Rice also stated that the subcommittee did not recommend promulgating as rules the forms and guidelines dealing with domestic violence and child protection since they are frequently reevaluated and amended. The Committee deferred action on the subcommittee's report until its next meeting.

Relative to comments to professional conduct rules, David Peck reported that the New Hampshire Bar Ethics Committee is still working on preparing comments.

Relative to amendments to Supreme Court Rule 50-B pertaining to the professional liability insurance certification requirement, Judge Dalianis summarized the procedure worked out with the N.H. Bar for gathering information from bar members. Following a brief discussion, the Committee agreed that the process should go forward as a pilot project, but that no rule should be adopted.

Relative to Supreme Court Rules 47, 48, and 48-A pertaining to fees paid to appointed counsel and guardians ad litem involving indigent clients, Judge Mangones and Attorney Taylor briefly reviewed their report previously distributed to Committee members before the meeting adjourned so that members could attend the public hearing scheduled for 1:00 p.m. in the courtroom.

During the public hearing, the Committee heard testimony on proposed court rules changes. In addition, it received written comments from the N.H. Association of

Broadcasters. The Committee took no action during the public hearing. Attorney Emily Rice was not present during the public hearing or the Committee's discussion on the proposed rules changes that followed the public hearing.

Following the public hearing, the Committee reconvened to discuss, after hearing comments at the public hearing, what action it wished to take on the proposed rules changes.

Relative to Supreme Court Rule 19, Superior Court Rule 78, District Court Rule 1.4 and Probate Court Rules 78 and 78-A, the Committee established a subcommittee consisting of Hon. Linda Dalianis, Raymond Taylor, Esq. and James Bassett, Esq. to consider whether additional changes should be made to the proposed amendments and to report back to the Committee at its next meeting.

Relative to the remaining rules before the public hearing, on motion of Attorney Taylor, seconded by Judge Cullinane, the Committee voted to recommend to the Supreme Court that Supreme Court Rules 12(1), 42(11), 42(12), 48-B, 49 and 56(III); Superior Court Rules 98 C. and 169; District and Municipal Court Rule 3.3; Probate Court Rule 169 and Rule of Evidence 609 be adopted as submitted to the public hearing.

Attorney Rice returned to the meeting.

The Committee then returned to its discussion on Supreme Court Rules 47, 48, 48-A. Following a lengthy discussion, and on motion of Attorney Honigberg, seconded by Attorney Taylor, the Committee voted to ask David Peck to draft amendments to the rules to increase the cap by 25% and allow for reimbursable expenses for the Committee's consideration at its next meeting and, if approved, to send said amendments to the Committee's next public hearing.

Relative to amendments to Supreme Court Rule 42(5)(m) pertaining to the character and fitness standards, David Peck reported that the Committee is still waiting for a response from the character and fitness committee.

Relative to Supreme Court Rules 12-D(2), 16(11), 21(1) and (1), and 26(1), David Peck reported that these amendments are still being worked on.

Relative to amendments to court rules pertaining to entry of judgment and appeal bonds, the Committee agreed to defer action on this item until its next meeting.

Relative to the ABA Report on Multijurisdictional Practice, Judge Dalianis reported that the subcommittee has reviewed the report and will have a recommendation for the Committee at its next meeting.

The Committee turned its discussion to new items for consideration and the following action was taken:

Relative to amending Supreme Court Rule 36 pertaining to appearance in court, after reviewing the suggestion raised in Debbie Bills' August 21, 2003 e-mail, the Committee agree to make no changes to Supreme Court Rule 36 and to have David Peck inform Ms. Bills of the Committee's decision.

Relative to adoption of plain error rules, the Committee reviewed the proposed rules changes suggested in David Peck's September 8, 2003 memo to Committee members. Following discussion, and on motion duly made and seconded, the Committee asked David Peck to send said amendments to the Committee's next public hearing.

Relative to court ordered periodic payments, the Committee discussed concerns raised in Peter Domino's two letters to the Committee. Following discussion and on

motion duly made and seconded, the Committee voted to make no changes to the court rules and to have David Peck inform Mr. Domino of the Committee's decision.

Relative to amendments to Supreme Court Rule 37 pertaining to reinstatement, following discussion and on motion of Attorney Rice, seconded by Mr. Chase, the Committee voted to send the proposed amendment to Supreme Court Rule 37(14), as contained in Appendix A of these minutes, to the Committee's next public hearing.

Relative to amendments to Supreme Court Rule 38 pertaining to the judicial code of conduct, following a brief discussion, the following subcommittee was established: Hon. Linda S. Dalianis, Hon. Philip Mangones and Hon. Robert Cullinane.

Relative to amendments to Supreme Court Rules 42(10)(a)(v); 42(11)(c) and 42(12)(d) pertaining to admission to the bar, following discussion and on motion of Attorney Rice, seconded by Judge Cullinane, the Committee voted to recommend to the Supreme Court that said amendments be adopted, as contained in Appendix B of these minutes, and further that they be considered as technical amendments.

Relative to Supreme Court Rules 37 and 37A pertaining to lawyer discipline, referred by the Supreme Court to the Committee to determine whether said amendments should be adopted on a permanent basis, on motion of Attorney Rice, seconded by Judge Cullinane, the Committee voted to send said proposed amendments to the Committee's next public hearing.

Relative to the new appellate process - rules and forms, David Peck reported that the new appellate process will go into effect January 1, 2004 and that the Supreme Court held a public comment period on the proposed rules and forms. The rules and forms have been referred by the Supreme Court to this Committee to

determine whether they should be adopted on a permanent basis. The Committee agreed to defer action on these new rules and forms until September or December 2004.

Relative to amendments to various rules pertaining to the delivery of motions to opposing counsel, following a brief discussion, the Committee asked Attorney Honigberg to draft an amendment to address concerns raised in Attorney Fisichella's November 10, 2003 letter for the Committee's consideration at its next meeting.

Relative to amendments to Supreme Court Rule 51-A, following a brief discussion and on motion of Judge Cullinane, seconded by Attorney Taylor, the Committee voted to send the amendment to Supreme Court Rule 51-A, as contained in Appendix C of these minutes, to the Committee's next public hearing.

The Committee next scheduled their 2004 meetings as follows: March 31 at 12:00 p.m.; June 2 at 12:00 p.m. with a public hearing beginning at 1:00 p.m.; September 22 at 12:00 p.m.; and December 8 at 12:00 p.m. with a public hearing beginning at 1:00 p.m. All meetings will take place in the Supreme Court building. Judge Dalianis will contact Amanda Merrill about her availability to attend the meetings.

With reference to parental notification in certain cases, Judge Dalianis informed members that the supreme court will be ready to deal with appeals by the date the law takes effect.

No further business to come before the Committee, on motion duly made and seconded, the meeting adjourned at 3:11 p.m.

APPENDIX A

Amend Supreme Court Rule 37(14) by adding a new subsection (f), so that said section (14) as amended shall state:

(f) *Special Rule for Suspensions of Six Months or Less:* Notwithstanding the provisions of Rule 37(14)(b), a lawyer who has been suspended for six months or less pursuant to disciplinary proceedings shall be reinstated by the court following the end of the period of suspension by filing with the court and serving upon disciplinary counsel a motion for reinstatement accompanied by: (1) an affidavit stating that he or she has fully complied with the requirements of the suspension order and has paid any required fees and costs; and (2) evidence that he or she has satisfactorily completed the Multistate Professional Responsibility Examination since his or her suspension.

APPENDIX B

Amend Supreme Court Rules 42(1)(a)(v); 42(11)(c) and 42(12)(d) by deleting said sections and replacing them with the following:

Produce evidence ~~of satisfactory completion of~~ **that** the Multistate Professional Responsibility Examination **has been satisfactorily completed prior to the date upon which the motion is filed;**

APPENDIX C

Adopt new Supreme Court Rule 51-A as follows:

RULE 51-A. APPROVAL OF FORMS

(1) The supreme court shall establish such forms for all courts as are necessary for the effective administration of justice. See RSA 490:26-d. No form shall be promulgated or put into use generally in any court prior to its approval by the supreme court. No form shall be amended without the approval of the supreme court. The supreme court shall approve forms or amendments to forms by the issuance of orders, which shall be public.

(2) An administrative judge, the director of the administrative office of the courts, or a person designated by an administrative judge or the director, may submit proposed new forms or proposed amendments to approved forms to the supreme court for approval. The supreme court may require that any submission be accompanied by a written explanation of the purpose and need for the proposed form or amendment. The supreme court may approve, amend, or reject any proposal.

Transition Provision

All forms in use in any court upon the effective date of this rule may continue to be used for one year. Any such form that has not been approved by the supreme court by the end of said one-year period shall thereafter not be used.