

ADVISORY COMMITTEE ON RULES
December 8, 2004

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

The meeting was called to order at 12:15 p.m.

The following Committee members were present:

Robert L. Chase
Hon. Linda S. Dalianis
Hon. R. Laurence Cullen
Alice Guay
Hon. Richard Hampe
Hon. Philip Mangones
Raymond W. Taylor, Esquire

Also present were David S. Peck, Secretary to the Advisory Committee on Rules, and Margaret Haskett, staff. Justice James E. Duggan was present for a portion of the meeting.

On motion of Judge Cullen, seconded by Judge Mangones, the Committee approved the minutes of the September 22, 2004 meeting.

In preparation for the public hearing, David Peck informed members that the Supreme Court has already adopted Supreme Court Rule 32-A pertaining to counsel in guardianships and involuntary admission cases on a permanent basis so it was mistakenly included on the public hearing notice.

With respect to action taken by the Supreme Court since the Committee's last meeting, David Peck reported that the Supreme Court adopted all the technical changes recommended by the Committee. In addition, the Supreme Court has put out for public comment the rules which were recommended by the Committee following its June public hearing. The Supreme Court's deadline for written comments is December 17, 2004.

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

Relative to comments to the Professional Conduct rules, Judge Dalianis asked members to review the material distributed with the agenda from the N.H. Bar Ethics Committee so that it can be considered at the Committee's next meeting.

The Committee next discussed the N.H. Bar Ethics Committee's concern that comments, including the ABA comments, to the Professional Conduct Rules are not available on the Judicial Branch website. Following discussion, Judge Dalianis agreed to ask Howard Zibel, the Court's General Counsel, for an opinion on whether there would be a copyright problem if the ABA comments were included on the website.

Relative to the rules of civil procedure, Judge Dalianis reported that the Supreme Court and the administrative judges are in favor of a comprehensive revisit of the rules. Judge Dalianis will ask Attorney Honigberg whether he would like to expand his subcommittee.

Relative to amendments to Rules of Professional Conduct Rule 1.6 pertaining to attorney/client privilege, the Committee agreed to recommend no changes to Rules of Professional Conduct Rule 1.6 at this time.

Relative to Committee membership, the Committee briefly reviewed the five applications selected by Mrs. Guay and Mr. Chase to fill the vacancy. Judge Dalianis and David Peck will prioritize the applicants and contact each one until one expresses an interest in serving on the Committee.

Relative to limited scope legal assistance, Judge Dalianis and David Peck will work with the N.H. Bar Ethics Committee to draft a proposal for the Committee's review at its next meeting.

Relative to amendments to Supreme Courts Rules 47, 48 and 48-A relating to fees and expenses, the Committee reviewed the revised draft amendments made in light of Nina Gardner's testimony during the public hearing. Following discussion, and on motion of Attorney Taylor, seconded by Judge Hampe, the Committee voted to further amend Supreme Court Rules 47, 48 and 48-A, as contained in Appendices A, B & C respectively of these minutes, and to recommend to the Supreme Court that they be adopted as amended.

Relative to amendments to Superior Court Administrative Rules Chapter 12 pertaining to marital masters, following discussion and on motion of Attorney Taylor, seconded by Mrs. Guay, the Committee voted to recommend to the Supreme Court that the amendments to Superior Court Administrative Rules Chapter 12 be adopted, as contained in Appendix D of these minutes, on a temporary basis and further that they be referred to the Committee's next public hearing.

Relative to amendments to Supreme Court Rule 55 pertaining to public protection fund, following a brief discussion, the Committee agreed to make no changes to Supreme Court Rule 55 at this time.

The Committee 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 in advance on several proposed rules changes. The Committee took no action during 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. Following discussion and on motion duly made and seconded, the Committee voted to further amend Supreme Court Rule 39 and to recommend to the Supreme Court that said rule be adopted as further amended by the Committee. The Committee also agreed to recommend to the Supreme Court that the following rules be adopted as submitted to the public hearing: Supreme Court Rules 39-A, 49(10)(e), 42 and 42B; Superior Court Rule 72; and District Court Rule 2.10. The Committee also agreed to defer action on Rules of Professional Conduct Rules 5.5A and 5.5B to allow the N.H. Bar Ethics Committee additional time to comment on the proposed changes.

Relative to amendments to Supreme Court Rules 39, 39-A and 40, which were included on the Committee's public hearing agenda, on motion of Judge Dalianis, seconded by Mrs. Guay, the Committee voted to ratify David Peck's action of placing the amendments to these rules on the Committee's December 8, 2004 public hearing agenda.

Relative to amendments to Superior Court Rule 169 pertaining to marriage waiver fees, following discussion and on motion of Judge Hampe, seconded by Attorney Taylor, the Committee voted to recommend to the Supreme Court that the amendments to Superior Court Rule 169 be adopted on a temporary basis and further to refer said amendments to the Committee's next public hearing.

Relative to Supreme Court Rule 53 et seq. pertaining to continuing legal education, during the discussion Judge Duggan answered questions raised by Committee members. Following discussion, and on motion of Judge Hampe,

seconded by Judge Cullen, the Committee voted to amend the proposals to amend Supreme Court Rules 53 et seq., as contained in Appendix E of these minutes, and to send them to the Committee's next public hearing.

Relative to appointing a subcommittee to revise the Family Division rules, Judge Dalianis asked members if anyone was interested in serving on the subcommittee being established to review the Family Division rules. She agreed to serve on the subcommittee and will report back to the Committee at its next meeting.

The Committee's 2005 meetings were scheduled as follows: March 2, June 1, September 7 and December 7. All meetings will begin at 12:00 p.m. The Committee will schedule public hearings at its March meeting.

Judge Dalianis reported that the Family Division Implementation Committee has filed its report with the Legislature. A transitional committee will soon be established.

No further business to come before the Committee, the meeting adjourned at 1:45 p.m.

ATTACHMENT A

Amend Supreme Court Rule 47 by deleting said section and replacing it with the following:

RULE 47. COUNSEL FEES AND EXPENSES -- INDIGENT CRIMINAL CASES

The provisions of this rule shall apply only to preparation for and proceedings in all courts in which assigned counsel is appointed to represent indigent criminal defendants.

(1) *Itemization of Bills.* All bills related to fees and expenses must be itemized as to the time spent and expenses incurred on each case, and there shall be no separate charge for overhead. A copy of the Notice of Appointment of Counsel order on appointment or other supporting document must be attached to the bill with each submission.

(2) *Fees.* Maximum compensation is limited as follows:

(a) Time properly chargeable to case: \$65.00 per hour. The paralegal hourly rate shall not exceed \$35.00 and shall be included with fees of counsel for the purposes of determining the maximum fee on any case. Travel time to and from court, and to and from meetings with an incarcerated defendant shall be compensable; otherwise, travel is not a compensable event unless expressly authorized by the court in advance for exceptional circumstances.

(b) Maximum fee for misdemeanors: \$1,400.

(c) Maximum fee for felonies: \$4,100.

(d) Maximum fee (per co-counsel) for homicides under RSA 630:1-2:
\$20,000

(e) Maximum fee for Supreme Court appeal: \$2000.

Only upon an express, written finding of good cause and exceptional circumstances by the court will the maximum fees be exceeded or will additional fees be authorized. All petitions to exceed the maximum fee guidelines must be approved prior to the guidelines being exceeded; provided, however, that the court may waive the requirement for prior approval when justice so requires.

When counsel represents more than one client on any particular day, the hours spent shall be allocated accordingly. Representation of more than one client on the same day and in the same court shall be noted on the bills submitted. All bills shall be reviewed by the judge who presided over the case, if practicable.

When assigned counsel is appointed in district or municipal courts, that counsel shall continue as counsel of record for all purposes (such as motions to reduce bail, waiver of indictments, etc.) until and unless new counsel is appointed by superior court. The appointment of counsel shall occur in accordance with RSA 604-A:2, II. The public defender shall be appointed if that office is available. In the event that the public defender program is not available, the appointment of a contract attorney shall occur, if such an attorney is available. Lastly, in the event that neither the public defender nor a contract attorney is available, the appointment of a qualified attorney under RSA 604-A:2, I, shall occur.

The adequacy of the rates prescribed by this rule may, upon request of the supreme court, be reviewed periodically by the advisory committee on rules.

(3) *Expenses - Reimbursable.* Investigative, expert, or other necessary services may be compensated only upon a finding of necessity and reasonableness by a justice of the appropriate court in accordance with RSA 604-A:6, made prior to said expense being incurred.

(a) Except for those services for which rates are established by the supreme court, the presiding justice may consider, but shall not be bound by, the prevailing rates or any rates established by a licensing agency or professional association in approving fees for services specified above.

(b) Rates for stenographers and deposition services shall be established by the supreme court. The cost of copies of depositions and transcripts shall be fifty cents (.50) per page.

(c) Rates for the services of interpreters for all parties and the court shall be established by the supreme court.

(d) No cost for investigative, expert, or other necessary services as initially approved may be exceeded prior to a subsequent finding of necessity by a justice of the appropriate court.

(e) All bills for investigative, expert, or other necessary services shall be reviewed by the judge who presided over the case, if practicable.

(f) Attorneys shall be reimbursed for the mileage expenses incurred in representing their client at the standard mileage reimbursement rate currently allowed by the Internal Revenue Service. Requests for reimbursement of mileage expenses shall specify the actual number of miles traveled.

(g) The expense of telephone service shall not be reimbursed.

(h) In cases appealed to the supreme court, attorneys shall be reimbursed for the actual reasonable costs (not including labor) of reproducing and binding the notice of appeal or other appeal document, any appendix and briefs, whether done in-house or by an outside printer.

(i) No reimbursement will be paid for overhead expenses including photocopies (other than as provided in subdivision (3)(h) of this rule), postage, fax and secretarial services.

(4) *Deadline for Filing Bills with Court.* All bills related to fees and expenses must be submitted no later than sixty days after the close of the case. The court may allow late filing for good cause shown, when justice so requires.

APPENDIX B

Amend Supreme Court Rule 48 by deleting said section and replacing it with the following:

RULE 48. COUNSEL FEES AND EXPENSES -- OTHER INDIGENT CASES

The provisions of this rule shall apply only to preparation for and proceedings in all courts in which counsel is appointed to represent indigent persons, other than criminal defendants, and indigent witnesses in appropriate circumstances. This rule refers to, but is not limited to, juvenile cases in the district court, guardianships under RSA chapter 464-A, termination of parental rights (TPR) under RSA chapter 170-C, and involuntary admissions under RSA chapter 135-C in the probate court and district court.

(1) *Itemization of Bills.* All bills related to fees and expenses must be itemized as to the time spent and expenses incurred on each case, and there shall be no separate charge for overhead. A copy of the Notice of Appointment of Counsel order on appointment or other supporting document must be attached to the bill with each submission.

(2) *Fees.* Maximum compensation is limited as follows:

(a) Time properly chargeable to case: \$65.00 per hour. The paralegal hourly rate shall not exceed \$35.00 and shall be included with fees of counsel for the purposes of determining the maximum fee on any case. Travel time to and from court shall be compensable; otherwise, travel is not a compensable event unless expressly authorized by the court in advance for exceptional circumstances.

(b) Maximum fee for all juvenile cases pursuant to RSA chapters 169-B, C, and D: \$1700.

(c) De novo appeal of juvenile cases pursuant to RSA chapter 169-C: \$1,400.

(d) Maximum fee for guardianships under RSA chapter 464-A: \$900.

(e) Maximum fee for annual review hearings for guardianships: \$300.

(f) Maximum fee for TPR cases pursuant to RSA chapter 170-C: \$1700.

(g) Maximum fee for involuntary admissions under RSA chapter 135-C: \$600.

(h) Appeals to the supreme court in all juvenile cases and any matters within the subject matter jurisdiction of the probate court: \$2000.

(i) Maximum fee for court review hearings of juvenile cases pursuant to RSA 169-B and D: \$300.

Only upon express, written finding for good cause and exceptional circumstances by the court will the maximum fees be exceeded or will additional fees be authorized. All petitions to exceed the maximum fee guidelines must be approved prior to the guidelines being exceeded; provided, however, that the court may waive the requirement for prior approval when justice so requires.

When counsel represents more than one client on any particular day, the hours spent shall be allocated accordingly. Representation of more than one client on the same day and in the same court shall be noted on the bills submitted. All bills shall be reviewed by the judge who presided over the case, if practicable.

The adequacy of the rates prescribed by this rule may, upon request of the supreme court, be reviewed periodically by the advisory committee on rules.

(3) *Expenses - Reimbursable.* Investigative, expert, or other necessary services may be compensated only upon a finding of necessity and reasonableness by a justice of the appropriate court, made prior to said expense being incurred.

(a) Except for those services for which rates are established by the supreme court, the presiding justice may consider, but shall not be bound by, the prevailing rates or any rates established by a licensing agency or professional association in approving fees for services specified above.

(b) Rates for stenographers and deposition services shall be established by the supreme court. The cost of copies of depositions and transcripts shall be fifty cents (.50) per page.

(c) Rates for the services of interpreters for all parties and the court shall be established by the supreme court.

(d) No cost for investigative, expert, or other necessary services as initially approved may be exceeded prior to a subsequent finding of necessity by a justice of the appropriate court.

(e) All bills for investigative, expert, or other necessary services shall be reviewed by the judge who presided over the case, if practicable.

(f) Attorneys shall be reimbursed for the mileage expenses incurred in representing their client at the standard mileage reimbursement rate currently

allowed by the Internal Revenue Service. Requests for reimbursement of mileage expenses shall specify the actual number of miles traveled.

(g) The expense of telephone service shall not be reimbursed.

(h) In cases appealed to the supreme court, attorneys shall be reimbursed for the actual reasonable costs (not including labor) of reproducing and binding the notice of appeal or other appeal document, any appendix and briefs, whether done in-house or by an outside printer.

(i) No reimbursement will be paid for overhead expenses including photocopies (other than as provided in subdivision (3)(h) of this rule), postage, fax and secretarial services.

(4) *Deadline for Filing Bills with Court.* All bills related to fees and expenses must be submitted no later than sixty days after the close of the case. The court may allow late filing for good cause shown, when justice so requires.

APPENDIX C

Amend Supreme Court Rule 48-A by deleting said section and replacing it with the following:

RULE 48-A. GUARDIANS AD LITEM FEES -- INDIGENT CASES

(1) *Itemization of Bills.* All bills related to fees and expenses must be itemized as to the time spent and expenses incurred on each case, and there shall be no separate charge for overhead. A copy of the Notice of Appointment of Counsel order on appointment or other supporting document must be attached to the bill with each submission.

(2) *Fees.* The provisions of this rule shall only apply to proceedings within the original jurisdiction of the district and probate courts, in which guardians ad litem are appointed, and the party responsible for payment is indigent.

Maximum guardian ad litem compensation as authorized by the administrative justice shall be limited as follows:

(a) Time properly chargeable to case: \$65.00 per hour. Travel time to and from court shall be compensable; otherwise, travel is not a compensable event unless expressly authorized by the court in advance for exceptional circumstances.

(b) Maximum fee for abuse and neglect cases through conclusion of dispositional hearing pursuant to RSA 169-C:19: \$1,400.

(c) Maximum fee for CHINS cases (169-D) or delinquency cases (169-B) through conclusion: \$900.

(d) Maximum fee for court review hearings in guardianship of minor case or abuse and neglect case: \$300.

(e) Maximum fee for TPR case (170-C): \$1,400.

(f) Maximum fee for appeals to the superior court: \$900.

(g) Maximum fee for guardianship of minor cases pursuant to RSA 463: \$1,400.

Only upon express, written finding for good cause and exceptional circumstances by the court will the maximum fees be exceeded or will additional fees be authorized. All petitions to exceed the maximum fee guidelines must be approved prior to the guidelines being exceeded; provided,

however, that the court may waive the requirement for prior approval when justice so requires.

When a guardian ad litem represents more than one client on any particular day, the hours spent shall be allocated accordingly. Representation of more than one client on the same day and in the same court shall be noted on the bills submitted. All bills shall be reviewed by the judge who presided over the case, if practicable.

The adequacy of the rates prescribed by this rule may, upon request of the supreme court, be reviewed periodically by the advisory committee on rules.

(3) *Expenses - Reimbursable.* Investigative, expert, or other necessary services may be compensated only upon a finding of necessity and reasonableness by a justice of the appropriate court, made prior to said expense being incurred.

(a) Except for those services for which rates are established by the supreme court, the presiding justice may consider, but shall not be bound by, the prevailing rates or any rates established by a licensing agency or professional association in approving fees for services specified above.

(b) Rates for the services of interpreters for all parties and the court shall be established by the supreme court.

(c) No cost for investigative, expert, or other necessary services as initially approved may be exceeded prior to a subsequent finding of necessity by a justice of the appropriate court.

(d) All bills for investigative, expert, or other necessary services shall be reviewed by the judge who presided over the case, if practicable.

(e) Guardians ad litem shall be reimbursed for the mileage expenses incurred in representing their client at the standard mileage reimbursement rate currently allowed by the Internal Revenue Service. Requests for reimbursement of mileage expenses shall specify the actual number of miles traveled.

(f) The expense of telephone service shall not be reimbursed.

(g) No reimbursement will be paid for overhead expenses including photocopies (other than as provided in subdivision (3)(h) of this rule), postage, fax and secretarial services.

(4) *Deadline for Filing Bills with Court.* All bills related to fees and expenses must be submitted no later than sixty days after the close of the case. The court may allow late filing for good cause shown, when justice so requires.

APPENDIX D

Amend Superior Court Administrative Rules 12-1, 12-2, 12-3, 12-5, 12-6 and 12-7 on a temporary basis by deleting said rules and replacing them with the following:

12-1. The Marital Master Program is in effect in all Superior Court and Family Division court locations. The number of Marital Masters to be assigned to each court location shall be determined by the Administrative Judge of the court in question, after consultation with the Clerk.

12-2. The Marital Master Program shall be administered in the Superior Court by the Chief Justice of the Superior Court and in the Family Division by the Administrative Judge of the Family Division.

12-3. All applicants for appointment as a Marital Master must meet the qualifications set forth in RSA 491:20-b, I, and have five or more years experience in the general practice of law or its equivalent.

....

12-5.

(a) Applications to serve as a Marital Master shall be on forms supplied by the Administrative Office of the Courts. A committee of judges and masters, to be known as the Masters Committee, shall evaluate each applicant in the manner it deems appropriate and shall make a recommendation to the Chief Justice of the Superior Court, who shall determine the candidate(s) to be submitted to the Governor and Council for appointment. In evaluating the qualifications of applicants, the Masters Committee shall seek input from members of the New Hampshire Bar who have experience in the practice of family law.

(b) The Chief Justice of the Superior Court shall recommend the selected person(s) to the Governor and Council for initial appointment pursuant to the procedure specified in RSA 491:20-a.

(c) The Chief Justice of the Superior Court, in consultation with the Administrative Judge of the Family Division with respect to Marital Masters who serve in the Family Division, shall make recommendations for reappointment of Marital Masters to the full Superior Court.

12-6.

(a) All Marital Masters shall be appointed for an initial three-year period as provided by RSA 491:20-a, III.

(b) A Marital Master desiring to be reappointed at the expiration of his or her initial term must file a request with the Chief Justice of the Superior Court no later than 90 days prior to the expiration of his or her term. Reappointment shall be upon vote of the full Superior Court and shall be for a period of five years. There shall be no limitation on the number of times a Marital Master may be reappointed.

12-7. The Chief Justice of the Superior Court or the Administrative Judge of the Family Division, as the case may be, may at any time consider and act on any grievance or complaint concerning a Marital Master and take whatever action is appropriate, including, during the Marital Master's initial term, a recommendation to the Governor and Council that the Marital Master's appointment be terminated, and during any subsequent term, a recommendation to the full Superior Court that the Marital Master's appointment be terminated. All Marital Masters shall be governed by all of the canons of the Code of Judicial Conduct. Subsequent to their initial term, Marital Masters serve at the pleasure of the Superior Court.

APPENDIX E

Amend Supreme Court Rule 53 et. seq. by deleting said rules and replacing them with the following:

Rule 53.1 A. Purpose

Continuing legal education improves the administration of justice and benefits the public interest. Regular participation in continuing legal education programs strengthens the professional skills of practicing lawyers, affords them periodic opportunities for professional self-evaluation and enhances the quality of legal services rendered to the public. This Rule requires active members of the New Hampshire Bar to participate in additional legal study throughout their careers.

B. Number of Hours Required

1. In General

Every person covered by this rule shall complete twelve (12) hours of continuing legal education in each reporting year.

2. Return to Active Status

Lawyers who are suspended or have selected inactive membership status with the New Hampshire Bar for more than two (2) consecutive reporting years are required to complete six (6) additional CLE credits upon returning to active status. Lawyers may complete the additional credits during the reporting year in which they return to active status or in the reporting year immediately preceding. Lawyers shall report completion of these credits by such method as the NHMCLE Board shall prescribe.

C. Reporting Year

The reporting year shall be the period from July 1 to June 30.

D. Carry Over of Excess Hours

If a lawyer has completed more than twelve (12) hours of continuing legal education in a reporting year commencing after the effective date of this rule, the excess hours may be used to fulfill the requirement of Rule 53.1(B) for the reporting year next following, but may not be used to fulfill the requirement in any other reporting year.

Rule 53.2 Lawyers Subject To Requirement

A. Application of Rule

Except as provided by Rule 53.2(B), all lawyers admitted to practice law in the State of New Hampshire must fulfill the requirements of Rule 53.1(B) (1) and as applicable, 53.1 (B) (2).

REV. Rule, page 2

B. Exemptions From Rule

Rule 53.1(B) and, except as provided below, Rule 53.6 shall not apply to:

1. Lawyers admitted to practice during the reporting year, except when nine months or more remain in the reporting year. Lawyers admitted with nine (9) months or more remaining in the reporting year are subject to the requirements of Rule 53.1(B).

2. Lawyers on active duty for the US Armed Forces stationed outside the state of New Hampshire for more than three (3) months of the reporting year. These lawyers must file a certificate of compliance pursuant to Rule 53.6 for each reporting year for which the lawyer is so exempted.

3. Lawyers whose status is inactive for more than three (3) months in a reporting year.

4. State and Federal full-time judges, judges retired from a full-time judgeship, full-time magistrates, full-time marital masters, the state reporter appointed pursuant to RSA 505:1, and full-time clerks and deputy clerks of court, provided however they are not engaged in the practice of law.

5. Lawyers who are elected State or Federal officials, provided however they are not engaged in the practice of law; and provided that such lawyers must nonetheless file a certificate of compliance pursuant to Rule 53.6 for each reporting year for which the lawyer is so exempted.

6. Lawyers who are exempted from Rule 53.2(A), in whole or in part, by the NHCLE Board, upon petition, for compelling reasons. Such reasons may include, but are not limited to, physical or other disability which prevents compliance with this rule during the period of such disability.

Rule 53.3 Activities Qualifying For NHCLE Credit

A. Methods of Complying With Rule

The NHCLE requirement may be met by completing approved courses or any other continuing legal education activity approved for credit by the NHCLE Board, including the following:

1. Attendance at programs presented live or by means of audio or videotape, the internet, electronic mail, motion picture, simultaneous broadcast or comparable systems or devices.
2. Teaching, in-office continuing legal education activities, self-study and publications.
3. Attendance by part-time judges at programs approved by the Supreme Court pursuant to Supreme Court Rule 45.

B. *Credit for Teaching*

NHMCLE credit shall be granted for teaching participation in approved courses (including in-office courses, as provided in paragraph C of this rule) at the rate of three (3) hours of NHMCLE credit for each hour of actual classroom instruction time.

REV. Rule, page 3

Rule 53.3

C. *Requirements for In-Office Courses*

NHMCLE credit shall be granted for attendance at approved courses offered by one or more law firms, corporate legal departments or government agencies primarily for the education of their members. The standards for approval of such in-office courses shall be as prescribed in Rule 53.5, except that the courses need not be open to all lawyers or to the public. In addition, a minimum of three (3) lawyers, including the instructor, must attend for the course to qualify for NHMCLE credit. For course attendance to qualify for NHMCLE credit, the sponsor or sponsors of the course, or any attendee desiring credit, must apply for course approval in advance or within thirty (30) days after the conclusion of the course, in the manner prescribed in Rule 53.5.

D. *Requirements for Audio/Video Courses*

NHMCLE credit shall be granted for exposure to audio or video tapes of approved courses provided that (1) exposure to the course occurs in a setting conducive to intellectual concentration and effective study, and (2) written course materials are available (at the time of exposure) for permanent retention by the student upon completion of the course, and (3) the course was not produced more than three (3) years prior to the date of exposure.

E. *Requirements for Self-Study Courses*

NHMCLE credit shall be granted for self-study activities which:

1. Are sponsored by a sponsor accredited pursuant to Rule 53.4 or are part of a structured course of study approved pursuant to Rule 53.5.
2. Include written course materials which are available for permanent retention by the student upon completion of the course.
3. Are pursued in a setting conducive to intellectual concentration and effective study.

F. *Application for Approval of Self-Study and Taped Courses*

For any self-study or taped program to qualify for NHMCLE credit, the sponsor of the course or the student in question must apply for course approval in advance or within thirty (30) days after the conclusion of the course, in the manner prescribed in Rule 53.5.

G. *Credit for Publications*

NHMCLE credit shall be granted to principal authors of books, law review and journal articles and similar publications treating legal or law-related topics in a scholarly or practical manner and directed primarily to an audience of lawyers, judges and legal assistants. Such credit shall be granted in the reporting year in which publication first occurs, at the rate of one (1) hour of NHMCLE credit for each one thousand five hundred (1,500) words published. Lawyers desiring NHMCLE credit for such publications shall submit a copy of the same to the NHMCLE Board upon request, and shall retain a copy for a minimum of two (2) years after the close of the reporting year in question.

REV. Rule, page 4

Rule 53.4 Sponsor Approval

A. *Designation as Approved or Accredited Sponsor*

Any person, firm, organization or other entity may apply to the NHMCLE Board for designation as an approved or accredited sponsor of NHMCLE courses or activities. Courses offered by an approved or accredited sponsor shall be automatically approved for NHMCLE credit provided the sponsor states that the course meets the standards set out in Rule 53.5 for individual course approval.

B. *Promulgation of Sponsor Standards*

The NHMCLE Board may promulgate appropriate regulations establishing standards for approval of sponsors of NHMCLE courses or activities. The NHMCLE Board shall have the authority to audit and review programs and may revoke the approval of a sponsor which fails to comply with this rule or with Board regulations. The NHMCLE Board shall have the authority to impose reasonable fees upon course sponsors for the support of its operations.

C. *Minimum Requirements for Sponsor Approval or Accreditation*

Without limiting the foregoing, in order to obtain approval or accreditation, sponsors of NHMCLE courses or activities must comply with the following minimum requirements:

1 The sponsor must provide courses consistent with the standards for individual course approvals as set forth in Rule 53.5

2. The sponsor must provide lawyers who seek credit in New Hampshire with approved attendance certificates for their records and also report their attendance to the NHMCLE Board in such form as the Board shall prescribe within 30 days of the program.

3. The sponsor must maintain and provide in such form as the NHMCLE Board determines, information concerning each course, including course brochures, description of the method or manner of presentation of the course materials, and a set of course materials within 30 days of the program.

4. The sponsor must develop and implement methods to evaluate its course offerings to determine their effectiveness and, upon request from the NHMCLE Board, provide course evaluation by attendees.

5. The sponsor must make the courses reasonably available to all New Hampshire lawyers, with the exception of in-office courses described in Rule 53.3(C) and courses offered by professional organizations primarily or exclusively for the education of their own members, or primarily or exclusively for lawyers employed by state, federal or local governments; and provided that the sponsor may impose reasonable prerequisites and limitations on course size, as provided in Rule 53.5.

6. The sponsor must agree to pay the administrative or sponsor fees established by the NHMCLE Board.

7. The sponsor must submit to all reasonable requests and abide by all regulations hereafter promulgated by the NHMCLE Board.

REV. Rule, page 5

Rule 53.5 Standards For Individual Course Or Activity Approval

A. To be approved for NHMCLE credit, continuing legal education courses or activities, whether offered by approved or non-approved sponsors, shall meet the following standards. The NHMCLE Board may grant credit for such courses or activities upon written application of a non-approved sponsor or a student.

1. The course shall be of intellectual or practical content and, where appropriate, address professionalism issues, including professional conduct, prevention of malpractice, law practice management or attorney-client relations.

2. The course shall contribute directly to lawyers' professional competence or skills or to their education with respect to professional or ethical obligations.

3. Course leaders or lecturers shall have the necessary practical or academic skills to conduct the course effectively.

4. Each attendee shall be provided with written course materials of a quality and quantity which indicates that adequate time has been devoted to their

preparation, which will be of value to the registrants in the course of their practice and which may be retained permanently by them upon completion of the course.

5. The course shall be presented in a setting conducive to a good educational experience.

6. The course shall be open to any lawyers thought to be interested in the subject matter, with the exception of in-office courses described in Rule 53.3(C) and courses offered by professional organizations primarily or exclusively for the education of their members, or primarily or exclusively for lawyers employed by federal, state local government; provided that the course sponsor may impose reasonable limitations upon course enrollment and may require reasonable prerequisites in terms of academic and/or practical experience for course attendance.

7. The sponsor shall as appropriate encourage the active participation by lawyers as planners, coordinators, authors, panelists and lecturers.

8. The sponsor or the student shall submit such information concerning the course as the NHMCLE Board may reasonably request within thirty (30) days following such request, such as attendance lists of those lawyers seeking credit in New Hampshire, course brochures, description of the method or manner of presentation of the course materials and a set of course materials and course evaluations.

9. With respect to approval or accreditation of self-study programs eligible for NHMCLE credit pursuant to Rule 53.3(E), in addition to the requirements therein, and the requirements prescribed above, the sponsor of such a program must agree to maintain and, upon request, supply the NHMCLE Board with a record of the lawyers obtaining such a program from it. In awarding credit for such activities, the NHMCLE Board may consider the following factors: (a) the nature of the structured, individualized activities comprising the course of study, (b) the time normally required to complete those activities, and (c) the extent to which the lawyers educational effort in this course is evaluated by the sponsor.

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Rule 53.6 Reporting And Certification For NHMCLE Credit

On or before August 1 of each year, each lawyer admitted to practice in the State and not exempt under Rule 53.2(B)(1), (3), (4) or (6) shall file a certificate of compliance with the NHMCLE Board, in such form as the board shall prescribe, concerning either his or her completion of accredited legal education during the previous reporting year, or the basis for his or her claim of exemption under Rule 53.2(B)(2) or (5). Each such lawyer shall maintain such records or certificates of attendance as may be required to substantiate his or her compliance or exemption for a period of two (2) years following the close of a reporting year. The NHMCLE Board shall assess each lawyer admitted to practice who is not exempt under Rule 53.2 (B) an annual fee to support the NHMCLE Board's operations.

Lawyers exempt under Rule 53.2(B) who wish to claim NHMCLE credit for activities completed during a reporting year for which such exemption applies (e.g., for purposes of carrying over such credits pursuant to Rule 53.1(D)), may do so by either (1) filing a certificate of compliance for the reporting year in which the activity was completed, or (2) reporting such activities on the certificate of compliance filed for the following reporting year if no exemption is then available.

Rule 53.7 Sanctions And Appeal

A. Delinquency

1. Notice of Delinquency

Following the annual reporting date, the NHMCLE Board shall send a notice of delinquency to each lawyer not in compliance with this rule. To the extent administratively possible, the notice shall be sent within thirty (30) days of the annual reporting date. Within sixty (60) days of the date appearing on the notice of delinquency, the lawyer shall take steps necessary to comply with this rule for the prior reporting period.

2. Final Demand for Compliance

After this sixty (60) day period, if the lawyer fails to report CLE credits sufficient to permit retroactive compliance with this rule, or fails to certify that the lawyer is exempt from the requirements, the NHMCLE Board shall notify the lawyer by mail of his or her continued noncompliance and make final demand for compliance.

3. Sanctions

If the lawyer does not meet compliance requirements within thirty (30) days of a final demand for compliance, beginning on that date, the lawyer shall be assessed a delinquency fee of one hundred dollars (\$100) for each month or fraction thereof in which noncompliance continues. However, the delinquency fee for each reporting period shall not exceed three hundred dollars (\$300). If the lawyer has not complied with the rule within three (3) months of the final demand, and/or has not paid any outstanding delinquency fee, the NHMCLE Board shall seek an order of the New Hampshire Supreme Court suspending the lawyer from the practice of law.

B. Reinstatement

Upon correction of the delinquency and payment to the NHMCLE Board of the delinquency fee, the delinquent lawyer shall be recorded as in compliance by the NHMCLE Board. However, if the lawyer shall have been suspended due to such delinquency, the suspended lawyer must also request the NHMCLE Board to move for reinstatement to the practice of law. Within thirty (30) days of a request for reinstatement by a lawyer, the NHMCLE Board shall submit a motion to the Supreme Court for reinstatement.

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C. False Statements

Should the NHMCLE Board have reasonable grounds to believe that a lawyer has knowingly misstated his or her NHMCLE activity on the Annual Certificate of

Compliance With Continuing Legal Education Requirements, the board shall notify the Attorney Discipline Office of the New Hampshire Supreme Court forthwith.

Rule 53.8 NHCLE Board

A. Membership, Appointment and Terms of Board -- The Supreme Court of the State of New Hampshire shall appoint a Minimum Continuing Legal Education Board consisting of ten (10) members as follows:

1. The President-Elect of the New Hampshire Bar Association – *ex officio*
2. An active or retired New Hampshire Supreme Court Justice
3. An active or retired New Hampshire Superior Court Judge, and active or retired District Court Judge, or an active or retired Probate Court Judge
4. The Chair of the New Hampshire Bar Association Continuing Legal Education Committee – *ex officio*
5. Nominee of the New Hampshire Bar Association President
6. Four (4) lawyers admitted to the New Hampshire Bar Association, at least one of whom shall be a professor of law or other professional educator at the post-secondary level
7. The Executive Director of the New Hampshire Bar Association or designee – *ex officio*

Board members, other than *ex officio* members, shall serve a term of three (3) years or in the case of active members of the judiciary, until they no longer are on the court from their appointment is derived, if sooner. Nothing in this section shall prohibit an active member of the judiciary whose term expires by reason of retirement from being appointed thereafter as a retired member of the judiciary.

B. Chair of Board -- The Chair of the NHCLE Board shall be designated by the Supreme Court from among the ten (10) members of the Board.

C. Other Officers -- The NHCLE Board shall elect a Vice Chair and Secretary from among its members.

D. Quorum -- A quorum of the board shall consist of five (5) members, and the act of a majority of such quorum shall constitute the lawful act of the board.

E. Powers and Duties -- The board shall have the following powers and duties:

1. Administer this rule and establish appropriate committees for that purpose;
2. Adopt regulations consistent with this rule and for its intended operations; and
3. Report at least annually to the New Hampshire Bar Association and the Supreme Court.

F. Confidentiality -- The records of the board are not confidential, other than those pertinent to exemptions pursuant to Rule 53.2(B).