

NEW HAMPSHIRE SUPREME COURT
ADVISORY COMMITTEE ON RULES

Minutes of Meeting of December 8, 2010

Supreme Court Conference Room
Frank Rowe Kenison Supreme Court Building
One Charles Doe Drive
Concord, NH 03301

The meeting was called to order at 12:30 p.m. by Justice Carol Ann Conboy, Committee Chair. The following Committee members were present: Karen M. Anderson; Edda Cantor; Robert L. Chase; Hon. R. Laurence Cullen; Hon. Richard A. Hampe; Jeanne P. Herrick, Esq.; Martin P. Honigberg, Esq.; Hon. Diane Nicolosi; Emily G. Rice, Esq.; Jennifer L. Parent, Esq.; Raymond W. Taylor, Esq.; and Hon. Carol Ann Conboy.

Also present were David S. Peck, Esq., Secretary to the Committee; Carolyn Koegler, Esq.; and Irene Dalbec, staff.

The Committee addressed the agenda items as follows:

1. Approval of Minutes

Upon motion made by Judge Hampe and seconded by Judge Cullen, it was unanimously voted to approve the minutes of the Committee's September 29, 2010 meeting.

2. Status of Pending Items

(a) District Court Rules of Civil Procedure and Probate Court Rules of Civil Procedure and Probate Administration

Judge Cullen submitted to the Committee a revised draft of the proposed District Court Rules of Civil Procedure. Judge Cullen noted that a number of technical details still need to be resolved.

Following discussion, the consensus of the Committee was that the district and probate court rules should be put into final form by March, at which point the Committee would determine how to proceed.

(b) 2008-013, Judicial Conduct Committee Procedures

The Committee is waiting for a report from its subcommittee. This matter was deferred to the March meeting.

(c) 2007-001, Superior Court Rule 170 pertaining to Alternative Dispute Resolution

The Committee is waiting for a report from its subcommittee, which plans to conduct a survey on the ADR process and rules. This matter was deferred to the March meeting.

(d) 2009-012, Supreme Court Rule 24

Attorney Herrick stated that she had raised the issue of whether Supreme Court Rule 24 should be amended at the October meeting of the Committee on Cooperation with the Courts, and that she had not received any comments from members of that committee. The Advisory Committee on Rules is waiting for a report from the subcommittee. This matter was deferred to the March meeting.

(e) 2010-007, Proposed Technical Amendment to Supreme Court Rule 53.1

The Committee is awaiting a recommendation from the MCLE Board. David Peck agreed to send a follow up letter to the MCLE board.

(f) 2010-009 Drug Court Rules

Edda Cantor submitted a written report reflecting that the subcommittee met and that all attendees of the meeting unanimously agreed that there should not be any special rules promulgated to govern these courts. It was agreed that the Committee would not advise, at this time, that rules be adopted to govern these courts, but that the Committee would revisit this issue in one year.

(g) 2010-011, HB 1223 (notice in class actions under Consumer Protection Act)

It had been agreed at the September meeting that Attorney Ardinger would review HB 1223 and report to the Committee about whether the legislation requires court rule amendments. Because Attorney Ardinger was not present at the meeting, the matter was deferred to the March meeting.

(h) 2010-013, Motion for New Trial – District Court Rules.

The Committee considered the issue of whether there is a need for a rule in the district court that would govern motions for a new trial after a final decision has been reached. Judge Cullen reported that he had spoken with

Judge Kelly, and that in their view, no rule was needed. It was the consensus of the Committee that no further action be taken.

(i) 2010-014, Proposed Amendment to Rule 1.10 of the Rules of Professional Conduct.

Attorney Parent reported that the Bar Board of Governors has no position on the Ethics Committee's proposed amendment. The Committee agreed to send the amendment to the Committee's next public hearing, noting that it originated from the Ethics Committee.

(j) 2010-015, Model Rules for Client Trust Account Records.

Judge Hampe moved that the Committee take no further action on this. Attorneys Rice and Parent seconded the motion. Attorney Herrick opined that it might be worth considering the distinction made between "collected" and "available." Some discussion ensued regarding this issue.

The Committee agreed that the matter be deferred to the March meeting, and that Attorney Herrick would research the issue of whether an attorney is able to determine whether funds have been "collected" and report back to the Committee. David Peck agreed to ascertain whether the attorney discipline office is advocating for this rule change, or whether it was merely acting as drafter of a proposed rule.

(k) 2010-016, HB 1393 (Investment Trusts).

The Committee agreed to defer until the March meeting consideration of whether the proposed legislation regarding investment trusts will require any rules changes. Attorney Honigberg has recused himself from participation in any discussions regarding this matter.

(l) 2010-017, District Court Rules 6.1 to 6.7 (Local Ordinance Citations).

Judge Cullen moved that the Committee recommend that the Supreme Court adopt the proposed rules temporarily, and that there be a public hearing on whether to adopt them on a permanent basis. Attorney Rice seconded the motion. The Committee voted to recommend to the Supreme Court that the proposed Rules be adopted temporarily, and that a public hearing be held regarding the proposed rules. Justice Conboy abstained from voting.

3. New Items For Committee Consideration

a. 2010-018 Supreme Court Rule 42(10)—Bar Admission

The Committee considered a memorandum dated September 23 submitted by David Peck stating that the supreme court has asked the Committee to consider whether Supreme Court rules 42 should be amended to define the term “primarily,” as it is used in the provisions setting forth the required qualifications for any attorney who seeks to become a member of the New Hampshire Bar on motion. It was noted that, given the nature of the relationship New Hampshire has with Maine and Vermont, it would be important to consider whether any rule adopted in New Hampshire would apply in Maine and Vermont. The Committee asked Carolyn Kogler to research whether Maine and Vermont currently define what it means to be “primarily engaged in the practice of law,” in terms of a minimum number of hours per week/month/year.

b. Review of Canon 4B of Code of Judicial Conduct

The Committee considered a letter from Eileen Fox, Clerk of the Supreme Court, asking the Committee to review Canon 4B of the Code of Judicial Conduct, which governs the avocational activities of a judge. Canon 4B requires a judge who intends to enter into a teaching contract to obtain written approval from the Chief Justice of the Supreme Court and limits the income that can be derived from such activities to 15% of the judge’s salary.

After some discussion, on motion made and seconded, the Committee voted to notify the Court that it has reviewed Canon 4B of the Code of Judicial Conduct and concludes that the 15% provision should not be limited to specific avocational activities. Justice Conboy abstained from voting.

4. Next Meeting

The next meeting is scheduled for March 23, at 12:00 p.m.

5. Meeting Schedule for 2011

It was agreed that the 2011 meetings will occur on the following dates: March 23, June 22, September 14, and December 14.

The meeting adjourned.