

ADVISORY COMMITTEE ON RULES
December 7, 2005

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

The meeting was called to order at 12:25 p.m.

The following Committee members were present:

Hon. Linda S. Dalianis
William F.J. Ardinger, Esquire
Mr. Robert Chase
Hon. R. Laurence Cullen
Mrs. Alice Guay
Hon. Richard Hampe
Mr. Robert G. Lown
Jennifer L. Parent, Esquire
Hon. Philip Mangones
Emily G. Rice, Esquire
Hon. Robert H. Rowe
Raymond W. Taylor, Esquire

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

Judge Dalianis welcomed the Committee's newest member, Jennifer Parent, and thanked her for her willingness to serve. Introductions of all Committee members followed.

On motion of Judge Cullen, seconded by Representative Rowe, the Committee approved the minutes of the September 7, 2005 meeting.

In preparation for the public hearing, Judge Dalianis informed members that written comments had been received on two proposed rules: correspondence from Attorney Edmund Boutin pertaining to a proposed amendment to Supreme Court Rule 62 and correspondence from Joe Magruder, Associated Press editor, pertaining to a proposed amendment to District Court Rule 3.3. Judge Dalianis noted that

there were also articles in local papers today on the proposed amendments to District Court Rule 3.3.

With respect to action taken by the Supreme Court since the Committee's last meeting, David Peck reported that the Supreme Court is seeking written comment on the rules the Committee forwarded to it in its annual report. The Court will make a final decision on those rules following the December 15, 2005 deadline for written comment.

Relative to the Rules of Civil Procedure, in Attorney Honigberg's absence Judge Dalianis stated that Attorney Honigberg's biggest obstacle continues to be locating a Wang computer so that the original version of the Rules of Civil Procedure can be retrieved.

Relative to the comments to the Professional Conduct rules, Judge Dalianis reported that the Committee is still waiting for recommendations from the N.H. Bar Ethics Subcommittee.

Relative to Superior Court Rules 62 and 72 pertaining to findings of fact and rulings of law in non-jury cases, following discussion, and on motion of Attorney Taylor, seconded by Judge Cullen, the Committee voted to further amend Superior Court Rule 62, as contained in Appendix A of these minutes.

Relative to a proposed proportional discovery rule, Judge Mangones reported that the subcommittee is meeting tomorrow.

Relative to Supreme Court Rules 54(2) and 54(5)(c) pertaining to administrative judges and orders, following discussion, and on motion of Judge Cullen, seconded by Judge Mangones, the Committee voted to recommend to the Supreme Court that

Supreme Court Rules 54(2) and 54(5)(c) be adopted, as contained in Appendix B of these minutes, and further that they be considered as technical amendments.

The Committee next considered new items and the following action was taken:

Relative to joinder and severance rules for criminal cases, following discussion, the Committee agreed to form a subcommittee to discuss this issue. The subcommittee will consist of Alice Guay, and individuals appointed by the attorney general, the chief appellate defender, Chief Justice Lynn, Judge Kelly, the president of the N.H. Criminal Defense lawyers, and the County Attorneys' Association. Judge Mangones will act as the subcommittee's chairperson and liaison.

Relative to Supreme Court Rule 36 allowing law students to appear in court under supervision, following a brief discussion of Representative Rowe's concerns and on motion of Judge Dalianis, seconded by Attorney Ardinger, the Committee unanimously voted to recommend to the Supreme Court that Supreme Court Rule 36 be amended, as contained in Appendix C of these minutes, and further that it be considered as a technical amendment.

Relative to Superior Court Rule 170-B pertaining to judge-conducted mediation of certain cases, following a lengthy discussion of concerns raised by Committee members on the rule proposed by Chief Justice Lynn, the Committee agreed to further amend Superior Court Rule 170-B, subject to Judge Lynn's agreement to said amendments; to recommend to the Supreme Court that said rule be adopted, on a temporary basis; and further to send said rule to the Committee's next public hearing.

The Committee adjourned so that members could attend the public hearing scheduled for 1:00 p.m. in the courtroom. No one was present to give testimony on any of the rules changes. The Committee took no action during the public hearing.

Following the public hearing, the Committee reconvened and continued its discussion on new items pending before it, and the following action was taken:

Relative to Family Division and Superior Court rules governing divorce, it was noted during discussion that these rules, suggested by Judge Kelly, were adopted, on a temporary basis, by the Supreme Court. On motion of Judge Dalianis, seconded by Attorney Taylor, the Committee voted to send said proposed rules changes pertaining to divorce to the Committee's next public hearing.

Relative to Probate Court Rules 62 and 169 pertaining to structuring conferences and entry fees, because additional changes to Rule 169 will be suggested by Judge Maher in the near future, the Committee agreed to defer action on the changes to Rule 169 suggested in Attorney Janelle Laylagian's November 21, 2005 memorandum until the Committee's next meeting. The Committee voted to take similar action on Rule 62 as it takes upon Superior Court Rule 62.

The Committee next considered what action it wished to take on the proposed rules changes submitted to the public hearing and the following action was taken:

Following discussion, and on motion of Judge Dalianis, seconded by Judge Hampe, the Committee voted to recommend to the Supreme Court that the following rules be adopted as submitted to the public hearing: Superior Court Rule 97-A; Superior Court Administrative Rule 1-6; and District Court Rule 4.29.

Relative to District Court Rule 3.3 relating to records research fees, following a brief discussion on the written comments received, and on motion of Judge Hampe,

seconded by Attorney Taylor, the Committee voted to recommend to the Supreme Court that District Court Rule 3.3 be adopted as submitted to the public hearing. Attorney Rice was not present for the discussion and did not participate in the vote.

The Committee invited Chief Justice Lynn, who was in the building, into the meeting, and revisited its earlier discussion on Superior Court Rule 170-B. Judge Lynn informed members that he had no problem with the Committee's suggested changes to the rule.

The Committee turned its discussion back to rules submitted to the public hearing.

Relative to Superior Court Rule 62, the Committee reviewed Attorney Edmund Boutin's written comments and, following a brief discussion, and on motion of Judge Dalianis, seconded by Attorney Rice, the Committee voted to further amend Superior Court Rule 62, as contained in Appendix D of these minutes, and to recommend to the Supreme Court that said rule be adopted as amended by the Committee.

Following a brief discussion, and on motion of Judge Hampe, seconded by Attorney Rice, the Committee voted to recommend to the Supreme Court that a similar amendment be made to Probate Court Rule 62.

Judge Dalianis informed Committee members that the Supreme Court met recently with various members of the legal services' community. She reported that as a result of that meeting, representatives of the legal services' community proposed an amendment to Rules of Professional Conduct Rule 6.1, which was distributed to members today. Judge Dalianis requested that members review the material so that the Committee can consider the matter at its next meeting.

The Committee's 2006 meetings were scheduled as follows: March 22, June 21, September 20, and December 13. The Committee will schedule public hearings at its March meeting.

No further business to come before the Committee, the meeting adjourned at 1:42 p.m.

APPENDIX A

Amend Superior Court Rule 62 so that said paragraph as amended shall state as follows:

In non-jury cases, unless otherwise ordered for good cause shown, all requests for findings of fact and rulings of law shall be submitted in writing to the Presiding Justice at trial no later than the close of the evidence.

APPENDIX B

Amend Supreme Court Rule 54(2) and (5)(c) by deleting the words "pilot program" from both subsections and by adopting them, as amended, on a permanent basis, so that said subsections shall state as follows:

[Rule 54(2)]

(2) Administrative judges for the superior court, the district court, the probate court, and the family division shall be appointed by the chief justice of the supreme court, with the concurrence of a majority of the supreme court. The appointment shall be for a term to be stated in the order of appointment, but subject to the pleasure of the appointing authority.

[Rule 54(5)(c)]

(c) Issuing superior court, district court, probate court, or family division administrative orders as may be required from time to time to carry out the responsibilities of the office;

APPENDIX C

Amend Supreme Court Rule 36(1) and (2) by deleting said subsections and replacing them with the following:

(1) Notwithstanding the provisions of any superior court rule concerning persons who are not lawyers, of any superior court rule and district court rule concerning lawyers who are not members of the bar of this State, and of any other such court rules, an eligible law student or law graduate acting under a supervising attorney may appear in any court in this State as herein provided, in behalf of any indigent person, the State of New Hampshire, a State agency, or a State subdivision.

(2) The supervising attorney shall be a member of the bar of this State and, with respect to the law student or graduate's proposed appearances in any court, shall file with the clerk of this court the attorney's written consent to:

(a) supervise the student or graduate;

(b) assume personal professional responsibility for the student's or graduate's work and consider purchasing professional liability insurance coverage to include such law student or graduate;

(c) assist the student or graduate to the extent necessary;

(d) appear with the student or graduate in courts in this State when, in the supervising attorney's judgment, the nature of the case requires the supervising attorney's presence; and

(e) participate with the student or graduate in all settlement or plea negotiations and remain available at all times for consultation with opposing counsel without the participation of the student or graduate.

The supervising attorney shall waive the right to the confidentiality of proceedings resulting from complaints to the Committee on Professional Conduct, for the limited purpose of permitting disclosure of such proceedings by said committee to this court in connection with the court's review of a filing under this rule.

The presence of the supervising attorney in the superior court shall be required in all contested civil cases and in all criminal cases, and in district and municipal courts at probable cause hearings. Practicing members in good standing of the bar of another State for at least two years may on application to this court be exempt from

the provisions of this rule relating to appearances in superior court and at probable cause hearings in district and municipal courts, provided that they prepare to take and do take the next bar examination in this State for which they are eligible or, having taken that examination, they are awaiting publication of the results of, or admission to the bar after passing, that examination. The presence of the supervising attorney shall be required in all cases in this court provided, however, that a student or graduate may appear in this court only in cases heard under Rule 12-D and with prior approval of this court.

The attorney shall file his written consent immediately upon his consenting to supervise a law student or graduate. Following such initial written consent, in every instance in which an attorney consents to continue his supervision of the law students and graduates under this rule, the attorney shall annually refile his written consent with the clerk of the supreme court in the month of October. The attorney shall file a withdrawal of his written consent immediately upon the termination of his supervision of any such student or graduate.

APPENDIX D

Amend Superior Court Rule 62 so that said paragraph as amended shall state as follows:

Ten days prior to the Structuring Conference the parties shall file a comprehensive written stipulation, signed by all counsel, or by parties if unrepresented, addressing all of the foregoing matters on which agreement was reached. If the parties have been unable to reach agreement on one or more issues, each party shall submit a proposed order on those matters as to which agreement has not been reached.