

ADVISORY COMMITTEE ON RULES
December 10, 2008

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

The meeting was called to order at 12:23 p.m.

The following Committee members were present:

Hon. Linda S. Dalianis
Mr. Robert L. Chase
Hon. R. Laurence Cullen
Mrs. Edda Cantor
Mrs. Alice Guay
Hon. Richard A. Hampe
Martin P. Honigberg, Esquire
Hon. Diane Nicolosi
Jennifer L. Parent, Esquire
Raymond Taylor, Esquire

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

On motion of Attorney Honigberg, seconded by Judge Cullen, the Committee approved the minutes of the September 10, 2008 meeting, as amended.

In preparation for the public hearing, written comments from several individuals were distributed. David Peck called members' attention to an e-mail dated December 9, 2008 from Jeffrey S. Krah. He noted that in addition to his comments on Supreme Court Rule 55, he also made a suggestion about attorney malpractice insurance. The Committee added the attorney malpractice insurance suggestion to its March 2009 agenda for consideration.

Relative to action taken by the Supreme Court since the last meeting, David Peck reported that the Supreme Court adopted most of the proposed rules changes

contained in the Committee's annual report and issued an order making them effective January 1, 2009. However, the proposed rules change pertaining to limited certificate of admission to NH bar for pro bono participation by inactive or retired attorneys is still under consideration by the Court. Attorney Parent arrived during this discussion.

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

Relative to Supreme Court Rule 38 pertaining to the Code of Judicial Conduct, this matter was deferred until the Committee's March meeting.

Relative to Rules of Civil Procedure, Criminal Procedure and Probate Administration, the Committee briefly discussed the formatting of the superior court rules prepared by Attorney Taylor. He and David Peck will go through the draft, clearing up any inconsistencies that exist, and report to the Committee in March. When completed, the draft will be forwarded to the probate and district court subcommittees, who will work on their section of the rules simultaneously.

Relative to Superior Court Rule 98 pertaining to discovery in criminal cases, following a brief discussion, and on motion of Judge Cullen, seconded by Judge Dalianis, the Committee voted to make no changes to said rule.

Relative to Rules of Professional Conduct Rule 8.5(c) pertaining to application of rules to non-lawyer representatives, Judge Cullen reported that his subcommittee will make its recommendations at the Committee's March meeting.

Relative to notice of the issuance of subpoenas, following discussion on the proposed rule prepared by the subcommittee, and on motion duly made and

seconded, the Committee voted to send proposed Superior Court Rule 40, as contained in Appendix A of these minutes, to the Committee's next public hearing for consideration.

Relative to the Judicial Conduct Committee Procedures, this matter was deferred until the Committee's March meeting.

Relative to Superior Court Rule 170 pertaining to alternative dispute resolution, the subcommittee will report back to this Committee at its March meeting.

The Committee next discussed new items before it, and the following action was taken:

Relative to Supreme Court Rules—appeal period, the Committee reviewed Attorney Gordon Rehnborg's September 26, 2008 e-mail. Following discussion, and on motion duly made and seconded, the Committee voted not to recommend any changes to the Supreme Court rules pertaining to the appeal period. Judge Nicolosi arrived during this discussion.

Relative to amending court rules to encourage submission of data CDs with filings, following a brief review of Josh Wyatt's November 12, 2008 memo to the Committee, it referred his suggestion to Clerk Eileen Fox and David Peck for their review and recommendations.

Relative to the rule amendment process, no action was taken by the Committee.

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 from various individuals on proposed rules changes. In addition, written comments were filed by several individuals on various rules changes. The Committee took no action during the public hearing.

When the meeting reconvened, the Committee considered what action it wished to take on the proposed rules changes discussed during the public hearing.

With reference to comments received on Family Division Rule 1.2, following discussion, the Committee agreed to request Judge Kelly's comments as to whether the language of Family Division Rule 1.2 should be similar to that in the Preface to the Superior Court Rules.

Relative to Supreme Court Rule 55 pertaining to the public protection fund, following a brief discussion, the Committee asked the subcommittee to review the input received during the public hearing and report back to the Committee at its March meeting.

Following a brief discussion, and on motion of Judge Cullen, seconded by Judge Dalianis, the Committee also agreed that the following rules, upon which no comments were received, should be recommended for adoption in the Committee's annual report to the Supreme Court: Supreme Court Rules 8(1), 9(1), 10(1)(a), 11(2)(j); 15, 16(2), 26(10), 37(9)(d), 42(2), 42(5)(e), 49(I), 57, 59 and the Transcript Form contained in Supreme Court Rule 7; Superior Court Rules 71 and 80; District Court Rules 1.19 and 4.27; Probate Court Rules 78-A and 80.

No further business to come before the Committee, the meeting adjourned at 2:15 p.m.

APPENDIX A

Amend Superior Court Rule 40 as follows (additions are in **bold and brackets**):

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.]**