NEW HAMPSHIRE SUPREME COURT
ADVISORY COMMITTEE ON RULES

Minutes of Public Hearing and Meeting of
December 9, 2016

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

The meeting was called to order at 12:35 p.m. by Justice Robert J. Lynn, Committee Chair. The following Committee members were present: Abigail Albee, Esq., Hon. Paul S. Berch, John A. Curran, Esq., Hon. N. William Delker, Hon. Daniel J. Feltes, Hon. Michael H. Garner, Joshua L. Gordon, Esq., Jeanne P. Herrick, Esq., Derek D. Lick, Esq., Maureen Raiche Manning, Esq., Ari Richter, Patrick W. Ryan, Esq., Frederick H. Stephens and Hon. Robert J. Lynn.

Also present was the Secretary to the Committee, Carolyn Koegler, Esq. and Charlene Desrochers and Claire MacKinaw, staff.

1. Public Hearing

Prior to opening the public hearing, Justice Lynn noted that the Committee had voted by email to put the vertical prosecution proposal out for public hearing and that, therefore, the Committee would need to vote to take testimony on the proposal.

Upon motion made and seconded, the Committee voted to take testimony on the proposal to amend Supreme Court Rules 37 and 37A to allow for vertical prosecution of attorney discipline matters in some cases.

The public hearing items are listed below in the order in which testimony was taken on them. The names of the speakers who testified are listed beneath the public hearing item title. Due to the length of the public hearing, no details are provided in these minutes regarding the testimony offered. A CD recording of the hearing is available upon request at the Supreme Court.

a. 2016-003. Supreme Court Rule 37. Attorney Discipline – Summary Suspension.

Attorney Sara Greene, Disciplinary Counsel at the Attorney Discipline Office testified in support of the proposal to add a summary suspension

procedure to Supreme Court Rule 37, and responded to questions from Committee members.

Attorney David Rothstein, Chair of the Professional Conduct Committee, testified in support of the proposal to add a summary suspension procedure to Supreme Court Rule 37.

b. 2016-003. Supreme Court Rule 37. Attorney Discipline – Vertical Prosecution.

Attorney David Rothstein, Chair of the Professional Conduct Committee, testified in support of the proposal to add amend to Supreme Court Rule 37 to allow vertical prosecution, and responded to questions from Committee members.

A comment on this proposal was submitted via an October 21, 2016 email from attorney Tracey Pearson. It was distributed to Committee members via email.

c. 2016-007, 2014-010, 2016-002 and additional amendments. Superior Court Civil Rules.

Carolyn Koegler distributed to committee members a comment submitted the morning of December 9, 2016 from New Hampshire Legal Assistance regarding proposed Superior Court Civil Rule 29(b).

No other comments were received regarding this item.

2. Discussion and Vote on Public Hearing Items

a. 2016-003. Supreme Court Rule 37. Attorney Discipline – Summary Suspension

Following some discussion, it was agreed that the proposed rule included in Appendix A of the notice of public hearing should be amended as follows: the words "by itself" will be inserted in subsection (b) so that (b) will read, " any other misconduct which **by itself** could result in a suspension or disbarment; and a paragraph (4) will be added to subdivision (d) to read as follows: "Notice of intent to seek summary suspension was both sent by certified mail and was provided in hand to the attorney or attempted in hand without success, despite reasonable efforts."

b. 2016-003. Supreme Court Rule 37. Attorney Discipline – Vertical Prosecution.

Ari Richter inquired whether what is being proposed here is just an administrative issue. He stated that it would be helpful to know why the system was set up this way. Is there a reason disciplinary counsel ought to be prohibited from participating in the process earlier? Attorney Gordon stated that the way the rule is currently written, it provides the subject attorney with more due process that it would if the rule is amended in the manner proposed.

Justice Lynn stated that what prompted the proposal is an efficiency issue. The Court raised the issue due to concerns about efficiency. Some matters have taken a very long time to conclude and there are some redundancies as a result of the way the rule is currently written.

Judge Delker noted that attorney Murphy had stated that under the existing rule, General Counsel can assist Disciplinary Counsel in her duties, but it does not work the other way around. This rule would correct that, so that Disciplinary Counsel can assist the General Counsel. The idea is that if Disciplinary Counsel gets involved sooner, there is less chance that there will be duplication of effort. As Judge Delker understands the testimony, the plan is for the Attorney Discipline Office to continue to function the way it currently does in most cases, but in some cases, disciplinary counsel would become involved sooner in order to save resources.

Justice Lynn agreed that what prompted this was a concern about efficiency. He agrees that the rule as currently written does provide an additional level of due process, but stated that there is no legal basis for that. He does not believe that the current level of process is required by law or by the constitution. The rule amendments would make the system more efficient, and there is no legal or constitutional problem with making the change. He stated that if one were to compare the amount of process provided under the current systems with the process available in criminal cases, one would find that the amount of process in these cases is actually greater. There are a lot of safeguards for the attorney.

Jeanne Herrick noted that that the Attorney Discipline Office was created by Court rule. The rule sets up not just the procedure to be followed, but also sets up the structure of the office itself and sets up the framework for how the office operates.

Attorney Lick stated that he has concerns about the proposed change to the process. As it is now, a grievance is filed and General Counsel plays a neutral role, then the grievance goes to the complaint screening committee. If it meets a certain threshold, then it goes to the prosecutor. Attorney Lick is concerned that if Disciplinary Counsel becomes involved in the process sooner,

then the office has a prosecuting mindset from the start. If this is the case, if the functions of the General Counsel and Disciplinary Counsel merge, then what is the point of having these two separate positions – General Counsel and Disciplinary Counsel? Attorney Lick stated that his impression is that the General Counsel is currently overwhelmed by the volume of cases, and the Disciplinary Counsel does not have as much work. Therefore, this request for a rule change has been made, so that Disciplinary Counsel can assist with the workload.

Justice Lynn stated that there may be something to that, but inquired why the change would be a problem, if the current rule gives lawyers an extra measure of due process that they do not really need.

Judge Delker noted that the legislature has instituted vertical prosecution in criminal cases through Felonies First. He notes that there may be reasons to separate the two roles of General Counsel and Disciplinary Counsel, from a work-flow perspective, but he believes that this proposal makes sense.

Attorney Gordon noted that three branches of government are involved in criminal prosecutions, whereas lawyers are self-regulated. He stated that there may be pressure from the public for there to be greater regulation, whereas attorneys might believe that they should not be regulated so much. So, the analogy to criminal prosecutions does not quite fit. Regarding the level of due process issue, perhaps the balance struck by Jim Dehart is right. Attorney Gordon stated that he will vote against the proposal.

Attorney Herrick stated that perhaps what is needed is a complete restructuring off the system. Perhaps having one General Counsel is the most efficient way to do things. It would be helpful if those who have proposed this change could be more direct about what they are asking – *i.e.*, that the system is in need of greater efficiency.

Ari Richter stated that he agrees with attorney Gordon. He inquires why this one adjustment should be made. Perhaps what is needed is a look at the overall structure. Attorney Manning stated that she agrees.

Attorney Albee noted that there are currently no ethical walls between the Disciplinary Counsel and the General Counsel. They are able to discuss anything.

Justice Lynn stated that what prompted this proposal was the Court's concern about efficiency. Attorney Rothstein has been working hard to make sure things run more smoothly. The Court agreed that vertical prosecution would help with that. There really is benefit to be gained and no real downside.

Judge Delker noted that the General Counsel sees a number of grievances, and the disciplinary counsel sees only a small fraction of these. Disciplinary Counsel could be used to help screen cases that come in the door.

Justice Lynn noted that the biggest challenge in terms of efficiency is the duplication of effort involved in the bigger and more complicated cases that come in. With these kinds of cases, it seems to make sense to involve disciplinary counsel earlier.

Ari Richter inquired whether if the original grievance is serious, is there a "fast track" possibility to get the case to the Complaint Screening Committee earlier?

Judge Delker noted that efficiency becomes more of an issue in the financial cases in which there are boxes of documents to review. In those kinds of cases, there is a great deal to be gained from having Disciplinary Counsel involved "on the ground floor." Having the General Counsel review these documents initially and then go to the Complaint Screening Committee and then having to have Disciplinary Counsel review these documents when she goes to prosecute the cases means that many more attorney hours than necessary are spent reviewing the documents. There is just a massive amount of waste in these kinds of cases.

Attorney Gordon stated that he understands the efficiency issue, but noted that perhaps it is supposed to be inefficient. There was a separation of these roles for a reason.

Representative Berch stated the he has gone back and forth when considering this issue. He stated that he is persuaded by the analogy to the criminal prosecutions, but also notes that we do not want to rush. We don't want to say, "it is so obvious" we should do this. Perhaps it is not so obvious and should be looked into more. He stated that he is leaning toward voting against that proposal because he is concerned about collateral consequences and has not been persuaded that we need to do this.

Upon motion made and seconded, the Committee voted 9 to 5 against recommending that the Court adopt the proposal.

Attorney Lick inquired whether there might be a middle ground. Is there a way for General Counsel to make an initial finding.

Ari Richter stated that if the Court has initiated this, perhaps the Court could make a clearer case as to what the other side of the equation is. Perhaps there needs to be a broader look at the whole process.

Attorney Gordon noted that perhaps it is a staffing problem. He also noted that Attorney Rothstein stated that it is the rare case that would require Disciplinary Counsel to become involved early on in the process. If this is the case, then perhaps this distinction can be written into a rule. That usually there will be a separation, but in some of the more complex cases there will not be.

Attorneys Herrick, Lick and Gordon agreed to try to draft some language to amend the proposal set forth in Appendix E to limit the ability of General Counsel to assign the initial review of matters to Disciplinary Counsel. They agreed to submit the language to the committee for consideration at the March meeting.

Representative Berch suggested that perhaps some change could be made to address the efficiency issue, even without changing the rule.

c. 2016-007, 2014-010, 2016-002 and additional amendments. Superior Court Civil Rules.

Judge Delker explained that he chairs a subcommittee formerly chaired by attorney Emily Rice, and that in a memo dated May 9, 2016 the subcommittee had recommended some amendments to the new Superior Court Civil Rules. It is those proposed amendments that were put out for public comment.

He noted that one comment has been submitted about the proposal to amend the rules relating to protective orders. The comment, submitted by New Hampshire Legal Assistance, states that the thirty day filing deadline is not practical or possible in all scenarios and suggests an amendment to the proposal.

Attorney Manning and Attorney Lick both expressed concern about the proposed language.

To address the concerns raised by NHLA and attorneys Manning and Lick, Judge Delker suggested that the proposal to amend Superior Court Rule 29, as set forth in Appendix J of the public hearing notice, be further amended. He proposed that the language "including any extensions agreed to by the parties or ordered by the court, or within ten days of an order of production of records" should be inserted after "Rule 22" in 29(b).

Upon motion made and seconded, the Committee voted to recommend that the Court adopt the proposed changes to the superior court rules set forth in appendices G through K, with the additional amendment to Rule 29(b) set forth above.

3. Approval of Minutes of September 9, 2016.

Upon motion made and seconded the Committee voted to adopt the September 9, 2016 minutes.

4. Status of Items Still Pending Before the Committee

a. 2015-022. New Hampshire Rules of Evidence – Update.

Justice Lynn noted that the Committee had voted electronically to recommend the amendments to the rules of evidence set forth in Carolyn Koegler's November 9, 2016 memo to the Committee. However, he stated that he has one concern about the 2016 Update Committee note following Rule 104. The proposed amendment to Rule 104(b) reads:

> (b) *Relevance that Depends on a Fact*. When the relevance of evidence depends on whether a fact exists, proof must be introduced sufficient to support a finding that the fact does exist. If such proof is presented, and the court finds that the evidence is otherwise admissible, the court shall admit the evidence. The court may admit the proposed evidence on the condition that the proof be introduced later.

The comment following the rule reads, in relevant part:

> The language of the amended rule mirrors Federal Rule of Evidence 104, except that the last two sentences of New Hampshire Rule of Evidence 104(b) are not included in the Federal Rule. The Committee believes that the addition of the last two sentences codifies existing New Hampshire law and makes it clear that a judge cannot decline to admit evidence which is otherwise admissible if the conditional evidence is presented.

Justice Lynn expressed concern about the second sentence, and proposed the following amendment to that sentence (deletions in ~~strikethrough~~; additions in **[bold and in brackets]**:

> The Committee believes that the addition of the last two sentences codifies existing New Hampshire law and makes it clear that a judge cannot decline to admit evidence which is otherwise admissible if **[evidence is presented that is sufficient to permit the factfinder to find that the condition has been satisfied]** ~~the conditional evidence is presented~~.

Following some discussion and upon motion made and seconded, the committee voted to ratify the electronic vote, and to make the change proposed by Justice Lynn.

b. 2015-011. Supreme Court Rules 37 and 37A.

Carolyn Koegler reminded the Committee that a subcommittee had been formed to consider whether the rules relating to reinstatement to the bar following suspension and readmission following disbarment should be amended. For the reasons set forth in the Committee's September 9, 2016 minutes, the subcommittee has suspended its work.

c. 2016-005. Superior Court (Civ.) Rules 1 and 4.

Justice Lynn reminded the Committee that David Peck had submitted a proposal to amend these Superior Court Rules to allow a party to cure defects in filings. At the September meeting, Justice Lynn had noted that the Circuit and Superior Courts might have concerns about the administrative problems the proposed amendments could create. Attorneys Albee and Ryan agreed that they would ask for feedback from the appropriate people at the Superior and Circuit Courts about the proposal set forth in David Peck's May 24, 2016 memo to the Committee.

Justice Lynn noted that Judge Nadeau had submitted a letter dated December 2, 2016, expressing concerns about the proposal. The Superior Court has no objection to the amendments in Rule 1(f)(1) and (2), but does object to the amendment contained in paragraph (3).

Some discussion ensued regarding the fact that the proposed amendment allowing filers 15 days from the clerk's rejection of a complaint to correct defects in filing would create some ambiguity regarding when a complaint is deemed filed.

There was some discussion about how often it is that a clerk rejects a complaint due to someone's failure to file the fee. Judge Delker reported that this happens quite often at the Superior Court. Attorney Albee stated that 99% of the time superior court clerks reject pleadings it is because of a party's failure to pay the filing fee. She stated that people are told that they can file a motion to waive the filing fee.

Some discussion ensued regarding the need to modify the proposal in response to the concerns Chief Justice Nadeau raised in her letter. Upon motion made and seconded, the Committee voted to put the proposal set forth in David Peck's May 24, 2016 letter out for public hearing, with the following changes: (1) delete (3) in Rule 1(f); and (2) eliminate the see cite in Rule 4(b), as follows (the text in **bold** indicates where David Peck suggested adding language

to the existing rule, the text in strikethrough indicates where the Committee has modified the proposal:

Rule 1

(f) The clerk may refuse to accept**, by notification in writing,** any filing that the clerk determines does not comply with these rules. In the event an objection is made to such determination, a written motion may be made to the court to rule on such determination. **The written notification shall state: (1) all reasons why the filing is not being accepted; and (2) that in the event the filing party objects to such determination, a written motion shall be made to the court to rule on such determination within 15 days of the date of the notification~~; and (3) if the refused filing includes a Complaint, if the noted defects are cured and the corrected filing resubmitted to the clerk within 15 days of the notification or within 15 days of any ruling by the court on a timely-filed motion objecting to the determination, the Complaint shall be deemed to have been filed on the date that the defective filing was initially received by the clerk~~.**

Rule 4

(a) There shall be one form of action to be known as a "civil action."

(b) To initiate a civil action, including an action authorized by law to be initiated by writ or petition, the plaintiff files with the court: (i) the Complaint; (ii) an Appearance (indicating the plaintiff's representative by name, address, email address, telephone number, and New Hampshire Bar Association identification number); and (iii) **either** the filing fee **or a motion to waive the filing fee**. See Rule 201. For purposes of complying with the statute of limitations **or analogous time limit**, an action shall be deemed commenced on the date the Complaint is filed. ~~***See* Rule 1(f)(addressing when Complaint is deemed to have been filed when the clerk refuses to accept Complaint because filing does not comply with these rules).~~

(c) Upon receipt of the Complaint and**, and if the filing fee is not waived, the** filing fee, the court will process the action and provide plaintiff with the completed Summons for service. The Summons will identify: (i) the date the Complaint is filed; (ii) the court-ordered deadline for service; and (iii) a hearing date, if appropriate. Plaintiff will cause the Summons together with a copy of the Complaint to be served on defendant no later than the court-ordered deadline for service, service to be made as specified in RSA 510, or as otherwise allowed by law. Proof of service shall be filed with the court within 21 days of the court-ordered deadline for service. If a defendant is not served within the court-ordered deadline for service, the

court shall dismiss the action with or without prejudice, as justice may require.

(d) In all cases of notice by publication where the time may be fixed by the court, the order shall be for publication in some newspaper or newspapers named by the court in general or special orders, once a week for 3 successive weeks. The last publication shall not be later than the time fixed by the court.

(e) Appearances and Answers are due within 30 days of the date the defendant is served with the Summons and Complaint.

d. 2016-006. Motions to Seal.

At the September meeting, Judge Delker agreed that he would chair a subcommittee to address the issues raised by attorney William Chapman, as explained in a May 31, 2016 memo from Carolyn Koegler to the Committee. Judge Delker reported that he had formed the subcommittee, and that it is scheduled to meet in January.

e. 2014-009. Superior Court (Civ.) Rules. Relation-Back

Judge Delker reminded the Committee that a subcommittee he chairs had considered, among other things, a proposal to adopt a rule addressing the effect of amendments to complaints in terms of relation back to the original filing. In a May 9, 2016 memo to the Committee, the subcommittee noted that this issue was complicated. Judge Delker volunteered to enlist law clerk assistance to research the issue and New Hampshire law and to generate a proposal.

Judge Delker explained that he had done so and had asked the subcommittee to review the proposal. The subcommittee's proposal is set forth in a December 6, 2016 memo to the Committee. Judge Delker also explained that a member of the subcommittee, attorney David Slawsky, had put forth an alternative proposal, for the reasons set forth in Attorney Slawsky's December 6, 2016 memo to the Subcommittee on Amendments to the Rules of Civil Procedure. Both proposals were distributed to members of the Committee.

Judge Delker stated that he believes both proposals advance the ball significantly. He notes that the primary difference between the two is that the Slawsky proposal has "more flex in the joints." The proposal set forth in Judge Delker's memorandum is based upon Federal Rule of Civil Procedure 15(c).

Attorney Manning expressed concern about the federal rules and the matter of the "John Doe" defendant. Judge Delker responded that the version of the rule based upon the federal rule addresses this concern.

Judge Delker explained to the Committee that the concern attorney Manning raises is illustrated by the following example. A complaint alleges that a police officer used excessive force, but the plaintiff could not see the name of the officer who used the excessive force at the time of the event. The complaint is filed on the last day of the statute of limitations, using the name "John Doe." Under the Federal Court rule, amendments to add a new defendant can only "relate back" to the date of the filing of the original complaint if the defendant had notice or should have had notice of the suit and a mistake was made concerning the identity of the defendant. Courts have held that under the federal rule naming a "John Doe" defendant is not a mistake, and have declined to hold that the amendment relates back, even when the defendant to be added was aware of the complaint. In response to this concern, the subcommittee added the language to make it clear that amendments to add a new defendant can relate back to the date of the filing of the original complaint if the defendant had notice or should have had notice of the suit and a mistake was made concerning the identity of the defendant or the defendant was not named due to a lack of information concerning the proper party's identity.

Attorney Gordon stated that he believes that this makes sense, because the defendant knows the identification better than the plaintiff.

Representative Berch inquired whether the addition of the language "lack of information" raises any concerns with respect to the due diligence concept. That is, should there be a distinction between circumstances in which the plaintiff makes no effort to obtain the information versus circumstances in which the plaintiff has tried but is unable to obtain the information.

Attorney Manning stated that this is a real issue with respect to the statute of limitations. She stated that her firm was local counsel on a personal injury case. The defendant gave the wrong name, so the firm sued using the wrong name and the statute ran. Judge Delker stated that this seems like a mistake or lack of information situation. He emphasized that under the rule, the defendant has to have had notice of the suit before the expiration of the statute of limitations.

Upon motion made by Justice Lynn and seconded by attorney Curran, the Committee voted to put both Judge Delker's proposal and attorney Slawsky's proposal out for public hearing in June.

f. 2016-010. Superior Court (Civ.) Rules. Permissive Counterclaims.

Judge Delker reminded the Committee that a subcommittee he chairs had considered whether Superior Court Rule 10 should be amended to address when it is appropriate for a party to file permissive counterclaims. In a May 9, 2016 memo to the Committee, the subcommittee had noted that this issue

would require additional research of New Hampshire law on the parameters for filing permissive counterclaims.

Carolyn Koegler reported that she will distribute Judge Delker's proposal for consideration at the March meeting.

g. 2016-011. Superior Court (Civ.) Rules. Appearances.

Judge Delker reminded the Committee that Judge Anderson, a member of the civil rules subcommittee, had raised the question of whether the rules regarding when a party must file an appearance should be amended to say that the filing of a complaint, answer or other responsive pleading should be adequate to constitute appearance of an attorney. *See* May 9, 2016 memo from Judge Delker.

Carolyn Koegler reported that she will distribute Judge Anderson's proposal for consideration at the March meeting.

h. 2016-012. Superior Court (Civ.) Rules. Administrative Orders.

Judge Delker reminded the Committee that in a May 9, 2016 memo from the civil rules subcommittee, the subcommittee had proposed adopting a rule referencing administrative orders that supplement or clarify the rules of civil procedure so that lawyers and pro se litigants are made aware that they exist, and know where to look for them.

At the September meeting, one of the committee members raised an issue about whether there should be a rule to address how to create administrative orders, and Judge Delker agreed to follow up with Judge Nadeau about the issue.

Judge Delker reported that Judge Nadeau opposes a rule to limit the process of creating administrative orders. New Hampshire Supreme Court Rule 54(4)(c) gives the superior and circuit court administrative judge the power to create administrative orders "as may be required from time to time to carry out the responsibilities of the office." As is noted in a November 7, 2016 email to Carolyn Koegler, Judge Delker believes that a rule referencing the administrative orders, as follows, would be helpful:

> Rule 314. The Chief Justice of the Superior Court has issued administrative orders, which supplement and/or clarify the rules of civil procedure. The administrative orders can be located on the New Hampshire Judicial Branch website.

Attorney Gordon noted that he believes that these administrative orders are a holdover from a time when there was no formal process for adopting rules. He

inquired why they exist. Judge Delker stated that his review of the administrative orders made clear that there are not a lot of administrative orders that fall into the "rule" category. Most of them relate to internal governance issues to ensure that the system runs smoothly. This is what administrative orders are designed to do; they should not be used to circumvent the rulemaking process.

In light of this, attorney Herrick expressed concern about the language "which supplement and/or clarify the rules of civil procedure." Following some discussion of this issue, the Committee agreed to amend the proposed rule to delete from the proposal the language, "which supplement and/or clarify the rules of civil procedure."

Upon motion made by Justice Lynn and seconded by Representative Berch, the Committee voted to recommend the proposed rule to the Court, without first holding a public hearing.

5. New Submissions

a. 2016-008. Rules of Professional Conduct and Medical Marijuana.

The Committee discussed this item, but took no action on it.

b. 2016-009. Rule of Professional Conduct 8.4. Harassment and Discrimination.

The Committee discussed this item, but took no action on it.

c. 2016-013. Superior Court (Civ.) Rules. Motion for Summary Judgment.

Justice Lynn directed the Committee's attention to Judge Delker's November 22, 2016 email and attachment proposing a rule designed to require both sides in the context of motions for summary judgment to submit a single document identifying the undisputed facts and any disputed facts.

Following some brief discussion and upon motion made and seconded, the Committee voted to put the proposal out for public hearing in June.

d. 2016-014. New Hampshire Rules of Criminal Procedure. In Camera Review of Documents

Justice Lynn directed the Committee's attention to the December 5, 2016 letter and attached memorandum from Chief Appellate Defender Christopher M. Johnson proposing an amendment to the Rules of Criminal Procedure used by trial courts when conducting *in camera* review of confidential records. He stated that he believes the proposal makes sense.

Representative Berch stated that he believes that it is an excellent proposal and presentation and an area in need of discussion. The idea of giving information to defense counsel telling him or her not to supply it to his or her client is a complex issue and can have downstream effects on a case – for example, regarding when to call a witness or not to call a witness. There is an alternative methodology here, and there should be some discussion on this.

Judge Delker volunteered to contact attorney Johnson to ask him to spearhead the effort on putting together a subcommittee to consider the proposal. Attorney Albee and representative Berch volunteered to work on the subcommittee. There was some discussion about the need to consider having a similar rule on the civil side.

Upon motion made and seconded, the Committee voted to put the proposal out for public hearing in June, understanding that the Committee would also consider the report of the subcommittee at the June meeting.

e. 2016-015. Superior Court Rule 37(e). Life Expectancy Tables.

Carolyn Koegler directed the Committee's attention to her December 8, 2016 memo stating that New Hampshire Law Librarian, Mary Searles, had proposed an amendment to Rule 37(e), and inquired whether the Committee wished to recommend the proposal to the Court without holding a public hearing. Judge Delker noted that in a recent case, the parties had disputed which life expectancy table should be used. He believes that a public hearing should be held on this proposal.

Upon motion made and seconded, the Committee voted to put the proposal out for public hearing in June.

f. Miscellaneous

Attorney Gordon noted that a concern has arisen among attorneys practicing in the family law area regarding the amendments to family division Rule 2.29 which are to take effect on January 1, 2017. He believes that the rule should be amended, or a comment should be added to the rule, to clarify that the amendments are not intended to affect the trial court's existing authority to act on certain matters while an appeal is pending.

It was agreed that attorney Gordon would work with Justice Lynn and Carolyn Koegler to address this before January 1.

6. Meeting Dates

It was noted that there is a conflict with the June 16 meeting date, so it has been changed to June 9. The 2017 meeting dates are:

- Friday, March 17
- Friday, June 9
- Friday, September 15
- Friday, December 8